

Revised Draft
- TI statement -
Waxman Hearings
August 1, 1986

Mr. Chairman:

My name is Horace R. Kornegay. I am chairman of The Tobacco Institute. With me is William Kloepfer, Jr., senior vice president of public relations. The Tobacco Institute is a trade association of the major cigarette manufacturers of the United States.

Today we speak against any legislation that would prohibit the advertising and promotion of tobacco products. I think it is fair to say that we are expressing the sentiment of a wider group than our member companies. The legislation under consideration is of grave concern to the entire tobacco community, to retailers, to wholesalers, to growers, to warehousemen, and to thousands of other businessmen and workers in our supplier industries.

CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION

Fundamentally, the suppression of free speech for this product sets a precedent that is of serious consequence to the entire nation and all of its citizens, present and future.

Accompanying me today are professor Roger Blackwell of Ohio State University and professor Scott Ward of the Wharton School of Business at the University of Pennsylvania. They will discuss the nature of advertising and the lack of effectiveness of advertising bans.

Mr. Chairman, with all respect, we are eager to appear before this distinguished subcommittee and and to provide a rational alternative to the extremely emotional and biased view of advertising that was presented on July 18.

Advertising in general -- and tobacco advertising in particular -- is a relatively straightforward subject that has become surrounded by a fog of myth, misconception, and, yes, misrepresentation.

TIMN 294363

We hope that the testimony that we and others from the tobacco and advertising community offer today may prove to be a helpful antidote to the virulent testimony offered two weeks ago.

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

Frankly, Mr. Chairman, we are deeply disturbed by the lack of fair play at the previous hearing.

We were not overly surprised when a Member of the subcommittee called cigarette advertising "obscene." Our anxiety mounted when a witness was permitted to equate cigarette advertising with "child molestation."

Our concern increased when another Member called tobacco companies "merchants of death" and accused them exerting "a lot of effort ... to addict, disable, and finally kill hundreds of thousands of Americans each year."

We were chagrined to hear witnesses describe smoking as a greater public health problem than heroin and cocaine addiction, AIDS, and toxic wastes.

Finally, we knew that fair play was totally abandoned when the Chairman reached back over a hundred years of American history and reopened a wound that Abraham Lincoln sought to heal with his "malice toward none" speech.

TIMN 294364

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

Let me quote your remark, Mr. Chairman, lest we forget.

"I often think," you said, "when I talk to some of the Representatives of the tobacco areas and they argue for continued support of the tobacco industry that they've just replaced those people in the last century who made the same arguments for slavery, ignoring the moral component that the U.S. government and the American people needed to address."

Let me remind you, Mr. Chairman, that those Congressman from tobacco states also replaced people who two hundred years earlier founded this nation, fought for its independence from Great Britain and wrote its Constitution and Bill of Rights, which includes the First Amendment.

But let us put the emotionalism and extremism of July 18 behind us, Mr. Chairman. As you said, it was a long day for all of us. There are many errors in that hearing record. Let's begin to replace them with facts.

TIMN 294365

CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION

First, let's talk about the need for new legislation on tobacco advertising when the ink is hardly dry on the current law.

Second, let's discuss the Synar bill, HR 4972, to ban all advertising and promotion of tobacco, which you said would be considered by the committee. As a prelude, Mr. Chairman, we request that the printed record include written testimony from a number of scientific experts. Their statements will respond to the series of so-called health findings in section 2 of the Synar bill.

Resolving scientific controversies by majority vote of Congress, which these findings attempt, is inappropriate, misguided and a disservice to the American people.

Is this legislation necessary, Mr. Chairman? Have the rotating warnings of Public Law 98-474 failed? Is the Comprehensive Smoking Education Act moribund less than a year after its effective date?

TIMN 294366

Mr. Chairman, legislation to ban tobacco advertising and promotion marks a watershed in public policy.

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

In the past, United States policy was directed at informing the public about the allegations regarding the health consequences of smoking. The theory was that if the government gave people the facts, the people had a right to make their own informed decision.

That was spirit of the law that gave Americans the first ubiquitous statement -- "Caution: Cigarette smoking may be hazardous to your health."

