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FRONTIERS OF FREEDOM

Malcolm Wallop
U.S. Senator (R-WY ret.)
Chairman

October 19, 1995

The Honorable David Kessler
Commissioner
Docket # 95 - N - 0253
Dockets Management Branch (HFA-305)
Food and Drug Administration
Room - 1 - 23
12420 Parklawn Drive
Rockville, Maryland 20857

Dear Commissioner Kessler:

I am writing in the strongest opposition to the proposed FDA rule to regulate the actions of the tobacco industry. I do this, not as a citizen who smokes cigarettes, but rather as a citizen who cherishes The First Amendment. I am an opponent of this rule because political gain and enhanced government authority are no reasons to set aside The First Amendment.

The term "slippery slope" is often used here in Washington to describe a myriad of things, however, I can't think of a better definition of slippery slope than that of the FDA rule.

If one small section of the rule violates The First Amendment, then the entire rule is unconstitutional. This rule, however, is a miracle. The entire rule is a slap at The First Amendment. Just a few examples of how this rule is uncontitutional:

- Bans the use of tobacco brand names on non-tobacco products.
- Requires all cigarette advertising to carry a second warning statement in addition to the Surgeon General's warning that is already required.
- Bans all outdoor advertising within 1,000 feet of any playground, elementary school or secondary school (This reg alone would ban advertising from many entire towns in America)

I'll give you a few more violations of The First Amendment.

- Limits logos and brand names on race cars, driver uniforms to a black on white format
- Limits advertising outside of the 1,000 feet to tombstone ads.

1735 North Lynn Street
Suite 1050
Arlington, VA 22209
Tel. 703-527-8282
Fax. 703-527-8388

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Yes, this is a tremendous slippery slope. As a rancher, I am concerned that one day you will decide for whatever reason, perhaps, cholesterol or kindness to animals, that you will tamper with red meat. I won't even mention alcohol.

When 70 percent of fourth graders are reading below 4th grade level. When teen pregnancy is growing at critical levels. When drug abuse is once again on the rise in students of high school age. When crime is rampant with children 18 years of age and under. Why, other than cheap political gain, is the Clinton Administration consumed with teenage smoking?

The rule, in its most basic essence, is the debate between big government advocates and limited government supporters. It, in fact, fully crystallizes liberals attitudes towards governing. An incident which perfectly illustrates this governing philosophy recently took place here in Washington. Sadly, Vice President Gore's middle daughter - underage daughter - was detained by police for possessing an open alcoholic beverage. The daughter was returned home. When the press made inquiries, the Vice President's office made one simple statement.. *"we are treating this as a family matter."*

Exactly!

Vice President and Mrs. Gore in their capacity as good parents are taking responsibility and handling their family matter. Many parents, except for those most fortunate, have been in the same position as the Vice President finds himself in now. Namely, parenting an underage child caught with an alcoholic beverage in their hand, or, perhaps, a cigarette in their hand.

Yet it is Vice President Gore who, by advancing this FDA rule, insists that parents of America cannot take responsibility for their children. In other words, Vice President Gore feels he can parent his child, but the federal government must parent the rest of our children.

As the parent of five adult children, none of whom smoke, I assure you sir I did not need the help of the federal government to achieve this happy result.

It is not the federal government's job to mother us. It is not the FDA's job to police us. While this is a free country, freedom comes with responsibilities. The tobacco industry has done more than most industries to self impose advertising regulations. However, when the federal government steps in and mandates advertising parameters, it is changing The First Amendment from a Constitutional right to a bothersome notion.

Furthermore, no one has a problem with your campaign against children smoking. It is your actions to stem such smoking that unsettles most Americans. When this country is faced with a teenage smoking problem, the answer is not to subtly change the Constitution. The answer is to empower parents, neighborhoods and communities to benefit the child.

In creating this rule, you think that you have attacked this "nicotine delivery device", but you have actually attacked The First Amendment. If it comes down to keeping the cigarette to keep The First Amendment, sign me up!

I ask you to reconsider this tragic avenue you are venturing down, cancel this rule, and hold The First Amendment high.

Thank you for your attention to this letter.

Sincerely,

Malcolm Wallop

Malcolm Wallop

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TOTAL P.04

Small Business SURVIVAL Committee

Comments on the U.S. Food and Drug Administration's Proposed Regulations on the Tobacco Industry and Tobacco Products

Docket No. 95N-0253

Small Business Survival Committee

Written by
Raymond J. Keating
Chief Economist
Small Business Survival Committee

Submitted on
November 29, 1995
to the
U.S. Food and Drug Administration

1320 18th STREET, N.W., SUITE 200 • WASHINGTON, D.C. 20036
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The Small Business Survival Committee (SBSC) is a small business advocacy organization with over 40,000 members across the nation. SBSC promotes a free-market, pro-entrepreneur agenda of lower taxes, less regulation, and smaller government. SBSC's interest in public policy issues that impact small business and entrepreneurs dictates that we file these comments on the U.S. Food and Drug Administration's (FDA) proposed regulations regarding the tobacco industry and tobacco products.

In recent years, the FDA has been moving on issues and in ways that are quite worrisome to those of us concerned with individual liberty, entrepreneurship, economic growth, and job creation. In many ways, the FDA seems to have declared war on a host of businesses and industries. Recent FDA battles include raids on vitamin clinics and orange juice producers, a pseudo-science attack on silicone breast implants, and an assault on the nation's health and economic vitality by creating a bureaucratic maze while fostering long delays in terms of drug and medical device approvals. (For more detail see: Raymond J. Keating: "FDA Hazards: How FDA Red Tape Impacts Entrepreneurs and the U.S. Economy," Small Business Survival Foundation, August 1995.) And now the FDA adds an attack on the tobacco industry -- as well as many related industries dominated by small businesses -- to this seemingly ever-growing list.

According to the Federal Register, the proposed FDA regulations include prohibiting cigarette vending machines, free samples, mail-order sales, and self-service displays; limiting advertising and labeling "which children and adolescents are exposed to" to black-and-white, text only formats; no advertising within 1,000 feet of a school or playground; banning the sale or distribution of branded non-tobacco items such as hats and t-shirts; and restricting sponsorship of events to corporate names only, no tobacco product brand names. Also, the proposed regulations would federalize 18 years as the legal age for purchasing tobacco products and require manufacturers to fund anti-smoking educational campaigns.

The FDA states that with these regulations it *hopes* to cut youth smoking by half within seven years. However, if this goal is not achieved, then the agency would take additional steps. Such additional steps are not specified.

The proposed measures reach well beyond any youth market and raise worrisome questions about the FDA's long-term goals relating to the tobacco industry. After all, an August 1995 report by the FDA declared "that nicotine in cigarettes and smokeless tobacco products is a drug, and that these products are drug delivery devices with the meaning of the Food. Drug, and Cosmetic Act." If true, the criminalization of tobacco products production and distribution must be a real possibility. Especially with unspecified, additional actions likely, one has to wonder: Is the FDA ultimately seeking prohibition with all its commensurate woes?

For the short term, though, this FDA effort is essentially based on the highly questionable notion that advertising has a significant impact on youth decisions to smoke — much more so than the more likely influences of peer pressure and family life. The FDA also assumes that the federal government should, and can, direct the personal tastes and habits of Americans. As in other cases where the nanny state runs amok, real and significant economic costs are incurred.

Indeed, small businesses of many kinds will be hurt by these FDA regulations, including convenience and grocery stores, advertising companies, a variety of manufacturers, print shops -- the list goes on and on. Of course, as is the case whenever the government is guilty of regulatory over reach, jobs will be lost.

According to an economic analysis performed for the Small Business Survival (SBS) Foundation by the American Economics Group, Inc. ("Employment and Wages Created by the Advertising and Promotion of Tobacco Products," October 1995), the FDA's projections of potential job losses due to these regulatory proposals are grossly underestimated. The FDA claims that approximately 1,000 jobs annually would be lost in the tobacco warehouse, manufacturer, grower, and wholesaler sectors for about 10 years. While a ten-year total of 10,000 jobs lost is significant, the American Economics Group report notes that this amounts falls far short of more realistic job-loss estimates: "Incredibly, the FDA does not include a job loss estimate for the sectors that would be most vulnerable to its regulations -- the advertising, manufacturing and retail industries."

The American Economics Group study for SBS Foundation found the following when examining the sales, employment, and wage impact of promotional and advertising expenditures by tobacco firms:

• Based on 1993 numbers, direct spending on advertising and promotion by tobacco companies employs an estimated 78,836 workers in the United States, and by the time the additional activity generated by these individuals is factored in, "the cycle of buying, all begun by tobacco advertising and promotion, continues until...209,112 persons are employed as a result."

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• Direct advertising and promotion purchases by tobacco firms amounted to more than $6.1 billion in 1993, with total generated purchases topping $17.9 billion. Direct wages and salaries amounted to more than $1.9 billion, and "subsequent activity" generated more than $3.2 billion for a total of over $5.2 billion in wages and salaries in 1993.

• Direct advertising and promotion expenditures by tobacco firms fall into 11 major industry categories -- food products and tobacco, apparel, printing and publishing, rubber and leather products, instruments and related products, miscellaneous manufacturing industries, transportation, wholesale trade, retail trade, business services, and miscellaneous services. Subsequent derived expenditures impact 37 different industry groups.

• The proposed FDA tobacco regulations place much of these advertising and promotional expenditures at risk. Therefore, the businesses -- many small, entrepreneurial firms -- tied into such activity are placed in jeopardy as well. (See information belowon the vending services industry, for example.)

• In terms of lost jobs, the report finds that approximately 45,000 full and part time direct jobs and at least 65,000 derived jobs could be lost over a three to five year period. *This job loss estimate registers 11 times the FDA's estimate -- but covers only five years as compared to FDA's ten-year projection.* And it should be remembered that these American Economics Group estimates only count jobs related to a decline in advertising and promotional expenditures by tobacco firms due to the proposed regulations, and not additional job losses tied to any kind of decline in the purchase of tobacco products.

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One industry hit particularly hard by the proposed regulations, for example, is vending services. Under the proposed FDA tobacco regulations. the sale of cigarettes through vending machines would be completely banned.

In a recent Wall Street Journal article ("If Cigarette Industry Coughs. Remote Areas Expect to Catch Cold," October 26. 1995), Mark Stomel, the owner of a vending machine company, noted who would be hurt by such a ban: "The man that fills the vending machines, the mechanic that fixes them, the people who do the maintenance of the vehicles...It spreads like wildfire." He also reported that 25 percent of his own company's sales would be wiped out.

The National Automatic Merchandising Association (NAMA) notes that cigarettes and tobacco sales represent 7.1 percent of sales by automatic merchandising machine operations, and a ban on these sales would mean thousands of lost jobs.

The FDA claims that it has undertaken this regulatory assault on tobacco in order to cut youth smoking in half in seven years. The FDA assumes that an end to cigarette distribution through vending machines will greatly assist this effort. However, NAMA's numbers point to the opposite conclusion, that the impact on youth smoking would be negligible:

- Cigarette purchasing habits of individuals ages 13 and 17:

Convenience stores	43%
Gas stations	29%
Grocery stores	11%
Vending machines	9%
Drug Stores	6%

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•Location of vending machines:

Locales rarely frequented by minors		*77.5%*
Bars, cocktail lounges	31%	
Industrial plants	27%	
Offices	12%	
Hotels/Motels	4%	
Universities/Colleges	3.5%	
Other Locales		*22.5%*
Restaurants	13%	
Terminals, Rec - Bowling Centers, misc	9.5%	

Meanwhile, this highly dubious undertaking creates tangible risks for an industry completely dominated by small businesses. For example, *Vending Times* reports that 26 percent of vending service providers are one-person (or family-only) establishments; 15 percent have only one part-time employee; another 28 percent claim 1-3 full-time employees; and 10 percent have 3.5-5 full-time employees. In total, an incredible 90 percent of all vending firms employ less than 20 employees. *The survival of many of these firms is placed in jeopardy due to the proposed ban of cigarette sales through vending machines by the FDA.*

The job of stopping youth smoking -- a goal worth supporting -- falls to parents, not federal government bureaucrats in Washington, D.C.. Governmental social engineering always fails -- and at great cost to the taxpayer, business, and the economy.

Indeed, excessive regulation always hurts the economy. If a federal government agency is going to declare war on any industry by instituting greater oversight and enhanced regulation, then a full and realistic accounting of the potential damage should be undertaken. Increased federal regulation is not a costless endeavor. Regulations have the same impact as taxes -- raising the costs of investing, risk taking, and generally "doing business." These costs translate into less investing and entrepreneurship, lower profitability, increased chances of businesses failure (especially for smaller firms struggling to survive), and fewer jobs. Federal agencies like the FDA have a responsibility to reasonably examine the costs and benefits of their regulatory initiatives.

Unfortunately, FDA officials do not even seem to concern themselves with proper jurisdiction -- tobacco regulation has never fallen within the FDA's regulatory domain -- never mind real costs. Orange juice producers, vitamin clinics, medical device firms, drug companies, and now tobacco-related businesses -- more and more industries suffer under the FDA's yoke. Of course, all of these costs ultimately are borne by the consumer -- whether through higher out-of-pocket expenses or fewer choices.

Finally, the question remains: Would not the FDA be better off using precious taxpayer dollars to improve upon the duties in which they traditionally are expected to partake? For example, in recent years, the FDA has failed consistently to meet their own deadlines for drug and medical device approval decisions -- costing not only U.S. businesses and jobs, but lives as well.

SBSC strongly urges that the proposed FDA regulations relating to tobacco products not be implemented. The real costs -- in terms of failed businesses, lost jobs, and wasted taxpayers dollars -- far outweigh the undetectable benefits.

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COMMENTS TO THE DOCKET AND RELATED ACTIVITIES

SPORTS SPONSORSHIP INTERESTS

Completed Comments

- Tobacco industry representatives and allied organizations have made a concerted effort to educate fans of bowling, racing, rodeos, concerts, and other cultural events about the impact the proposed FDA regulations will have on these activities. Industry efforts have reached hundreds of thousands of attendees at dozens of events:

  - Hats, t-shirts, bumper stickers, and other paraphenalia have been distributed at events.

  - Through letter-writing booths at industry-sponsored events, hundreds of thousands pre-printed cards and some letters have been sent to the FDA docket expressing opposition to the proposed rule.

  - Thousands of event attendees have also expressed their opposition to the proposed FDA regulations in letters to Members of Congress.

