



Written by [Patrick Krey](#) on June 18, 2009

Nanny State Targets Tobacco

It is ironic that those active in the drug decriminalization movement expressed optimism that Obama might make strides to roll back the war on drugs/drug prohibition when it appears that he is actively seeking to expand it (much like [he is doing](#) with the War on Terror). The proposed legislation would allow the Food and Drug Administration to "ban some chemicals in tobacco products.... The F.D.A. would have the power not only to consider changing existing products, but also to ban new products unless the agency found they contributed to overall public health."



The absurdity of the new rules seems almost comical. One of the measures includes a [requirement](#) that advertising must be designed by the FDA and occupy 50 percent of the packaging. Can any smoker today honestly say they were not aware that smoking was unhealthy when they started? Or that, if there had been only a bigger, flashier warning on the package they might not have taken those initial puffs? Such self-delusion is only common to the lawmakers in Washington D.C.

Another sad irony is that when the federal bureaucracy inserts itself into such matters, it is always prone to abuse by special interests. [Patrick Basham](#) of the CATO institute explains the involvement by Philip Morris, one of the world's largest tobacco corporations, in creating the legislation.

Handing tobacco regulation over to the FDA, as Congress is poised to do, is an epic public health mistake. It is tantamount to giving the keys of the regulatory store to the nation's largest cigarette manufacturer, Philip Morris. The legislation that will be voted on shortly in the Senate was cooked up out of public sight by Philip Morris, Sen. Ted Kennedy, Rep. Henry Waxman, and anti-tobacco lobbyists. Philip Morris staffers themselves even wrote large portions of the bill.

Indeed, Philip Morris competitors are arguing that the new FDA power will give the top tobacco company an unfair advantage in the marketplace. [National Public Radio](#) reports:

Reynolds and Lorillard [the # 2 and 3 tobacco corporations] — oppose it, in part because they believe it will prevent them from ever challenging the dominance of Philip Morris and its Marlboro brand. The bill gives the FDA broad authority over marketing and immediately clamps down on the few advertising venues still available to tobacco companies. Maura Payne, vice president of communications for Reynolds American, says, "As you limit even further companies' ability to talk to their customers, you potentially ... lock into place market share trends and sales trends." Reynolds also worries that under FDA regulation, it will now be much more difficult to bring new tobacco products to market — products that could enable it to challenge Philip Morris."

The question that is never asked when the federal government attempts to take a nanny state role is whether this action is constitutional. The Supreme Court has modified the true meaning of the first amendment on this issue to suit the political elite by creating post-constitutional judicial doctrines



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separating speech into artificial categories of commercial speech versus political speech but even under these arbitrary and convoluted standards, the court [might rule](#) against the FDA's new restrictions. Besides the violation of the first amendment, this action is yet another example of the federal government usurping power that it was never granted by the U.S. Constitution.

Out of the 425 members of Congress, it would appear that once again the sole voice of constitutional sanity was Congressman Ron Paul. Paul, himself a medical doctor very familiar with the adverse health effects of smoking, decried the unconstitutional and unnecessary use of the federal government to act as a nanny for adult citizens. Drawing parallels between government prohibition of marijuana with the new legislation and the resulting black market, Dr. Paul warned about the threat of a new black market for tobacco. In addition, Paul [reminded Americans](#) of their fleeting freedoms as compared to the founding generation.

Hemp and tobacco were staple crops for our Founding Fathers when our country was new. It is baffling to see how far removed from real freedom this country has become since then. Hemp, even for industrial uses, of which there are many, is illegal to grow at all. Now tobacco will have more layers of bureaucracy and interference piled on top of it. In this economy it is extremely upsetting to see this additional squeeze put on an entire industry. One has to wonder how many smaller farmers will be forced out of business because of this bill.



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