That was the same spirit that motivated Congress to enact the second caution -- "Warning: the Surgeon General has determined that cigarette smoking is dangerous to your health."

The spirit of the current law is much the same: "to increase the availability of information on the health consequences of smoking ..." (Emphasis supplied.)

However, the antismoking lobby is not now and has never been satisfied with a policy of providing information and letting people exercise freedom of choice.

TIMN 294367

CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION

The antismoking lobby is not satisfied with the fact that virtually everyone in the United States is informed about the charges against smoking. Survey research placed the awareness at an unprecedented 96 per cent.

The antismoking lobby is not satisfied with the fact that the incidence of smoking is declining. As a matter of fact, a Gallop Poll published a year ago reported that smoking was at its lowest point in 40 years. Gallop found that only 27 per cent of young adults are smokers.

Since many of these guardians of the public health consider one smoker to be one too many, the existence of 50 million American adults who are informed and continue to smoke is unbearable. Smokers must be made to quit; nonsmokers must not be allowed to start.

TIMN 294368

In 1984, they succeeded in getting Congress to enact more and stronger warnings. And now in unusual haste, they ask Congress to turn the ratchet of behavior control another notch tighter. They ask Congress to shift public policy from mandating information to mandating censorship.

A "smoke free society" is their final solution. To get there they move ever closer to outright Prohibition. This year they pause at prohibition of advertising and sales promotion.

But the truth is that cigarette advertising does not cause smoking. Therefore, ending cigarette advertising will not cause smoking to cease.

Surgeon General's reports have conceded the point time and time again. The purpose of cigarette brand advertising is keep one's own customers smoking one's own product and to induce smokers of other brands to switch.

Just the day before your hearing two weeks ago, the Federal Trade Commission released its annual report to Congress on cigarette advertising. The FTC reported that advertising expenditures had increased while per capita consumption continued to decline.

TIMN 294369

Mr. Chairman, soap advertising does not cause bathing, gasoline advertising does not cause driving, cigarette advertising does not cause smoking.

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

Perhaps a political analogy would be helpful. Take campaign advertising. Clearly, it is designed to hold one's own voters and capture the opponent's voters. It is not intended to increase the aggregate number of voters or to increase aggregate voter turnout.

Look what happened in the 17 states that held Senate elections in 1980 and again in 1982. Total campaign spending rose from 000,000,000 to XXX,XXX,XXX. Turnout dropped from 50 to 40 percent of the voting age population. The Republicans lost 3.2 million votes; the Democrats lost 2.5 million.

Experience in country after country throughout the world also demonstrates that advertising bans fail to achieve their objective. Let's look only at those countries with political systems that are suited to implement the antismoking agenda. Cigarette advertising is prohibited in Poland and smoking in public is severely restricted, yet per capita consumption is the highest in the world.

TIMN 294370

China and East Germany also ban advertising and restrict public smoking, but smoking continues at a high level.

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**

Bulgaria, Hungary, and the Soviet Union have the toughest policies in the world, including advertising prohibition. Bulgarians now smoke 2 percent fewer cigarettes than 10 years ago, while the Soviets use 8 percent more and the Hungarians use 4 percent more.

We submit that such means, in addition to being ineffective, are an unwarranted intervention of government into free exchange of information in the market place of ideas.

We further submit that imposing such means are an would disrupt the free market system and create anticompetitive conditions in the tobacco industry. Professor Blackwell and Professor Ward will elaborate on the marketing implications.

Finally, we submit that such means are unconstitutional, that they do violence to the First Amendment and the free speech rights it provides for advertiser and consumer. We have heard from the experts on this subject earlier today.

CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION

Mr. Chairman, a far wiser man than I said it most eloquently nearly sixty years ago. I would like to invoke his words to guide all of us here today at these important hearings.

"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 all respect, Mr. Chairman, the record is clear that advertising in general and tobacco advertising, in particular, is misunderstood by the appointed and self-appointed zealous guardians of the public health and welfare.

wc 1611

TIMN 294372

**CONFIDENTIAL:
MINNESOTA TOBACCO LITIGATION**