- Industry representatives and others have been active at the following Winston Cup Series races:

  - Bud at the Glen
  - GM Goodwrench Dealer 400
  - Goody's 500 (Bristol, TN)
  - Mountain Dew Southern 500
  - Miller Genuine Draft 400
  - MBNA 500
  - Goody's 500 (Martinsville, VA)
  - Tyson Holly Farms
  - UAW-GM 500
  - AC Delco 400
  - Slick 50 500
  - NAPA 500

- Industry representatives have also encouraged affected third parties, such as race-track owners and event organizers, and their employees, to file comments to the FDA docket.

    - For example, the President of Dover Downs submitted comments to the docket, and requested that his more than 500 employees do likewise, with copies sent to Members of Congress.

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COMMENTS TO THE DOCKET AND RELATED ACTIVITIES

SMOKERS' RIGHTS GROUPS

Completed Comments

- National and local chapters of smokers' rights groups collected anti-FDA regulation petition signatures for submission.
  - For example, a Louisville, KY, smokers' rights group gathered more than 6,300 signatures for a petition sent to the FDA docket.

Ongoing

- Local chapters continue to collect petition signatures for submission to the docket.

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MEDIA RELATIONS

AGRICULTURE

Completed Activities

- The New York Times and the Washington Post both ran positive feature stories concerning the effects of the FDA on tobacco farmers.

- Flue-Cured Tobacco Cooperative Statbilization Corporationhas talked to more than 200 media outlets on the subject.

- Every leader of every agriculture group has talked to the media in their respective states concerning the FDA. For example, the Virginia Farm Bureau issued press releases denouncing Clinton's plan and also had a representative interviewed on the television talk show, "On the Record."

- The Tennessee Farm Bureau Federation included a special tobacco insertion called "Tennessee's Golden Leaf" in the Tennessee Farm Bureau News, circulation 500,000, educating people on the issue of FDA regulation and requesting submission of comments. Every Farm Bureau publication in the South Eastern United States has highlighted the FDA issue thereby reaching millions of people in the region.

- Special tobacco insertions appeared in two fall 1995 editions of the newsletter, "Senter on the Hill," which has an ultimate reach of approximately 40,000 farmers, growers, ranchers, etc.

- Singers Willie Nelson and John Mellencamp and other celebrities led the 10th annual Farm Aid Town Hall Meeting in Louisville, KY, Oct. 1995, during which FDA issues were discussed. The event was aired four times on national C-SPAN broadcasts.

- The Council for Burley Tobacco hosted news conferences in conjunction with the opening of the Kentucky Burley Tobacco Market in Lexington and Shelbyville. The news conferences were centered around the proposed FDA regulations, and included giant letters that signed by farmers to be shipped to Dr. Kessler. Congressman Scotty Baesler (D-KY) was one of the speakers at the news conference.

- The Council for Burley Tobacco hosted a similar conference in Gallatin, Tennessee. Congressman Bart Gordon (D-TN) spoke at the conference.

Ongoing

- Op-eds were drafted for Farm Bureaus by TI staff and are being distributed to newspapers in:
    - Georgia
    - Kentucky
    - North Carolina
    - South Carolina
    - Tennessee
    - Virginia

The New York Times
p. A1
8/11/95

Tobacco Growers Bemoan Clinton Smoking Proposal

By MICHAEL JANOFSKY

RALEIGH, N.C., Aug. 11 — "The man's off his rocker," Claude B. French said of President Clinton, and that was one of the milder reactions today among the tobacco farmers who serve on the board of a cooperative representing 180,000 growers in five Southern states.

Tobacco farmers have long been accustomed to attacks on smoking from health groups and Government agencies. But Mr. Clinton's proposed regulations to reduce teen-age smoking, announced on Thursday, provoked an unusual level of anger as the board met here at the Flue-Cured Cooperative Stabilization Corporation offices, where visitors are greeted by a sign: "Thank You for Smoking."

Characterizing the plans as illegal, hypocritical, unnecessary and economically harmful to tobacco farmers, the directors voted at their regular monthly meeting, 11 to 0, to join the nation's five largest tobacco companies in a lawsuit filed on Thursday that challenges the Food and Drug Administration's authority to regulate the sale, distribution and promotion of cigarettes.

The regulations proposed by Mr. Clinton, based on the F.D.A.'s finding that nicotine is an addictive drug and thus subject to the agency's control, would prohibit cigarette sales to anyone under 18, eliminate the sale of cigarettes through vending machines and place new restrictions on cigarette advertising.

"The farmers are really down in the mouth about this," said Mr. French, who farms 800 acres in Reidsville, N.C. "It's very discouraging to us. This has been our livelihood through generations of hand-me-down farms."

All the directors are farmers, representing growers in Virginia, North Carolina, South Carolina, Georgia and Florida who produce flue-cured tobacco, curing their leaves by regulating heat and humidity in closed barns. Burley, the other major tobacco type produced in the United States, by about 160,000 growers, is cured by air flowing through open barns. Flue-cured tobacco constitutes up to 60 percent of the tobacco used in cigarettes, about twice as much as burley.

In 1993, the latest year for

Karen Tam for The New York Times

B. Frank Strickland at a meeting of tobacco co-op directors.

p. 1 of 2

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Growers of Tobacco Bemoan Proposals

Continued From Page 1

which statistics are available, 46 million Americans, about a fifth of the population, smoked 486 billion cigarettes, generating $50 billion for cigarette manufacturers and $14 billion in Federal, state and local taxes. Leaf sales generated about $3 billion for farmers — about $3,782 an acre, according to the Agriculture Department, compared with $352 for cotton, $208 for soybeans and $176 for wheat.

Many of the directors here argued that Mr. Clinton's proposals were just another example of government intrusion into people's lives — and an illegal one at that, inasmuch as the power to regulate commerce is given by the Constitution to Congress. The F.D.A.'s position is that nicotine, a chemical that occurs naturally in tobacco, falls within a wide group of addictive substances that the Food, Drug and Cosmetic Act already gives the agency the authority to control.

p. 2 of 2

Stressing their belief that most tobacco growers oppose teen-age smoking, some board members said state laws already barring the sale of cigarettes to minors made Mr. Clinton's plan redundant.

Beyond that, they insisted that the Government should play no role in a teen-ager's deciding whether to smoke. Andrew Q. Shepherd, a farmer from Blackstone, Va., said any teen-ager who wanted to smoke would smoke, regulations notwithstanding.

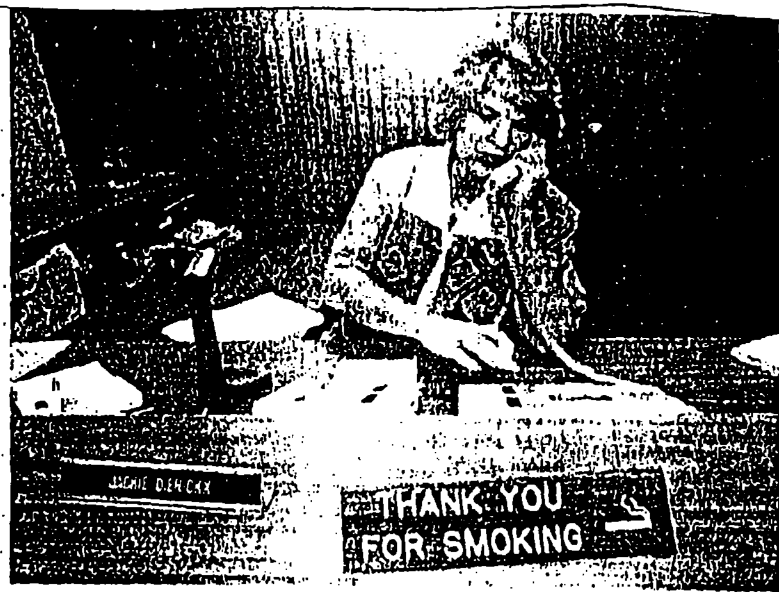
His 16-year-old son smokes filter-tipped Camels, he said.

"We are all against smoking by teen-agers," said Mr. Shepherd, a smoker who described himself as "an eighth or ninth generation" tobacco farmer with no other source of income. "Churches discourage kids from smoking. Schools discourage them. With all that community involvement, if parents, peers and community institutions cannot convince kids not to smoke, you're not going to solve anything with unnecessary intrusion into private lives."

As for his son, he said, "I would prefer that he not smoke."

Albert M. Johnson of Galivants Ferry, S.C., said that preaching the ills of smoking to teen-agers, let alone regulating them, was no less daunting than other challenges parents typically face.

"To teen-agers, a no-no is a temptation," Mr. Johnson said. "Smoking is something parents have to discuss with their kids, like speeding, wearing seat belts and using drugs. But it should come from parents, not the Government."



On the receptionist's desk at a tobacco co-op in Raleigh, N.C., a variation on a common sign greets visitors.

'The farmers,' one of them says, 'are really down in the mouth about this.'

James C. Pate of Rowland, N.C., added: "The American public doesn't like to be told what it's got to do. A lot of people tell me they smoke only because people tell them they can't."

Some directors said they viewed Mr. Clinton's proposals as part of a larger campaign to increase Government restrictions on the tobacco industry, and several criticized the Administration for emphasizing to teen-agers the adverse effects of smoking rather than of alcohol and drugs.

"Tobacco has been in this country 200 years, but they've never talked about it until now," said B. Frank Strickland of Lakeland, Ga. "I don't know why. But I do know tobacco does not do what alcohol and dope do to people. Yet they jump on tobacco. Why don't they jump on the dope crowd?"

Board members also said Mr. Clinton's plan would damage him politically, almost certainly costing him any chance to win North Carolina in next year's Presidential election. Among tobacco-growing states, Mr. Clinton carried only Kentucky and Tennessee in 1992, losing North Carolina to President George Bush by 20,000 votes.

"As poor as his rating is in the South, he couldn't stoop no lower," said Kenneth Dasher of Live Oak, Fla. "Maybe he figured he had nothing to lose and this would take the heat off some of his other problems — you know, spreading the misery."

Mr. Johnson, the director who represents all of South Carolina, a state Mr. Clinton lost by almost 100,000 votes in 1992, said he was "amazed and devastated" by the President's proposals for the economic loss they would pose to tobacco farmers.

"But I guess it never ceases to amaze me what the Clinton Administration does, trying to regulate," he said. "You hear a lot of talk about a two-party system; if Clinton keeps on going, it's going to be a one-party system. He has totally destroyed the Democratic Party in our area."

Asked if he is a Democrat, Mr. Johnson sighed deeply.

"I wanted to be," he said.

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The Washington Post

TUESDAY, AUGUST 15, 1995

B1

Tobacco Farmers All Fired Up

Clinton's Proposed Rules Have Va. Growers on Defensive

By Peter Finn
Washington Post Staff Writer

SOUTH BOSTON, Va., Aug. 14—The rich, sweet aroma of tobacco leaf hangs in the air at the Banner auction warehouse, but on the lips of the farmers who have come here to sell their crop, there is only bitterness.

"Tobacco is our life. It's the only life we know," said Mildred Womack, 63, whose family has farmed the small, hilly fields of Southern Virginia for five generations. "If they take away tobacco, what will we do? There's nothing else. I don't think people understand that."

Last week, after President Clinton proposed rules to curtail the sale of cigarettes to minors, tobacco farmers again felt under siege, browbeaten by a government that they suspect would shed no tears at their destruction. The language of apocalypse—the fear of the end of a deeply southern way of life—is everywhere.

"Tobacco has been here since the first successful colony in Jamestown," said Andy Anderson, who owns the Banner warehouse in this community about 190 miles south of Washington, near the North Carolina line. "Tobacco made the colony a success. We have lived off it since, and now a few knuckleheads want to do away with it. This isn't a paycheck. It's our heritage."

A farmer standing beside Anderson visibly trembled and said, "I'm sorry. I'm so angry I can hardly talk. We're not doing anything wrong."

The particulars of Clinton's proposal seem almost incidental to these farmers. Most, but not all of them, said they think that smoking by teenagers should be discouraged. But they suspect that the administration's proposal is an opening gambit to regulate tobacco use among adults.

Even before Clinton's proposal, the farmers were nervous about Congress's reconsideration of several federal initiatives, including a tobacco price support program that controls the amount grown and guarantees growers a minimum price for their crops.

"The more smoking laws you have, the more teenagers will smoke," said C.J. Bales, 42, who has 38 acres under tobacco and, like most of the farmers interviewed, seems to favor chewing tobacco over smoking it. "It should be up to the parents if they don't want their kids to smoke. Don't tell me you can't smell it on their

See TOBACCO, B6, Col. 3

BY DEAN HOFFMEYER FOR THE WASHINGTON POST
Mildred Womack watches as a Food and Drug Administration inspector looks at her tobacco.

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Tobacco Farmers Light Into Clinton's Proposal

TOBACCO, From B1

breath or on their clothes. But that's not what [government officials] want. They want to mess with our livelihoods. And if tobacco goes, these little towns are going to dry up and die."

Tobacco generates $31 million annually in farm sales in surrounding Halifax County, and the local Virginia Cooperative Extension agent estimated that that money turns over four to six times in the local economy. All other crops in the county generate sales of only $5 million. In Virginia, nearly $200 million worth of tobacco is grown annually.

"Tobacco is by far the biggest thing down here," said Larry L. McPeters, the extension agent.

Sue Wilkins, 37, sees those economics at work in her restaurant, Oliver's, in South Boston.

"When it's selling time, like it is now, there's money around," she said. "People come into the restaurant, they buy clothes, they have a little extra. And then when the selling is done, it's over, it's dead."

To stay afloat, farmers said, they have to stay in tobacco, because it's the only crop that turns a good profit.

"It's the prettiest I have ever pulled, long as my walking cane," said Vernon Hill, 71, as he surveyed his sacks of yellow leaves in the Independence warehouse yesterday morning. "We sold it for top money."

Because of tobacco's potential for profit, and the large investments farmers have made in tobacco farming equipment such as curing barns, most farmers here can't imagine switching to another crop.

"There's nothin' in any other crop," said W.H. Spell, who farms 36 acres of tobacco and whose family has been in the business since the 1600s. Spell said the land here, unlike in other parts of the United States, is not suitable for significant grain farming. "You can't get your money back on corn or wheat or soybeans. I've tried them all. You can make a few dollars on tobacco. You can halfway live on it."

BY DEAN HOFFMEYER FOR THE WASHINGTON POST
Buyers in South Boston, Va., move through tobacco piles at the Banner warehouse, where some farmers bring their crop.

Whether others die from it is an issue the farmers evade.

"It's up to every adult to decide," said Artie Clark, 55, who farmed until he retired 10 years ago and now is floor manager at the Banner warehouse. "And you got to smoke right. You can't have a cigarette in your hand all the time. My daddy smoked, and he lived to be over 100. And his daddy smoked, and he was over 100 when he went. And my great-granddaddy was 105, and he smoked, chewed and made his own liquor."

