through the royalty on energy production and devoting most of it to those investments in alternative and renewable energies. Again, we do this without borrowing money by establishing a renewable and alternative energy trust fund and putting funds from domestic production royalties into that trust fund. In doing so, we do more for alternative and renewable energy than President Obama's entire $800 billion stimulus plan.

No. 3, the third big thing the No Cost Stimulus Act of 2009 does, it streamlines the regulatory burden and clarifies environmental law. We streamline the review process for new nuclear energy production, and we prevent the abuse of environmental laws, which were not meant to be used as a way to simply stop and block all of these projects.

Madam President, I wish to close as I began. Energy is a big topic, and ensuring affordable, reliable energy is central to the core of who we are in this country because energy is a great equalizer. We are a society of equals. We have never had distinct classes. We have always had great mobility. You can make it in America. If you are successful, you can do anything. You are not born into a class. You are not limited in that way. Affordable, reliable energy is a key equalizer that ensures that American way of life.

So what should energy policy be about? It should be about four things:

No. 1, ensuring affordable energy for all Americans, particularly middle- and low-income families, so that we keep that great equalizer in the center of our society, in the center of our economy.

No. 2, it should be a way to grow the economy with our abundant domestic resources, particularly as we need to get out of this serious recession.

No. 3, good energy policy should work us toward energy independence so we do more here at home and we rely less on foreign sources.

No. 4, a good energy policy should ensure that it is consistent with national security, which, of course, increasing our energy independence is.

I truly believe the No Cost Stimulus Act of 2009 achieves all four of those broad goals in a very significant way. Just as clearly, President Obama's energy tax proposals, which across the board increase the tax burden on utility bills, on domestic energy, on domestic energy production, move us in the opposite direction.

President Obama said very recently about GM, in the midst of the latest GM bailout, that:

> GM has been buried under an unsustainable mountain of debt, and piling an irresponsibly large debt on top of the new GM would mean simply repeating the mistakes of the past.

There is an old saying: What is good for GM is good for the country. I would like to modify that to say: What is true for GM is true for the country. So why are we piling an irresponsibly large debt on top of our existing historically high levels of debt in this country? We need another way. We need something like the No Cost Stimulus Act of 2009. We need to learn again how to generate wealth and a healthy economy. We need to refocus here at home on our abundant energy resources. And that is the way we can have a sound energy policy that meets those four crucial goals I mentioned and allow us to work out of this severe recession—not by borrowing more from the Chinese, not by spending more taxpayer dollars—and it is all borrowed money right now—but focusing here at home on our own resources, on our own people, on good sustainable jobs we can build here toward a prosperous future and toward a new energy future.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. LIEBERMAN. Madam President, I rise today to describe and explain my amendment to H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The central purpose of this legislation is to give the Food and Drug Administration the authority to regulate tobacco products. I support the bill's goals and am an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products under H.R. 1256 passes muster under budget rules only because of the increase in tax revenues generated by one federal employee retirement program, I want to make sure that the overall retirement system treats federal employees fairly. To accomplish this, I and colleagues on the Homeland Security and Governmental Affairs Committee—Senators COLLINS, AKAKA, and VOINOVICH—have developed this bipartisan amendment to make a number of much-needed corrections and improvements to the federal employee retirement program. In addition to Senators COLLINS, AKAKA, and VOINOVICH, I would also like to thank Senators MURKOWSKI, MIKULSKI, INOUYE, and BEGICH, who have all asked to be included as cosponsors of this amendment.

The central purpose of our amendment is to bring justice to federal employees who—because of quirks in the law, errors, and oversight—have lost out on retirement benefits for which they would otherwise be eligible. Many of the provisions of this amendment have the very strong support of federal employee unions and organizations of managers.

Our amendment would add back into the pending substitute amendment several of the reforms to the federal retirement system that were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I have prepared a complete written summary of these provisions, and I will ask consent that it be printed in the RECORD. Now I want to focus on those that are most significant.

One of the most important reforms in our amendment would lift retirement penalties now experienced by long-time federal employees under the Civil Service Retirement System who want to switch to part-time work at the end of their careers. The amount of an employee's annuity is based, in part, on the highest rate of salary that the employee received over a 3-year period. Because an employee's salary ordinarily reaches its highest rate at the end of the employee's career, employees count on that end-of-career work period to help determine the amount of annuity. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for the part-time work, is only a fraction of the rate of salary received. With retirement credit for part-time work so reduced, many employees have little incentive to stay on part-time, and simply opt to retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee's annuity. This would remove the disincentive that now discourages federal employees near retirement from working on a part-time basis while phasing into retirement.

Our amendment is not only fair to the employee, but also good for the government, by helping to retain valuable employees who wish to phase down their work but to continue offering their talent and experience to serve the government and to train future leaders. This is one of the provisions in our amendment that was passed by the House as part of its version of H.R. 1256, and this provision is also very similar to a bill introduced by Senator VOINOVICH, S. 469, which was unanimously approved by the Homeland Security and Governmental Affairs Committee late last month by voice vote.

A second provision in our amendment would correct an injustice in calculating the retirement dates and benefits for nonjudicial employees of the DC courts, the Court Services and Offender Supervision Agency and the DC

Public Defender Service. Legislation in 1997 and 1998 converted these individuals from being employees of non-federal agencies into being federal employees. The converted employees were brought under the Federal Employees Retirement System, which essentially began calculating their eligibility for retirement and the amount of their benefits anew, without recognition of their previous service.

Some employees of these three agencies could have retired years ago had they received credit for their years of service with the DC government. Instead, they are still serving to make up for time lost when they were transferred into the federal service. One provision in our amendment would simply require that the time served by these employees before their date of transfer from DC to federal service will count towards their overall federal retirement eligibility as ''creditable service.'' This is a fair and just correction.

Another important provision in our amendment will equalize the treatment of participants in the old Civil Service Retirement System and participants in the newer Federal Employees' Retirement System. This provision would allow FERS participants to apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefit—something Civil Service Retirement System participants are already allowed to do. This reform would not only bring equity to all federal employees participating in the two retirement plans. It also would help reduce the inevitable absenteeism that results from the current ''use it or lose it'' policy for sick leave under the FERS program.

Our amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits because they did not receive what they were promised when hired. This provision would restore this group of agents and officers to the retirement system they were promised and paid into over 22 years ago.

Historically, Secret Service nonuniformed agents, like other federal employees, joined the Federal Civil Service Retirement System, whereas uniformed officers of the Secret Service were covered under the District of Columbia Police and Fire Retirement Plan, because their division had originally begun as an adjunct to the DC police force. Nonuniformed agents who accrued 10 years of protection time could also transfer into the DC plan, and many did so, because the DC plan is more generous and more flexible than the federal system.

New-hires to the Secret Service continued to be promised that they could retire under the DC Metro plan up until 1987. In that year, when the Federal Employee Retirement System was created to replace the older CSRS, the law did not permit Secret Service agents hired between the years of 1984 and 1987 to opt into the DC plan, but instead required them to be covered by the new federal retirement system.

We ask a tremendous amount from the men and women of the Secret Service, many of whom have some of the most challenging jobs within the federal government. It is not too much to expect that the federal government abide by its promises in return. Accordingly, this amendment will enable the affected Secret Service agents to convert to the DC Metro plan if they so choose.

Finally, our amendment incorporates two additional bipartisan reforms of the federal pay and benefits system that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator AKAKA, and cosponsored by Senators MURKOWSKI, INOUYE, and BEGICH, called the ''Non-Foreign Area Retirement Equity Assurance Act of 2009.'' This legislation will bring federal employees in Hawaii, Alaska, and other ''nonforeign'' U.S. territories in line with federal employees in the lower 48 states with regard to pay and pension. Federal employees in the lower 48 states receive locality pay, which is taxed and counts towards employees' pensions Federal employees in nonforeign areas instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

This puts nonforeign area employees at a substantial disadvantage when it comes time to retire. To correct this situation, the legislation would move federal employees in nonforeign areas from the nonforeign COLA system to locality pay that would both be taxed and count toward pensions. Locality pay would be phased in over a 3-year period and the nonforeign COLA would be phased out. Although all future employees would be covered by the act, existing employees in nonforeign areas could choose to continue receiving the nonforeign COLA rather than being transitioned to locality pay.

