

-1-

EAH SENATE STATEMENT
ORAL SUBMISSION - SHORT VERSION
DRAFT V
5/7/82

MY NAME IS EDWARD A. HARRIGAN JR., AND I AM
APPEARING BEFORE THIS COMMITTEE IN MY CAPACITY AS
CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE TOBACCO
INSTITUTE, AN ASSOCIATION OF TOBACCO MANUFACTURERS
WHICH IS HEADQUARTERED IN WASHINGTON, D.C. I AM
ALSO CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF R.J.
REYNOLDS TOBACCO COMPANY.

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-2-

WITH ME TODAY ARE DR. LARRY LIGHT, EXECUTIVE
VICE PRESIDENT, TED BATES, INC., AND DR. ROGER D.
BLACKWELL, PROFESSOR OF MARKETING, OHIO STATE
UNIVERSITY.

WE ARE HERE TODAY TO PROVIDE THE MEMBERS OF
THIS COMMITTEE WITH THE TOBACCO INDUSTRY'S VIEWS ON
S. 1929, THE COMPREHENSIVE SMOKING PREVENTION
EDUCATION ACT.

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ON THE BASIS OF ALL THE FACTS AVAILABLE, NOT JUST THOSE SELECTED BY THE INDIVIDUALS AND ORGANIZATIONS OPPOSED TO SMOKING, WE CAN FIND NO JUSTIFICATION FOR THIS BILL AND BELIEVE IT TO BE BAD, UNNECESSARY LEGISLATION. ITS PROVISIONS REPRESENT A MISGUIDED ATTEMPT BY THOSE OPPOSED TO SMOKING TO FURTHER IMPOSE THEIR BELIEFS UPON MILLIONS OF AMERICANS WHO CHOOSE TO USE TOBACCO PRODUCTS. THE PASSAGE OF THIS BILL WOULD IMPOSE A WEB OF TECHNICALLY COMPLEX REGULATIONS UPON ONE OF THIS NATION'S OLDEST INDUSTRIES, AND THERE IS SIGNIFICANT EVIDENCE TO SUGGEST THAT ITS IMPLEMENTATION COULD ACTUALLY LESSEN PUBLIC

AWARENESS OF CIGARETTE HEALTH WARNINGS. THIS BILL ALSO RAISES SERIOUS CONSTITUTIONAL QUESTIONS UNDER THE FIRST AMENDMENT.

LET ME FIRST ELABORATE ON MY CONTENTION THAT THIS BILL IS UNNECESSARY.

BASED UPON THE EVIDENCE SUPPLIED BY SEVERAL HIGHLY RESPECTED PUBLIC OPINION RESEARCH ORGANIZATIONS, IT IS APPARENT THAT PUBLIC AWARENESS ABOUT THE ALLEGED ASSOCIATION BETWEEN SMOKING AND DISEASE PROBABLY EXCEEDS THAT OF ANY MAJOR CONTEMPORARY ISSUE. STUDIES BY BOTH THE ROPER AND GALLUP ORGANIZATIONS REACHING BACK TO 1978 INDICATE THAT NINETY PERCENT OR MORE OF THE POPULATION IS

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AWARE OF THE CLAIM THAT SMOKING IS HAZARDOUS TO HEALTH.

SUCH A HIGH LEVEL OF AWARENESS BY THE PUBLIC SHOWS THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT IS WORKING. WHY, THEN, IS IT NECESSARY TO CONSIDER AN UNPROVEN AND COMPLEX SYSTEM OF ROTATING HEALTH WARNINGS?