Clark quit smoking some years ago and now chews tobacco.

The more optimistic among those standing in the seven-acre Banner warehouse said they believe that tobacco will endure because it is too entrenched in the culture to die.

"Tobacco has always been controversial," said Bob Cage, 72, a tobacco farmer and auctioneer. "It was a capital offense to use it in the time of King James. It will always be controversial. But it's a fool's dream to think people are going to stop smoking. It makes you feel good. And it's too big. There's too much money at stake. Tobacco will go on."

As the farmers left the sweltering warehouses to return to the fields, many said they wished that those who seem to be condemning them could walk their land, feel the sticky wax of the tobacco leaves on their hands and endure the blistering sun on their backs.

"I sure would love the president to follow us for a day or a week to see what we go through to raise the tobacco," Womack said. She and her husband and son rise at 4 a.m. each summer day and work until 11 p.m., all to get $800 profit on each 600 pounds of tobacco they pull from the land."

"If the president spent a day in the fields," she said, "maybe he wouldn't be so hard on us."

FOR MORE INFORMATION

To read a full text of President Clinton's recent news conference on the issue, see Digital Ink, The Post's on-line service. To learn about Digital Ink, call 1-800-510-5104, ext. 3000.

91715446

Tobacco News

Washington DC — November 1995

COMMENT PERIOD ON FDA REGULATIONS ON TOBACCO EXTENDED TO JANUARY 2, 1996

The FDA has announced that the period for submitting comments on recent proposals to bring tobacco under FDA jurisdiction has been extended to January 2, 1996.

Under the proposed FDA rule, the FDA would be given broad authority to regulate the manufacture, sale, distribution, marketing, advertisement, and promotion of cigarettes and smokeless tobacco products. These regulations should be viewed as a prelude to the prohibition of tobacco.

With the extended period for comment to the FDA, farmers and rural people who oppose these new regulations have time over the holidays to write the FDA and their Senators and Representatives.

On the back side of this insert is a form to use to comment to the FDA.

Your letters to the FDA and Congress can have a strong impact on the passage of or rejection of legislation and regulations. The FDA is required by law to invite comments from anyone and everyone who feels affected by the proposed regulation. When the FDA receives a letter, it is obligated to review it, categorize the points in it, and respond to it. Since the FDA will not share your letters with Congressman or Senator, it is important that you also send them a copy of this same letter.

Mattie Mack, Brandenburg Ky tobacco farmer and activist with the Western Kentucky African-American Farmers Association and Federation of Southern Cooperatives, during a recent tobacco harvest.

KENTUCKY TOBACCO FARMERS ARE LETTING THE FDA KNOW WHAT THEY THINK OF INCREASED TOBACCO REGULATION

The Western Kentucky African American Farmers Association is conducting a campaign in Kentucky to encourage tobacco farmers to comment on FDA regulations. Under the leadership of Mattie Mack, sample FDA letters are being placed in mainstreet businesses and farm stores to remind tobacco farmers and rural people of the implications of FDA regulation of tobacco on rural towns.

91715447

Here's how to address your FDA correspondence:

Docket Nos. 95N-0253 and 95N-0253J
Dockets Management Branch (HFA-305)
Food & Drug Administration
12420 Parklawn Drive, Rockville, MD 20857

Here's how to address your Congressman and Senators

The Honorable _____	The Honorable _____
US House of Representatives	US Senate
Washington, DC 20515	Washington, DC 20510

POINTS TO MAKE

* FDA has no jurisdiction over tobacco. For more than 80 years Congress has said regulating cigarettes is its job. On February 25, 1994, FDA Commissioner Kessler wrote, "We recognize that the regulation of cigarettes raises societal issues of great complexity and magnitude. It is vital in this context that Congress provide clear direction to the Agency."
  What has changed since that statement? Nothing!

* Tobacco is already highly regulated. At least a dozen federal agencies and every state have tobacco controls. Government should enforce what's already on the books!

* The FDA can't handle its current workload. The FDA is already dragging its feet in approving life-saving drugs and medical devices. For example, former US Senator Wallop (WY) blames 150,000 heart attack deaths on FDA drug delays. The FDA also has a role in keeping our food supply safe. Does the FDA have time to waste on tobacco; an industry that is already highly regulated?

* FDA proposals won't reduce youth smoking. Long-term U.S. government data show overall youth smoking rates declining dramatically, by nearly 40% since 1975. Meanwhile illegal drug use by kids is soaring. International studies show (and even former Surgeon General Koop and other anti-tobacco crusaders agree) that kids smoke mainly because of peer pressure, or if their parents or siblings smoke. Advertising is not the reason kids take up smoking.

* Kessler claims to be worried about "youth access" to tobacco. His proposal would do everything but address that issue – it doesn't offer a mechanism to strengthen enforcement of existing minimum age laws or otherwise address the real issue.

* The FDA rule would toss the First Amendment on its ear. Advertising is a form of speech, and free speech is protected under our Constitution. Kessler would trample that historic document. This is America, not China or North Korea.

The National Tobacco Council
September 1995

91715448

The life of a farmer can be difficult and unpredictable. Bad weather, determined insects, and a whole host of crop diseases can make a farmer think hard about getting into another line of work.

The last thing a farmer needs is more obstacles. But that is exactly what tobacco growers got when President Clinton announced that he would ask the Food & Drug Administration to regulate tobacco. It can be of little comfort to leaf growers that FDA Commissioner David Kessler -- an unelected Washington bureaucrat who has said that tobacco has no place in America -- could soon be looking over their shoulders.

Not that tobacco was under-regulated before the FDA entered the picture. In fact, tobacco is already one of the most highly regulated consumer products in America. From the seedbed to the store-counter, an alphabet soup of federal departments and agencies, as well as every state, have control over tobacco.

Unfortunately, that detail has been ignored by the bureaucrats at the FDA. As a result tobacco growers could face another level of bureaucratic interference. Will FDA agents -- whose powers are broad and include criminal law enforcement -- be trampling through tobacco fields and seizing crops? Will tobacco farmers be subject to heavy fines? Don't laugh. Early on in the Kessler era, FDA agents confiscated made-from-concentrate orange juice from a warehouse because the carton labeling included the word "fresh."

The FDA's proposal is a Trojan horse. If he gets his way, Kessler's crusaders will regulate every aspect of the tobacco industry, and it isn't just farmers who will be hurt by this proposal. According to a 1992 Price-Waterhouse study, tobacco is nearly a $3 billion industry in Kentucky, providing jobs not only in the farming sector, but also in the warehousing, retailing, and marketing industries, to name a few. Spill-over effects caused by the spending of tobacco dollars provide additional jobs and income to people far removed from the tobacco industry. Moreover, taxes on tobacco products are a valuable revenue boost to state and local governments and help pay for a variety of public services. FDA regulation puts those jobs and our state's economic health at risk.

And while the FDA is out attacking tobacco growers and others, it is ignoring its critical role: to approve lifesaving drugs and medical devices and to assure a safe food supply. Anyone who has a friend or relative waiting on approval of a new drug treatment or medical device should be concerned.

Unfortunately, approval delays for potentially lifesaving drugs and medical devices are standard procedure at the FDA. In fact, former Senator Malcom Wallop (WY) blames 150,000 American heart attack deaths on FDA drug approval delays. During Congressional hearings this year, the FDA was taken to task by both Democrats and

Republicans for failing in its core mission. And yet, this inept organization wants to take on more work by regulating tobacco, maybe right in your fields.

The President's goals -- to reduce youth smoking -- are to be commended. Nobody, tobacco farmers included, wants kids to smoke. But the President's proposal will do little to affect youth smoking rates. All 50 states already have laws on the books dealing with youth smoking -- some of them similar to the provisions within the Administration's proposal. During the last 20 years youth smoking has dropped dramatically, nearly 40% according to federal government reports. We don't need another set of regulations and the bureaucratic baggage that goes with them. Let's enforce the laws already on the books, and look to our families and our communities to solve the problem of youth smoking -- and get big government out of the equation.

If you share my concern on this issue, please take a moment to let your U.S. Congressional Representative and your two Senators know how you feel. They are in Washington, after all, to represent your views.

91715451

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MEDIA RELATIONS

ORGANIZED LABOR

Completed Activities

- LMC took immediate action in response to the President's announcement of the proposed FDA regulations.

    - BC&T President Frank Hurt issued a press release to newspapers, radio and television networks, and tobacco trades on a national scale. Coverage of President Hurt's remarks included the Washington Post.

    - North Carolina State AFL-CIO President Chris Scott issued a press release to all state newspapers, wire services and the Associated Press.

    - Kentucky State AFL-CIO President Bobby Curtis issued a press release to all state newspapers, wire services and the Associated Press.

    - Kentucky, Georgia, Virginia and North Carolina tobacco local presidents issued press releases in their respective states, followed by print and broadcast interviews.

    - A second BC&T national press release was distributed; coverage included Kansas City Star.

    - September issue of BC&T News ran an article titled, "FDA attempts to Regulate tobacco could cost jobs."

NEWS RELEASE

Bakery, Confectionery & Tobacco Workers International Union 10401 Connecticut Ave., Kensington, MD 20895-3961

FOR IMMEDIATE RELEASE:
AUGUST 10, 1995

CONTACT:
SCOTT TREIBITZ
JAY BOSHARA
(703)276-2772

STATEMENT OF BC&T INTERNATIONAL PRESIDENT FRANK HURT ON PRESIDENT CLINTON'S PLAN TO REGULATE TOBACCO

Thousands of American jobs would be eliminated by President Clinton's expensive new plan to regulate tobacco. This attack on the tobacco industry is an attack on the livelihood of tens of thousands of American families and their communities. Is it the federal government's business to threaten American jobs and wreak economic havoc for so many Americans?

The Bakery, Confectionery and Tobacco Workers International Union represents nearly 15,000 men and women working in the tobacco industry. Together with 4,000 machinists who work alongside our members in tobacco plants, these workers are employed in an industry that is integral to the economy of the southeast United States. If enacted, the Food and Drug Administration's plan would have a serious negative impact on the whole regional economy.

According to its own estimates, FDA regulation of tobacco will eliminate 10,000 jobs and cost the states billions in tax revenues. Government should encourage employment, not destroy it.

BC&T agrees that teen smoking must be addressed, and we stand ready with the industry to talk with the President about effective measures to curb adolescent tobacco use. But regulating away thousands of American jobs is not the way to do it.

The Washington Post

FRIDAY, AUGUST 11, 1995

Clinton Moves to Limit Teenage Smoking

Tobacco Firms Sue To Bar Restrictions On Ads and Sales

Clinton Takes On Smoking

91715455

NORTH CAROLINA STATE A.F.L.-C.I.O.

Post Office Box 10805
Raleigh, North Carolina 27605
Phone (919)833-6678

FOR IMMEDIATE RELEASE:
AUGUST 10, 1995

CONTACT:
CHRISTOPHER SCOTT
(919)833-6678

STATEMENT OF NORTH CAROLINA STATE AFL-CIO PRESIDENT CHRISTOPHER SCOTT ON PRESIDENT CLINTON'S PLAN TO REGULATE TOBACCO

The President's end run around Congress by using the Food & Drug Administration to regulate tobacco would have a very adverse effect on the livelihood of tens of thousands of working men and women in the state of North Carolina. The FDA does not now and has never had the authority to regulate this legal product, nor should it.

The tobacco industry is an extremely important part of the economy of this state. Tobacco workers earn a decent living and can provide for their families in the best tradition of the American middle class. Their work generates a significant economic contribution to their communities and their states. FDA regulation of tobacco would result in the loss of many of these jobs and would cripple the tax base of many of our cities and towns.

We agree that teen smoking must be stopped, and we stand ready with the industry to talk with the President about effective measures to curb adolescent tobacco use. But regulating away tens of thousands of American jobs is not the way to do it.

If enacted, the Food and Drug Administration's plan would have a serious negative economic impact. According to its own estimates, FDA regulation of tobacco will eliminate 10,000 jobs and cost the states billions in tax revenues. Government should encourage employment, not destroy it.

KENTUCKY STATE AFL-CIO

340-1 DEMOCRAT DR.
FRANKFORT, KY 40601
502-695-6172 / 1-800-AFL-CIO-K
FAX: 502-695-6176

FOR IMMEDIATE RELEASE:
AUGUST 10, 1995

CONTACT:
ROBERT T. CURTIS
(502)695-6172

STATEMENT OF KENTUCKY STATE AFL-CIO PRESIDENT ROBERT T. CURTIS ON PRESIDENT CLINTON'S PLAN TO REGULATE TOBACCO

The President's end run around Congress by using the Food & Drug Administration to regulate tobacco is an attack on the livelihood of tens of thousands of men and women in the state of Kentucky. The FDA does not now and has never had the authority to regulate this legal product, nor should it.

The tobacco industry is an extremely important part of the economy of this state. Tobacco workers earn a decent living and can provide for their families in the best tradition of the American middle class. Their work generates a significant economic contribution to their communities and their states. FDA regulation of tobacco would result in the loss of many of these jobs and would cripple the tax base of many of our cities and towns.

We agree that teen smoking must be addressed, and we stand ready with the industry to talk with the President about effective measures to curb adolescent tobacco use. But regulating away tens of thousands of American jobs is not the way to do it. Furthermore, the tobacco companies already have in place extensive advertising and educational programs, and are taking new steps to curb adolescent tobacco use.

If enacted, the Food and Drug Administration's plan would have a serious negative economic impact. According to its own estimates, FDA regulation of tobacco will eliminate 10,000 jobs and cost the states billions in tax revenues. Government should encourage employment, not destroy it.

NEWS RELEASE

FOR IMMEDIATE RELEASE:
AUGUST 11, 1995

CONTACT:
Jim Masterson
(502)778-3376

UNION HIGHLY CRITICAL OF ADMINISTRATION DECISION TO REGULATE TOBACCO PRODUCTS -- Says Industry Workers Are Forgotten

In expressing deep disappointment with President Clinton's decision to allow Food and Drug Administration regulation of tobacco products, Wayne Purvis, President of the Bakery, Confectionery and Tobacco Workers International Union Local 16-T, stated today, "We believe that the President's decision to have FDA regulate tobacco products is totally inappropriate. It will cost hundreds of high-paying local jobs and have a devastating impact on the local economy." The union represents workers at the Philip Morris cigarette manufacturing facility in Louisville.

Purvis went on to say, "The members of our union are particularly outraged that in this whole debate, rarely is a word ever mentioned in Washington about the jobs of the men and women who work in the industry. Our members earn high wages and benefits. These jobs are a crucial part of the local economy.