We have also included in this amendment a bill, S. 629, which was introduced by Senator COLLINS and cosponsored by Senators VOINOVICH, KOHL, and MCCASKILL, named the ''Part-Time Reemployment of Annuitants Act of 2009.''

This legislation would authorize Federal agencies to reemploy retired Federal employees, under certain limited conditions, without offset of annuity against salary. The purpose is to help agencies weather the upcoming wave of retirements by hiring back retirees on a limited basis.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule, and our amendment would grant all agencies the power to hire annuitants at full salary and annuity if certain conditions are met.

The bill includes several limits intended to ensure that the authority is used for the intended purpose, to fill particular staffing gaps and needs. A reemployed individual may not work more than a maximum of 520 hours—i.e., 65 days—in the first 6 months after retirement, or more than 1,040 hours—i.e., 130 days—in any 12-month period, or exceed a total of 3,120 hours—i.e., 390 days—for any one individual. These limits represent working at about half time.

Moreover, reemployed annuitants at an agency may not comprise more than 2.5 percent of the agency's total workforce, and may not exceed 1 percent of the agency's total workforce unless the agency head submits a written justification to OPM and Congress. The legislation would sunset after 5 years.

Federal employees, wherever they work, are a dedicated group of people who are asked to make a number of sacrifices for the sake of their country.

Those in the Secret Service, obviously, sacrifice more, sometimes with their lives. Our amendment will update and bring retirement parity and fairness to many federal employees. This amendment will provide a measure of justice for hundreds of thousands of public servants. I urge my colleagues to support this amendment.

Madam President, to reiterate, I rise today to describe and explain and speak on behalf of the bipartisan amendment to this underlying bill I am proud to introduce, along with Senator COLLINS, Senator AKAKA, and Senator VOINOVICH. The central purpose of the legislation before us, of course, is to give the Food and Drug Administration the authority to regulate tobacco products. I support the aims of the bill strongly and I am proud to be an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products is estimated to result in some reduction in tobacco excise taxes, the bill before us, H.R. 1256, passes muster under budget rules only because of an increase in revenues generated by a change that is made in the proposal in the Federal Employee Retirement System. The aim of Senator COLLINS, Senator AKAKA, Senator VOINOVICH, and myself, in proposing this amendment is to make sure that while that revenue-raising change occurs, that the overall retirement system treats Federal employees as fairly as possible. So we have developed this bipartisan amendment to make a number of corrections and improvements in the existing Federal employee program.

In addition to the Senators I have mentioned, I also thank Senators MURKOWSKI, MIKULSKI, INOUYE, and BEGICH, who have also become cosponsors of this amendment.

The central purpose of the amendment is to bring justice to Federal employees who, because of quirks in the law—frankly of errors or oversights—have lost out on retirement benefits for which they would otherwise be eligible.

Many of the provisions of this amendment have the very strong support of the groups representing Federal employees and managers as well. Our amendment would add back into the pending substitute amendment several of the reforms to the Federal retirement system that actually were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the Federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I should state here for the record that the committee now has very broad jurisdiction which has been added to, in recent years, when we became the Homeland Security Committee, but in the original governmental affairs jurisdiction of the committee we not only have general oversight of the activities of government, of the Federal Government, this is the committee responsible for the civil service, for those who work every day to enable our Federal Government to work for the citizens of our country.

I have a complete written summary of the provisions that are in this amendment. I will offer it a little bit later, but now I want to focus on a few of the most significant changes.

One of the most important reforms in the amendment would lift retirement penalties now experienced by long-time Federal employees under the Civil Service Retirement System when they want to switch to part-time work at the end of their careers. It is very important, as we face a time of increasing retirement from Federal service and increasing demand on Federal service. The amount of an employee's annuity is based in part on the highest rate of salary an employee received over a 3-year period. Although an employee's salary naturally reaches its highest rate at the end of an employee's career, employees count on that end-of-career work period to determine the amount of annuity they will live on in retirement. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for part-time work, is only a fraction of the rate of salary received.

With retirement credit for part-time work so reduced, a lot of employees have very little incentive to stay on part time when we need them to do so, and they will, therefore, retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee's annuity. That would remove the disincentive to continue to serve that now exists.

A second provision in our amendment would correct an injustice in calculating the retirement dates and benefits for nonjudicial employees of the D.C. courts, the Court Services and Offender Supervision Agency, and D.C. Public Defender Service. These are fair and just corrections.

Another important provision in the amendment would equalize the treatment of participants in the Civil Service Retirement System with treatment of participants in the newer Federal Employees Retirement System. To the average American, this vocabulary is probably not too comprehensible. To the millions of Federal employees, the difference between the CSRS and FERS is quite well understood and significant. The provision that we have in this amendment would allow for its participants to apply their unused sick leave in determining their length of service for the purposes of computing the amount of retirement benefits—something Civil Service Retirement System participants are already allowed to do. So that is an inequity this amendment would eliminate.

The amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits because they did not receive what they were promised when hired. This provision would restore this small group of agents and officers to the retirement system that they were promised and paid into over 22 years ago. We obviously ask so much of the men and women of the Secret Service that we should treat them fairly.

Finally, our amendment incorporates those two additional bipartisan reforms of the Federal Pay and Benefit System that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator AKAKA, who I know is on the floor and I believe may speak on this when I am done, cosponsored by Senators MURKOWSKI, INOUYE, and BEGICH, called the Non-Foreign Area Retirement Equity Assurance Act of 2009. These obviously are colleagues from Alaska and Hawaii, so it has unique relevance there. The legislation would bring Federal employees in Hawaii and Alaska and other ''nonforeign'' U.S. territories in line with Federal employees in the lower 48 States, as we call them, with regard to pay and pension. Federal employees in the lower 48 receive locality pay, which is taxed and counts toward employee pensions. Federal employees in nonforeign areas, such as Alaska and Hawaii, instead receive a nonforeign cost of living allowance, which is neither taxed nor counted toward pensions.

This puts Federal workers in places such as Hawaii and Alaska at a substantial disadvantage when it comes to retirement. To correct this situation, this legislation would remove Federal employees in nonforeign areas—Alaska, Hawaii, et cetera—from the nonforeign COLA system to locality pay that would both be taxed and would count toward pensions.

We have also included in this amendment a bill, S. 629, which was introduced by Senator COLLINS and cosponsored by Senators VOINOVICH, KOHL, and MCCASKILL, which is called the Part-Time Reemployment of Annuitants Act of 2009. This is relative to something I talked about earlier. It would authorize Federal agencies to reemploy retired Federal employees under certain limited conditions without offset of annuity against salary. In other words, we have some retired employees who, after a long period of service, have built up specialized skills we need and will need more and more in the years ahead, as a generation retires from Federal service. Yet now there is an economic disincentive for those retired employees to come back part time or for limited periods of time to serve the American people.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule. Our amendment would grant all agencies the power to hire annuitants at full salary, while maintaining their full retirement benefit, if certain conditions are met.

The bill includes several limits to ensure that this authority is used for the intended purpose, which is to fill particular staffing gaps and needs and not used to frustrate the desire of a new generation of Federal workers to come in. A reemployed individual may not work more than a maximum of 520 hours, 65 days, in the first 6 months after retirement or more than 1,040 hours, 130 days, in any 12-month period or exceed a total of 390 days for any one individual for the entirety of their retirement.

Each of these proposals that are part of this amendment treat Federal employees fairly. They correct inequities; in some cases, oversights. The fact is, in many countries of the world, developed countries particularly, one of the most respected professions, lines of work one can go into is civil service, what we call the civil service. We are not where we should be in this country. These are the people who make the Federal Government work. We should treat them fairly and, in this unique circumstance, when we are taking some more out as a result of a change in the Federal retirement system to offset the loss of excise taxes on tobacco, there is some money left over which we can use to correct these inequities on Federal employees. That is why I am so pleased this is a bipartisan amendment.

I hope, when it comes to a vote, it will receive overwhelming bipartisan support.

