

CAMPAIGN For TOBACCO-FREE Kids®

RECENT CIGARETTE COMPANY STATEMENTS REGARDING FEDERAL AUTHORITY OVER TOBACCO

Starting a couple of weeks before the March 21, 2000 U.S. Supreme Court's ruling that existing law does not provide the U.S. Food and Drug Administration (FDA) with regulatory jurisdiction over tobacco products, the major U.S. cigarette companies have been saying that they will agree to support or at least discuss some alternative new form of federal jurisdiction over tobacco products. Although the companies have been a bit short on detail, the following industry statements provide some idea of what kind of federal authority over tobacco products the cigarette companies might support and which types they would oppose.

On Their Willingness to Support or Discuss Federal Regulation of Tobacco

Philip Morris: "This decision closes one door but hopefully opens another. We opposed the FDA Rule because regulation of cigarettes as "medical devices" was inappropriate and could have led to Prohibition, as the Supreme Court has determined. But federal regulation of cigarettes as cigarettes, dealing with youth smoking while respecting an adult's right to smoke, makes sense for smokers and manufacturers alike. Useful approaches, in our view, would include the following elements:

- Actions designed to reduce youth smoking while respecting an adult's right to smoke and building on the state tobacco settlement agreement;
- Appropriate Federal oversight of cigarette manufacturing and of ingredients;
- Government-led efforts to define reduced-risk cigarettes that could be made available and marketed to adult smokers
- Government requirements to provide additional disclosures to smokers about cigarettes.

We are ready and eager to engage in a useful, positive discussion on these issues."¹

Philip Morris, Steven Parish, senior vice president: "I have no problem with the FDA regulating tobacco in the context of a reasonable regulatory system if that's what the members of Congress decide."²

Philip Morris, Steven Parish, senior vice president: "The Supreme Court has told us what the law is. Now let's figure out what's a tough, common sense, reasonable way to regulate tobacco products going forward. That's what I'd like to see us do."³

Philip Morris, Steven Parish, senior vice president: "[The cigarette] certainly is a product that causes serious harm in a lot of people who use it, and it certainly is an addictive product. . . I've acknowledged those two points before. And it seems to me what the court has given us today. . . is an opportunity to sit down and say, okay, let's assume Justice O'Connor is right and that this is a significant public health issue. Let's assume we have a harmful product. Let's assume that it is a legal product and that there would be profound consequences to banning that legal product, and let's try to sit down and figure out what is the right way to regulate it."⁴

Philip Morris, Mark Berlind, senior assistant general counsel: "The most important thing that we would like to see is that we . . . have a constructive discussion about what kind of national tobacco policy we should have."⁵

Philip Morris, Brendan McCormick, "Our time will be best spent hammering out a resolution everyone can live with rather than continuing the name calling of the past. We want to make progress on the issue of federal regulation of cigarettes, and to do that we need a seat at the table."⁶

Philip Morris, Steven Parish, senior vice president: "It is an honestly held, good-faith belief on my part that there needs to be more than just some regulation. . . . There needs to be serious regulation of the tobacco industry at the federal level. The way I get there is much the same way that Dr. Kessler [former head of FDA] gets there when he talked to the Congress of the United States a couple of years ago, when he said, here we have a dangerous product, tobacco, which is addictive, which causes harm to some of the people who use it."⁷

Philip Morris, Steven Parish, senior vice president: "I believe that nicotine is a drug. I do not believe . . . that merely because nicotine is a drug that that means it should be regulated as a pharmaceutical or as a medical device under the Food, Drug and Cosmetic Act. . . . But I don't think this should stop us – the fact that there is this very fundamental dispute about the proposed FDA rule – in trying to talk about what is the right way to regulate the product. . . . So I want to sit down and talk to you, obviously, and a lot of other people about what is the right regulatory regime for tobacco, not as a pharmaceutical or as a medical device but as a tobacco product – which is addictive, I've conceded that, and which causes harm to some people."⁸

Philip Morris, Steven Parish senior vice president: "What I want to talk about is what is the right way to regulate the product going forward. That is the topic of our panel. Let's work together to figure out the regulatory system, talking to members of Congress, that makes sense for tobacco products. I understand the skepticism, I understand the hostility. We have spent so much time pointing fingers at one another. . . . That is over as far as I am concerned, for my part that is not going to happen. What I want to do is figure out a policy that makes sense for the future, for one of the products that my company makes."⁹

Philip Morris, Steven Parish senior vice president: "And another thing I think we have to keep in mind is that if there are going to be others who are impacted by whatever the Congress decides – whether it is operators of vending machines or retailers or others – we sure need to reach out to those people and hear what their points of view are on this."¹⁰

RJR, Charles Blixt, executive vice president and general counsel: ". . . we are willing to begin a dialogue with Congress on reasonable options for additional regulation of the design and manufacture of cigarettes at the federal level."¹¹

RJR, Charles Blixt, executive vice president and general counsel: "If Congress determines that new or additional regulation of cigarettes is appropriate, we would be open to discussing that. . . . We would like to come to a consensus on what constitutes a reduced-risk cigarette."¹²

Brown and Williamson: "The industry has accepted numerous marketing restrictions, including taking down billboards, as mandated by our agreement with the states. Further, Brown & Williamson has stated on numerous occasions, including remarks by our CEO Nick Brookes before the National Press Club in January, that we seek a cooperative dialogue with government and the public health community to address key tobacco-related issues facing the country."¹³

On Their Continued Opposition and Concerns Regarding Full FDA Authority

Philip Morris: "We opposed the FDA Rule because regulation of cigarettes as "medical devices" was inappropriate and could have led to Prohibition, as the Supreme Court has determined."¹⁴