"We recognize concerns over the use of tobacco products by minors. However, the companies already have in place extensive advertising and educational programs, and are currently undertaking significant new additional steps to guard against minors having access to these products.

"The steps outlined by the President go well beyond curbing teenage smoking. They go right at the economic viability of the industry, and in turn, our jobs. We believe the President has made a terrible mistake in putting the future of the industry and our livelihood in the hands of the FDA and people like Dr. Kessler."

Bakery, Confectionery & Tobacco Workers International Union 10401 Connecticut Ave., Kensington, MD 20895-3961

Courier Journal
8-11-95

[C]linton's move may cost him support of Patton, Baesler

[By] AL CROSS
[Pol]itical Writer

[T]wo top Kentucky Democrats [said] yesterday that they would repu[diate] President Clinton if he lets the [Foo]d and Drug Administration reg[ulate] tobacco, but they would work [with] him to keep that agency's [han]ds off the state's chief crop [illegible] if they don't succeed, and that [if] the plan Clinton announced yester[da]y does go into effect, Lt. Gov. [Pa]ul Patton and 6th District U.S. [Re]p. Scotty Baesler said they can't [su]pport Clinton for re-election. [illegible] Democratic U.S. Sen. Wendell [Fo]rd sidestepped that question, say[in]g he is trying to remain on speak[in]g terms with the White House as [he t]ries to broker a deal in which [C]linton's plan would be written into [la]w and enforcement power handed [to] any agency but the FDA.

Some Republican congressional [le]aders appeared skeptical of that [ide]a yesterday, but Ford, the Demo[c]ratic point man for tobacco, in Washington, said "I think we'll be all right. A lot of people don't like (FDA administrator David) Kessler, particularly Republicans" — who have a majority in both houses of Congress [illegible] Kessler [illegible] the Clinton administration [illegible] [illegible] [illegible] as the embattled [illegible] yesterday. the FDA wouldn't object if another agency got enforcement power.

Ford said, "I think the White House will agree that it should not stay there," and will agree to legislation in place of regulation. Clinton said yesterday, "I would just as soon have an act of Congress."

Ford and Baesler said they will try to write Clinton's plan into law, with two major exceptions — the FDA's role and the regulation of tobacco advertising, the point on which negotiations between the tobacco industry and the White House broke down.

"The key point of this legislation, and probably the most contentious point, is going to be the issue of advertising," Baesler said, indicating that laws limiting advertising of one product could [illegible] opposition [illegible] of other products that could [illegible] [illegible] [illegible] young people to get involved in something that can be harmful to their health. ... are we going to remove smoking from the baseball fields ... and put up [illegible] signs at the same field?" Baesler asked.

Clinton's plan calls for banning colors, pictures and graphics in outdoor advertising and in publications with more than 15 percent youth readership or more than 2 million readers under the age of 18.

Ford said he had been negotiating such points for weeks and had "agreed to almost everything." In an unusually vituperative release, he said, "Mr. Kessler wanted a scalp on his belt, and the White House was determined to give it to him."

Ford added, "I am not only disappointed, I am hurt. My first thought was to be vindictive — use every means I have available to me, and I have several, to get back at the White House. But I have decided [illegible] that course."

Ford said he spoke with Clinton twice Tuesday night. Between those calls, Patton also got to speak to the president, a conversation he had been trying to have for weeks.

Patton said he didn't tell Clinton directly that he couldn't support him if the FDA plan goes through, but "I think he got the message. I don't think there's any question about that."

Patton said he "pushed the legislative approach," and "I have to believe his later call to Senator Ford was a result of my call."

Patton is the Democratic nominee for governor. His Republican opponent, Larry Forgy, said Clinton was trying to score political points. He then made a political point of his own, suggesting Kentuckians who are upset with Clinton should vote for him. "I will do everything in my power to defeat Bill Clinton next year," he said.

Tobacco interests are clearly upset because they fear the FDA has an attitude that could lead to burdensome enforcement and devaluing of the high-nicotine burley tobacco grown in Kentucky.

Wayne Purvis, president of Tobacco Workers Union Local 16, said he's worried that Clinton's proposed restrictions are "going to do more than ban kids from smoking."

"If the FDA gets their hands in there, they can do what they want. They're not going to stop until they've banned cigarettes."

Purvis noted that would involve more jobs than those held by his union members — about 1,400 at Philip Morris USA in Louisville. "Start with the farmer and stop with the retail clerks," he said. "Truck drivers. People who work in paper mills. Vending machine people."

91715459

NEWS RELEASE

Bakery, Confectionery & Tobacco Workers International Union 10401 Connecticut Ave., Kensington, MD 20895-3961

FOR IMMEDIATE RELEASE:
August 16, 1995

CONTACT:
Steven Hahn or
Joelle Martini at
(703) 276-2772

UNION LEADERS CRITICIZE CLINTON'S ANTI-SMOKING PLAN

WASHINGTON — President Clinton's announced plan to curb smoking could cost thousands of U.S. jobs disproportionately affecting Southern states, women and minorities union leaders contend. Letters from labor leaders from Virginia to Georgia have been flooding the White House criticizing the Administration's plan and warning of possible political fallout in states where the President ran strongly in 1992.

"Jobs in the tobacco industry, the highest paying unskilled jobs in the world, pay up to $22 an hour plus benefits," said Wayne Purvis, President of Bakery, Tobacco and Confectionery Workers Local 16-T, which represents 1,400 workers at Philip Morris in Louisville, KY. "At a time when union members have have watched jobs disappear to Mexico and other low wage wage countries, additional threats to their employment have workers up-in-arms," he said.

Tobacco workers see the President's plan as doing more than stopping kids from smoking and believe it is just the first step in completely banning cigarettes. Workers say the cumulative effect of a smoking ban would level regional economies. "Start with the farmer and stop with the retail clerks," Purvis told the Louisville *Courier Journal*. "Truck drivers, people who work in paper mills, vending machine people, the list goes on and on."

President of the Bakery Confectionery and Tobacco Workers Frank Hurt said jobs are most often ignored in the debate in Washington. "Before we knock out a viable industry in the U.S., we must all realize there are human faces with severe human consequences," he cautioned.

Faye Waters, Georgia President of the A. Philip Randolph Institute, an organization comprised of African-American trade unionists, is particularly concerned with the plan because of the high number of women and minorities employed in the industry. "As Congress eliminates funding for job retraining, reverses affirmative action and erodes important gains for minorities, future employment opportunities for displaced tobacco workers may be hard to find."

- more -

This is particularly true for employees in Louisville where according to Wayne Purvis, the average workers' age at Philip Morris is over 40. "What kind of jobs will these people be eligible and properly trained for?" he asked. "With the loss of tax revenue and the added strain on unemployment and other sustenance, job threats will be taken very seriously in communities throughout the region."

A letter from Sheet Metal Workers President Arthur Moore warned the President that his tobacco plan presents a "Catch 22" for workers and the President's own reelection efforts. With the Administration now being perceived as "anti-tobacco," union leaders feel Republicans can successfully exploit this issue in tobacco growing states such as Georgia, North and South Carolina, Kentucky and Tennessee.

Labor contends Clinton's plan is a political time bomb and will isolate otherwise Democratic voters who rely on the President for preserving workplace health and safety, labor law reform and other worker protections under attack by the Republican Congress. Moore explained, "We are concerned that FDA attempts to regulate the tobacco industry will have a significant negative impact throughout the South and in border states such as Maryland and Missouri, where tobacco is grown in distinct regions of those states."

Moore, whose union has been working to gain broader support for Clinton's reelection said, "Working families cannot afford to lose any Southern Democratic seats and in order to prevent this, the Administration cannot continue to pursue anti-tobacco policies."

With most at stake is North Carolina, where according to the North Carolina AFL-CIO, over 10,000 jobs could be lost. President of the North Carolina AFL-CIO Christopher Scott told President Clinton, "Government should encourage employment, not destroy it. FDA regulations would result in the loss of thousands of jobs dependent on tobacco and the revenue it produces crippling the tax base of North Carolina cities and towns."

Scott added that not all jobs are the excellent production jobs paying high wages. "Work such as leaf processing employs mainly women and minorities as seasonal workers paying just enough to keep them off of welfare and other government assistance. The work is in rural communities that offer no other suitable employment opportunities. Eliminating these jobs," Scott said, "Would create a whole new set of problems for North Carolina and the federal government."

KANSAS CITY STAR

Saturday, August 19, 1995
★★

Labor in fight for tobacco

Organized labor seems ready to test its power and relevance by jumping into the intensifying controversy over tobacco's role in American society.

An early tactical strike was made this week by the Bakery, Confectionery & Tobacco Workers International Union, which alerted the media to the potential job losses from the administration's anti-smoking initiative.

The union's press release warned that President Clinton's bid to curb smoking — particularly by youngsters — could cost thousands of jobs and have disproportionate adverse effects on female and minority workers.

Faye Waters, Georgia president of the A. Philip Randolph Institute, a national organization comprised of African-American trade unionists, is one of those concerned about how recent political assaults on the tobacco industry will affect women and minorities.

"As Congress eliminates funding for job retraining, reverses affirmative action and erodes important gains for minorities, future opportunities for displaced tobacco workers may be hard to find," Waters says.

Many of these aren't dead-end jobs, either.

"Jobs in the tobacco industry, the highest-paying unskilled jobs in the world, pay up to $22 an hour plus benefits," says Wayne Purvis, president of the Bakery, Tobacco and Confectionery Workers Local 16-T.

It's good to see organized labor step up to the plate on this issue for a number of reasons.

Aside from the economics, it's a controversy that is highly relevant for labor because smoking is traditionally perceived as a working-class pleasure.

The economic aspect, however, remains the critical element in the debate. And what seldom gets talked about when tobacco-use restrictions are pushed is the tens of thousands of workers who may be put at risk.

Tobacco foes are fond of talking about the billions of dollars tobacco use costs society as a result of related health problems. While such sweeping claims seem subjective, even if you accept them for the sake of argument they're still abstract.

What isn't abstract is the personal threat of losing your job because a relatively small group of politically powerful people want to reduce or eliminate use of the product that generates your livelihood.

Tobacco-use opponents like to think they have the moral high ground. This claim, however, will always ring hollow as long as they insist on ignoring the grass-roots economic consequences of their crusade. This is especially so given that tobacco is a legal product enjoyed by people acting of their own free will.

Tobacco workers apparently are beginning to understand what the administration's anti-smoking campaign implies with the Food and Drug Administration involved. The logical denouement of any bureaucratic power play would seem to be a prohibition of the product. This would the ball game unless Congress acts to neutralize this bureaucratic power.

There probably wouldn't be different sets of rules for children and adults, but more likely a legal across-the-board ban. It would create not only an economic crisis, but also a political crisis involving tens of millions of industry workers and tobacco users.

In the South, meanwhile, many towns could be expected to founder as the local economy and tax base are destroyed.

These are the stakes of the anti-tobacco game.

Jerry Heaster's column appears Wednesday, Friday, Saturday and Sunday. To share a comment, call 816/889-7827 and enter 2301. Send e-mail, including a telephone number to heasterj@kcstar.com.

91715462

FDA attempts to regulate tobacco could cost jobs

LEGISLATION

"The BC&T believes that teen smoking must be addressed, and we stand ready with the industry to talk with the President about effective measures to curb adolescent tobacco use. But, regulating away thousands of American jobs is not the way to do it," said BC&T International President Frank Hurt. The BC&T represents some 15,000 tobacco workers in the U.S.

Hurt's comments came in response to President Clinton's declaration that nicotine is a drug that can be regulated by the Food and Drug Administration (FDA) and his announcement that he will ask that the agency draft a federal rule aimed at curtailing smoking by minors.

"My particular concern is the jobs of my members," said Hurt.

"What is especially disturbing is that this is the first step on the road to eliminating an enormously profitable domestic industry which generates billions of dollars of taxes and revenue into the economy. No matter what happens, you can be sure that kids will continue to get cigarettes. The difference is that cigarettes will not be produced in this country."

The BC&T learned earlier in the summer that FDA Chairman Kessler was planning to circumvent the Congressional and regulatory processes by declaring nicotine an addictive drug. He planned on issuing sweeping regulations intended to curtail smoking among teens—and ultimately a total ban on the sale of tobacco products in the U.S.

Letter sent to the President

President Hurt immediately wrote to President Clinton, urging him "to reject any efforts by the FDA to change current regulatory policy towards tobacco," citing the companies extensive voluntary advertising and educational programs, as well as their recent additional steps to guard against minors' having access to these products."

Hurt also wrote to principal officers of all cigarette locals, urging them to contact the President.

As soon as the President made his August announcement, the nation's largest tobacco companies sued to block the FDA from proceeding with their regulations.

The lawsuit is now before a federal magistrate in Greensboro, N.C. They charge that regulation would hurt their ability to compete and would violate their freedom of speech. They are challenging the FDA's ability to assert jurisdiction over cigarettes under a Federal law that gives the agency power to regulate medicines, medical devices and pharmaceutical products.

Immediately following the President's announcement, Senator Wendell Ford (D-Ky.) took to the Senate floor to denounce the move. "My farmers lost out to the zealots. The Administration has chosen litigation over compromise, delay over action. The President has chosen a press conference instead of a negotiating conference; he has chosen a process that reaches his goals later rather than sooner."

He said that he would introduce a bill when the Senate came back into session in September that would accomplish Clinton's goals, in cooperation with the industry.

Representative Thomas J. Bliley, Jr. (R-Va.), who chairs the House Commerce Committee, which has jurisdiction over the FDA, said the question of the agency's authority was one for the courts, not Congress. He predicted that the President's move would ultimately be reversed.

Officers of all BC&T cigarette locals—Local 16-T (Louisville, Ky.) Secretary-Treasurer Jim Masterson, Local 203-T (Richmond, Va.). President Jerry Sprouse, Local 229-T (Concord, N.C.) President Mack McClory, Local 362-T (Macon, Ga.) Secretary-Treasurer Michael Gardner—issued news releases in response to the announcement. Each expressed "deep disappointment," calling the decision "totally inappropriate" and costing "hundreds of high-paying local jobs and have a devastating impact on the local economy."

BC&T Industry Vice President Bobby Curtis, who also serves as president of the Kentucky AFL-CIO, as well as North Carolina AFL-CIO President Chris Scott issued news releases. In them, each was critical of the President's action, noting that, "FDA regulation of tobacco would result in the loss of many jobs and would cripple the tax base of many of our cities and our towns."

91715464

MEDIA RELATIONS

ADVERTISING

Completed Activities

- The Freedom to Advertise Coalition (FAC) and its members issued press releases opposing the proposed FDA action.

- Members of FAC also participated in several print and broadcast interviews on the issue of FDA.