I thank Senator AKAKA, who is an extraordinary Senator in general but has been a wonderful, productive, contributing member of this committee and a great advocate for the most progressive

human capital management; that is, the best management of our Federal workforce.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. AKAKA. Madam President, I ask unanimous consent to speak as in morning business for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Madam President, I thank Chairman LIEBERMAN for his leadership. He has been doing a grand job in moving legislation on issues of homeland security. I rise today to support the Family Smoking Prevention and Tobacco Control Act. Tobacco products kill approximately 400,000 people each year. The FDA must be provided with the authority to regulate deadly tobacco products, limit advertising, and further restrict children's access to tobacco.

I commend my friend from Massachusetts, Senator KENNEDY, for his long-term commitment to advancing this vital public health legislation, and I thank my friend from Connecticut, Senator DODD, for managing this bill. I am proud to support their efforts.

Included in the bill are a number of Federal retirement provisions that go a long way to support retirement security and provide more options for Federal employees.

The provisions in the managers' amendment would make four changes to enhance the Thrift Savings Plan. Federal employees would be automatically enrolled in the TSP with the option of opting out of the program. Federal employees also will be eligible for immediate matching TSP contributions from their employing agency. In addition, the Thrift Savings Board will have the option to create a mutual fund window during which employees will be able to select mutual funds that are appropriate for their investment needs. Finally, employees will be allowed to invest in a Roth IRA through the TSP.

As chairman of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I also am proud to support my other good friend from Connecticut, Senator LIEBERMAN, in offering an amendment to support additional retirement security and equity provisions for the Federal workforce.

Most important to my home State of Hawaii, the amendment provides needed retirement equity to Federal employees in Hawaii, Alaska, and the territories. Nearly 20,000 Federal employees in Hawaii, and another 30,000 Federal employees in Alaska and the territories, currently receive a cost of living allowance, which is not taxed and does not count for retirement purposes.

Because of this, workers in these areas retire with significantly lower annuities than their counterparts in the 48 States and DC.

COLA rates are scheduled to go down later this year along with the pay of these nearly 50,000 Federal employees if we do not provide this fix.

In 2007, the Office of Personnel Management offered a proposal to correct this retirement inequity. After soliciting input from all affected employees, I introduced the Non-Foreign Area Retirement Equity Assurance Act. The bill passed the Senate by unanimous consent in October 2008. Unfortunately, the House did not have time to consider the bill before adjournment.

I reintroduced this as S. 507, which is included in this amendment, with Senators MURKOWSKI, INOUYE, and BEGICH. It is nearly identical to the bill that passed the Senate last year.

This is a bipartisan effort to transition employees in Hawaii, Alaska, and the territories to the same locality pay system used in the rest of the United States, while protecting employees' take-home pay in the process. In this current economic climate we must be careful not to reduce employees' pay.

The measure passed unanimously through committee on April 1. OPM recently sent Congress a letter asking for prompt, favorable action on this measure.

This is one of the most important issues facing Federal workers in Hawaii, Alaska, and the territories. I urge my colleagues to support this change.

One of the other provisions in the amendment corrects how employees' annuities are calculated for part-time service under the Civil Service Retirement System. This provision treats Federal employees under CSRS the same way they are treated under the newer Federal Employee Retirement System. Eliminating this unnecessary disparity is a matter of fairness and correction.

Similarly, this amendment includes a provision to treat unused sick leave the same under the new retirement system as under the old system.

The Congressional Research Service recently found that FERS employees within 2 years of retirement eligibility used 25 percent more sick leave than CSRS employees within 2 years of retirement. OPM also found that the disparity in sick leave usage costs the Federal Government approximately $68 million in productivity each year.

This solution was proposed by Federal managers who wanted additional tools to build a more efficient and productive workplace and to provide employees with an incentive Congress should have retained years ago.

This amendment also will make good on the recruitment promise made to a small group of Secret Service agents. Approximately 180 Secret Service officers, hired during 1984 through 1986, were promised access to the DC retirement plan. This amendment would provide it.

The majority of these retirement reform provisions have the endorsement of all the major Federal employee groups including: the American Federation of Government Employees, the National Treasury Employees Union, the National Active and Retired Federal Employee Association, the Senior Executives Association, the Federal Managers Association, the Government Managers Coalition, and the list goes on.

I strongly encourage my colleagues to support this bill and the Federal retirement reform provisions.

I thank Chairman LIEBERMAN for his support and his leadership.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HAGAN. Madam President, I ask unanimous conent to speak in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HAGAN. Thank you.

Madam President, I rise in opposition to the Family Smoking Prevention and Tobacco Control Act that is before us. While the bill purports to reduce smoking among teenagers and to regulate tobacco products, it goes far beyond these two goals.

This broad, sweeping legislation will further devastate the economy of North Carolina and the lives of many of my constituents. In my State, we have 12,000 tobacco farmers and 65,700 jobs tied to this industry. It also generates close to $600 million annually in farm income. And the economic impact of tobacco in North Carolina is $7 billion. We know we are in the midst of an economic crisis, and the bill before us today will further impact the economy in North Carolina by putting thousands of people out of work and exacerbating the already high levels of unemployment throughout our State.

Many aspects of the bill will make it impossible for tobacco manufacturers to earn a living. For example, the labeling requirements in the bill will present a burdensome and costly obstacle for many of the smaller tobacco manufacturers, as will the marketing and advertising restrictions in this bill.

But I am also concerned that the bill will allow the FDA to develop standards for tobacco products for which technology now may not exist. For example, the bill requires the FDA to establish standards for the reduction or elimination of certain components, including smoke components. The problem is that many of these components are naturally found in the tobacco leaf and technology may not be available to extract these natural—they are not artificial—components. Allowing the FDA to develop unattainable standards will put farmers in an outright impossible position—again, hurting generation-old families and businesses in North Carolina.

But let me make it clear that the bill is going to make it more difficult for

domestic tobacco manufacturers to compete with foreign tobacco manufacturers who are not going to be forced by the FDA to abide by the same standards as our domestic manufacturers.

For example, the bill requires that tobacco products be tested. I want to offer an amendment that is going to require that this testing be done in a laboratory in the United States because it is hard to fathom that the FDA is going to be allowed into foreign manufacturing facilities.

I believe we need to be cognizant of the burdens these new standards will impose on our domestic tobacco manufacturers in terms of greater costs to implement the reporting, testing, and labeling requirements. And we have to ensure that these costs are not going to put our domestic manufacturers at a total disadvantage with foreign competitors.

The bottom line is that in North Carolina, people are working hard to make a living. Some 65,000 work in this industry, and 12,000 work on our wonderful tobacco farms. In this economic downturn, I do not think now is the time to pass a bill that is going to disproportionately impact so many people in my State.

I have three amendments I wish to discuss at this point. I understand the majority leader is working on an agreement with the Republican leader so that these amendments will be called up at a later date.

The first amendment I wish to discuss is amendment No. 1249, requiring that the technology exist before the FDA can develop standards. This is an amendment I wish to have serious consideration given.

This amendment, No. 1249, simply clarifies that the FDA cannot establish technological standards until they have determined that the technology is available to meet that particular standard.

The bill does not limit the FDA's authority to reduce or ban compounds found naturally in tobacco leaf. Rather, this bill gives the FDA the authority to require the removal of harmful components from tobacco products, including components that are native to the tobacco leaf. Because of this, many of the new requirements will only be achievable through dramatic changes in tobacco farming operations and could affect the growing and curing of the actual tobacco leaf. As such, this bill allows the FDA to establish standards on tobacco products that may not be achievable with the technology that exists. While the bill does include language that would require the FDA to consider technical achievability, it does not go far enough to ensure that the technology does, in fact, exist.

My amendment would require the FDA to actually establish that the technology is available before it sets the standards. This approach is similar to the standards the EPA must meet to implement environmental laws. I believe if we are going to put 65,700 jobs on the line in North Carolina, we certainly have to ensure that the technology is available to give those people and employers and employees a chance to adhere to the FDA standards.

I urge support of this amendment.

Madam President, I also wish to discuss amendment No. 1253, disallowing FDA regulation of the actual tobacco farmer.

This amendment would clarify that the FDA does not have the authority to regulate the production of tobacco or a farmer who produces tobacco, either directly or indirectly. The underlying bill does state that the FDA does not have authority over the tobacco leaf that is not in the possession of the manufacturer and that the FDA does not have the authority to enter onto a farm owned by a producer of tobacco. But the bill provides an exception to allow the FDA to regulate activities by a manufacturer that affects the actual production. This is a backdoor way of getting at the tobacco grower because nearly every activity by the tobacco manufacturer affects the production of the tobacco leaf.

