

# C.A.T.S

Citizens Against Tobacco Smoke

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TESTIMONY OF

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ON BEHALF OF

CITIZENS AGAINST TOBACCO SMOKE

REGARDING LEGISLATION TO BAN SMOKING ON AIRLINE AIRCRAFT

BEFORE THE

SUBCOMMITTEE ON AVIATION

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

UNITED STATES HOUSE OF REPRESENTATIVES

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## I. INTRODUCTION

My name is Ahron Leichtman and I am President of Citizen's Against Tobacco Smoke. I'm also an independent motion picture producer and writer who has been involved in the national nonsmokers' rights movement for more than 18 years. Three years ago I founded a local group in Cincinnati, Ohio, where we were able to secure one of the most comprehensive nonsmoker protection laws in the nation which was also the first law of its kind in the mid-west. It took us ten months to get the law during which time we grew from a handful of volunteers to over five-hundred strong. We were able to secure the legislation despite a constant battle being waged against us by a very rich and powerful tobacco industry which said if the city of Cincinnati enacted the legislation businesses would move out of the city into the suburbs. But just the opposite happened. People are flocking into the city to dine because nonsmokers are afforded protection from tobacco smoke they can only find in less than 30% of the suburban restaurants. Most of the city's restaurants now seat two-thirds to three-quarters of all patrons in the nonsmoking section because the city felt the seating preferences should be based upon the law of supply and demand and not on a fixed percentage. That's an extremely significant point and I'll draw an analogy with the airlines in a moment. The Board of Health of the city of Cincinnati said it wanted an even-handed law that was fair to all so it made the law applicable to every restaurant and employer large and small -- not just those with 50 seats or more, or work places with 5 employees or more. Cincinnati's very strong work place regulations of smoking as well as the restaurant section was sought with one common goal in mind -- people who choose not to smoke should not be forced to do so. Would the same philosophical approach and the same campaign work for something that needs fixing at the federal level like banning smoking on all domestic flights?

In October of 1985 we had the opportunity to find out. Action on Smoking and Health sponsored the First World Conference on Nonsmokers Rights in Washington, D.C. and hundreds of the nations nonsmokers' rights and anti-smoking activists gathered to learn from Prof. John Banzhaf just how far we had come and how far we have to go in order to achieve what Surgeon General Koop calls a Smokefree Society by the year 2000. Activists like myself spelled out plans for a National Agenda and focused on methods for cooperative action. We discovered that many groups had common goals in mind and were willing to network and share information on several projects. Citizens Against Tobacco Smoke was formed in October of 1985 after six months of pre-planning. Our first major project was to secure a total smoking ban on all domestic flights. I resigned my local position to head the new national anti-smoking group called CATS, which began as a national coalition of activists and groups which recently broadened its base to include the public in its constituency. Our primary project for '87 and '88 is our SMOKEFREE SKIES CAMPAIGN to ban smoking on all domestic flights and in airline terminals. Our affiliates work with the news media to help generate coverage about the issue of airline smoking. Citizens Against Tobacco Smoke also serves as a resource and clearinghouse on the airline smoking issue for any entity which seeks information on the topic. In addition to our affiliates, we provide Members of Congress, the Department of Transportation (DOT/FAA), the National Transportation Safety Board, the Aviation Safety Commission, and the airlines with information that can lead to a total ban on all airline smoking. We have become one of the fastest growing anti-smoking organizations in the nation in part because we're concentrating on one issue that people feel very strongly about -- airline smoking. Citizens Against Tobacco Smoke is one of many national organizations which endorses a total ban on airline smoking. For the past 24 months I have worked almost exclusively with the airline smoking issue.

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Today my testimony will consist of some of the insight I've gained during the past two years dealing with this issue.

## II. WHY A TOTAL BAN ON SMOKING FOR ALL DOMESTIC AIRLINE FLIGHTS IS NECESSARY

Some real protection from exposure to tobacco smoke in the airliner cabin is needed for the 450 million people who are expected to travel by air this year. The nation's 90,000 flight attendants suffer most of all. Many have had to leave their jobs due to debilitating illnesses caused by breathing other people's smoke. The legislation you are considering today will resolve the matter. It bans smoking on all domestic flights. That's what the National Academy of Science 18 month long study released 14 months ago at a cost of \$500,000 to the nation's taxpayers called for - a total ban on smoking on all domestic flights. Three federal reports on involuntary smoking issued within a five-month period last year proved beyond the shadow of a doubt that it is dangerous to passively breathe a smoker's smoke. When you consider the fact that nine out of ten smokers say they want to quit and an overwhelming majority of people who smoke choose to sit in a nonsmoking section on an airplane, you begin to see why banning smoking in-flight not only protects nonsmokers and supports that National Academy of Science recommendation on a ban made 14 months ago, but it is also supportive of the smoker's decision to cut down or quit.