IN ITS REPORT, THE FTC STAFF CONCLUDED THAT SUCH WARNINGS ARE NEEDED BECAUSE THE PRESENT WARNING HAS BECOME "INEFFECTIVE" AND DOES NOT ADEQUATELY INFORM THE PUBLIC OF CLAIMED "NEW FINDINGS" AND SPECIFIC CHARGES ABOUT THE ALLEGED RELATIONSHIP BETWEEN SMOKING AND HEALTH. BUT THIS

REPORT IS FUNDAMENTALLY FLAWED, AS A LETTER TO REP. HENRY WAXMAN FROM BURNS W. ROPER, CHAIRMAN OF THE ROPER ORGANIZATION WHOSE STUDIES ARE CITED EXTENSIVELY IN THE FTC REPORT, CLEARLY STATES.

MR. ROPER SAID, "THE FTC STAFF CONCLUDES, BASED ON OUR AND OTHER SURVEY DATA, THAT THE PUBLIC IS INADEQUATELY INFORMED ABOUT THE DANGERS OF SMOKING. USING EXACTLY THE SAME DATA ON WHICH THEY BASE THEIR CONCLUSION, I WOULD CONCLUDE ALMOST EXACTLY THE OPPOSITE -- THAT THE PUBLIC IS HIGHLY AWARE OF THE REPORTED DANGERS OF SMOKING ...

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I WOULD REQUEST AT THIS TIME, MR. CHAIRMAN,
THAT A COPY OF MR. ROPER'S LETTER BE ENTERED INTO
THE RECORD OF THESE PROCEEDINGS. I WOULD ALSO ADD
THAT MR. ROPER IS HERE TODAY SHOULD YOU WISH MORE
INFORMATION.

I CALL YOUR ATTENTION TO THE FACT THAT EVEN
THE FTC'S CURRENT DIRECTOR OF CONSUMER PROTECTION,
MR. TIMOTHY J. MURIS, HAS ACKNOWLEDGED THAT NINETY
PERCENT OF THE PUBLIC IS AWARE OF THE HEALTH RISKS
ALLEGEDLY ASSOCIATED WITH SMOKING AND THAT THERE IS
NO EVIDENCE WHATSOEVER THAT CURRENT CIGARETTE
ADVERTISING DECEIVES ANYONE.

THEREFORE, ROTATING HEALTH WARNINGS CANNOT BE JUSTIFIED ON THIS BASIS.

DR. YORAM J. WIND, PROFESSOR OF MARKETING AT THE WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA, GAVE THE FOLLOWING EVALUATION AT THE HEARINGS ON H.R. 5653: "... IT IS QUITE POSSIBLE THAT THE RATIONAL HEALTH WARNINGS PROPOSED ... WOULD HAVE AN OPPOSITE EFFECT OF WHAT IS INTENDED BY THE BILL'S SPONSORS."

FURTHER, A REVIEW OF THE FTC'S DATA BY ONE OF
TODAY'S PANEL MEMBERS, DR. ROGER D. BLACKWELL,
PROFESSOR OF MARKETING AT OHIO STATE UNIVERSITY AND
A RECOGNIZED EXPERT IN THE FIELD OF CONSUMER
BEHAVIOR, SUGGESTS THAT ROTATING HEALTH WARNINGS
MAY WELL DECREASE PUBLIC CONCERN ABOUT
SMOKING-AND-HEALTH ISSUES.

LET ME QUOTE BRIEFLY FROM A WRITTEN STATEMENT
BY DR. BLACKWELL ENTERED INTO THE RECORD OF SENATOR
HATCH'S HEARINGS ON MARCH 16.

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"... EVEN THE PRELIMINARY RESEARCH THAT HAS BEEN DONE TENDS TO SUPPORT THE CONCLUSION THAT THE PROPOSED ROTATIONAL WARNINGS WOULD BE CONSIDERED IRRELEVANT BY SOME CONSUMERS, AS COMPARED TO THE PRESENT WARNING STATEMENT THAT ANNOUNCES TO EVERY CONSUMER THE SURGEON GENERAL'S CONCLUSION THAT 'SMOKING IS DANGEROUS TO YOUR HEALTH.'"

I AM SURE DR. BLACKWELL WILL ELABORATE IF YOU WISH.