Further, the underlying bill would allow the FDA to indirectly place mandates on a tobacco producer by placing mandates on a manufacturer. It is unrealistic to expect that mandating standards on tobacco manufacturers will not trickle down to drastically impact the actual farmer and their operations. I believe the exception in this bill is too broad.

My amendment drops this exception. This amendment is critical to ensure that as new standards and regulations are imposed on tobacco manufacturers, farmers and their families will be protected.

Again, there are 12,000 tobacco farmers in North Carolina who are on the line. Their livelihoods are on the line. We need to be sure they are able to have a playing field they can work with.

I urge support of this amendment.

Madam President, the third amendment I want to discuss is amendment No. 1252, which has to do with testing in U.S. laboratories.

This bill before us today requires foreign-grown tobacco to meet the same standards applied to domestically grown tobacco. But the problem is, the bill does not contain language suggesting how the FDA is going to enforce this. I sincerely doubt we will find any foreign tobacco manufacturers willing to invite the FDA into their companies to inspect and test their tobacco products. And I doubt we will find many foreign testing facilities that are willing to submit to U.S. standards.

My amendment addresses this concern by requiring, simply, that any testing of tobacco products required in this bill be conducted in a U.S. laboratory. Undoubtedly, the FDA is going to have a difficult time regulating products coming in from overseas. We do not have to look very far into FDA's past to figure that out. The solution to this problem is to require tobacco products intended for domestic consumption to be, simply, tested in our country.

This requirement would help ensure that domestic tobacco manufacturers are not put at a competitive disadvantage to foreign manufacturers, and that foreign manufacturers do not get preferential treatment because domestic manufacturers would be subject to stricter testing requirements. It would also help to ensure that foreign manufacturers are not simply dumping unsafe products into the U.S. market.

In this time of economic uncertainty, I think we have to do what we can to protect and create American jobs. Requiring tobacco products to be tested in the United States would certainly help keep those jobs here at home.

Once again, I urge support and consideration of this amendment.

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

The PRESIDING OFFICER (Mr. KAUFMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURR. 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. BURR. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. We are.

Mr. BURR. Mr. President, I ask unanimous consent to speak for up to 30 minutes.

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

Mr. BURR. I thank the Presiding Officer.

Mr. President, later this morning, today, we will go back on the tobacco FDA bill. As one who has tried to educate Members on why this is a flawed bill, let me state I am fighting an uphill battle. I have been all week.

I wish to thank my friends and colleagues who have come to the floor over the last days to support their belief that this is misguided, not the regulation, but the fact that we are concentrating this in the Food and Drug Administration, an agency that has the trust and confidence of the American people that the gold standard of proving safety and efficacy for all drugs, devices, biologics, and cosmetics, and food safety is their No. 1 mission. But my colleagues know this has been an uphill fight, too. I have tried over the course of those days to highlight for the American public why it is bad policy. I have highlighted portions of the bill that I thought were flawed. I haven't come out and said this is the wrong thing, even though, let me remind my colleagues, this is the current flowchart for the Federal regulation of tobacco before we do anything. So for Members who come and say this industry is underregulated, let me remind them it is the Department of Transportation, the Department of the Treasury, the Department of Commerce, the

Department of Justice, the Office of the President, the Department of Health and Human Services, the Department of Education, the Department of Labor, General Services Administration, the Department of Veterans Affairs, the Federal Trade Commission, the Department of Agriculture, Environmental Protection, U.S. Postal, and the Department of Defense. Now we are going to take all of those areas of Federal regulation and we are going to condense them all into the Food and Drug Administration, which has a mission statement of proving the safety and efficacy of every product over which they have jurisdiction.

Twenty-five percent of the U.S. economy is currently regulated by the Food and Drug Administration. Americans go to bed at night after taking pills prescribed by a doctor and filled by a pharmacist with the comfort of knowing they have been approved to be safe and effective. Through this bill, we are going to dump on the Food and Drug Administration a product that is not safe and it is certainly not effective.

I have tried to point out the flaws. Heck, I have tried to point out the good things in the bill. I haven't been one-sided on it. But every time one of my colleagues from the other side of the aisle has come to speak, we have either seen charts that are 10 years old or data that is 10 years old. We have seen products that they have painted in a light that didn't even exist 10 years ago. I haven't heard a single question I have asked in this debate answered by the other side or even their opinion of what is wrong with the substitute. It has all been rhetoric.

I wish to share a story with my colleagues. This story is a news report. It was a report CNN ran on a product that is new to the market. It is called Camel Orbs. It is not a cigarette, and it is really not smokeless tobacco; it is a dissolvable tablet.

As I pointed out to my colleagues yesterday when I showed them the chart for continuum of risk, nonfiltered cigarettes have a 100-percent risk factor and filtered cigarettes have a 95-percent risk factor. As you introduce new products into the marketplace that allow individuals to move from cigarettes to other products, you reduce the risk. You reduce the risk of death and disease, and that is one of the three objectives of tobacco legislation. Youth usage should go down. Death and disease should be reduced from the standpoint of risk.

Let me come all the way over here on the chart to dissolvable tobacco. The risk is 2 percent. To bring these to market is to reduce the risk from 100 percent to 2 percent—98 percent better.

CNN ran this article on Orbs. It is a smokeless product, but I will get into that in a few minutes. For now, what you need to know is Orbs falls under the same age restrictions all tobacco products do. That means it contains no cartoon images. It must be shelved behind the counter where it is out of reach of children. Heck, it is out of reach of adults. They have to physically ask for the product. By the way, you must show photo ID to buy tobacco products today. Let me say that again. You must show a photo ID to purchase tobacco products.

When CNN did their story, take a guess on the angle they took. They labeled it as candy—candy—even though it is not candy flavored. They said it was candy. They didn't mention death or disease. You would think a story on tobacco would lead with that. I haven't been shy to come to the floor and say that is the result of tobacco usage. But they didn't even go to death and disease. No, they said it was candy. That is how they labeled it.

Even though they mischaracterized the product and took people down the path they wanted to go, that wasn't the bad news of this story. The bad part of the story was they took tins of the product and they actually placed them in the candy aisle at the convenience store, right there beside the Reese's Cups and the chewing gum. Then they took footage of a young boy, I think, reaching over and picking up one of the Camel Orbs, even though this is highly illegal. Even though the convenience store could be prosecuted, and therefore they don't put tobacco products in the candy section, still CNN wanted to make their point. What a better way to make the point than to stage what the picture was. Let me say that again. What a better way to make the point than to stage that every retailer in the world out there is putting Orbs, a tobacco product, in its candy section. They portrayed Reynolds America as being deceptive and luring children. No candy. It is not going in the candy section. It is in the tobacco section where smokeless and stick smoke products are.

That is why it is so difficult. That is why the job I am on a quest for is an uphill battle. It is because nobody on that side wants to come down and talk about the policy.

The bill we are considering was written 10 years ago. No wonder we are using 10-year-old charts and 10-year-old statistics. The truth is, if you look at the statistics today, if you want to address death and disease, then accept the fact that there has to be an opportunity to reduce the risk. But what my colleagues need to know is that H.R. 1256 gives the FDA full jurisdiction over tobacco products, and it takes this category right here and it locks it in. It cements it because it grandfathers FDA from ever doing anything on the existing products that are in the marketplace: filtered cigarettes and nonfiltered cigarettes. FDA is forbidden from changing anything. The products that were sold continue to be sold. No new products can be sold.

They say there is a pathway for these products to come to market. It is a three-pronged test they have to meet. I won't dwell on the first two prongs. Let me dwell on the third one. The third one is this: You have to prove that people who don't use tobacco products aren't likely, when this new product is introduced, to actually use this product. But the way the bill is crafted says this: You can't communicate with the public unless you have an approved product. So I ask my colleagues, if you can't communicate with the American people to find out whether they are likely to buy a product that is new to the market until that product is actually approved, then how can you fill out an application and make the claim that the American people aren't likely to use that product when they don't use tobacco products? So it is disingenuous to suggest that there is a pathway for reduced-risk products when, under the construction you make anybody go through, you can't possibly make the claim they ask you to make because you can't communicate with non-tobacco users as to whether this product would be something they would choose to use. So any claim based upon that, that this is a bill which addresses death and disease, is disingenuous at best because what it does is it locks this category. It cements those people who currently use smoke products—cigarettes—the 19.8 percent of the American people who currently smoke.

