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May 11, 2011

The Honorable Bill Posey
U.S. House of Representatives
Washington, DC 20515

The Honorable Kathy Castor
U.S. House of Representatives
Washington, DC 20515

Dear Representatives Posey and Castor:

We are writing to express our strong opposition to H.R. 1639, legislation you have recently introduced that would exempt many cigars from regulation under the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31. We believe the Food and Drug Administration (FDA) should retain the authority to regulate all tobacco products, including cigars. When used as directed, products containing tobacco cause death and disease, and no tobacco products should be exempted from oversight by the agency.

Cigars are clearly within the scope of P.L. 111-31. The Act provides the FDA with authority to regulate the manufacture, sale and marketing of all tobacco products including cigars. The statute explicitly defines tobacco products as “any product made or derived from tobacco that is intended for human consumption...” and all cigars clearly fall under this definition. The Act immediately applied all of FDA’s new authorities, found in Chapter IX of the Federal Food, Drug, and Cosmetic Act (FDCA), to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and established a process for the Secretary of Health and Human Services to apply all or some of FDA’s authorities to other tobacco products, including cigars.

FDA has indicated it intends to deem cigars subject to Chapter IX of the FDCA, but it has not indicated what specific provisions or regulations will apply to cigars. Congress should not take action to exempt cigars from regulatory oversight. Any FDA proposal about cigars will be subject to Notice and Comment rulemaking, which is open to participation by all interested parties.

Cigar smoking is not safe. It causes cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are at increased risk for an aortic aneurysm. Daily cigar smokers, particularly those who inhale, have an increased risk of heart disease and chronic obstructive pulmonary disease (COPD).

Cigar smoking is the second most common form of tobacco use among youth. According to national surveys, nearly one in five (18.6%) high school boys currently smoke cigars (i.e., large and small cigars and cigarillos), and each day more than 3,400 kids under 18 years old try cigar smoking for the first time.

We are particularly concerned about the wide range of products that would likely be exempted from any regulation under your bill. Examples of the type of products that would likely be exempted include

Swisher Sweets Sweet Chocolate Blunts, Phillies Sugarillos Cigarillos (described on the box as “when sweet isn’t enough!”), White Owl grape Blunts Xtra, and Optimo peach Blunts. These products are among the most popular with youth and come in flavors that are attractive to youth.

As a result of an amendment offered by Senator Isakson (R-GA) during Senate committee consideration of the legislation, cigar companies were exempt from paying user fees until FDA began its regulation of the product. The Tobacco Control Act specifies that user fee shares will be allocated based on overall tobacco product market share, which is 3.65% percent. While you have expressed concern about the economic impact of FDA regulation of cigars, it is important to understand that the total costs of the user fees that would be imposed on traditional and large cigars would average less than 0.2 cents per cigar. That is a very small cost in light of the average cost of a traditional or premium cigar.

We strongly urge you to reconsider and withdraw your legislation.

Sincerely,



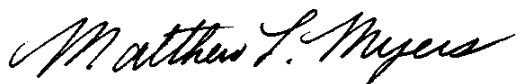
Christopher W. Hansen
President
American Cancer Society Cancer Action Network



Nancy A. Brown
Chief Executive Officer
American Heart Association



Charles D. Connor
President and Chief Executive Officer
American Lung Association



Matthew L. Myers
President
Campaign for Tobacco-Free Kids