NOT ONLY ARE THE ROTATING WARNINGS UNNECESSARY IN VIEW OF BROAD PUBLIC AWARENESS OF THE ISSUES AND POSSIBLY COUNTERPRODUCTIVE, THEY ARE ALSO TECHNICALLY UNWORKABLE CUMBERSOME AND CREATE A LOGIISTICAL NIGHTMARE FOR MANUFACTURERS.

IN DECEMBER 1981, THE FTC REPORTED "TAR" AND NICOTINE LEVELS ON TWO HUNDRED CIGARETTE BRAND STYLES. NEW BRANDS ARE CONSTANTLY BEING INTRODUCED AND OLD ONES WITHDRAWN. YET UNDER THE PROVISIONS OF THE BILL, EVERY BRAND OF CIGARETTES WOULD BE REQUIRED TO CARRY EACH OF THE FIVE WARNINGS CALLED FOR AN EQUAL NUMBER OF TIMES DURING A FIFTEEN-MONTH PERIOD. FURTHER COMPLICATING THE MATTER IS THE ADDITIONAL REQUIREMENT THAT AT ANY GIVEN TIME EACH OF THE FIVE WARNINGS MUST APPEAR ON "AT LEAST FIFTEEN PERCENTUM OF ALL CIGARETTE PACKAGES AND ADVERTISING."

IT WILL BE VIRTUALLY IMPOSSIBLE TO ENSURE THAT EACH WARNING STATEMENT IS PRESENTED TO THE PUBLIC AN EQUAL NUMBER OF TIMES. THE NUMBER OF ADVERTISEMENTS USED VARIES GREATLY FROM BRAND TO BRAND AS DOES SALES VOLUME. THEREFORE, EQUALIZING WARNING STATEMENTS AMONG ALL BRANDS WILL HAVE NO RELATIONSHIP TO THE NUMBER OF TIMES EACH STATEMENT IS EXPOSED TO THE PUBLIC.

TURNING TO THE OTHER PROVISIONS OF THIS BILL, WE BELIEVE THAT THE REQUIREMENT FOR DISCLOSURE OF "TAR," NICOTINE AND CARBON MONOXIDE LEVELS ON PACKAGES AND IN ALL ADVERTISING IS UNWARRANTED.

SINCE 1970 CIGARETTE MANUFACTURERS HAVE MADE "TAR" AND NICOTINE LEVELS WIDELY AVAILABLE TO THE PUBLIC IN CIGARETTE ADVERTISING. SMOKERS WHO CHOOSE THEIR BRAND ON THE BASIS OF "TAR" AND NICOTINE LEVELS CAN READILY OBTAIN THIS INFORMATION.

THERE IS ALSO NO PURPOSE TO BE GAINED BY THE DETERMINATION OR PUBLICATION OF CARBON MONOXIDE YIELDS. SCIENTIFIC EVIDENCE DOES NOT ESTABLISH THAT EXPOSURE TO CARBON MONOXIDE FROM CIGARETTE SMOKING IS HAZARDOUS TO HEALTH. FURTHERMORE, NO SINGLE METHOD OF CARBON MONOXIDE MEASUREMENT IN CIGARETTE SMOKE HAS GAINED GENERAL ACCEPTANCE IN THE SCIENTIFIC COMMUNITY.

THE PROVISION REQUIRING DISCLOSURE OF
INGREDIENTS IS ALSO UNNECESSARY AS THE INDUSTRY HAS
ALREADY AGREED TO MAKE AVAILABLE NECESSARY
INFORMATION ON INGREDIENTS TO HHS.

WE ARE AWARE THAT THERE HAVE BEEN SOME EFFORTS
TO BUILD SUPPORT FOR THIS BILL WITH CLAIMS THAT ITS
PROVISIONS WOULD SERVE AS A DETERRENT TO SMOKING
AMONG YOUNG PEOPLE AND THAT INDUSTRY ADVERTISING
AND PROMOTIONAL PRACTICES ARE INTENDED TO ENCOURAGE
YOUTHFUL SMOKING.