So far in this debate, I have seen charts, like everybody else, that would make your skin crawl and I have heard stats that would make your head spin. I even heard Senator SANDERS come to the floor yesterday and say tobacco manufacturers want to get you addicted to heroin. I think he misspoke, but I have to tell my colleagues I am not absolutely positive of that.

All of this follows the same conclusion: Under H.R. 1256, which is the base bill, the sponsors claim that the FDA will stop everything, that all of this will go away. And let me concede for a minute that maybe they are right, then they would have to concede that I am right—with the exception of locking this product in forever. If you lock that product in forever, then you can't make the claim that you are reducing death and disease.

I think, as I have gone through this debate and pointed out that when you look at the CDC study of 50 States and you look at the percentage of smoking prevalence in our youth, what you find is that in 48 States out of 50, the prevalence of marijuana usage is higher than the prevalence of smoking. Let me say that again. In 48 out of the 50 States, the prevalence of marijuana use is higher than the prevalence of smoking. One would conclude from that, since marijuana is illegal—it is not age-tested; it is illegal—that the usage prevalence among youth would be zero. Well, the American people aren't that foolish. They realize nothing goes to zero. But they also realize it is foolish to suggest that if you concentrate tobacco jurisdiction at the FDA, the smoking prevalence is going to go below that of marijuana because marijuana is illegal.

The fact is, putting tobacco regulation at the FDA is not going to have any impact on youth usage. What is going to have an impact on it? Actually taking the master settlement dollars from 1998, the $280 billion the tobacco industry committed to the States, all 50 of them, for two things: one, to defray their health care costs, and two, to fund the programs of cessation to get people to quit smoking and fund the programs to make sure children never take it up. But as I pointed out, we have some States that, when the CDC annually makes its recommendations, spend as little as 3.7 percent of what the CDC told them they needed to spend of this tobacco money to make sure kids got an educational message: ''Do not smoke. It kills.'' Now we are blaming it on the fact that they are not regulated enough today and that we can concentrate this under one Federal agency, the Food and Drug Administration, and by some magical, mythical thing that happens, youth prevalence of smoking is going to go down. No. It is going to go down when States take the money the tobacco industry gave them and they actually use it to reduce the youth usage, to make sure they never take up tobacco products, to make sure people switch from smoking products to some other form that has a better effect on death or disease.

I would love to say that my State of North Carolina devotes 100 percent of what the CDC recommends to use on cessation and youth education, but we only spend 17.3 percent of what the CDC recommended of the money we got. When you look at all of the States, though, 17 percent is pretty good. I don't know whether it was used in other States for sidewalks or for greenways. I know one thing for certain: It didn't go to try to educate young people in this country not to use tobacco products. If we want to get the youth usage down, then we have to use the tools we know work; that is, education.

I have listened to my colleagues come to the floor for weeks and make unbelievable statements. All of this has followed the same conclusion: FDA will stop all of this and FDA will put the evil tobacco out of the hands of kids. I think I have made a pretty good case that it is not going to happen, not with this legislation. The sad reality is, maybe Congress could pass a bill that does all that. That is why Senator HAGAN and I have offered a substitute. That substitute will be debated over the first half of this afternoon, and every Member will have an opportunity before the afternoon is over to vote on that substitute.

I encourage all Democrats, Republicans, and Independents to read the bill. You will find that it provides all the regulation in H.R. 1256, and more. The base bill limits print advertising to black-and-white ads. What does our substitute do? It eliminates print advertising. That magazine that mom buys that a 14- or 16-year-old daughter may like to look at in the afternoon—under our substitute, they cannot advertise there anymore. Under H.R. 1256, they are allowed to advertise, but in black and white. In some way, they believe kids cannot read in black and white, they can only read in color. That probably tells you more about how misguided the legislation is. It is not solving the problems—death, disease, and usage. The tools are in place. We can reinforce them in a more effective way. That is what the substitute amendment, I believe, will do.

My friend from Connecticut yesterday stated that I was misguided in my belief that the FDA was not the right agency to regulate tobacco. He said the FDA was the only agency in America that had the scientific expertise to do the job. I only have one question: Does the FDA have the expertise to make tobacco safe? Again, does it have the expertise to make tobacco safe? I think the answer is, no, it doesn't. Therefore, it doesn't meet the mission statement of safety and efficacy. But that is what they are vested to do. That is what the American people believe the FDA accomplishes. To suggest that we would regulate a product that doesn't meet that threshold is, to some degree, disingenuous to the American people.

My friend from Connecticut also pointed out that my downplay of CBO's estimate on smoking reduction was misplaced. He said that while I kept using the 2-percent figure—which is all the population over 10 years—and CBO had estimated that if we pass the bill, we will reduce smoking by 2 percent over 10 years—that was 900,000 fewer smokers over 10 years, and that number was impressive. I agree that it is impressive. I think he said there would be tremendous health care savings with 900,000 fewer smokers. I am not sure if Senator DODD heard the statistics I gave that were the result of the CDC study. I said numerous times that the CDC said that if we do nothing, there is a reduction in smoking of between 2 and 4 percent per year—not over 10 years, but per year.

I ask my friend from Connecticut, what is more impressive, 900,000 or 9 million fewer smokers? By doing nothing, as CDC has said, we eliminate 9 million smokers. By passing this legislation, CBO says we eliminate 900,000 smokers. Nine million fewer smokers is what we would have if we pass the substitute, but it is not what we would have if we pass the base bill. I ask my friend from Connecticut to truly think about the health savings realized without passing the base bill and realize that, with the substitute, we might actually get to more than 9 million.

My colleague went on to say that I purposely ignore CBO's estimate that youth smoking rates will reduce by 11 percent over the next 10 years under the bill. That is the CBO projection.

Obviously, he didn't hear me earlier in the morning on this issue. I think it is great that smoking rates would decline by 11 percent over the life of the bill. I think it is much better that they would reduce 16 percent if, in fact, the bill weren't enacted. That is what the CDC says—16 percent if you do nothing, and 11 percent if you pass H.R. 1256.

We are not saving lives with this bill. We are not reducing youth usage. If you want to save lives, you need to follow where Senator HAGAN and I are and create a harm reduction center—one that will promote harm reduction products.

If we go back to the continuum of risk chart, if you look at the 100 percent risky and 90 percent risky, it is hard to believe you reduce death and disease. The only way to do that is if you get people to give up these products and you make available products that are on this chart, but also some products that are not on this chart. In the absence of doing that, there is no way you can claim that you have actually affected death, disease, or the cost of health care.

I listened to my friend from Oregon make statement after statement about those dissolvable tobacco products that I pointed out in the CNN expose on tobacco. He repeatedly called it candy, also, even though you cannot buy it unless you are 18, and it cannot be put in the candy section—unless you are CNN and you are doing a story. He said the packaging was intentionally shaped like a cell phone to attract kids. If a cell phone doesn't work, children don't want it, let me assure you. But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective.

My friend went on to call Camel Orbs dangerous. He had no scientific basis for that claim. He quoted an 8-year-old Surgeon General warning on smokeless tobacco that said it caused cancer, but the last time I checked, Camel Orbs didn't exist back then. He said that I called harm reduction products, such as Camel Orbs, safe.

I have been on the floor 4 days, and I spoke for 2 hours 37 minutes yesterday. I might have slipped, but I don't believe I have ever referred to any tobacco product as ''safe.'' If I did, let me retract it. I have frequently said there are products that are ''less harmful.'' I have constantly described and made the point that if you don't move people from cigarettes to other tobacco products that allow them to make that transition, you will not reduce death and disease.

I don't think tobacco is safe, but I do believe there are products that are safer than smoking. I believe that for adults who choose to use tobacco products, they should have every option available to make sure that that product is something they can access. Compared to smoking, they do reduce death and disease.

Camel Orbs and Sticks represent a 99-percent reduction in death and disease associated with tobacco use compared to cigarettes. They don't cause lung cancer, cardiovascular disease, emphysema, or COPD.