FREEDOM TO ADVERTISE COALITION

PRESS RELEASE

August 10, 1995
Washington, D.C.
For immediate release

ADVERTISING INDUSTRY CHALLENGES FDA'S PROPOSED TOBACCO ADVERTISING RESTRICTIONS AS VIOLATION OF THE FIRST AMENDMENT AND USURPATION OF CONGRESSIONAL AUTHORITY

Today advertising and publishing trade associations composing the Freedom to Advertise Coalition filed suit against the United States Food and Drug Administration ("FDA") in federal district court for the Middle District of North Carolina strongly denouncing the FDA's proposed restrictions on tobacco advertisements as a frontal assault on the Constitution. "The sweeping regulations proposed by FDA demonstrate that agency's complete disregard for the First Amendment," said John Fithian, counsel to the Coalition. Mr. Fithian went on to note that "regardless of how one feels about tobacco, such blatant disregard for our Constitution by the federal government is alarming." The restrictions proposed by the agency ignore the significant protection for commercial speech afforded by the First Amendment and consistently reaffirmed by the United States Supreme Court.

FDA's proposed restrictions include imposing a draconian tombstone format on virtually all tobacco advertisements, a ban on most tobacco advertisements within 1,000 feet of schools, and a ban on most promotional activities for tobacco products. If imposed, these restrictions would constitute a near ban on tobacco advertising and a clear violation of the First Amendment. Tombstone format requirements for advertisements, which limit advertisements to black and white text and prohibit the use of colors or pictures, create a virtual ban on tobacco advertisements. For example, when tombstone advertising was required in Canada, all outdoor advertising of tobacco immediately ceased. Similarly, a ban on tobacco advertisements within 1,000 feet of schools would create an unconstitutional de facto ban on tobacco advertisements in many major cities across the country.

FDA's proposed regulations also state that if youth smoking is not reduced to 50% of its 1993 level, additional measures will be taken. This provision purports to ensure that the proposed restrictions reduce youth smoking. Based on the experiences of other countries which have imposed similar restrictions, however, these drastic measures are likely to be ineffective in reducing youth tobacco use. Instead, these measures, which are significantly broader than necessary to address youth smoking, will violate the First Amendment rights of advertisers to engage in commercial speech and the rights of adults to receive information about a legal product. FDA's actions are particularly unwelcome in an era in which many have sought to reduce government intrusion into the lives of American adults.

91715466

legislative process. Over the years, Congress has taken an active role in the regulation of tobacco advertising and promotion. Congress clearly and deliberately vested authority to regulate tobacco advertising and promotion with the Federal Trade Commission. Further, in 1989-90, Congress specifically considered and deliberately rejected a legislative proposal containing restrictions that are nearly identical to those contained in FDA's proposal. The advertising industry strongly denounced the FDA's obvious attempt to circumvent the legislative process in this manner.

Over the last few months, the advertising industry has written the President and met with his senior staff to discuss this matter. The industry was rebuffed in its attempt to cooperate with the President in the development of workable, constitutional restrictions on tobacco advertising and promotion.

The Freedom to Advertise Coalition is made up of the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers, the Magazine Publishers of America, the Outdoor Advertising Association of America and the Point of Purchase Advertising Institute. These organizations represent a wide variety of advertising interests.

The advertising industry expressed confidence that the proposed FDA regulations will be found unconstitutional upon their impending judicial review.

Contact:

John Fithian, Ray O'Hara, Penny Farthing
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News Release

For Immediate Release
Contact: Daniel L. Jaffe
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A.N.A. Calls Administration Tobacco Proposal Blatantly Unconstitutional Censorship

WASHINGTON, D.C., August 10, 1995 -- The Association of National Advertisers, Inc. (A.N.A.) today voiced strong opposition to the Clinton Administration's plan for imposing a crushing censorship regime on tobacco advertising.

"This proposal is unprecedented. The Clinton Administration is going much farther down the censorship path than at any time in our history," said A.N.A. Executive Vice President Daniel L. Jaffe. "These proposals constitute a virtual defacto ban on tobacco advertising."

A.N.A.'s membership is a cross-section of American industry consisting of manufacturers, retailers, service providers, and financial institutions. Representing more than 5,300 separate advertising entities, these member companies market their products to consumers and to other companies.

A.N.A. supports efforts to stop youth smoking, but these proposals go far beyond this goal. The Supreme Court has ruled that in an effort to protect youth, regulators cannot lower discourse in society "to the level of the sandbox."

Among the unconstitutional violations of First Amendment rights contained in the Administration proposal:

- The sweeping nature of the proposed restrictions violates First Amendment protections against government curbs on speech which are "more extensive than necessary" to achieve the government's aim;
- The Supreme Court has ruled that the use of pictures and other illustrations in advertising are fully protected by the First Amendment, and;
- Blanket restrictions on the use of colors are equally unconstitutional.

"The government has every right under the law to seek to restrict or ban any advertising which targets illegal audiences, such as the underaged," Mr. Jaffe said. "If anyone has allegations of advertising which targets the underaged, they should bring those charges to the Federal Trade Commission, which is fully empowered to put a stop to illegal targeting."

"This debate will be continued in the courts," Mr. Jaffe said. "We live in a nation of laws, not edicts, and advertisers will carry this fight all the way to the U.S. Supreme Court if necessary. We expect to prevail due to the gross violations of the First Amendment right to advertise truthfully and nondeceptively about legal products."

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AAAA
American Association of Advertising Agencies Inc., 1899 L Street N.W., Washington, DC 20036 • (202) 331-7345

Washington Office

**STATEMENT BY
HAROLD A. SHOUP
EXECUTIVE VICE PRESIDENT
AMERICAN ASSOCIATION OF ADVERTISING AGENCIES
August 10, 1995**

We in the advertising industry have grave concerns about the actions involving tobacco advertising announced today by President Clinton. We are not fighting a battle over the issue of whether people should purchase tobacco. That is a personal decision. We are concerned about the rights of marketers to advertise legal products and the precedent this would set for other "politically incorrect" but legal products.

We believe that jurisdiction over the advertising of tobacco products must remain with the Federal Trade Commission (FTC). The FTC has statutory authority over all advertising. It has the expertise and the capacity to regulate advertising and, most of all, has an objective perspective.

The FTC shares responsibility with FDA for the regulation of other products and that has proved to be a very successful and efficient partnership. Also, the FTC and the FDA effectively share the responsibility for regulation other products with the advertising responsibility being retained by the FTC.

There is, however, an even more fundamental issue at stake: in its effort to modify and change the behavior of individuals, the government has elected to suppress speech. We believe and the courts have upheld the tenet that government does not have this right. The most important precedent for this is the Central Hudson case decided by the U. S. Supreme Court.

This case clearly sets the terms for government interference.

- Does the government have a legitimate interest in the issue?
- Would the remedies suggested advance the government's interest?
- Are the remedies carefully tailored to advance those interests?

We agree that the government has an interest. However, there is no evidence that advertising restrictions will have any deterrent effect. In fact, they may work in exactly the opposite direction. This has been the case in other countries where ad bans and restrictions have notably failed to change behavior. In several countries where all advertising is banned, smoking is widespread and has actually increased. In addition, the Federal Trade Commission has stated that there is no evidence that the decision to smoke is linked to advertising.

Finally, in the Central Hudson test, we believe that the remedies proposed by the President are not narrowly tailored. The President's plan does not take into account the rights of adults. Any number of other remedies could be used without violating the rights of 50 million adult smokers to receive truthful information about a legal product that have decided to use.

Over the years, many proposals to restrict tobacco advertising have come before the Congress. They have been rejected. The President's plan seems to be completely counter to public demand for smaller, less intrusive government.

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We do, however, propose a simple solution:

First, government should increase its effort to educate the public -- undoubtedly there are advertising agencies available to work on such a campaign.

Second, government should intensify its efforts to enforce existing laws that prohibit sale of cigarettes and smokeless tobacco products to minors.

But finally, government should abandon its initiative to restrict by law or regulation the truthful advertising of this legal product.

The AMERICAN ASSOCIATION OF ADVERTISING AGENCIES is the national trade association of the advertising agency business. AAAA's membership is comprised of over 600 advertising agencies doing business in 1,700 offices throughout the United States. AAAA members create and place almost 75% of all national advertising and substantial amounts of local and regional advertising.

AUG 11 1995

THE WALL STREET JOURNAL FRIDAY, AUGUST 11, 1995

ADVERTISING / By Kevin Goldman

Agencies Are Gearing Up to Fight Proposed Tobacco Regulations

Madison Avenue will be among the big losers if new regulations proposed by the Clinton administration that drastically restrict tobacco advertising and promotions ultimately take effect.

The outdoor advertising industry and magazine publishers rely most heavily on cigarette ads. In 1994, the tobacco industry spent $121.9 million in outdoor advertising, accounting for 12% of the medium's revenues. It is the second biggest spender in outdoor advertising behind entertainment and amusements. And the tobacco industry spent $284.8 million last year in magazines, accounting for 1.3% of the magazine industry's total revenue. But the restrictions also would hurt the ad and promotion agencies that work for the tobacco companies.

Industry executives are already preparing to fight the regulations proposed by the Food and Drug Administration. Six trade groups, including the Association of National Advertisers and the American Association of Advertising Agencies, say they plan to file suit in federal court in North Carolina, challenging the proposals. Advertising executives contend that the restrictions are an unconstitutional infringement of free speech, and they say the legal battle may drag on through the turn of the century.

Under the proposed regulations, outdoor advertising for cigarettes would be banned within 1,000 feet of schools and playgrounds, cigarette advertising in publications with more than 15% of their readership children and teenagers would be limited to include only text without any pictures or drawings, and brand-name advertising would be banned on products not related to tobacco products, such as T-shirts and jackets.

Also, advertising at sporting events would be restricted to text only on stadium billboards and kiosks. The Marlboro Man, for example, would become an extinct icon at stadiums. There are already a number of arenas that restrict tobacco advertising. The exception: arenas that are, of course, within 1,000 feet of a school. In that case, tobacco advertising would be forbidden entirely.

There is concern that if such limits are placed on tobacco advertising, the government won't stop there, say media and advertising executives.

"The next thing you know the government will put ice cream on the list of products to regulate because it's known to cause high cholesterol," says Kent Brownridge, senior vice president of Wenner Media and general manager of Rolling Stone, a Wenner Media publication. "If tobacco is so bad, why not ban it entirely. These regulations are ridiculous. How can you have something that is legal and yet can't be advertised?"

Magazines account for the bulk of tobacco advertising, but outdoor advertising would be hurt the most. If the ban is passed as proposed, "that will drive a stake through the heart of outdoor advertising," says Hal Shoup, executive vice president of the American Association of Advertising Agencies. "By not being allowed within 1,000 feet of a playground or school virtually eliminates outdoor advertising in cities." Nancy Fletcher, president and chief executive officer of the Outdoor Advertising Bureau, says that since 1990 the industry has voluntarily restricted itself not to carry tobacco or liquor advertising within 500 feet of churches and schools.

In 1993, the most recent figures the ad industry compiled, the tobacco industry spent a total of $340.2 million in advertising, a drop from $382.1 million in 1992.

Under the new proposals, billboards and kiosk tobacco ads would be limited to only text. Gone would be posters featuring stylishly dressed women for Virginia Slims and yuppies having a grand old time in the backyard while taking a drag on a Newport.

The proposed regulations wouldn't just limit media advertising. The FDA also proposes snuffing out promotional efforts from tobacco companies, including the highly successful technique of plastering cigarette logos on everything from lighters to T-shirts to baseball caps. Philip Morris, for instance, has a valuable franchise with its Marlboro Gear catalog, an offshoot of its Marlboro Country Store catalog.

A Philip Morris spokeswoman says the regulations "go far beyond issues of youth access. Our promotions are run in perfectly lawful means. We limit [Marlboro Gear] to smokers over 21. We're very concerned about the impact on our promotions."

So are the companies that create the promotional paraphernalia. "Clearly we aren't happy about these proposals," says Terry Angstadt, executive vice president of Cyrk, a company in Gloucester, Mass., that designs promotional products for Philip Morris, among others. "This is a freedom of choice issue for adults. If they want to purchase Marlboro products and are of the legal age, they should be allowed to."

The Clinton administration is also proposing that the tobacco industry fund a $150 million annual education campaign to try to prevent people under 18 years old from smoking.

That recalls 1971, when the television networks and local stations were forced by the government, under the equal time regulation, to give antismoking groups free air time equivalent to the amount of time the tobacco industry received for its paid advertising. Because antismoking ads proved so effective, the tobacco companies eventually agreed to stop advertising on television.

Sports promotions are also targeted under the proposed regulations. Cigarette brands would be prohibited from being listed as an event sponsor. That would place such racing car events as the Winston Cup in jeopardy, says a spokeswoman for R.J. Reynolds Tobacco. The company could still place a Winston logo on a sports car, the spokeswoman says, "as long as it is black and white" and not representing the familiar red-and-white pack. While the race could no longer be called the Winston Cup, it could be renamed the R.J. Reynolds Cup.

But marketing executives say the regulations aren't expected to face smooth sailing. "This kind of sweeping regulation is very questionable under the constitution," says Douglas J. Wood, an attorney specializing in advertising with the New York law firm Hall Dickler Kent Friedman & Wood and the author of "Please Be Ad-Vised: The Legal Reference Guide for the Advertising Executive."

"These restrictions are too broad, they go over the top," he says. "If you have a problem with the product, in this case cigarettes, address the product."

Daniel J. Jaffe, executive vice president of the Association of National Advertisers says the Clinton administration "is going much further down the censorship path than at any time in our history. These proposals constitute a virtual de facto ban on tobacco advertising."

George Washington University law professor John Banzhaf, who led the fight to get antismoking ads on television free of charge in 1971, believes the advertising industry is off base in its arguments. "We restrict advertising of drugs," says Mr. Banzhaf. "If we are going to treat nicotine as a drug, then such restrictions are justified and needed."

Mr. Banzhaf says the liquor industry doesn't protest its inability to sell spirits in vending machines. (Under the FDA proposal, all cigarette vending machines will be banned.) "It's funny," he says. "Things only become unconstitutional when it applies to the tobacco industry."

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The Washington Times MONDAY, AUGUST 21, 1995 PAGE A1

Advertisers call tobacco proposal a virtual ban

By Karen Riley
THE WASHINGTON TIMES

The cigarette ad of the future will consist of black type on a white page that reads: "Marlboro Cigarettes — A Nicotine-Delivery Device."

Gone will be the colorful Kool clocks marking the time in gas station minimarts and curbside Camel signs promising gas, coffee, cigarettes and newspapers. Gone too will be the Marlboro signs on shopping baskets at the nation's 7-Elevens. And countryside barns will have to paint over signs for Red Man chewing tobacco.