The current federal policy which permits passengers to smoke cigarettes in-flight is obsolete, unfair, unhealthy, and poses a severe threat to the safety, health, comfort, and well-being of all passengers who choose to travel by air. The airliner cabin is also the work place for over 90,000 flight attendants. All employers have an obligation to provide a work place free of harmful contaminants. The airlines have not done that for flight attendants. Government has the right and the obligation to protect the health of its citizens. Smoking should be banned on all commercial flights.

Any examination on whether or not to ban in-flight smoking must keep in mind a basic reality. Smoking is an optional behavior; breathing isn't. While smokers can choose to refrain from smoking, nonsmokers cannot choose to refrain from breathing, nor can they choose to be unaffected by smoke.

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Tobacco interests would have us believe we're destroying precious freedoms if we ban in-flight smoking. But this philosophical tug of war is nothing new as we can see from a similar controversy in the past.

In 1905, Governor Samuel Pennypacker of Pennsylvania vetoed proposed restrictions on public spitting of tobacco and declared, "It is a gentleman's right to expectorate." Today we all agree public spitting of tobacco is unacceptable. We don't have spitting or non-spitting sections on an airplane. Why then should smoking, a self-destructive and publicly obnoxious act, be permitted to harm airline passengers and crew? Why should 85% of the passengers seated in a nonsmoking section be forced to breathe the 3800 harmful chemicals -- including 84 known carcinogens -- contained in ambient tobacco smoke?

Our society lives by the principle of restricting behaviors which demonstrably jeopardize more important freedoms. Thus, Congress should take steps to ban smoking in-flight and protect the overwhelming majority of airline passengers and crew who work in the airliner cabin.

Some people consider it an admission of failure whenever an arm of government thinks it necessary to make an industry do what it ought to do out of ordinary courtesy and consideration. Airline regulation of in-flight smoking is a case in point. Corporate failure to act responsibly has caused us to be at this point. The airlines and their trade association should have dealt with this issue long ago. The airlines have said

they are waiting for government regulation. They fully expect it. Until now, the airlines appear to be supporting the position that smokers have some inherent privilege to assault others with the harmful and toxic chemicals which are the waste products of an addiction, and to fill an airplane -- including the lungs of all its passengers -- with disease-causing pollutants.

If someone came aboard a plane and pinched or slapped a flight attendant or spat upon her, the person would be removed from the plane and probably arrested. If someone brought a canister of the very same chemicals contained in ambient tobacco smoke on a plane, and sprayed them onto a flight attendant, they would be charged with assault and battery and arrested.

It is unfortunate that former Secretary of Transportation, Elizabeth Dole, took no positive steps on this issue nor did she even encourage the airlines to voluntarily ban smoking, as the Canadian Air Minister did. His experiment in Canada is an overwhelming success with a 96% approval rating. Canada even reported a 10% business increase for its Montreal and Toronto nonsmokers. Air Canada is just completing a 28 day trial smoking ban on all its 66 routes. Canada is expected to ban all in-flight smoking, possibly by the end of the year.

Ex-Secretary of Transportation, Elizabeth Dole, read the NAS Airliner report and six months later, finally made her recommendation to Congress not to ban smoking in flight. She was not convinced that tobacco smoke harmed anyone on the airliner. She felt the scientific proof wasn't there and "more study is needed." However, she failed to include two major studies that were available to her at the time she was

reading the report and drafting her recommendations. The first was issued by the National Academy of Sciences in mid-November of 1986 titled ENVIRONMENTAL TOBACCO SMOKE: MEASURING EXPOSURES AND ASSESSING HEALTH EFFECTS. The second report, the 1986 Surgeon General's Report on INVOLUNTARY SMOKING, was the work of more than 60 scientists from the United States and abroad, representing a variety of disciplines. The overall evidence justified the conclusion that among other places, smoking should definitely be banned on all domestic flights. The report confirmed what the other reports contend: Due to the rapid diffusion of tobacco smoke, the smoke on an airplane doesn't know where the smoking section ends and the non-smoking section begins. Airline personnel are forced to work in the smoking section even though it's like smoking four cigarettes a day for them. Passive smoke can cause disease in healthy nonsmokers.