The American Association of Public Health Physicians states that those Orbs are the most effective way to fight death and disease associated with current tobacco users. Yes, much to my amazement, the American Association of Public Health Physicians came out and endorsed the substitute to H.R. 1256. Again, yesterday, the Association of Public Health Physicians endorsed the substitute amendment to this bill.

Unlike my friend from Oregon, I have the science to back up my claim. I have the studies from Sweden, and I have looked at the documented evidence. Alternative tobacco products work in harm reduction. I will tell you what doesn't work—current cessation programs, especially the ones that are not funded in that money that was supplied to the States. The current cessation programs don't work; they have a 95-percent failure rate. So 95 percent of the people return to smoking.

Why in the world would we continue to support that as a pathway for reducing death and disease? Why wouldn't we acknowledge the science that currently exists and accept, in new policy, a policy that would in fact embrace this?

May I inquire how much time I have left?

The PRESIDING OFFICER. Four minutes.

Mr. BURR. Senators come to the floor and speak about the $13 billion in marketing the tobacco industry spends. They fail to tell you that 95 percent of that money goes to retailers and coupons against the competition and to make them more attractively priced at retail. Only 3 percent actually went to advertising in adult venues and point of sale displays. That doesn't make it a good point.

What makes it a good point is that the tobacco industry spends a tremendous amount of money making sure that their industry is protected for those who choose to use it and are of legal age.

Last year, we taxed the tobacco industry to fund the children's health insurance program. There is a proposal on the table to tax them to pay for universal health care. Senator DODD admitted yesterday that the industry would be taxed to pay for this bill.

But that is not a good story. A good story is placing tobacco products in the candy aisle by a news organization just to make a point and then portray to the American people that these are the tactics of the tobacco industry.

I have, over 4 days now, come to the floor not to defend the tobacco industry, but to defend the FDA, because I don't believe the American people deserve us to discredit the gold standard of the FDA by putting this product under their jurisdiction and asking them to do something they have never, ever done.

When I showed the flow chart of jurisdictions, the one missing out of the current regulatory architecture for tobacco is the FDA. Nobody can claim to me they have done this before and, therefore, this is an appropriate thing to do again. Simply, I have come to the floor in the last 4 days to debate the policy. At the end of the day, I hope Members of the Senate will weigh the policy, the points that I have made, the statistics I have produced, the evidence I have brought to the table, and if, at the end of the day, what you are attempting to do is reduce death and disease, reduce youth usage, I hope I have made the case to you that you should not pass H.R. 1256.

This afternoon, before there is an opportunity to vote, I hope to make the case that you should support the Hagan-Burr substitute. I hope I have made the case to most that even if the choice comes down to passage of H.R. 1256 or nothing, that the CDC report says if you want to address a reduction in death and disease, the fastest way to get there is to do nothing if, in fact, your only choice is to pass H.R. 1256.

Once again, I thank my colleagues for their patience as I come to the floor to try to educate and provide facts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I unanimous consent to speak in morning business for 30 minutes.

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

Mr. DURBIN. Mr. President, first, I will address the issue pending on the floor of the Senate, which is the issue of whether we are going to have the FDA regulate tobacco.

The FDA, historically, focuses on the obvious—food and drugs. Over the years, we have expected from them that they would do their job and make sure, as much as humanly possible, that American consumers would not be exposed to dangerous food products or dangerous drugs and medicine. Sometimes they have failed us, but most of the time they do the job pretty well.

The way they do their job, when it comes to food, is pretty obvious when you go to the grocery store. A consumer buying a pound of spaghetti can grab the box or bag and look at the label and find out the contents, including a nutrition square that talks about carbohydrates, fat, and calories, which people are concerned about before making choices.

When it comes to medicines and drugs, the Food and Drug Administration goes a step further. They require that products that are sold in the United States be both safe and effective. If you are going to sell a drug that is supposed to lower your cholesterol, the Food and Drug Administration wants it tested to make sure it does not hurt you, No. 1, and, No. 2, that it does what it is supposed to do.

So over the years, for almost 100 years, the Food and Drug Administration has created a safety net for American consumers so that the things we purchase, at least by that agency and a few other Federal agencies, have some review before the consumer purchases it.

Then along comes tobacco, and the tobacco industry has argued for as long as this issue has been going on that they should not be covered by the Food and Drug Administration. They say: We are not food. Nobody eats tobacco for nutrition or other purposes. And we are not a drug. We are just tobacco leaves that are ground up, put in a little paper cylinder that people enjoy smoking or maybe chewing. That is all it is about.

For the longest time, they were exempt from the Food and Drug Administration asking the most basic questions. For example: What is in your product? If you believe it is just tobacco leaf ground up and stuck in paper, you are wrong. It turns out that tobacco companies learned a long time ago that if they added chemicals to the cigarettes, they could get more consumer satisfaction, more consumer use, and people buying more of their product.

What did they add? They learned a long time ago that the tricky part of tobacco is nicotine. Nicotine is a drug naturally occurring in tobacco which, if you smoke it, your body starts to crave it, and with that craving and that demand of your body each day for more and more of the chemical, you smoke more and more. Nicotine, craving, leading to an addiction.

I don't use that word lightly. I have seen people who are addicted to tobacco products—virtually all of us have—folks who just cannot quit. They try everything—hypnosis, patches, lectures, you name it—and they cannot quit. They crave that nicotine chemical.

The tobacco companies learned a long time ago that if they added more nicotine to those tobacco leaves than naturally comes out of them, the people get more addicted. It makes it more difficult for them to quit. So they started piling more nicotine into the cigarette. But that was not the end of it.

They also said: The first time a kid or somebody picks up a cigarette and takes a big drag of it, often they cough because their body is saying: What are you doing to me? You are jamming that smoke into my lungs? That doesn't belong there. They found other chemicals that they could add to cigarettes which would reduce the body's rejection and would make it more pleasant to the taste, and so they pumped those chemicals in as well. Then came a whole soup of chemicals that they added for any number of reasons.

Obviously, when you buy a pack of cigarettes, if you want to know what is in the cigarette and take a look at the

package, you will find there is no disclosure whatsoever. None. You don't know what is in there. All you know is this is paper and tobacco to start with, but you don't have a clue that there is more nicotine or other chemicals added. And you certainly don't have a warning on the package that some of the chemicals they stick in cigarettes literally cause cancer. It isn't bad enough that burning tobacco and inhaling the smoke can cause cancer, there are other chemicals that are carcinogenic added by tobacco companies because they think it makes a more pleasant product.

The obvious thing the American consumers would say is: Where is the Food and Drug Administration warning? Why won't they tell us the ingredients on that tobacco package? Why won't they tell us if they are dangerous? Because they do not have the legal authority to do it.

From the beginning of time, with the tobacco lobby being one of the most powerful in Washington, they made sure the Food and Drug Administration had no authority when it came to this product. None.

Who does regulate tobacco in the United States? The answer is not anyone; no agency does. The only real regulation has come out of court cases where people who were injured sued the tobacco companies because of things such as misrepresentations—light tobacco, low-tar tobacco, safer cigarettes. People take them to court and say that is misleading and deceptive. They have won cases, and they have had to disclose more information over the years.

Today we are trying to do something that the tobacco companies' lobby has been fighting for decades. We are trying to let the Food and Drug Administration take over the responsibility of making certain that American consumers are at least informed about tobacco products so they know what is in that little package, whether it is dangerous, and they can make a conscious choice about purchasing it.

The second thing we do is to make sure that we keep those tobacco products out of the hands of kids. Why? The math is very simple. Every day about 1,000 Americans die from tobacco-related disease—lung cancer, heart disease—1,000 die. If you were a company selling a product and 1,000 of your consumers are dying every day, you start wondering whether you are going to be in business in a few years. So you have to recruit more consumers of tobacco products.

But tobacco companies have a problem. If people wait until they are older—18, 19, 20 years old—to make a choice about smoking and using tobacco, they will probably say: Are you kidding? No way. It is dangerous and it is stupid and it is expensive. So if you cannot get adults to make up for the 1,000 tobacco users who die each day, where do you go? Kids. You go to children. You try to find ways to lure children into using tobacco products.

