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SAMUEL D. CHILCOTE, JR.
President

March 12, 1993

MEMORANDUM

TO: The Members of the Executive Committee

FROM: Samuel D. Chilcote, Jr. *Sam*

Rep. James Traficant (D-OH) yesterday convened the House Subcommittee on Public Buildings and Grounds to hear testimony on H.R. 881, the "Ban on Smoking in Federal Buildings Act." The bill would ban smoking in all federally owned and leased facilities in all three branches of government.

Three experts appearing at the request of The Tobacco Institute raised concerns about the scientific quality of the Environmental Protection Agency's (EPA) risk assessment of environmental tobacco smoke (ETS), which is the basis for the smoking ban proposal, and the inadequacy and inappropriateness of smoking bans in addressing indoor air quality concerns.

Subcommittee members in attendance included Committee Chairman Norman Mineta (D-CA) and Reps. Eleanor Holmes Norton (D-DC), Eddie Johnson (D-TX), James Clyburn (D-SC), Walter Tucker (D-CA), John Duncan (R-TN) and Bill Emerson (D-MO). An agenda and copies of available testimony are enclosed.

Media coverage was light. TI spokespersons were on site to provide the industry's position on the issues of smoker/nonsmoker accommodation and the claimed health effects of ETS.

Due to time constraints, the subcommittee asked the final scheduled panel of representatives from the American Lung Association and the Society of Critical Care Medicine to return at a later date. Subcommittee staff indicated that Hillary Rodham Clinton, who has written to Traficant in support of the bill's objectives, would be extended an invitation and encouraged to testify at that time. It also was suggested that the panel appearing at the request of The Institute would be invited back as well "in the spirit of fairness."

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The hearing began with testimony from Surgeon General Antonia Novello, who expressed support for H.R. 881 based on health claims made in the EPA report. Novello also used the hearing as a platform to address other "pressing" tobacco issues, including youth access to tobacco products and the impact of tobacco advertising on youth, women and minorities. Michael Eriksen, director of the federal Office on Smoking and Health, joined Novello to field questions about the "social cost" of tobacco use and its impact on health care. Erikson also stated that he anticipates increasing attention to liability issues as a result of the EPA report. In their comments, Reps. Traficant and Mineta also raised concerns about the workers' compensation and liability implications of the EPA's conclusions.

In statements submitted for the hearing record, subcommittee members Duncan, Emerson, and Clyburn and Rep. Nick Rahall (D-WV) expressed opposition to H.R. 881, citing the scientific deficiencies of the ETS risk assessment, the lack of adequate data regarding health effects of ETS specifically in the workplace, the impact of the bill on the collective bargaining rights of labor unions and general worker morale and productivity concerns.

In statements supporting the legislation, subcommittee member Johnson and Reps. Richard Durbin (D-IL) and Romano Mazzoli (D-KY) cited health care costs allegedly due to smoking, health concerns raised by the EPA report and concerns about employer liability.

Subcommittee members heard next from Dr. William Farland, director of the Office of Health and Environmental Assessment at EPA, who detailed the policy implications of the EPA report and expressed the Agency's intention to work closely with other agencies to reduce exposure to ETS. In response to questions from Rep. Duncan regarding the lung cancer mortality estimate in the EPA report, Farland acknowledged "uncertainties" in the ETS analysis but stood by the Agency's estimate.

Farland also defended the 90 percent confidence interval applied in the ETS assessment. ETS risk assessment project manager Steve Bayard, who appeared with Farland, described questions about the confidence interval as "bogus."

P. Gerald Thacker, acting commissioner of the General Services Administration's Public Building Service (PBS), testified in support of the proposal's objectives, but supported some modifications. Thacker said PBS advocates an indoor smoking ban as a cost effective means to prevent exposure to ETS, but suggested that enforcement should be left in the hands of individual agencies.

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In response to inquiries from Clyburn, Thacker acknowledged that separately ventilated areas would be acceptable in federal buildings, but added that Congress should consider the potential costs of providing such areas in all facilities.

Patricia Lattimore, acting director of the Office of Personnel Management (OPM), expressed the agency's "strong support" for the legislation but deferred to the General Services Administration regarding implementation.

Mark Hurwitz, executive vice president of the Building Owners and Managers Association International (BOMA), said his organization would support a Congressional mandate to achieve healthy indoor environments via smoking bans, adding that BOMA has officially adopted a position statement favoring bans in all workplaces. He conceded that questions remain regarding who should enforce such a requirement and who should be held legally liable.

The testimony of scientific experts appearing at The Tobacco Institute's request focused on the scientific flaws of the EPA risk assessment and the lack of scientific data suggesting that workplace exposure to ETS presents a health risk. Dr. Gio Gori, director of the Health Policy Center, called the EPA report "a glaring example of the misuse of science in support of preconceived policy aims." Gori also called the subcommittee's attention to the report Safeguarding the Future: Credible Science, Credible Decisions, which raised significant concerns about the quality and objectivity of EPA research.

Dr. Maurice LeVois, principal scientist with Environmental Health Resources, also addressed health issues related to ETS exposure, focusing specifically on workplace exposures. LeVois said studies that have examined the potential health risks of workplace exposure to ETS do not suggest an increase in risk.

Simon Turner of Healthy Buildings International (HBI), who also appeared on behalf of The Institute, discussed indoor pollution problems and solutions. Turner said that in HBI's investigation of hundreds of buildings, including the Longworth House Office Building, the U.S. Department of Health and Human Services and the Supreme Court, tobacco smoke has been found to account for less than three percent of indoor air quality complaints.

Turner also told the subcommittee that typical levels of ETS constituents in the workplace are hundreds and thousands of times lower than applicable standards allow. He noted that levels of benzene, which is produced by many common products and processes in addition to cigarette smoking, generally is lower in offices

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where discretionary smoking is allowed than in homes where no smoking occurs, and, in any event, is much lower than federal standards allow. Finally, Turner addressed data from indoor air quality surveys worldwide, which suggest that in countries where smoking bans are most common, absences due to indoor air pollution-related illnesses are most frequent.

Following Turner's presentation, several members suggested that the subcommittee would seek additional information about the general problem of poor indoor air quality when it reconvenes for hearings on the proposed ban.

We will keep you informed of further activity.

Enclosures

SDC:cah

cc: The Members of the Management Committee
The Members of the EPA/OSHA Task Force
The Members of the Committee of Counsel
TI Senior Staff

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