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Assemblyman 127th District

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Docket Nos. 95N-0253 and 95N-0253J
Docket Management Branch (HFA-305)
Food and Drug Administration
12420 Parklawn Drive
Rockville, Maryland 20857

Dear Commissioner David Kessler:

I am writing regarding your proposal to regulate the sale, distribution, advertising and promotion of tobacco products. At the outset, I want to make it clear that I strongly support our own strict state laws prohibiting the sale of tobacco products to minors; enacted, by the way, long before the FDA decided to turn its attention to this issue. However, as a member of the State Legislature of New York, I am strongly opposed to this over-reaching power grab by the FDA because:

1. It is intrusive and over-regulatory;
2. It is duplicative and unnecessary; and
3. It is without jurisdiction - Congress has not delegated the authority to the FDA.

This new FDA action is yet another effort to become the type of "super-legislature" which the states have previously objected to. In early versions of its ADAMHA regulations, the HHS attempted to force state legislatures to enact restrictions not authorized by Congress. Again, states are at risk of the FDA usurping their legislative prerogatives.

We in New York have our Adolescent Tobacco-Use Prevention Act, McKinney's Pub. Health Law sec. 1399-aa et seq., which addresses all of the issues you propose to regulate. Your regulations are unnecessarily duplicative, for our state and many others.

Our State Legislature has already enacted an 18 year old minimum age of purchase requirement, in addition to other restrictions, and will continue to enact our measured, reasonable responses when required. States have traditionally exercised discretion over most aspects of retail transactions occurring within its borders. The FDA proposal would impose new and additional restrictions and obligations on retailers and manufacturers that may not be suitable for New York.

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