The advertising has a lot to do with it, but so does human nature. My wife and I raised three kids. We have seen a lot of kids being raised. I even have vague memories of my youth. The first thing you are attracted to is what your parents say you should not touch. Don't you dare touch that pack of tobacco. Don't you dare smoke a cigarette. Can't wait to try it, right? Get out behind the garage with your cousin, the way I did when I was 10 or 11 years old, to smoke my first cigarette. Man, that shows I am independent, I am grown up, I make up my own mind. Kids will do this. I wish they did not. I wish I had not. But they do it.

I told the story on the floor the other day about when I was a little kid growing up in East St. Louis. My cousin Mike and I went out behind a garage and smoked a cigarette. Lucky for me I didn't like it much. I didn't continue the habit. Unfortunately, my cousin Mike did. He passed away 2 weeks ago—younger than I am—passed away from tobacco-related lung disease. It was an addiction started behind that garage that he could never break the rest of his life. There he was, on oxygen, smoking the night before he died. He just could not quit. It is a terrible addiction.

The tobacco companies know to make up for the thousand who die each day. They need 1,000 new smokers a day. Where do they get them? They get them from our kids. Mr. President, 3,000 to 4,000 kids will try a cigarette in America for the first time today, and about 1,000 of them will decide: I am going to keep doing this. And so the ranks of those who die from tobacco-related disease are filled by children.

This bill says we know that and we have to stop it. So not only do we give the Food and Drug Administration the authority to tell us the ingredients in the package, we give them the authority to police how people sell tobacco products in America.

It is no coincidence that they start peddling these tobacco products with candy flavors, because they know kids enjoy candy and will enjoy candy cigarettes. I am not making this up. Chocolate cigarettes and vanilla and strawberry—all these things they come up with so that kids will be attracted to the product. We put an end to that stuff. And we say to retailers: Get serious. You better put those cigarettes away from kids. You better not sell to them or you are going to face a serious penalty. If we are sincere about protecting our kids, we have to do this.

I have been involved in this fight for a long time. I was attracted to it when I first got elected to Congress and probably because like virtually everyone following this debate, somebody in my family died from a tobacco-related disease. In my case, it was my dad. He was 53 years old, and he died of lung cancer. I was 14 years old. It was devastating to my family, to me. But my story is not unique. Sadly, it is a story that is repeated over and over every single day.

About 20 years ago, I decided as a Member of the House of Representatives that I was going to do something about it. The first thing I did was to tackle the tobacco lobby on one little tiny issue: banning smoking on airplanes. Hard as it may be for younger people to believe, there was a time when we had what we called smoking and nonsmoking sections on airplanes. Can you believe that? We are all sitting in the same metal tube flying across the world or around the country, and we are somehow of a mind that if I sit in row 1 through 18 in the nonsmoking section that I will not be bothered by secondhand smoke; it is only those folks in rows 19 to 36 who are going to be in the smoking section that are in trouble. Crazy idea. It never made sense and caused a lot of problems, health and otherwise.

So 20 years ago, we banned smoking in airplanes. I did it in the House. Senator FRANK LAUTENBERG of New Jersey did it in the Senate. It became the law of the land and eventually all flights became smoke free.

I do not want to take more credit than is due, but I think finally people woke up and said: If secondhand smoke is dangerous on a plane, then it is dangerous on a train or a bus or an office or a school or a hospital. Things changed across America. Now, it is rare to walk into a public gathering place and see people smoking. Folks understand, and they do not do that. You do not expose some innocent person to secondhand smoke. If you want to smoke, if you made that terrible decision that you want to be a smoker, go outside and do it. Don't try to put yourself in a position where you endanger others.

What we are trying to do with this bill is to move this debate forward. It was not enough that we could put warning labels on at one time that now have become so small and irrelevant that people do not even see them. It wasn't enough that we banned it on airplanes. If we are serious about protecting our kids from tobacco and smoking, we have to do more.

This may be an easier issue for me coming from the State of Illinois than Senators from tobacco-producing States or tobacco-manufacturing States. I accept that. This is not easy. For them the issue may be different. It may be in terms of tobacco growers and farmers. It may be in terms of tobacco-related employees. For them the idea of reducing the number of people smoking cigarettes has an economic impact. So I am not going to begrudge them coming to the floor and their attempts to change this bill that is before us. It is perfectly understandable. I do not question their motives at all. But I come to it from a public health viewpoint. I think what they are offering as an alternative is not a good one. Let me tell you why.

We have 1,000 organizations, literally 1,000 organizations, health and consumer organizations across the United

States that have endorsed this bill. I have literally in my time in Congress, 27 years, never seen a bill with this kind of endorsement. People understand this now. They understand we have to do this now. Senator KENNEDY, who is our champion and inspiration, cannot be with us. He is battling a brain tumor and doing well, but he cannot make it to the floor. But I will tell you that he is in our hearts, thoughts, and prayers today. This bill is about his valiant effort to make sure we do this. So many organizations join him and us in saying this is long overdue.

Those on the other side have come up with a substitute, an alternative. There are a lot of problems with it. I have heard the Senators from North Carolina—Senator BURR was just on the floor—talk about their alternative. We took a look at it. It turns out there are some problems with their alternative.

They want to create a new Federal agency. They don't want the Food and Drug Administration to do this. Unfortunately, it will be an untested and underfunded agency. They do not understand the concept behind trying to keep tobacco products out of the hands of kids. They say maybe there are some alternative products these kids could use which would not be as dangerous, the so-called risk reduction idea. We started our bill on the premise that the tobacco industry's practices mislead people and result in terrible health consequences, and they have to be changed.

One of the ways they propose to reduce the risk of tobacco is to change the form of tobacco. Instead of cigarettes inhaled into the lungs, it turns out they believe that spit tobacco, chewing tobacco, is a safer way to use tobacco. The proposal that is being offered by the Senator from North Carolina virtually exempts smokeless tobacco products from regulation. You know what I am talking about, those little pouches you stick in your mouth that let tobacco juices flow, and so forth. We even have some Senators who chew tobacco, if you can believe that—it is a fact—and spit into cups. Not my idea of a good time. But some of them do it anyway.

This bill would not go after that form of tobacco. There is little, if any, evidence that smokeless tobacco products are a step in the way of quitting smoking or becoming healthy.

In fact, many of these new smokeless products are being marketed to smokers as a way to sustain their addictions in places where smoking is no longer allowed. Take a look at this product: Camel Snus, frost-flavored Camel Snus, 15 pouches. See these little pouches over here?

For those who aren't familiar with it, snus is a smoke-free, spit-free tobacco product that comes in little pouches which can be placed under the upper lip. And as one high school student described it: It is easy—says the high school kid—it is super discreet. None of the teachers will ever know what I am doing.

This is their idea and the alternative? This is the idea, the alternative of the Senator from North Carolina to kids smoking cigarettes. The Web site for Camel Snus boasts that ''snus can be enjoyed almost anywhere, regardless of growing smoking bans and restrictions.''

So do we really want a national policy—as the Senator from North Carolina is suggesting—that steers people toward this kind of a product? Let's look at the facts.

Smokeless tobacco is loaded with dangerous ingredients, just like cigarettes. The National Cancer Institute reports that chewing tobacco contains at least 28 known cancer-causing agents. Smokeless tobacco may be a reduced risk in some respects compared to cigarettes, but its use is still a serious health problem and a danger to children. If you need proof of that, look at this poor young man here.

Gruen Von Behrens is an oral cancer survivor. This young man has had more than 40 surgeries to save his life, including one radical surgery that removed half his neck muscles and the lymph nodes and half of his tongue. Like too many teenagers, Von Behrens first tried spit tobacco, which this bill says is a safer way of using tobacco than cigarettes, at age 13—13—in order to fit in. It only took 4 years for him to be diagnosed with squamous cell carcinoma. Look what this poor young man has been through because of a product which the North Carolina Senator tells us is something we should be moving toward in this country.

I think of all those kids who used to have the little can of snuff—baseball players—in the back of their jeans and how cool that was, and I just wonder how many of them face this kind of an outcome because of popular fads. Would we want to endorse that as part of our debate on the future of tobacco in America?

The Burr substitute is based in part on an unproven assumption that smokeless tobacco should be promoted as a way to help people quit smoking. But the 2008 U.S. Public Health Service Clinical Practice Guidelines concluded that the use of smokeless tobacco products is not a safe alternative to smoking, nor is there any evidence to suggest it is effective in helping smokers quit.

