

**DRAFT OPENING STATEMENT**

**Federal Preemption of Advertising and Promotion**

Before I begin Mr. Chairman, I would like to quote from the Joint American Bar Association - American Newspaper Publishers Association Task Force:

"The difference between our country and many others is that our government may not decree better living through censorship."

How ironic then, in a time of exciting change towards democracy around the world, that Congress should now consider legislation that, would violate one of our basic principles of democracy -- freedom of speech.

H.R. 3943 would repeal the federal preemption of state regulation of local advertising. But when closely examined, one discovers it's simply a backdoor approach to a ban on cigarette advertising and promotion.

More than 25 years ago Congress enacted the Federal Cigarette Labeling and Advertising Act, ensuring national uniformity among advertising regulations. To disable the uniformity would encourage a proliferation of state and local laws and create a regulatory nightmare of confusion. It would also make it

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difficult, if not impossible, for tobacco companies to exercise their right to free commercial speech under the First Amendment, which is exactly what the anti-smoking activists want.

This is not the first time the anti-smoking movement has attempted to outlaw the advertising and promotion of cigarettes. During the last two Congressional sessions, a number of First Amendment experts and organizations testified against such advertising and promotion bans, including the American Civil Liberties Union, the Washington Legal Foundations, the Freedom to Advertise Coalition, the Association of National Advertisers and the American Association of Advertising Agencies.

Given the zeal of anti-smoking arguments, why didn't such legislation pass? Because as elected officials we recognized that, regardless of our personal views on smoking, the tobacco industry, like any other, is entitled to its First Amendment rights. We also recognized the harm in allowing one zealous faction of society to dictate its personal preferences on others.

Tobacco use in this country has declined dramatically. In fact, the prevalence of smoking by adults has dropped from 40 percent to 29 percent, according to the 1989 Surgeon General's report. Clearly, Americans are making a choice whether or not to smoke based on information found in a free marketplace. Further regulation of tobacco advertising won't help reduce tobacco

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smoking because research shows that tobacco advertising has little impact on consumption.

Even the Surgeon General stated in his 1989 report that "there is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption." And Michael Pertschuck, former chairman of the Federal Trade Commission and a leading anti-smoking advocate, said, "No one pretends that advertising is a major determinant of smoking in this country or any other."

The question before us today, Mr. Chairman, is not whether smoking is good or bad, but whether there is ample reason to injure something as basic and as cherished as freedom of speech so that children, women and blacks, as well as the rest of us, never see another cigarette ad.

Common sense argues against passing a law that unwisely erodes freedom of speech, even if its "just this once." We set a precedent every time we make an exception to what is protected under the First Amendment, making it easier and easier to go after other industries we may not "approve."

This legislation ignores the substantial constitutional concerns involved in mandating compliance with a needless patchwork of

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conflicting state and local advertising regulations. As was the case 25 years ago, there is no reason today to abandon Congress' consistent policy toward cigarette advertising and promotion by infringing upon the First Amendment.

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