

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 of major United States cigarette manufacturers. With me is William Kloepfer, Jr., senior vice president for public relations at The Institute.

We appear today in opposition to various proposals that have been made to ban or further restrict tobacco product advertising. In doing so, I think it fair to point out that we are expressing 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 -- to retailers, to wholesalers, to growers, to warehousemen, and to the thousands of other people who work in the manufacturing and supplier sectors of the tobacco industry.

The other members of this panel are Professor Scott Ward, an advertising and marketing expert who serves on the faculty of The Wharton School at the University of Pennsylvania;

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Professor Roger Blackwell, a consumer behavior specialist on the faculty of Ohio State University; Professor J.J. Boddewyn, an international business and marketing professor at Baruch College, City University of New York; Jolly Ann Davidson, former president of the National Association of State Boards of Education and currently a consultant to The Tobacco Institute; and Vernon L. Dempsey, president of a firm -- Phoenix Marketing & Research, Inc. -- that specializes in consumer product sampling.

Mr. Chairman, after the rhetoric and emotion are brushed aside, the fact is that no lawful consumer product is subject to greater or more severe advertising restrictions than tobacco products. No cigarette advertisement can appear unless accompanied by one of the four rotating health warnings mandated by the Federal Cigarette Labeling and Advertising Act, as amended in 1984. Those warnings are both specific and unambiguous. They inform smokers and nonsmokers alike, in words that cannot be misunderstood, of the Surgeon General's official position on cigarette smoking.

In view of these and the predecessor statutory warning requirements, as well as the media's extensive coverage of the health charges against smoking, the universal public knowledge that exists concerning the Surgeon General's position on smoking and health is hardly surprising. As you know, Mr. Chairman, only a few months ago, warning legislation also was enacted with respect to smokeless tobacco advertisements.

But the restrictions on cigarette and other tobacco product advertisements do not end with mandated health warnings. In 1969, the major United States cigarette manufacturers offered to withdraw all cigarette advertising from the broadcast media -- radio and television. To deal with antitrust concerns, legislation ultimately was introduced, and was enacted in 1970 without opposition from the cigarette manufacturers, prohibiting the carrying of cigarette advertisements on broadcast media subject to the jurisdiction of the Federal Communications Commission. Earlier this year, that prohibition was expanded to cover smokeless tobacco products. In addition, pursuant to a voluntary agreement with the Federal Trade Commission, the major United States cigarette manufacturers have included since 1971 in each of their advertisements information concerning the "tar" and nicotine ratings of the cigarette brands being advertised. Tobacco product manufacturers have moved promptly to implement each of the measures that I have described in a manner that respects their spirit and letter.

The major United States cigarette manufacturers have taken, Mr. Chairman, still other steps with respect to their advertising -- steps that, so far as I am aware, have not even been considered by the manufacturers of any other product. These include not placing cigarette advertisements in publications directed primarily to people under 21 years of age and not advertising in college or university publications, even though the great majority of college students are old enough to purchase

tobacco products under the laws of the various states. The cigarette manufacturers also do not depict in their advertisements anyone under 25 years of age -- and they do not include in their advertising testimonials from sports figures or other celebrities. In addition, such advertising may not suggest that smoking is essential to social prominence, distinction, success or sexual attraction. Neither may it show a smoker participating in, or obviously just having participated in, a physical activity requiring stamina or athletic conditioning beyond that required in normal recreation.

The major United States cigarette manufacturers also have adopted, and have aggressively implemented, a Code of Cigarette Sampling Practices. Although Mr. Dempsey is prepared to provide the Committee with detailed information concerning implementation of the cigarette sampling code, certain of the provisions deserve special emphasis here. Among other things, the sampling code prohibits the giving of sample cigarettes to anyone who is younger than 21 years of age, samplers must indicate either orally or by written means that the samples are intended for smokers only and no sampling can be conducted near any center of youth activity -- such as a school or playground. The individual cigarette companies require the sampling companies with which they do business to abide by these limitations and closely monitor all sampling activity. In addition, the cigarette companies require those who engage in sampling to

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attend training programs to ensure that they are aware of and understand the pertinent limitations and requirements. Samplers who knowingly violate these standards are subject to being discharged. I have with me copies of the Code of Cigarettes Sampling Practices, and would ask that the code be included in the record of these hearings.

As you know, Mr. Chairman, the cigarette industry long has taken the position that cigarette smoking is only for those adults who choose to smoke. The voluntary advertising and sampling restrictions that I already have described have been designed, of course, to implement that policy decision. In addition, The Institute as well as individual cigarette manufacturers have sponsored a variety of advertisements encouraging parents to intercede with their children to prevent them from smoking.