"They want the ads to become invisible," complains Daniel Jaffe, executive vice president of the Association of National Advertisers, lambasting the Food and Drug Administration's sweeping new rules released last week aimed at curbing teen-age smoking.

"The government has now become the copywriter and the ad director for tobacco advertising. They can speak through your ads, but you can't. It's a very substantial step in a free society," Mr. Jaffe said.

After a week of examining the fine print of the new cigarette and smokeless-tobacco rules, advertisers say the FDA proposal is potentially even more damaging than they first thought.

Industry officials say that a closer look at the regulations shows that advertisers would be limited to using only ads that either no one will notice or companies won't want to run.

"We think this whole thing is a complete tobacco ban," scoffed John Fithian, a lawyer with the Washington firm of Patton Boggs who is representing the nation's six major advertising associations in a lawsuit to block the new rule.

For convenience stores, racetracks, farmers and others who agree to carry cigarette advertising, the FDA rule also means lost fees, such as the $10 a month RJR Nabisco Inc. pays minimarts to display its Camel tank-top promotion.

"My folks are going to be under the gun. Cigarettes are profitable. They do much more promotion than soft drinks," said Jim Daskal, counsel for the Service Station Dealers of America and Allied Trades in Lanham.

Since the federal government prohibited cigarette advertising on television and radio in 1970, cigarette advertising and promotional spending has grown from $361 million to $6 billion, according to the Federal Trade Commission.

FDA Commissioner David Kessler said at a Georgetown University seminar Wednesday that his proposals are intended to "dramatically change" the public landscape, where cigarette advertising is ubiquitous.

"Listen to the words of one 18-year-old, and I quote: 'I figure if it's really so bad for you, they won't be selling it everywhere. I mean, you walk into the Stop-and-Go and there's a whole wall of them right up front at the cash register.' "

The proposed regulation would outright forbid caps and T-shirts and other paraphernalia bearing cigarette logos, ban cigarette sponsorship of sporting events, and prohibit all cigarette advertising on billboards or other outdoor displays within 1,000 feet of a playground or school.

Although the distance may seem short, some industry officials did a quick survey of one big city — Detroit — and found that there are few locations that would qualify for a cigarette billboard.

Experts who have examined the rule say that buses and taxis could also be barred from carrying cigarette ads on placards because they invariably pass in front of schools during any day.

Under the proposed rule, the FDA would allow limited advertising in magazines and newspapers, on posters and store placards, and on other outdoor displays away from schools, provided they include the added language "Cigarettes — A Nicotine-Delivery Device."

The agency's rules for print advertising are twofold. Ads appearing in magazines read by teens can be black-and-white text only — no pictures, no color.

Ads in teen magazines must also carry a special health statement in addition to the surgeon general's warning, such as "About one out of three kids who become smokers will die from their smoking." The FDA has begun testing these warnings with teen focus groups.

Publications that are read by adults are free to continue to run traditional ads. But to do so, they must provide the FDA with market data proving that no more than 2 million children read the publication or that at least 85 percent of its readers are adults.

"There's just huge confusion" about how to comply with the rule because there's scant information on teen readership, said a major magazine publisher.

The FDA rule says magazines must count readers, not subscribers. "How does the magazine count the teen who has access to Daddy's magazine at home or to a magazine available at any school or public library?" asks Mr. Fithian.

The upshot: Most major publications that currently carry tobacco ads, such as Sports Illustrated or Rolling Stone, will be restricted to the plain vanilla ads.

The rule would also limit in-store placards, billboards away from schools and direct mail (even if the mailing list is drawn from the seniors magazine Modern Maturity) to the black-and-white text-only format.

And the FDA is talking about writing other rules as well. It is reviewing whether to require ads to carry "contraindications" — those lengthy lists of potential side effects and other medical data it now requires for all prescription drug advertising. And it also wants to take over the Federal Trade Commission's jurisdiction over ad claims so in the future it could review claims made in ad copy aimed only at adults.

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MEDIA RELATIONS

ECONOMISTS

Ongoing

- An extensive economist op-ed program was implemented to focus media attention on the FDA's agenda. The program attacks the FDA proposal from an anti-big government, anti-regulatory perspective. Targeting key Congressional districts, program themes include:

  - While FDA claims their focus is on preventing youth smoking, the action is the first step to impose harsher regulations on tobacco;

  - The FDA regs will have repercussions on not only the tobacco industry, but vending, confectionery and candy industries, distributors, advertisers and sponsors for sporting events; and

  - The regs will have a devastating impact on jobs.

- Economists prepared and submitted op-eds for publication to major newspapers in select states:

  - Dr. William Boyes, Arizona State University
  - Dr. Barry Poulson, University of Colorado
  - Dr. Dominick Armentano, University of Hartford
  - Dr. Dwight Lee, University of Georgia, Athens
  - Iowa economist tbd
  - Dr. Cecil Bohanan, Ball State University
  - Dr. Robert Pulsinelli, Western Kentucky University
  - Dr. Michael Kurth, McNeese State University (Louisiana)
  - Dr. Bill Shughart, II, University of Mississippi
  - Dr. Joe Bell, Southwest Missouri State University
  - Dr. Terry Ridgway, University of Nevada, Las Vegas
  - Dr. Allen Parkman, University of New Mexico
  - Dr. Lowell Gallaway, Ohio University
  - Dr. Ed Price, Oklahoma State University
  - Dr. William Mitchell, University of Oregon
  - Dr. J.R. Clark, The University of Tennessee at Chattanooga
  - Dr. Michael Davis, The University of Texas at Dallas
  - Robert Higgs, Independent Institute, Edmonds, Washington
  - Dr. Charles Breeden, Marquette University

FDA sees crisis where none exists

By WILLIAM MITCHELL

IN AN AUGUST news conference, President Clinton outlined his proposed attack on teen-age smoking and requested the Food and Drug Administration to devise a new regulatory program that would greatly reduce smoking by our youth.

David Kessler, the FDA commissioner, lost no time in coming up with a complete and detailed set of severe regulations and making the rounds of the TV talk shows advocating his approach.

In brief, Kessler proposed that tobacco products be legally defined as "medical devices," thereby providing a convenient and powerful rationale for detailed regulation of tobacco products. Some of the proposed regulations include banning cigarette sales to minors, licensing requirements for retailers, vending machine restrictions, limited advertising, and a requirement forcing producers to fund a educational campaign to stop smoking among children.

Although Clinton said he preferred that Congress enact these draconian measures, something it is reluctant to do, Clinton and Kessler were quite prepared to ignore Congress and act on their own power.

While Clinton and Kessler's personal beliefs and values are no doubt sincere, it is also true that they recognize the political advantages of appearing tough on "obscene" profit-making by "heartless" tobacco companies. Virtually all parents and even most adult smokers recognize the dangers of the habit and devoutly wish that kids not pick up the addiction. So, being against tobacco is being on the side of the angels.

The problem is not in the ends, whether they be health or morally-directed; it is in the means. They are deficient in every regard.

In the first place, the states already have the power to restrict sales to minors, and many states fund taxpayer-supported anti-smoking educational campaigns. Federal participation seem redundant and, therefore, inefficient.

Whether efficient or not, Kessler and the FDA seem not at all reluctant to administer still another program of regulation. Would it not be better if they improved their performance in their other, more traditional areas of food and drug administration?

FDA Commissioner David Kessler

Economists have shown, in detailed statistical studies, that the FDA has done much harm in preventing new and useful drugs from being sold, in delaying safe and effective medical treatments and, of course, in not protecting people from genuine harms.

Bureaucracies have the tendency to grow in size, budgets, activities and, above all, their powers. The FDA and the Defense Department have much more in common than their various supporters and respective detractors might recognize. It is very easy to rationalize bureaucratic growth, and it is done not just by the bureaucrats, but by their self-interested citizen-clienteles and producer-suppliers and, of course, by politicians intent on doing well by doing "good."

Even if this analysis were incorrect, one must ask whether the proposed regulations would, indeed, achieve their desired and desirable ends. It is my considered opinion that they would not.

Regulations from above and especially those enforced by well-intended but faceless bureaucrats are usually effectively resisted by the regulated; in this instance, both retailers and the kids, and for obvious reasons. And both know or will quickly learn how to get around the rules.

Rational bureaucrats, politicians and other interested groups can always justify their proposed regulatory activities by citing alleged scientific data warning of some imminent and foreboding crisis or that some cataclysmic epidemic will do us in unless immediate and forceful governmental actions be taken. We must always be at war against something!

The fact of the matter is there is a problem but no crisis. Indeed, great progress has been made during the past 20 years in reducing smoking and tobacco-related health problems.

The University of Michigan's Monitoring the Future project has been studying smoking habits for 20 years, and it finds no crisis or epidemic. It does find variable, small increases in smoking amounts or frequencies among some age groups. But, overall, the study provides no support for the catastrophe school of thought. Smokers are now on the defensive!

If something ought be done about smoking by kids, it should be done by those closest to the victims — families, schools, churches, and other local organizations. Being a nanny is a hard-enough job without an already overloaded federal government adding that role to its all-encompassing agenda.

But if the voters decide that the federal government must do something, let it be done by Congress. Maybe then we can face up to the hypocrisy of subsidizing tobacco growers and sellers while granting draconian regulatory powers to the FDA.

William Mitchell is a professor emeritus of political science at the University of Oregon.

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OPINION

Columnists' views

FDA proposal merely 'power grab' to regulate tobacco advertising

■ The FDA plans to preempt the laws of Mississippi and every other state on tobacco.

WILLIAM SHUGHART II

Guest columnist

Food and Drug Administration (FDA) Chief David Kessler's recent proposal to regulate cigarettes and smokeless tobacco products as medical devices is proof positive that no one is more annoying than an unelected bureaucrat. Under the guise of protecting helpless children from the "evil weed," Kessler's FDA has proposed an expansive set of rules that would give that agency broad authority to determine the terms and conditions under which tobacco products are advertised and sold.

Dr. Kessler's passion for power is well known. From his order to destroy 15,000 gallons of orange juice whose labels did not fit his fancy, to his burning desire to control the consumption of cigarettes, Kessler has been on a personal crusade since appointed by President Bush in 1991 to force Americans to conform to his own vision of political correctness.

While the goal of curbing smoking by young people is laudable, Kessler's proposed methods are not. Indeed, given the myriad state and federal laws already on the books that restrict the sale of cigarettes and other tobacco products to minors, the new rules being contemplated by the FDA are nothing less than a bureaucratic power grab that launches a perilous attack on the Constitution's guarantees of free speech and a federal system of government.

The state of Mississippi already prohibits the sale or distribution of cigars, cigarettes, smoking tobacco and snuff to minors, requires proof of age from anyone who appears to be less than 18 years old and declares violators guilty of a misdemeanor and subject to a fine of $20 to $100. Retailers must post a sign notifying customers of this law or face a fine. The state also restricts the location of vending machines to places inaccessible to minors and, to further limit access, requires tobacco products to be sold in the manufacturer's original sealed packaging.

The FDA plans to preempt the laws of Mississippi and every other state by banning vending machine sales altogether and imposing far-reaching restrictions on the advertising of tobacco products. The proposals include banning the use of tobacco brand names on T-shirts, caps, and lighters; prohibiting tobacco sponsorship of sporting contests and other entertainment events; and limiting the logos and brand names on race cars and drivers' uniforms to a black and white format. Joe Camel, call your office. If the FDA's rules go into effect, all cigarette advertising will also be required to conspicuously include the phrase "CIGARETTES — A NICOTINE DELIVERY DEVICE," and, in case anyone just returning from Mars misses the point, all cigarette packages will be compelled to brandish the word "CIGARETTES" in letters at least half as large as the product's brand name.

These proposed regulations, which represent yet another rash step down the road to prohibition, go far beyond the reasonable measures that could be adopted — and which the tobacco companies themselves have already undertaken — to fulfill the ostensible purpose of reducing the incidence of cigarette smoking among America's youth. They are calculated to assert the FDA's jurisdiction over the sale of cigarettes already on the market when the 1976 Medical Device Amendments were passed. This means not only that they may have been "grandfathered" in along with all other existing medical devices like cardiac pacemakers and, yes, condoms, but as noted in the FDA's own *Small Manufacturer's Assistance Memo*, Pre-amendment devices, i.e., those that were in distribution prior to passage of the Medical Device Amendments on May 28, 1976, "have an enviable position since no 'pre-marked notification' is or was required of the company distributing them." Dr. Kessler can close the barn door, but it's not clear that he can regulate the horses that are still inside of it. Even new devices escape the regulatory net if they are shown to be "substantially equivalent" to those already on the market.

The FDA's rationale for regulating cigarettes, namely that the filter and paper tube are "devices" that deliver the "drug" nicotine to smokers, confuses "drugs," which despite the agency's name do not fall within its jurisdiction, with "medicines," which the FDA was created to oversee. Alcohol, tobacco, and illicit substances like marijuana, heroin, and cocaine have never been within the FDA's purview. Making them so will overburden an already overburdened bureaucracy. Over 1,100 applications for new medical devices are currently awaiting approval. How many more delays will Americans be forced to bear and how many more lives will be lost, if the FDA devotes scarce resources to making sure no outdoor cigarette advertising is displayed within 1,000 feet of any playground, elementary or secondary school, rather than fulfilling its important responsibilities of safeguarding the nation's food, blood, and drug supplies?

Cigarettes are no more of a "drug delivery system" (medical device) than are scented markers, glue dispensers, chocolate candies, or a cup of coffee. Kessler has lost sight of his agency's fundamental mission. If he succeeds this time around, what will be the target of his next crusade? Cappuccino? Chinese food as the delivery device for antiviral agents like garlic and ginger? Let's not forget where the road paved with good intentions leads.

■

William Shughart II is professor of economics and holder of the P.M.B. Self, Nancy C. Self, and William King Self Free Enterprise Chair at the University of Mississippi.

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Lexington Herald-Leader
12/1/95

Clinton, FDA exaggerate smoking by teen-agers to further their cause

By Bob Pulsinelli

Recently, the National Institute on Drug Abuse sponsored a University of Michigan study of smoking among young Americans. One finding was that the percentage of eighth-graders who had last smoked at least one cigarette in the previous 30 days increased from 14.3 percent in 1991 to 18.6 percent in 1994 — a 30 percent rise.

The Clinton administration and the Food and Drug Administration have used this study to advocate FDA regulation of tobacco products. The first stage in FDA regulation amounts to a virtual ban on tobacco-product advertising; the apparent ultimate aim is to declare nicotine a drug and to prohibit its use entirely.