Smokers who are trying to quit already have access to safe, rigorously tested, and FDA approved forms of nicotine replacement, like including nicotine gum, the patch, lozenges and other medications.

Let's steer people who want to quit toward these FDA approved products, not toward smokeless tobacco, which is riddled with carcinogens.

Another weakness in my colleague's bill is in the limited authority it gives the new agency to oversee the contents of tobacco products.

The Kennedy bill gives the FDA strong authority to regulate the content of both existing and new tobacco products, including both cigarettes and smokeless tobacco products.

The Burr substitute gives the new agency virtually no authority over the content of existing smokeless tobacco products—no matter how much nicotine, and no matter how many cancer-causing agents they contain.

My colleague's substitute gives the agency far less authority to remove harmful constituents in cigarettes than the Kennedy bill does, and it makes it far more difficult for the agency to act.

The Kennedy bill allows the FDA to fully remove harmful constituents.

The Burr proposal allows only the reduction—but not the elimination—of known harmful substances.

The Kennedy bill allows the FDA to take into account the impact of product changes on potential users—including children—and the effects on former smokers who might be enticed to resume the nicotine addiction.

The Burr substitute allows the agency to consider only the narrow health impact on existing smokers.

The Kennedy bill allows the FDA to reduce or fully eliminate substances that ''may be harmful'' using the best available scientific evidence.

The Burr substitute requires the agency to demonstrate that a single product change is likely to result in ''measurable and substantial reductions in morbidity.'' This standard will be extraordinarily difficult to meet given the large number of harmful substances in cigarettes. It is language that will tie the agency in knots and prevent actions that are clearly in the interests of public health.

The Kennedy bill includes an outright ban on candy and fruit-flavored cigarettes.

The Burr alternative bans only the use of candy and fruit names on the products, while allowing the use of candy and fruit flavors to entice young people to begin using products laced with nicotine and carcinogens.

All these details are important—they mark the difference between an approach that gives the government real authority to regulate the contents of tobacco products, and an approach that bows down to the industry and leaves tobacco companies in charge of these decisions.

We shouldn't continue to give those companies that kind of power.

There is another serious problem with the substitute offered by the Senator from North Carolina. It does not adequately protect consumers from misleading health claims about tobacco products.

The Kennedy bill sets stringent but reasonable scientific standards before manufacturers of cigarettes and smokeless tobacco products are allowed to claim that their products are safer or reduce the risk of disease.

The Burr substitute completely exempts smokeless tobacco products from these standards even if those

claims are likely to cause youth to take up tobacco for the first time.

When smokeless tobacco manufacturers aggressively marketed their products to young people in the 1970s, often with themes suggesting that they were less harmful than cigarettes, use of those products increased among adolescents.

The Burr substitute only allows the agency to look at the impact of health claims on individual users of tobacco products.

It does not allow the agency to consider whether the reduced risk claim would increase the harm to overall public health by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit.

The Senator from North Carolina has criticized the Kennedy bill for limiting tobacco advertising to black-and-white text-only material in publications with significant youth readership.

His substitute, he says, goes further by banning tobacco advertising.

That is an attractive talking point. But like so much tobacco advertising, it is misleading. It has a barbed hook buried in it.

The fact is, a broad, indiscriminate ban on tobacco advertising would likely be struck down by the courts.

The courts would probably rule that it is an impermissibly broad limitation on speech.

They would say the ends are not sufficiently tailored to the means, and they would conclude that it violates the first amendment.

That is what constitutional scholars tell us.

The result of the Senator's amendment would be a continuation of current law—a continuation of the insidious advertising the industry currently uses to lure new customers. Under the guise of a total advertising ban, he would give us the status quo.

And the tobacco industry would thank him for it.

My colleague from North Carolina has improved the warning labels he would require on cigarettes. But they would not be strong enough.

The Burr substitute would allocate 25 percent of the bottom front of the package to a warning label.

In contrast, the Kennedy bill reflects the latest science on warning labels by requiring text and graphic warning labels that cover 50 percent of the front and back of the package.

Clearly, a health warning that takes up the top half of the front and back of a package will be more noticeable and easier to read than one that takes up only a quarter of the bottom of the package—an area that may be hidden by the sales rack.

Senator KENNEDY's bill also gives the FDA the authority to change the warnings in light of emerging science. Under the Burr substitute, the agency would not have any authority to change the warning labels.

And the Burr amendment's required warning labels for smokeless tobacco products read more like endorsements than warnings.

For example, one of the required statements is a warning that the product has a significantly lower risk of disease than cigarettes. That is not a health warning—it is an unhealthy promotion.

We have an historic opportunity to finally put some real and meaningful regulations in place, and that will stop some of the tobacco industry's most egregious practices.

For decades, this industry has lied to us, and I don't know why we would trust them now to do the right thing.

We should not accept the underlying premise of the Burr substitute, that a lifetime of addiction and a high risk of premature death must be accepted, and that our strategy should be to steer people towards ''reduced harm'' products.

That is the smokeless tobacco approach, not the public health approach.

The Kennedy bill is a strong and carefully crafted solution that puts the public health first.

The Kennedy bill is the bill that should be enacted.

EXTENSION OF MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that morning business be extended until 12:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mrs. HAGAN). Is there objection?

Hearing no objection, it is so ordered.

Mr. DURBIN. Madam President, I have about 10 minutes remaining, and then I will be glad to yield to the Senator from Kentucky, who has been sitting here. I ask unanimous consent that when I conclude my remarks, the Senator from Kentucky be recognized to speak as in morning business.

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

GUANTANAMO

Mr. DURBIN. Madam President, if you got up early this morning—like about 6 a.m.—and turned on the television, you would have heard a historic speech. President Barack Obama is in Cairo, Egypt, this morning—our time this morning—giving a speech to an assembled group at a university in Cairo about the relationship of the United States and Muslims around the world. It is a critically important speech.

All of us know what happened on 9/11/2001. We know our relationship with people in the Middle East has been strained at best, and we have been troubled by the threats of Islamic extremism, and so the President went and spoke in Cairo. I listened to his speech. Now, I am biased because he was my former colleague from Illinois and I think so highly of him, but I think it was an excellent speech. I think what he tried to do was to explain to them how we can develop a positive relationship between people of the Islamic faith and America, and I thought he laid out the case very well in terms of our history, our tolerance, the diversity of religious belief in our country, and how some elements of Islam—extremist elements of Islam—are not even operating in a way consistent with their own basic values and principles.

The reason I refer to that speech is that one of the points that was important was when President Obama said to this assembled group—to their applause—that the United States was going to change its policies under his leadership. He said we are not going to use torture in the future, and he received applause from this group. He said we are going to close Guantanamo, and they applauded that as well.

What the President's statement said—and basically the reaction of the audience told us—is that regardless of our image of the United States, for some people around the world there are things that have occurred since 9/11 which have created a tension and a stress between us that need to be addressed honestly. President Obama made it clear that we are starting a new path, a new way to develop friendships and alliances around the world to stop terrorism and stop extremism, and he understands that torture—the torture of prisoners held by the United States—has, unfortunately, created a tension between the United States and other people in the world. They know of it because of Abu Ghraib, the graphic photographs that are emblazoned in our memory, and theirs as well, of the mistreatment of prisoners in Iraq. They know it from the photographs that have emerged and the documentary evidence about the treatment of some prisoners at Guantanamo.

It has, unfortunately, become a fact of life that Guantanamo itself is a symbol that is used by al-Qaida—the terrorist group responsible for 9/11—to recruit new members. They inflame their passions by talking about Guantanamo and the unfair treatment of some prisoners at Guantanamo. President Obama knew this and said in his first Executive order that the United States will not engage in torture and within a year or so we will close the Guantanamo corrections facility. I think it was the right decision—not an easy decision but the right decision. If we are truly going to break with the past and build new strength and alliances to protect the United States, then we have to step up with this kind of leadership.

The President inherited a recession, two wars, and over 240 prisoners in Guantanamo, some of whom have been held for 6 or 7 years. Many of these people are very dangerous individuals who should never, ever be released, at least as long as they are a threat to the safety and security of the United States or a threat to other people. Some should be tried. They can be tried for crimes