

**Oral Statement of Horace R. Kornegay
Chairman, The Tobacco Institute
to the
Subcommittee on Health and the Environment
Committee on Commerce and Energy
United States House of Representatives
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Mr. Chairman, my name is Horace R. Kornegay. I am chairman of The Tobacco Institute, a trade association for the major United States cigarette manufacturers. With me is William Kloepfer, Jr., senior vice president for public relations at The Institute.

We appear here today in opposition to various proposals that have been made to ban or further restrict tobacco product advertising. In doing so, we express the sentiments of a wider group than our member companies. The proposals that are under consideration are of grave concern to the entire tobacco community.

Mr. Chairman, after the rhetoric and emotion are brushed aside, the fact that remains is that, with the possible exception of prescription drugs, no lawful product is subject to greater or more severe advertising restrictions than tobacco products. That fact was essentially ignored by those who appeared before this Committee two weeks ago.

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No product advertising is more closely monitored, studied or reported on -- by federal regulators as well as by private entities -- than tobacco product advertising. No product advertising is held up to, or required to meet, more exacting or rigorous standards. No product advertising is required to carry warnings as threatening as those appearing in tobacco product advertising. No industry other than the tobacco industry has been required to contend with the complexities and burden of rotating warnings in their advertising, a requirement that has been and will continue to be an administrative nightmare.

Four years before the oldest living teenager was born, the major United States cigarette manufacturers voluntarily ceased advertising in college and university publications -- even though the overwhelming majority of college students are old enough to purchase cigarettes in the various states.

In 1964, three years before any living teenager was born, the same companies agreed to a set of advertising principles that continue to guide cigarette advertising in the United States to this day. Those principles include a prohibition on placing cigarette advertising in publications directed primarily to people under 21 years of age, a prohibition on the use of models under 25 years of age and a ban on testimonials by sports figures or other celebrities who might have special appeal to young people. In addition, cigarette

companies avoid suggesting in their advertising that smoking is essential to social prominence, distinction, success or sexual attraction. They also avoid depicting smokers participating in physical activities requiring unusual stamina or athletic conditioning.

In 1969, when the oldest living teenager was only two, the cigarette companies offered to discontinue all advertising on radio and television. To deal with antitrust concerns, legislation was enacted in 1970 -- without opposition from the cigarette manufacturers -- accepting that offer. Since 1971, the major United States cigarette manufacturers have been operating under a voluntary agreement with the Federal Trade Commission to include in their advertisements information concerning the "tar" and nicotine ratings of the brands being advertised.

Consistent with the spirit of the voluntary measures I already have described, the cigarette industry also has adopted, and has aggressively implemented, a set of restrictions to govern cigarette sampling. Vernon Dempsey, another member of this panel, is prepared to provide the Committee with detailed information concerning the scope of the Code of Cigarette Sampling Practices and the actions that have been taken to implement it. I would request that a copy of the code be added to the record of these hearings.

Mr. Chairman, we also have undertaken positive -- and highly successful -- programs on the issue of youth smoking. As you know, the cigarette industry long has taken the position that cigarette smoking is for adults only -- adults who choose to smoke. The voluntary advertising and sampling restrictions that I have described have been designed, of course, to implement that policy decision. But, in addition, The Institute and its member companies have sponsored a variety of advertisements encouraging the parents of young people to intercede with their children to prevent smoking.

We have placed three of our youth smoking advertisements on the easel. The message of the advertisements perhaps is captured best by the headline of the center advertisement, which reads:

"Do cigarette companies want kids to smoke? No.
As a matter of policy. No. As a matter of practice.
No. As a matter of fact. No!"

I also would ask that copies of these advertisements be placed in the record, along with copies of the "Helping Youth Decide" materials that Jolly Ann Davidson will discuss in a few minutes.

The point that I have been attempting to make, Mr. Chairman, is that cigarette advertising already is subject to severe restrictions -- restrictions that have been largely ignored by those who have proposed additional restrictions. The

requirements and limits that have been imposed by statute are only the beginning. The cigarette manufacturers have substantially exceeded their legal obligations by implementing a number of voluntary advertising restrictions and programs. We are proud of the industry's record with respect to cigarette advertising generally and youth smoking in particular. We would submit that the record is one of unparalleled restraint and responsibility.

To be frank, we are tempted to believe that the motive underlying the calls for further legislation on tobacco product advertising is purely punitive. For some people, the very existence of tobacco product advertising apparently is an unwelcome reminder that some Americans have chosen to continue to purchase such products despite the anti-tobacco lobby's demands for a tobacco-free society.

But whatever may be said of the motives underlying the current proposals, at least two points are nonetheless clear. The first is that the proposals that have been made are inconsistent with, and represent a direct repudiation of, the informational objectives that Congress repeatedly has endorsed with respect to tobacco product advertising. Second, the available evidence squarely refutes any suggestion that further restrictions on tobacco product advertising would serve to discourage consumption. The cigarette advertising of The

Institute's member companies is brand advertising. It is designed to prompt smokers to switch brands or to keep them loyal to the brands they already smoke. It does not cause smoking any more than soap advertising causes people to bathe or detergent advertising causes people to wash their clothes. During several hours of testimony before this Committee two weeks ago, no witness was able to offer any evidence to the contrary -- apparently believing that assertions and heated rhetoric, if repeated often enough, can supply the missing link.

Mr. Chairman, at the hearings two weeks ago, a number of other claims were made with respect to cigarette advertising that I do not have time to deal with in the short time permitted for opening presentations. Some of those claims will be covered by other witnesses today. Many are covered in my printed testimony.

I would like, however, to make two points in closing -- the first relates to the constitutional implications of the proposals that have been advanced and the second relates to broader policy issues. Despite statements that were made at the hearings two weeks ago, we continue to believe that the current proposals raise very troubling concerns under the First Amendment. Those concerns have been described in a legal memorandum prepared by our counsel, Covington & Burling. I would ask that a copy of the Covington memorandum be included in the hearing record.

The current proposals also raise other, at least equally fundamental, concerns. In effect, they invite Congress to declare that the American people cannot be trusted to respond rationally to advertising or to deal responsibly with truthful information. They also invite Congress to affirm that the American people are too dull, unintelligent or unsophisticated to think or make decisions for themselves. In addition, they invite Congress to tell women, Blacks and Hispanics -- groups that the proponents of legislation have labeled "especially vulnerable" -- that they, in particular, need help from Congress in weighing information and deciding what products to purchase and use. Finally, the current proposals invite Congress to get into the business of censoring and managing the flow of truthful information -- all for the asserted good of the American people.

We might do well, in that connection, to recall the views expressed by Justice Brandeis nearly sixty years ago. "Experience," said Justice Brandeis, "should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent." He added that "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding." With respect, I would suggest that the words of Justice Brandeis should have a central place in the Committee's discussions of the proposals that have been made with respect to cigarette advertising.

I would be happy to respond to any questions members of the Committee may have.