It should be noted that the University of Michigan study tracks smoking by eighth-graders only since 1991; it is impossible to tell what the long-run trend has been. Actually, NIDA has been collecting data on high school seniors who smoke since 1975. Its data indicate that since 1975 the percentage of daily smokers in that group has fallen by 39 percent, and that of high school senior classified as "heavy smokers" has dropped by 60 percent. Similarly, the percentage of black high school seniors who had smoked at least one cigarette during the prior 30 days fell from 25.2 percent in 1980 to 11 percent in 1994 — presumably without governmental help.

The long-run trend for teen-agers and adults has been reduced smoking. Apparently teen-agers and adults can process information regarding the costs and benefits smoking in an intelligent way.

I am aware of no evidence that advertising affects the decision to smoke; it does affect the choice of brands. It is even less likely that advertising affects *teen-age* decisions regarding tobacco products. Studies that I am aware of indicate that these decisions are determined almost entirely by peer pressure and family influences — as are decisions about alcohol and drugs.

Indirect evidence confirms these results. Norway completely banned

Gary Brookins/Richmond Times-Dispatch

tobacco advertising in the early 1970s and 36 percent of its 15-year-olds are classified as regular smokers. The Centers for Disease Control and Prevention reports that the 1994 smoking rate among white teen-agers was 23 percent, compared with 5 percent among black teen-agers (even though both groups are equally exposed to tobacco advertisements).

If the long-run trend is downward for teen-age smoking, and little or no evidence links advertising to the decision to use tobacco, and if the tobacco industry is already regulated (at all stages) by more than a dozen federal agencies and all 50 states, then how do we account for the recent Clinton administration-FDA initiatives?

In recent years, the FDA has been criticized by Congress and economists because it has not been doing very well that which it is supposed to be doing. It is alleged that the FDA has delayed the approval of numerous potentially life-saving drugs and medical apparatus that are available in other countries.

The 1994 election indicated that Americans are tired of being over-regulated and of being told what is good for us by the social engineers in government. A fabricated crisis in teen-age tobacco use presents an opportunity for a power grab by the FDA and allows the president to make political hay at the expense of tobacco-growing states, which he has written off anyway.

On the other hand, it may be that the president truly believes that a crisis exists and his knee-jerk response is to solve this problem — indeed, all problems — with laws and governmental mandates on behavior. This despite obvious government failures, here and everywhere else, to change human nature.

What is really going on is a preliminary battle in the war to ban tobacco products altogether. President Clinton and the FDA have already hinted that stricter action will be taken if these measures don't reduce teen-age tobacco use within a few years. Then, perhaps, we can "save the children" by putting them — and their parents — in jail for smoking. Of course, even in jail they will surely be able to get all the cigarettes they choose to smoke.

Paul Johnson, the British historian, has written (in *Modern Times*) that the history of Western countries in the 20th century has been that of governments grabbing power during periods of crisis (real or imagined). Then, after the crisis has long disappeared, government power has remained and bureaucrats have set to work to expand their power.

Seen from this long-run perspective, the Clinton administration and the FDA actions are engaged in business as usual.

Bob Pulsinelli is a professor of economics at Western Kentucky University and a non-smoking libertarian.

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More Regulation Would Be Wasteful, Intrusive

President Clinton recently issued an executive order authorizing the Food and Drug Administration to regulate tobacco products as "medical delivery devices," ostensibly to reduce smoking among America's youth. Unfortunately, such actions are much more about politics and power than about the newly invented "pediatric disease" of teen-age smoking. Attempting to extend the FDA's authority to control advertising of tobacco products is ineffective, bureaucratic and hypocritical.

There is no compelling evidence that anything targeted for the FDA's control causes youths to smoke. In 1989, Surgeon General C. Everett Koop said, "To date, ... no longitudinal study of the direct relationship of cigarette advertising to smoking initiation has been reported in the literature." Even in the face of recent government-funded research struggling to fabricate some link, both the preponderance of studies since 1989 and significant international experience have found no connection between advertising and the decision of youths to start smoking.

While tobacco ads have been severely restricted or completely banned in Norway, Finland and Sweden, researchers there have found higher percentages of youth smokers and, in some cases, even *greater* increases in youth smoking *following* the ban.

J.R. CLARK

The risks attributed to smoking are well known, but for whatever reason — to defy their parents, or conform to peer pressure — young people try it anyway. Surely, given his history of smoking, the president can fully appreciate this fact. Ironically, the president may have increased the prestige of youth smoking by making it look like an even greater act of rebellion than it was before.

The FDA cannot handle its current responsibilities, much less take on vast new ones. It is a matter of public record that the agency has been failing in its core mission: to assure that safe and effective drugs, medical devices and food are available to the American public. For example, it currently takes six years for the FDA to visit each of the 90,000 domestic product and manufacturing plants it is required by federal statute to inspect every two years.

For many years, the FDA itself has consistently found no basis for regulating cigarettes, and the courts have agreed. In 1980, the FDA stated in a court brief that it "has repeatedly informed Congress that cigarettes are beyond the scope of the Food and Drug Act." Yet the president's new executive order comes complete with budget and more bureaucratic manpower.

The most offensive feature of the proposals is not their cost but their hypocrisy. Here we have a chief executive trying to stamp out youth smoking who himself smokes cigars, which strangely have been exempted from the FDA regulations. As a nonsmoker, I find the scent of cigar smoke and the smell of this hypocrisy equally unappealing.

The president's tobacco industry regulations are more of the same kind of government that has proven to be wasteful, ineffective, intrusive and sometimes unconstitutional. This was not what the voters had in mind last November when they cleaned house in Washington, but they may get another chance in November 1996.

J.R. Clark holds the Probasco Chair of Free Enterprise at The University of Tennessee at Chattanooga. The opinions expressed are his own and do not necessarily represent those of the university.

CHATTANOOGA FREE PRESS
11/5/95 p.35

91715479

The Hartford Cour.
Sunday, November 12, 1995 D3

The wrong approach to teen smoking

Dominick T. Armentano

The expressed intent of the Food and Drug Administration's recently proposed regulations on cigarettes and smokeless tobacco products is to cut adolescent consumption in half. Roughly 3 million American juveniles are said to smoke and an additional 1 million young males use smokeless tobacco. Putting aside all of the other difficulties with the FDA proposal, can these new regulations possibly accomplish their objective?

The FDA proposes severe new restrictions on the advertising of cigarettes under the mistaken assumption that there is a direct relationship between advertising and the decision to begin smoking. But there is no reliable evidence in the literature to support this contention and plenty of evidence to contradict it.

Juvenile smoking actually increased in Finland after a complete ban on tobacco advertising was implemented in 1978. Norway, which completely prohibited tobacco advertising in 1975, has a higher percentage of juvenile smokers than does the United States. And black teens in the United States, presumably exposed to the same "persuasive" advertising as white teens, have far lower smoking rates.

It is widely acknowledged, outside of Washington, that the decision to start using tobacco products is influenced primarily by culture, family and peer pressure, not corporate advertising. So banning brand-name-event sponsorships, or limiting cigarette-brand logos on race cars and driver uniforms, will have no measurable effect on anyone's decision to light up.

FDA Commissioner David Kessler would have us believe that billboards near playgrounds and the use of cigarette brand names on T-shirts (which would all be prohibited under the new regulations) have created a teen smoking epidemic. Nonsense. The marginal increase in teen smoking recorded since 1991 is easily swamped by the longer term steadily downward trend.

Listening to the FDA, one would never know that the percentage of high school seniors who smoke daily has fallen from more than 28 percent in 1977 to less than 20 percent in 1994. Smoking half a pack or more per day among high school seniors has declined from 17.9 percent in 1975 to approximately 11 percent today. Yet Kessler would prohibit cigarette vending machines and the distribution of tobacco products by mail even though there is no evidence that a curtailment of these marketing techniques would impact teen cigarette consumption.

The bottom line is that these proposed prohibitions have little to do with changing cigarette consumption by teenagers. What they will do, however, is hurt certain advertisers, promoters of sporting events, tobacco manufacturers and their employees, and vending-machine owners, among others. Even more important, they will enhance the power of FDA bureaucrats to exercise additional control over private markets and lifestyles. And that's what the FDA smoke screen is really all about.

Make no mistake about it, the FDA would like to severely restrict the sale of all cigarettes in the United States. Kessler knows that total prohibition is politically impractical at the moment, so he starts the crusade with regulations that aim to "protect the children." And when these fail, as they must, the agency will return with stronger recommendations and sterner controls.

But controls are already a way of life in this industry. Laws addressing tobacco sales to minors are on the books in every state and the District of Columbia. Dozens of governmental agencies including the Department of Health and Human Services, the Federal Trade Commission and the Bureau of Alcohol, Tobacco and Firearms already police and regulate the industry. Every state taxes cigarettes and most, like Connecticut, lump a sales tax on top of the excise tax. Cigarettes are already among the most taxed and regulated products in America.

The FDA has invited public comment, so it should be told that its proposed regulations will not affect teen smoking but will reduce employment and income in tobacco-related industries. It should also be told that its contrived rationale to regulate cigarettes as a medical device is as phony as a three-dollar bill. Finally it should be told that freedom and persuasion, not regulation, are the primary social values that we choose to pass on to our children — whether they smoke or not.

Dominick T. Armentano, *a professor of economics, is on sabbatical from the University of Hartford in West Hartford.*

91715481

MEDIA RELATIONS

THINK TANKS/FREE ENTERPRISE/PRO-BUSINESS GROUPS

Completed Activities

- The Small Business Survival Committee (SBSC) released a study prepared by the American Economics Group that measured the employment and wages created by the advertising and promotion of tobacco products. Press releases by the SBSC described the detrimental effect the proposed regulations would have on jobs.

- The Alexis De Tocqueville Institution sent out an Issue Brief criticizing FDA's proposed regulations. The brief was sent out to 100 policy groups and press contacts. The group also sent the brief to many prominent conservative radio talk show hosts.

    - The brief was placed in two papers, the Colorado Springs Telegraph-Gazette and the Waterbury Republican
    - The Issue Brief also generated radio interviews

- The Business Leadership Council issued a news release decrying President Clinton's announcement of the proposed FDA regulations.

- Former Senator Malcom Wallop (R-WY), currently the Chairman of Frontiers of Freedom, has written two op-ed articles dealing with the FDA issue. One was featured in USA Today, the other is still being placed.

91715482

COLORADO SPRINGS GAZETTE
TELEGRAPH
COLORADO SPRINGS, CO
DAILY 102,449
TUESDAY
AUG 22 1995
BURRELLE'S

COMMENTARY

Federal tobacco crackdown usurps parenthood

By Merrick Carey

Talk about an overreach of federal authority. President Clinton's plan to reduce teen-age smoking by regulating tobacco as a drug is one of the largest extensions of government power in recent years. If it stands, companies in America should fear for the precedent it sets.

The administration's micromanaging of cigarette advertising has been opposed in a lawsuit by the 1,200 company members of the American Association of Advertising Agencies. It is understandable why. The Clinton administration's new policy specifies that any cigarette company advertisement in a magazine that reaches large numbers of teen-agers can include only text — no pictures — and must be in black and white. In other words, all tobacco company advertising must be unattractive, unappealing and, essentially, a waste of money.

Another aspect of the Clinton administration's plan comes perilously close to extortion. It would require tobacco companies to spend $150 million of their own money on "public education" advertising aimed at reducing teen smoking. Why not, one might ask, also require Nintendo and Sega-Genesis to use corporate profits to advertise the importance of exercising over playing video games? In the future, perhaps Doritos could be forced to do commercials on the virtues of eating fruits. Or how about making all the TV networks in the country devote hours of programming to encourage kids to read rather than watch television? The list is endless and, unfortunately, not completely beyond the realm of possibility.

Some would defend the president's action by saying that reducing the level of teen-age smoking is a good cause that should be supported. However, nearly everything the government attempts to do is based on the premise that it is a good cause, whether it is improving public safety or cleaning up the environment. Yet the method the government chooses to enforce its intentions is crucial if we are to live and prosper in a free society.

The manner in which the administration achieved this expansive power needs to be reviewed by Congress. Declaring tobacco a drug provided only limited regulatory reach, so the administration chose to go further and labeled the cigarettes themselves "medical devices." Many people would find it difficult to place cigarrettes in the same category with hearing aids and heart valves. Under such an expansive definition it seems that any product in America could be labeled a medical device.

In announcing his plan, President Clinton declared, "We're their parents, and it is up to us to protect them." Yet the federal government is not the collective parents of all children in America. And a government or president who takes on the role of parent puts us even further along the path to a "nanny state," with a central authority interfering in all of life's choices. Agencies like the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA) and the Consumer Products Safety Commission (CPSC) are not only usurping the role of parents, but they also are treating all Americans like children.

Just last year, the federal CPSC "strongly warned" Warner Bros. films to observe the CPSC's safety rules in scenes that involved Macaulay Culkin riding an all-terrain vehicle in the movie "Richie Rich." The CPSC has studied whether it has the authority to regulate films as consumer products. The EPA has tried unsuccessfully to force private-sector employees to car-pool to work. And FDA commissioner David Kessler has forbidden pharmaceutical firms from telling doctors about new uses for drugs that have already received FDA approval. Since 60 percent of chemotherapy treatment falls outside FDA-recognized uses, this policy prevents oncologists from receiving up-to-date information that can help the lives of their patients.

The president's decision on tobacco is a continuation of this "nanny state" mentality and would seem to make the prohibition of cigarettes the next logical step. Not only would this be a policy mistake of enormous proportions, given the history of Prohibition, but it would also take us even further from the country's original conception on the role of government and personal responsibility. It was Thomas Jefferson who declared at his first Inaugural Address that, "A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvemennt, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." If one follows Thomas Jefferson's view of good government, then President Clinton's policy on tobacco is not very good at all.

Carey is president of the Alexis de Tocqueville Institution in Arlington, Va.

Jeff MacNelly/Chicago Tribune

The Next Raid

91715483

[redacted]

SUNDAY REPUBLICAN
WATERBURY, CT
SUNDAY 76,766

SEP 17 1995

Tobacco regulation a dangerous precedent

By Merrick Carey

Talk about an overreach of federal authority. President Clinton's plan to reduce teenage smoking by regulating tobacco as a drug is one of the largest extensions of government power in recent years. If it stands, companies in America should fear for the precedent it sets.

The administration's micro-managing of cigarette advertising has been opposed in a lawsuit by the 1,200 company members of the American Association of Advertising Agencies. It is understandable why. The administration's new policy specifies that any cigarette company advertisement in a magazine that reaches large numbers of teenagers can include only text — no pictures — and must be in black and white. In other words, all tobacco company advertising must be unattractive, unappealing and essentially a waste of money.

