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HEALTH

# Legal Issues Likely To Impede Clinton Plan on Teen Smoking

It's hard to find anyone who says young people should be smoking cigarettes, dipping snuff or chewing tobacco. But that does not mean that President Clinton or Congress will be able to agree on how to keep teenagers away from tobacco.

Clinton's Aug. 10 announcement that he would direct the Food and Drug Administration (FDA) to begin a broad-scale attack on teenage smoking is likely to be delayed by courts or Congress. (Text, p. 2460)

Clinton invited Congress to pass legislation to achieve similar goals and thus prevent FDA intervention, but it seems unlikely that the Republican leadership will rush to pass such measures. Members risk angering the tobacco lobby, known for its influence and deep pockets, as well as giving Clinton a political victory.

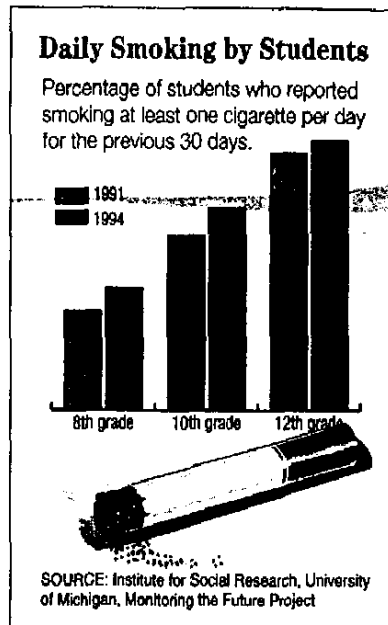
House Commerce Committee Chairman Thomas J. Bliley Jr., a Virginia Republican and longtime defender of tobacco interests, quickly indicated his preference to stay out of the matter: "Whether the FDA has the legal authority to regulate tobacco is a question for the courts, not Congress."

But some members — even those who support the tobacco industry — indicated a willingness to work on legislation. Sen. Wendell H. Ford, D-Ky., whose home state is the nation's No. 2 producer of tobacco, said he would introduce legislation after the August recess that would achieve the president's goals without hurting producers.

"My farmers lost out to the zealots," he said on the Senate floor just minutes after Clinton formally announced the proposals. "The administration has chosen litigation over compromise, delay over action."

Other Democratic senators vowed to back the administration. "Today we serve notice to the tobacco industry," said Frank R. Lautenberg of New Jersey. "If there is an effort to overturn the president's actions, there will be one huge fight in the U.S. Senate."

Outside of legislation to either enforce or mitigate the FDA regulations, members have other options available. Opponents of the administration pro-



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posals, for instance, could attach riders to any number of bills that would limit the FDA's rule-making or enforcement authority over tobacco. They could also try, as GOP Rep. Jim Bunning of Kentucky did July 21, to eliminate all FDA funding. Bunning's amendment was rejected by voice vote during floor debate on the spending bill for the Agriculture Department. (Weekly Report, p. 2168)

### Extent of the War

In his announcement, Clinton supported the FDA's controversial assertion that nicotine is an addictive drug. As such, the agency would have the power to restrict advertising aimed at youth and to enforce limits on youth access to tobacco products.

The proposed regulations would ban brand name advertising at sporting events and on such products as T-shirts and hats. Outdoor tobacco ads would be banned within 1,000 feet of schools and playgrounds. And advertising in publications that reach a significant number of children and teenagers would be limited to black and white text only, with no pictures.

To keep minors from easily getting cigarettes, the proposals would ban cigarette vending machines, self-service dis-

plays, mail orders and free samples. It would require buyers to prove they were 18 years old to get cigarettes or smokeless tobacco at stores. The rules, however, would not apply to cigars or pipe tobacco, on the assumption that those products are mostly used by adults.

Clinton also proposed requiring the tobacco industry to fund a \$150 million annual education campaign to discourage tobacco use by teenagers, with an emphasis on public service ads on prime-time television.

Clinton said he had no intent to limit adult use of tobacco products, only to counteract youth's susceptibility to "the deadly temptations of tobacco and its skillful marketing."

Among the statistics from the Department of Health and Human Services that Clinton cited were that 3,000 young people begin smoking daily; that 1,000 will die prematurely as a result and that the numbers are rising. Other data indicate that the average teenage smoker begins at 14 and is a daily smoker by age 18. The Centers for Disease Control and Prevention estimated the health care costs associated with smoking totaled \$50 billion in 1993.

The tobacco companies immediately filed suit, charging that the administration is overstepping its authority and is heading down the path toward prohibition of all tobacco products.

The litigation could take years to determine whether nicotine is a drug, whether the FDA has authority over tobacco products and whether the agency can impose such broad restrictions on an industry. Advertisers also said the administration's actions infringe on their rights to free speech.

The political implications were not lost on anyone. Clinton's actions presumably would antagonize voters in a number of Southern states, where his support for gun control and gays in the military have already dampened some enthusiasm for him. His base in the six leading tobacco states was already mixed: In 1992, he won Kentucky, Tennessee and Georgia (with 32 electoral votes) but lost North Carolina, South Carolina and Virginia (with 35 electoral votes). But nationwide polls show widespread support for moves to curb teenage smoking.

Clinton tried to downplay the politics. "First of all, the most important thing is that there is an epidemic among our children," he said. "Whatever the political consequences... a thousand kids a day are beginning a habit that will probably shorten their lives... That is the issue." ■

By Colette Fraley

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