SUCH CHARGES ARE WITHOUT FOUNDATION.

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THE WRITTEN SUBMISSIONS OF EXPERT WITNESSES WHICH HAVE BEEN PROVIDED TO THIS COMMITTEE CLEARLY POINT OUT THAT THE PROVISIONS OF THIS LEGISLATION CAN IN NO WAY BE JUSTIFIED BY THE EMOTIONALLY APPEALING BUT UNSUPPORTED ASSERTION THAT CIGARETTE ADVERTISING ENCOURAGES A YOUNGSTER TO SMOKE.

OUR INDUSTRY'S POSITION IS THAT SMOKING IS AN ADULT PRACTICE TO BE CONSIDERED ONLY BY THOSE MATURE ENOUGH TO MAKE AN INFORMED DECISION.

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OUR ADVERTISING IS TARGETED AT SMOKERS AND IS INTENDED TO ENCOURAGE SWITCHING FROM COMPETITIVE BRANDS. THE AVAILABLE EVIDENCE CLEARLY SHOWS THAT OUR ADVERTISING IS NOT DESIGNED TO ATTRACT NEW SMOKERS OF ANY AGE AND IS NOT HAVING THAT EFFECT. IN FACT, GOVERNMENT REPORTS SHOW THAT THE PERCENTAGE OF SMOKERS IN THIS COUNTRY IS DECLINING.

IN CONCLUSION, MR. CHAIRMAN, IT IS OUR FIRM BELIEF THAT THE WEIGHT OF ALL THE AVAILABLE EVIDENCE DEMONSTRATES THAT THIS BILL REPRESENTS BAD LEGISLATION.

IT DOES NOT HAVE A VALID SCIENTIFIC BASIS BECAUSE THE "FINDINGS" USED TO SUPPORT IT WILL NOT STAND UNBIASED SCIENTIFIC SCRUTINY.

IT IS UNNECESSARY BECAUSE THE PRESENT SURGEON GENERAL'S WARNING HAS CREATED UNPRECEDENTED PUBLIC AWARENESS OF THE ALLEGED ASSOCIATION BETWEEN SMOKING AND HEALTH.

IT IS COUNTERPRODUCTIVE FOR TWO IMPORTANT REASONS. FIRST, ACCEPTANCE OF THE SCIENTIFIC STATEMENTS MADE IN IT COULD WELL DETER MUCH-NEEDED RESEARCH INTO THE CAUSES OF CHRONIC DISEASE. SECOND, IT MAY WELL LESSEN PUBLIC AWARENESS OF THE ISSUES REGARDING SMOKING.

BUT PERHAPS MOST IMPORTANTLY, THIS BILL IS BAD LEGISLATION BECAUSE IT SERIOUSLY ERODES THE PRINCIPLE OF FREE CHOICE IN OUR SOCIETY. IT IMPLIES THAT THOSE WHO DO NOT CONFORM ARE UNINFORMED -- THAT THEY CANNOT BE ALLOWED TO REJECT OPPOSING VIEWS REGARDING THE USE OF TOBACCO PRODUCTS. THIS REFLECTS A PROHIBITIONIST AND PATERNALIST MENTALITY WHICH THE CITIZENS OF THIS NATION HAVE ALREADY REJECTED, AND WHICH WE STRONGLY DOUBT THEY WOULD ACCEPT NOW.

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-19-

WE FIRMLY BELIEVE THIS BILL IS AN UNWARRANTED
INTERVENTION BY THE FEDERAL GOVERNMENT INTO THE
LIVES OF PRIVATE CITIZENS, AND REPRESENTS A THINLY
VEILED EFFORT TO FURTHER HARASS AN INDUSTRY WHICH
IS ALREADY HEAVILY BURDENED BY LEGISLATION.

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