We have placed on the easel three advertisements that have appeared in many leading national magazines during the past four years. The gist of the advertisements perhaps can be illustrated best by the headline of the center advertisement. It 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 would like at this time to submit for the record copies of the youth smoking advertisements that The Institute has sponsored. You might direct any questions concerning those advertisements to Mr. Kloepfer, who was directly responsible for their development.

Working with the National Association of State Boards of Education, or NASBE, we also have undertaken an ambitious program to assist parents in persuading their children not to become involved in activities appropriately reserved for adults, including cigarette smoking. That program has been vigorously promoted by extensive advertising in major media. Jolly Ann Davidson, who was the president of NASBE when our "Helping Youth Decide" program was being developed, is prepared to provide details concerning the program and to answer any questions members of the Committee may have about it.

Our "Helping Youth Decide" program has elicited an overwhelmingly positive response. For example, both houses of the Pennsylvania legislature have approved citations of congratulations for the program. The bipartisan leadership of the Michigan legislature has issued a special tribute to The Institute for, as they said, "continuing its responsible approach to discouraging young people from smoking." And the Indiana Senate has adopted a resolution of commendation. In fact, the acclaim that the program has received has prompted us to begin the development, again with NASBE, of an additional program -- "Helping Youth Say No." I would like to submit at this time, and would appreciate your adding to the record of these hearings, copies of the "Helping Youth Decide" program materials, supporting advertisements and a sampling of the testimonials that we and NASBE have received concerning the program.

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The point that I have been attempting to make, Mr. Chairman, is that cigarette advertising already is subject to severe restrictions -- restrictions that were largely ignored by those who have proposed additional restrictions. And the restrictions that have been imposed by federal statute are only the beginning. The cigarette manufacturers have substantially exceeded their legal obligations by implementing a variety 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 industry's record is one of unparalleled restraint and responsibility.

The fact that proposals have been made to impose even more stringent restrictions on cigarette advertising, or to ban such advertising entirely, involves -- it seems to me -- a very peculiar irony. The recent amendments to the Cigarette Labeling and Advertising Act, requiring the inclusion of rotating warnings in cigarette advertising, have been in effect for only nine months. The Smokeless Tobacco Education Act has not yet even been fully implemented. The proponents of additional legislation have come to this Committee without the slightest evidence that the current statutory or regulatory framework for tobacco product advertising has failed or will fail to meet the informational objectives specified in current law. And they have provided no evidence that their proposals will discourage smoking, which is their stated objective. The proponents of additional legislation

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also ignore entirely the voluntary initiatives that tobacco product manufacturers have taken with respect to advertising and youth smoking.

To be frank, Mr. Chairman, we are tempted to believe that the motive underlying the calls for further legislation on tobacco product advertising is entirely punitive. Apparently, there are those who simply cannot tolerate either smoking or smokers. For such people, the very existence of tobacco product advertising seems to be an unwelcome reminder that some Americans have chosen to continue to purchase such products despite the antitobacco lobby's demands for a tobacco-free society. Since the pertinent evidence shows overwhelmingly that further legislative restrictions on tobacco product advertising would not discourage use of tobacco products, there certainly is ample reason to suspect that the current attack on tobacco product advertising constitutes little more than an effort to punish tobacco product manufacturers and their customers.

If the demands for additional legislation are not purely punitive, at least two points are nonetheless clear. The first is that the proposals that have been made are inconsistent with, and represent a radical departure from 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.

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The fact is that cigarette advertising does not cause smoking -- any more than soap advertising causes people to bathe or detergent advertising causes people to wash their clothes. Cigarette advertising is brand advertising. It is designed to prompt smokers to switch brands or to keep them loyal to the brand they already smoke. To perform either of those functions, of course, the advertising must be sufficiently lively, distinctive and targeted to be noticed, which accounts for the images that one sees in cigarette advertising. Consequently, banning or further restricting cigarette advertising would not serve any useful purpose. It would simply interfere with or destroy the competitive process that is the basis of our free economy.

The 1979 report of the Surgeon General, the only one to focus on this matter, conceded that "the major action of cigarette advertising now seems to be to shift brand preferences, to alter market share for a particular brand." Smoking and Health: A Report of the Surgeon General 18-23 (1979). Cigarette advertising has not changed significantly since the Surgeon General reached that conclusion. In 1983, Dr. Mortimer B. Lipsett, Director of NIH's National Institute of Child Health and Human Development, informed this Committee that "[t]he most forceful determinants of smoking are parents, peers, and older siblings." Smoking Prevention Education Act: Hearings on H.R. 1824 Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, 98th Cong., 1st Sess. 53 (1983). That statement was correct when made and, again, nothing

has changed in that regard during the past three years. Indeed, even Michael Pertschuk, a former chairman of the Federal Trade Commission and long-time advocate of cigarette advertising restrictions, conceded in 1983 that "no one really pretends that advertising is a major determinant of smoking in this country or any other."