Ever since the first Surgeon General's report on smoking in 1964, we have known smoking to be a killer. Until the 18th report, issued last year -- the nation's first on the health effects resulting from nonsmoker exposure to environmental tobacco smoke -- we didn't really have the extensive body of evidence needed for the profound changes in public policy that are forthcoming. Based on the 1986 Surgeon General's Report, the judgment can now be made that exposure to environmental tobacco smoke can cause disease, including lung cancer. It is also clear that simple separation of smokers and nonsmokers within the same airspace may reduce but cannot eliminate nonsmoker exposure to ETS which contains over 3800 chemicals including 84 known carcinogens. The nation's 90,000 flight attendants need protection from tobacco smoke most of all. They work an average of 900 hours per year in the airliner cabin. What Ex-Secretary Dole seems to be saying to them, and to the 450 million people who are expected to fly this year is "Let them eat smoke." The Tobacco Institute agrees. It claims an airliner smoking ban is unwarranted and premature.

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Granted, all we have are epidemiological studies including more than 600 papers in the scientific literature on passive smoke, some of them inferential, based on the analysis of statistics correlating passive smoking with an increased incidence of health problems. But how much longer do we force flight attendants and the flying public to serve as guinea pigs? Considering the evidence, an airliner ban should have gone into effect years ago. Why it hasn't is testimony to the power and clout of the tobacco industry. Years ago it apparently formed an unholy alliance with the airline industry which also opposes a smoking ban.

The Air Transport Association (ATA) asserts that the airlines have to accommodate preferences, and it says one third of the public chooses to smoke. Not so, according to a recent study put out by the Center for Disease Control which lists the figure as 26.5% of adults. The ATA also fails to take into consideration that the overwhelming majority of smokers choose to sit in a nonsmoking section on an airplane.

The Air Transport Association (ATA), the lobbying arm for the nation's airlines, sounds like the Air Tobacco Association and asserts that smokers have a need to smoke in flight. It contends the airlines would lose business if smokers were denied the privilege of smoking in flight. However, according to a FREQUENT FLYER POLL of September '86, only 12% of those polled chose to sit in a smoking section. One wonders how many of these folks would change their mode of travel to the train, the bus, or the boat if they couldn't smoke in flight. When people buy an airplane ticket they want to go from point A to point B as rapidly and as safely as possible. They are not buying a ticket because they're looking for a place to smoke. I did a little checking and learned from Prof. John Banzhaf at Action on Smoking and Health that the legal responsibility of a common carrier, according to common law going back to the days of stagecoaches, is that it must provide the highest possible standard



of safety and health for passengers. There is nothing in the common law that requires it to permit anybody to smoke or to drink or to burn incense or to chew or to spit tobacco. Yet the ATA talks in terms of "preferences." Somehow they have to accommodate preferences. Yet the Civil Aeronautics Board held from the beginning, and the U.S. Court of Appeals reaffirmed -- and many airlines have demonstrated -- that there is no legal right to smoke aboard an airplane. After 17 years of complaints, the airlines have done virtually nothing to solve the problem. They have not experimented with other proposals like designating some flights smokefree. They have not come up with different ventilation or physical barriers or a barrier of people who don't care between the smoking and nonsmoking sections. They do absolutely nothing and then when proposals are made, they say they oppose them. Why does the ATA feel that cigarette smokers are somehow entitled to more protection than pipe and cigar smokers? Pipe and cigar smoking is banned by most carriers. Those who derive the same satisfaction from chewing and spitting tobacco, or those who desire to burn incense, or to do a variety of other things, can't do so aboard a plane.

The Department of Transportation has kept track of public opinion rendered to it regarding the NAS Airliner recommendation on a total smoking ban. From August 14, 1986, to December 23, 1986, 412 letters favored a ban, and only 6 were opposed. That gives you an indication of public opinion sent to D.O.T.

In addition to the passive-smoking issue, there are other reasons why in-flight smoking should be banned. The accumulation of tobacco smoke also affects delicate airplane equipment. Safety, therefore, becomes an issue. Reports were documented at a news conference held in South Florida on July 12, 1987, that the following incidents have occurred and continue to occur in the airliner cabin: oxygen masks

have failed to drop in ground tests due to their matting surfaces being glued shut by tobacco tars; congealed tar and nicotine becomes frozen to flight control cables; outflow valves malfunction; in-flight fires occur; clothing and hands are burned caused by careless smoking; captains have to leave the cockpit to referee disputes over smoking or to help flight attendants look for dropped cigarettes between and beneath seats.

The potential for in-flight fires is a primary concern if smoking is permitted in the airliner cabin. The rear of any airplane now can be considered a sort of smoking salon. The transition into the lavatory with a passenger carrying a cigarette is not an uncommon sight, despite a rule against lavatory smoking. Although smoke alarms are mandatory, many have chime-like sounds, and it becomes very confusing to flight attendants because the ring sounds just like the call button noise. Smoke alarms can be made tamper-proof and equipped with loud alarms, and that should be done immediately. The Association of Flight Attendants has recommended criminal penalties as a way to deal with anyone caught smoking in a lavatory. When you stop to consider that such smoking jeopardizes the safety of everyone on the plane, violators should be firmly dealt with, and harsh penalties can serve that purpose.

