



American Tort Reform Association

1850 M Street, N. W. • Suite 1095 • Washington, D. C. 20036-5803
(202) 682-1163 • Fax (202) 682-1022 • www.atra.org/atra

TO: Senators and Staff

FROM: Victor Schwartz, Esq. and Mark Behrens, Esq.
Crowell & Moring LLP
Counsel to the American Tort Reform Association

DATE: June 21, 1999

RE: *Unsound and Unconstitutional Appropriations Amendment*

This week, the Senate is expected to consider the appropriations bill for the Departments of Commerce, Justice and State, the Judiciary and Related Agencies (S. 1217). We are deeply concerned that one or more Senators may offer: (1) an amendment to restore funding to the Department of Justice to pursue litigation against the tobacco companies to recover federal funds allegedly paid out under Medicare as a result of tobacco-related illnesses; and (2) an amendment that would greatly expand the Federal Government's power to bring direct legal actions against tobacco companies and, presumably, any other industry to recover Medicare funds. These are not ordinary lawsuits, but substitutes for regulation and taxation. The Department of Justice would become a "super plaintiff" against private defendants.

Regardless of assurances from the Attorney General, the principles at the core of the proposed amendments could affect all industries. Future targets of governmental cost recovery litigations could include producers of beer and wine and other adult beverages, and manufacturers of pharmaceuticals, firearms, chemicals, and automobiles. Even Internet providers, the gaming industry, the entertainment industry, the media, the dairy industry, and fast food restaurants could be targeted.

We strongly urge you to vote against these amendments and any other amendments that would facilitate regulation and taxation through litigation. Such "litigation enhancement" proposals represent unsound public policy and, if enacted, would likely be declared unconstitutional.

We explain these issues in the attached Washington Legal Foundation LEGAL BACKGROUNDER. A second paper (attached) by Citizens for a Sound Economy's J.V. Schwan provides an excellent overview of the proposed Department of Justice litigation. If you have any questions about these materials or the proposed amendments, please call either Victor Schwartz at 624-2540 or Mark Behrens at 624-2675 or send us an e-mail at vschwartz@cmor.com or mbehrens@cmor.com.

2073094802