The experience of countries that have banned cigarette advertising entirely, or imposed restrictions even more severe than those that have been imposed here, confirms that cigarette advertising does not cause smoking -- and that the proposals that have been made would not discourage it. That experience recently was reviewed in a comprehensive report edited by Professor Boddewyn. That report concludes that during the period 1960 through 1984:

"There is no evidence from those countries where tobacco advertising has been banned, that the ban has been accompanied by any significant reduction in overall consumption, per-capita consumption or the incidence of smoking. The market trends apparent prior to the introduction of a ban have largely continued unchanged in the years following it." (Emphasis in original.)

Tobacco Advertising Bans and Consumption in 16 Countries
(1986), p. 8.

The study conducted by M.J. Waterson for the Advertising Association in Great Britain supports the conclusions of the Boddewyn report. After reviewing the experiences of a

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number of countries that have imposed cigarette advertising bans, the Waterson study concluded:

"Despite the great deal of propaganda produced by the antismoking lobby on the question of cigarette advertising, it is clear that any impartial analysis of the vast mass of evidence available suggests that advertising bans simply do not work."

Advertising and Cigarette Consumption (1984), p. 25.

In a recent article in the Washington Post, George Will suggested that the conclusion that cigarette advertising is effective only at the brand level, and does not increase aggregate consumption, is "counterintuitive." According to Mr. Will, it would be irrational for the cigarette companies to spend \$2 billion each year to communicate only with those people who ultimately will switch brands during the year. Mr. Will also suggested that "[t]he evidence from the nations with the severest limits on cigarette advertising is that after such advertising is limited, adult smokers continue but fewer young people start." Washington Post, July 24, 1986, p. A23.

Mr. Will's suggestions are erroneous and unfounded. The retail value of cigarette sales in the United States during 1984, the most recent year for which advertising data are available, was approximately \$29 billion. The \$2 billion that was spent on cigarette advertising and promotion during 1984 was not directed solely at the portion of the cigarette market that

experienced brand shifts during 1984. A substantial portion of those expenditures went to protect from competitive inroads the much larger segment of the market in which no brand shifts ultimately occurred. Indeed, Mr. Will's point makes sense only if one is prepared to accept the notion that it is irrational, or "counterintuitive," for cigarette manufacturers to direct any of their advertising expenditures toward protecting the current market shares of the brands that they manufacture and sell. The fact is that most cigarette advertising is designed to protect the advertised brand's market share from encroachment by new brands or other established brands.

Mr. Will likewise was in error in suggesting that cigarette smoking among young people has declined in countries with the severest limits on cigarette advertising. We are not aware of any evidence that would support that suggestion. As a matter of fact, a second study edited by Professor Boddewyn and now in press demonstrates that the incidence of smoking by young people is unrelated to the prevalence of cigarette advertising (or cigarette advertising restrictions). Professor Boddewyn will discuss that study in a few moments.

A related claim that has been advanced is that one can assume, even without supporting evidence, that cigarette advertising expenditures are intended to affect -- or do affect -- aggregate demand for cigarettes because approximately 1.4

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million Americans start smoking each year. Again, that suggestion cannot be reconciled with the available evidence. If the suggestion had any merit, cigarette advertising bans that have been adopted in other countries would have caused a decline in aggregate cigarette consumption. As noted, they have not.

As Professors Ward and Blackwell will explain, brand advertising in mature product markets -- like the cigarette market -- has virtually no effect on use of the product category as opposed to purchase of brands within the category. To draw again on the soap analogy, an effective advertisement for a brand of soap may increase the chances that the advertised brand will be purchased by a consumer desiring to purchase soap -- but it will have virtually no effect on the threshold decision to purchase some brand of soap.

Mr. Chairman, almost every product that is advertised uses attractive models and distinctive graphics in order to attract attention. And the manufacturers of a wide range of products sponsor community events as a public service, to promote the sponsor's image and/or to assist in brand competition. But we have yet to hear, to take only one example, automobile manufacturers being taken to task because they feature attractive models in their advertising. Neither has anyone suggested seriously, so far as I know, that such advertising takes unfair advantage of uniquely vulnerable and insecure people in our society by conveying the impression that purchasing the advertised product will permit them to be like the model

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appearing in the advertisement. Such claims have no more substance when directed at cigarette advertisements than they would have if leveled against advertisements in general.

Moreover, the notion that a cigarette company's sponsorship of community, ethnic or cultural events can be expected to induce nonsmokers to begin smoking is obvious nonsense. It simply is not realistic to suggest, as have the proponents of legislation, that mere attendance at such an event may cause nonsmokers to become smokers.