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Merrick Carey is president of the Alexis de Tocqueville Institution in Arlington, Va.

ALEXIS de TOCQUEVILLE

AdTI ISSUE BRIEF - No. 110
August 17, 1995

The Nanny State Strikes Back
By Merrick Carey

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A L'E X I S de TOCQUEVILLE

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The Tax Dollar Dilemma:
Destroy Your Enemies or Fund Your Friends

by Malcolm Wallop

Washington has taken such a beating in recent decades because the citizens of this great country do not believe that the Congress or the White House know the value of a tax dollar. Oh, they say they do. It is a great sound bite on the campaign trail. The new freshman class in Congress seems to understand. They have held the leadership's feet to the fire through the entire budget debate. We can only hope that the freshman stay vigilant, do not get seduced by the trappings of Washington, and maintain a determination to keep sacred the value of the tax dollar.

The Clinton Administration could stand to take a few lessons from the Republican House freshman. It is not a stretch to say that Bill Clinton's "ethic" -- that the government is the nursemaid of all citizens -- has been wholeheartedly embraced by all presidential and political appointees. It is remarkable to what a broad extent that ethic has been transformed into government policy.

Case in point. The Clinton Administration's premise: Cigarette smoke is bad for your health. The Clinton Administration's answer? Destroy the tobacco industry with taxpayer funds and protect us from ourselves.

The issue of tobacco and its effects on our health is a legitimate issue, but the government's vendetta singling out an industry is quite another. I am not just talking about the FDA rule to limit the tobacco industry's First Amendment rights. The proposed FDA rule is a dangerous course that Bill Clinton willingly charts. He and his ilk prefer politics to the Constitution. The First Amendment is a simple nuisance, the Constitution an impediment to efficient government.

We Americans have become immune to our lawmakers chipping away at our Constitutional rights. We no longer lash out when they whittle away at more of our freedoms. When Americans do lash out at their government, they are dismissed as radicals, anarchists, militia members, or simply, the "angry block." Nonetheless, when these attacks on our personal freedoms are done with taxpayers money, all Americans must stand up and take notice.

Whether you like smoking or not, your money is being used to destroy the American tobacco industry. If you think this is all right, just think of this. Do you enjoy a nice thick steak on occasion? How about a cold beer during a hot summer day or a nice glass of wine during an elegant meal? I do and, in fact, I occasionally enjoy a cigar.

Is it a stretch to think that this government could attack other American industries such as the meat industry or the alcohol industry. On September 19, 1995, approximately 40 anti-drinking organizations wrote to President Clinton asking for the FDA rule be applied to cover the sale of alcohol, as well. And that is how it begins.

Once the first spark hits, all gasoline burns. The Clinton Administration jumps into its nanny's role and begins spending taxpayer dollars to "protect" us all from "evils" of their choosing.

Just this year, the National Cancer Institute awarded a grant of $506,000 to Stanton Glantz, Ph.D. to "study" tobacco industry political contributions and their effect on legislative policy in California. The National Cancer Institute is a scientific body not a political research firm. In what scientific realm does the study of political contributions fall? Furthermore, could NCI find anyone more biased than anti-smoking crusader Glantz. Speaking to a conference in April of 1990, Dr. Glantz remarked, "We are on a roll and the bastards [tobacco industry] are on the run and I urge you to keep chasing them. In researching scientific data, one would assume that credible research comes from a totally objective approach to a given project. Giving Dr. Glantz a grant to study the tobacco industry is akin to the EEOC giving Mark Fuhrman a grant to study race relations.

ON THE FRONTIER
Malcolm Wallop, U.S. Senator (ret.-WY), Chairman

Another example of President Clinton's efforts to kill the tobacco industry is a $950,000 grant to Northeastern University to, in the words of professor Richard Daynard, principle investigator, "develop strategies to thwart the bullying tactics of the tobacco industry." By the way, Professor Daynard has been an advocate of tobacco control policies since the mid-70's. I would say that qualifies him as an "objective" researcher. Of course, we are talking about the Clinton Administration where scientific data is less relevant than the point they're after.

These two absurd grants simply scratch the surface. If that $800,000 and that $950,000 of taxpayers money can be used to investigate the tobacco industry, look out, your industry could very well be next. There is no Constitutional basis or authority for their assault. Again, it is the battle between those who believe in big government and those whose preference is limited government. It is the battle between those who believe that one tax dollar is theirs to spend in any way and those who would like that tax dollar returned to the taxpayer.

To smokers or those who detest smoking, funding these federal projects to promote a political motive is unethical. Moreover, funding these projects to single out and destroy a particular industry is near criminal.

While the President goes after the tobacco industry with a vengeance, his administration happily uses other taxpayer dollars to benefit his political friends. Between July of 1993 and June of 1994, the Clinton Administration handed the AFL-CIO over $2 million, the National Education Association $385,000, the Teamsters over $3.5 million. What did Democrats get in return from the happy Unions? From 1988 to 1993, Unions gave Democratic House Members @57 million to @$1.7 for Republicans. In that same time span, Unions gave Democrat Senate candidates @$15 million to @$1.5 million for Republicans. In 1994, the Democratic National Committee received $835,000 from Unions and the Republican National Committee received, (are you ready?) $0.

Here it is in a nutshell. Spend lavishly to kill an industry in free market America and then turn around to give taxpayer money to your friends. Bill Clinton is truly amazing. He finds nothing wrong with this scenario.

Every single tax dollar begins as the fruits of someone's labor. Using taxpayer money to destroy an industry or help a political friend is wrong and Bill Clinton, had he any conviction, would agree.

Malcolm Wallop is a former Republican U.S. Senator from Wyoming who served 16 years on the Finance Committee. He is currently chairman of Frontiers of Freedom, a non-profit constitutional freedoms and property rights organization in Arlington, Virginia.

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MEDIA RELATIONS

TOBACCO INSTITUTE REPRESENTATIVES

Completed Activities

- During the period immediately surrounding FDA's assertion of jurisdiction, Tobacco Institute spokespersons provided quotes for more than 125 newspaper and magazine articles, wrote several op-eds, and gave interviews for more than 60 television and radio newscasts providing the industry's point of view:

    - one pagers on key issues were distributed;
    - background and supporting materials were developed and distributed; and
    - briefings were given to reporters.

- Following the initial wave of activity, a team of industry representatives was convened to:

    - assess current progress;
    - coordinate on-going efforts; and
    - work together on prospective strategies.

- A plan for the end of the comment period has been developed to:

    - ensure aggressive outreach on the industry's views, including:

        - top 50 editorial boards
        - about 50 "fair or favorable" columnists
        - more than 50 "key" reporters
        - health and science writers at daily newspapers in the top 50 markets
        - talk radio programs nationally and in the top 75 media markets
        - advertising columnists
        - trade press

    - highlight the industry's submission to the docket; and

    - coordinate with allies in target markets.

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D R A F T Plan for

MEDIA COMMUNICATIONS
ON FDA PROPOSED REGULATIONS

Background

While purporting only to regulate tobacco advertising and sales aimed at youngsters, the FDA's proposed regulation of tobacco actually unleashes far-reaching federal controls and censorship.

Editorial and other commentary on the FDA proposal have been decidedly mixed. While straining to support efforts aimed at reducing youth smoking, much has noted that "big government" and violations of the First Amendment are not solutions. Clearly, too, those editorials supporting the proposal demonstrate a lack of understanding of FDA's mission, tobacco regulations already in place and the role of government in getting youngsters to do as they should.

The industry, along with our allies, must aggressively educate and seek support for the position that FDA has no basis or business moving ahead with their regulatory scheme.

Objectives

Demonstrate that the FDA's proposed regulation is not an appropriate solution to the issue of youth smoking because:

- The FDA does not have jurisdiction over tobacco;
- The FDA's proposed "solutions" will not reduce youth smoking;
- The proposed solutions come with a significant price tag -- First Amendment, jobs, cost to FDA's core mission; and

- The tobacco industry has addressed the issue of youth smoking.

To effectively communicate these messages, and to ensure efficiencies, a coordinated plan with specific responsibilities is in order

<u>Tactics</u>

Material Development

- Develop/revise key message points in the following formats (TI will circulate draft materials for review by 11/6)

    ⇒ Summary of FDA issues and analysis
    ⇒ One-pagers on key message points
    ⇒ Letters to editorial boards requesting visits, with appropriate topic highlighted
    ⇒ Letters to columnists introducing materials and/or with highlighted topic
    ⇒ Pitch materials for talk radio

- Develop additional resources (i.e. economic impact study of proposed rule, update of international study on ad bans and youth smoking rates) and provide for a distinct media outreach plan for each

- Assist and encourage allies and others affected by FDA proposal to speak-out. This deserves on-going attention -- and a more specific plan (e.g., farm groups are already circulating materials and op-eds ...)

Media Outreach

The media outreach section of this program contains several elements: editorial board visits, contact with columnists, ongoing contacts with reporters (both "key" and science and health reporters); radio talk shows and trade press. For each of those activities, a brief discussion of the assignments and approach is included.

Timing also is an issue for discussion. TI's recommendation is that we begin to implement this plan as quickly as possible.

I. Editorial Board Visits

GOAL: Pitch editorial board visits to the top 50 newspapers in the U.S.

The list of the editorial page editors -- with suggested assignments -- is Attachment A for your review and use.

- For the "top" newspapers -- those of major influence and circulation -- you will note the assignment is for a team approach, with a representative from each company conducting the visit together.
  - ⇒ For these top papers, TI will make the pitch and coordinate the schedule -- with assistance from each of the task force members from each organization.
- TI is compiling what has been written on the FDA/tobacco by each of these and we will circulate that materials early next week.

- Each organization is responsible for pitching and scheduling those visits once assignments are finalized.

- This list should be circulated among the federal relations staff of each organization to determine if additional newspapers should be added in key locales.

II. Columnists

GOAL: Provide materials supporting the industry's position to all columnists likely to write about the issue.

- A list of columnists identified by TI as having written about the issue is Attachment B for your review.

  ⇒ TI will contact each columnist (either by phone or in writing) initially to share/offer additional information/views and will keep them updated with current information.

  ⇒ For those in *italics*, contact has already been made by a company representative who will continue those efforts.

  ⇒ TI will continue to update the list of columnists as additional stories appear.

III. Key Reporters

GOAL: Provide a continuously responsive flow of information to reporters charged with covering the FDA/tobacco debate.

- TI has compiled a list of "key reporters" (Attachment C) who have been covering the FDA/tobacco issue. Rather than split the list, TI will assume responsibility for distributing materials the group agrees should be distributed.

  ⇒ Distribute core-materials to each reporter with a letter indicating a continuing willingness to assist.

  ⇒ Keep reporters updated, routinely, with additional information.

- This list of key reporters should be shared with allies and others concerned with the FDA proposal.

IV. Science and Health Reporters

GOAL: Provide science and health reporters at the top 100 newspapers with a core of information supporting industry positions and keep them updated as appropriate.

- TI has compiled a list of science and health reporters at the top 100 newspapers and major broadcast outlets -- this list is Attachment D. We suggest that TI be responsible for the science and health reporters.

⇒ Provide core materials to this group with an offering of assistance.

⇒ Use this list as an additional base for distributing additional resources and for allied contacts as they develop.

⇒

V. Advertising Columnists

GOAL: Provide information on the impact of the FDA proposal to this group

- TI is developing this list and will share it with the group next week. We are prepared to handle the distribution of materials to this group.

V. Talk Radio

GOAL: Provide the industry's point of view during as many talk radio programs as possible.

- The TI's list of top talk-radio shows is undergoing final review.

  ⇒ TI is prepared to pitch and conduct these interviews.

VI. Trade Press

GOAL: Ensure that the tobacco and allied industries trade press understand the importance of the FDA proposal and the issues involved.

- Philip Morris has offered to take the first cut at trade press -- organizing a forum of reporters and editors for an industry-wide presentation.

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VII. Congressional districts

GOAL: Orient and educate media in selected congressional districts to understand the broad implications of the proposed FDA regulations and utilize this increased media interest to build support for comment writing and communications from constitutents to their congressional offices.

- STC to initiate effort by targeting districts in Pennsylvania, Wisconsin, Ohio, Kentucky and Tennessee.

Attachment A

EDITORIAL PAGE EDITORS
TOP 50 NEWSPAPER MARKETS

Robert L. Bartley
Editorial Page Editor
THE WALL STREET JOURNAL
200 Liberty Street
New York, NY 10281
Ph: 212/ 416-2551
Fax:212/ 416-2658

TI to pitch: group editorial board visit

8/25: A latent endorsement of Clinton;Federal government shouldn't be taking those steps, parents & private organizations do it better.

Howell Raines
Editorial Page Editor
THE NEW YORK TIMES
229 W. 43rd Street
New York, NY 10036-3959
Ph: 212/ 556-1875
Fax:212/ 556-3690

TI to pitch: group editorial board visit

8/11: Endorses Clinton;Questions free speech infringement, especially "tombstone"ads.
8/23: Endorses Clinton; ABC at "heart" of FDA case; Doesn't renege substance of ABC's story, therefore, keep up regulatory pressure.
10/24: Endorses Clinton; "Peer Influence" and " ammonia" bolster FDA argument.

Thomas Plate
Editorial Page Editor
LOS ANGELES TIMES
Times Mirror Square
Los Angeles, CA 90053
Ph: 213/ 237-7944
Fax:213/ 237-4712

TI to pitch: group editorial board visit

3/10 Endorses Clinton;Cites early "addiction" and 400,000/year death figure as compelling "government intervention" to be a necessity.

91715500

N. Don Wycliff
Editorial Page Editor
CHICAGO TRIBUNE
435 N. Michigan Ave.
Chicago, IL 60611-4041
Ph: 312/ 222-3431
Fax:312/ 222-3143

RJR

7/15 & 8/11: Latent endorsement of Clinton; FDA shouldn't regulate, Congress should legislate.

Mark Hornung
Editorial Page Editor
CHICAGO SUN-TIMES
401 N. Wabash Avenue
Chicago, IL 60611-3593
Ph: 312/ 321-2958
Fax:312/ 321-3084

RJR

(Found no editorial position on FDA)

Jan Eisner
Editorial Page Editor
PHILADELPHIA INQUIRER
400 N. Broad St.
Philadelphia, PA 19130-4099
Ph: 215/ 854-4530
Fax:215/ 854-5553

TI to pitch: group editorial board visit

(Abstracts only)

Jerry Roberts
Editorial Page Editor
SAN FRANCISCO CHRONICLE
901 Mission St.
San Francisco, CA 94103-2988
Ph: 415/ 777-7182
Fax:415/ 512-8196

RJR

10/19: Endorses Clinton; No reservations on advertising ban.