Philip Morris, Steven Parish, senior vice president: "I believe that nicotine is a drug. I do not believe . . . that merely because nicotine is a drug that that means it should be regulated as a pharmaceutical or as a medical device under the Food, Drug and Cosmetic Act. . . . Here is one of my fundamental points: As I understand what government lawyers said in the Supreme Court case, if the FDA regulates tobacco as a medical device, which is what the proposal is, that it is subject to the safety and efficacy requirements of the act and therefore, either on its own or pursuant to a petition by a third party, FDA could be forced to ban the product to adults. I don't think that makes sense."¹⁵

RJR, Charles Blixt, executive vice president and general counsel: "Clearly, cigarettes do not meet the definition of a drug or a medical device under the Federal Food, Drug and Cosmetic Act. . . . [And] it is clear that the FDA's charter currently does not give it the authority to regulate this industry."¹⁶

RJR, Charles Blixt, executive vice president and general counsel: "The broad-sweeping proposals that the FDA had that were struck down by the Supreme Court we clearly could not support."¹⁷

RJR, Charles Blixt, executive vice president and general counsel: "People have a broad range of choices of tar and nicotine levels available to them, and people choose to smoke those that they want to smoke. What the FDA's rule was trying to do was make cigarettes unpalatable and unmarketable and eventually try to put us out of business."¹⁸

Brown and Williamson: "Business and industry throughout the nation ought to breathe a sigh of relief. The highest court in the land has confirmed that a federal agency cannot on its own go beyond its limits of authority set by Congress."¹⁹

Brown and Williamson: "While we are pleased by the Court's decision, it should be noted that much has changed since the FDA first tried to exercise authority over tobacco in 1996. Many of the things that the FDA tried to mandate have already been enacted. For example, the industry is working actively with retailers on programs to ensure that age identification is required to purchase cigarettes and on other efforts to prevent youth access to tobacco."²⁰

Brown and Williamson, Burt Rein, attorney for B&W: "I don't think Brown & Williamson is interested in having a mega-bureaucracy built up around tobacco regulation."²¹

Brown and Williamson, Burt Rein, attorney for B&W: "It's very important to Brown & Williamson to deal with the problem of youth smoking. We've been trying to deal with it on a private basis, we've been trying to deal with the states. . . . We're very much open to dialogue but we think that the problem has to be solved independently with some blanketing of the pre-existing regime."²²

Lorillard: "The decision will hopefully bring to an end this politically expedient attempt to dramatically expand the agency's power to regulate adult behavior -- all under the guise of addressing the issue of teen smoking."²³

Phillip Morris's Stated Willingness to Be Put Out of Business by Anti-Youth-Smoking Efforts

Philip Morris, Steven Parish senior vice president: "I believe that in the future there will be a smaller group of people who smoke, but, if you are right, Dr. Kessler, and [if] as a result of cracking down and doing everything we can in a comprehensive way to keep kids from smoking our adult business dries up, our company is prepared to accept that. And I know that doesn't make sense to a lot of people but I can tell you, having lived through this for the last six years, that our belief is, if we are perceived to be a part of the smoking problem, then society in this country will not allow our corporation to exist. We have one of the finest companies in the world, we own Kraft Food, Miller Brewing and lot of other great businesses. We want those businesses to continue growing. But if we are not part of the solution I think the future of our company is not a good one. That's why, if no adults smoke as a result of cracking down on youth smoking, we are prepared to accept that and we will invest our assets in other businesses."²⁴

National Center for Tobacco-Free Kids, April 19, 2000

¹ *Philip Morris Press Release* (March 21, 2000).

² The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

³ The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

⁴ The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

⁵ Rubin, A. & H. Weinstein, "Big Tobacco Gets a Chance to Deal Analysis: Ruling Could Allow Industry to Trade Concessions on Regulation for Permission to Market 'Safe Cigarettes' But Congress May Not Be Receptive," *Los Angeles Times* (March 22, 2000).

⁶ Goldstein, J., "Capitol Hill a Little Leery of Effort to Regulate Tobacco Industry," *Philadelphia Inquirer* (March 23, 2000).

⁷ "Verbatim; Big Tobacco's Changing Tune," *Washington Post* (March 3, 2000).

⁸ "Verbatim; Big Tobacco's Changing Tune," *Washington Post* (March 3, 2000).

⁹ "Verbatim; Big Tobacco's Changing Tune," *Washington Post* (March 3, 2000).

¹⁰ The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

¹¹ *RJR Press Release* (March 21, 2000).

¹² *RJR Press Release* (March 21, 2000).

¹³ *Brown and Williamson Press Release* (March 21, 2000).

¹⁴ *Philip Morris Press Release* (March 21, 2000).

¹⁵ "Verbatim; Big Tobacco's Changing Tune," *Washington Post*, March 3, 2000.

¹⁶ *RJR Press Release* (March 21, 2000).

¹⁷ Elliott, D., *NPR Morning Edition* (March 22, 2000).

¹⁸ Elliott, D., *NPR Morning Edition* (March 22, 2000).

¹⁹ *Brown and Williamson Press Release* (March 21, 2000).

²⁰ *Brown and Williamson Press Release* (March 21, 2000).

²¹ The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

²² The News Hour, "Tobacco Tussle," *Public Broadcasting System* (March 21, 2000).

²³ *Reuters*, "Cigarette Makers 'pleased with Supreme Court Ruling'" (March 21, 2000).

²⁴ "Verbatim; Big Tobacco's Changing Tune," *Washington Post* (March 3, 2000).