Yet another claim that has been made is that the dependence of newspapers and magazines on cigarette advertising revenues has had a chilling effect on their coverage of smoking and health issues. To the extent that those making such claims were implying that any cigarette manufacturer has sought to influence the editorial policies or coverage of any publication, I must tell you on behalf of The Institute's member companies that the implication is unfair and unfounded -- and we deeply resent it. If the claim was intended to suggest, instead, that publications carrying cigarette advertisements often decide on their own initiative to curtail or alter their coverage of smoking and health issues, an elaborate refutation hardly seems necessary.

The fact is that the American people are confronted constantly with a virtual blizzard of anti-smoking articles and propaganda, often repeating the most extreme claims concerning smoking and adverse health effects without the slightest effort

being made to exercise critical judgment or to achieve a balanced picture of the pertinent scientific evidence. At the same time, studies that fail to support the case against cigarette smoking are ignored, discounted or ridiculed. Without meaning to appear unkind, I can only suggest that those who believe that the case against cigarette smoking has not received sufficient coverage in the print media must have been asleep for much of the past thirty years.

Only a few days ago, the Office on Smoking and Health began distributing a 151-page directory of state and local programs designed to promote the antismoking point of view and to reduce the incidence of smoking. The first edition of the directory, published in 1982, listed 426 such programs. The current directory lists over 800. A massive amount of anti-smoking material -- books, films, print and broadcast advertisements, brochures -- also is being distributed, of course, by the Federal Government itself, the voluntary health organizations and other groups in the public and private sectors. All of the material that I have described adopts and advances a single viewpoint -- that smoking involves a clear, and uncontrovertible, danger to human health. That is the message that has been drummed into the consciousness of the American people.

There is, however, another side to the story, even if it is seldom told and almost never reaches the American people. And that is the story of continuing questions concerning the statistical association between smoking and health and the need

for further, more definitive, research. Many of those questions were raised and discussed at the hearings that this Committee held in 1982 and 1983 in connection with amendments to the Cigarette Labeling and Advertising Act that were being considered at that time. We would urge members of the Committee to review the record of those hearings in weighing the health-related claims that have been made in support of the current proposals.

Mr. Chairman, the proposals that have been made to ban or further restrict cigarette advertising also raise a host of troubling legal questions. Representative Synar has suggested that the Supreme Court's recent decision in the Posadas case removes any doubt as to the constitutionality of a cigarette advertising ban. Representative Stark and Senator Bradley have made the same suggestion in support of their proposal to make cigarette advertising expenditures nondeductible for tax purposes. For the reasons stated in a legal memorandum that has been prepared by our counsel, Covington & Burling, we must respectfully disagree. I would ask that a copy of the Covington & Burling memorandum be included in the record of these hearings.

The suggestion that the federal government is "subsidizing" tobacco product advertising by permitting advertising expenses to be deducted for tax purposes represents an appeal to emotion rather than fact. Our tax system is based on the premise that only net income should be taxed, with deductions being permitted for costs reasonably incurred in producing income. The deduction taken by all businesses for advertising expenses --

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like deductions for other ordinary business expenses -- simply implements the net income concept. It no more provides a "subsidy" for advertising than the deduction for payroll expenses provides a "subsidy" for the hiring of workers. Indeed, expense deductions can be viewed as a "subsidy" only if one also is prepared to label every decision not to impose a particular type of tax as a "subsidy." In short, the "subsidy" justification that has been offered for the Bradley and Stark bills offends both logic and common sense. It also fails to respond to the constitutional issues that would be raised by any proposal that would single out one type of speech, or one category of speaker, for uniquely harsh or burdensome treatment.

My understanding is that the constitutionality of the various cigarette advertising proposals that have been made will be addressed by another panel appearing at these hearings. I would suggest, however, that much more is at stake here than can be captured by a discussion of how the Supreme Court might respond to an advertising ban or additional legislative restrictions on tobacco product advertising. As I already have noted, the stated objective of the cigarette advertising legislation that has been enacted to date has been to provide information -- to ensure that the American people are told repeatedly of the Surgeon General's views on the health consequences of smoking. The recently-enacted legislation dealing with smokeless tobacco advertising reflects a similar objective. The current proposals reject the approach of providing information. They also

repudiate traditions that have long been valued in this country.

The current proposals 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 say that the American people are too dull, unintelligent or unsophisticated to think or make decisions for themselves. In addition, they have invited some to suggest that women, Blacks and Hispanics -- groups that the proponents of legislation have identified as being "especially vulnerable" -- that they, more than their male or Caucasian counterparts, 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. We urge that the proposals be rejected.