Lavatory smoking is a major scare tactic currently being used by some to convince Congress and the public that an in-flight smoking ban would be a bad thing. That argument, however, fails to take into consideration the responsible nature of most smoking passengers and the fact that they are not going to run and hide out to have a cigarette. The proper kind of smoke alarm and penalties can deal effectively with violators. When smoking in-flight is banned under the new rules, those passengers who currently smoke in flight will be randomly scattered throughout the airliner cabin, seated next to other nonsmoking passengers. Peer pressure alone

will be enough to deter smoking. Smokers won't see anyone light up, and it will therefore be easier for them not to smoke. Finally, those who are severely addicted to nicotine can get a prescription from their doctor. There are several ways to get nicotine other than smoking tobacco. However, if people need to smoke that badly, they can break up their trip and smoke in a designated area inside the airport terminal. However, the smokers' addiction, and the harmful waste products from the addiction, should not be permitted to rule in the airliner cabin nor should the harmful and toxic chemicals inflict harm on the rest of the passengers and crew.

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### III. MUCH OF THE CONTROVERSY OVER BANNING SMOKING IN-FLIGHT BEGINS AT THE TOBACCO INSTITUTE.

Most United States Congressmen realize by now that the "institute" has little if any credibility. It is naive to suggest that an industry that produces an addictive product that kills nearly half a million Americans every year would be truthful about any harm associated with tobacco use. For example, the "institute" says some of its "research" indicates that more than 3800 chemicals contained in tobacco smoke, including 84 known carcinogens, aren't as harmful as health authorities have indicated. Believing that could be hazardous to your health. The Tobacco Institute is a non-scientific lobby similar to the Flat Earth Society which continues to deny that tobacco smoke is harmful to anyone, smokers or nonsmokers, and exists partly to enable the tobacco industry to justify the misrepresentation of factual information to make it appear that the controversy over smoking and health remains an open one.

While it is recognized that we have only scratched the surface in determining all of the adverse health effects of involuntary smoking, what we do know precludes any denial that exposure to second-hand smoke can be harmful. There is growing public acceptance of restrictions on smoking in public places. The benefits of a smoke-free environment are becoming increasingly apparent as the federal government, the

military, most states, and many of the nation's top companies have limited smoking in various locations. Some have even banned it altogether. The airlines are next in line and they are resisting it because they have been duped into believing the unbelievable.

The Tobacco Institute has cited an Airline Pilots Association Poll that purportedly shows that 87% of pilots favor the current separation policy. NO SUCH POLL WAS EVER TAKEN of all airline pilots. In November, 1986, ALPA polled its airline pilot chairmen (delegates) on cockpit smoking and they decided on a voluntary smoking ban in the cockpit. ALPA didn't ask pilots about a total ban, 3-hour ban, 2-hour ban, or the current policy that exists in the airliner cabin. While individual pilots overwhelmingly favor a total smoking ban, ALPA, in fact, opposes the proposed legislation on the grounds of safety--apparently believing the tobacco lobby which says some smokers would be apt to sneak into the lavatory to light up. If the product is that addictive, what we need is an addiction warning on the label and nicotine substitutes for people who need it when they fly. If addicted smokers can cause fires in airplane lavatories, let's ban airline smoking altogether, install tamper-proof smoke detectors with loud alarms, and propose criminal penalties to deal with offenders who would dare to jeopardize the health and safety of all passengers and crews.

As the situation now stands, a significant segment of the flying public suffers discomfort and illness in order to avail themselves of the most convenient and rapid form of intercity public transportation, and a smaller segment of the population-- people with cardiovascular disease, respiratory disease, and allergies-- is denied access altogether because of a life threatening or a debilitating condition. For

these people, and for the 450 million people who are expected to travel by air in 1987, a total ban is certainly warranted and public opinion says that's the kind of ban it wants. The two-hour compromise proposal which soon goes to the Senate floor is a political compromise. This legislation before you solves the problem. The issue boils down to health and safety versus greed. The health and safety of all passengers and crew versus the greed of the cigarette industry. The tobacco industry is the only industry in America that produces a product that is harmful when used as intended. The cigarette is the only consumer product in the nation that not only causes harm to the user, but to the innocent bystander as well.

Smoking in flight threatens everyone. Congress should take immediate action to end it now.

Last year on the Friday after Thanksgiving, Citizens Against Tobacco Smoke announced its national SMOKEFREE SKIES CAMPAIGN to ban smoking on all domestic flights. One week earlier the American Cancer Society held its annual Great American Smokeout Day. On the very day the Cancer Society was attempting to encourage people to try to quit smoking, the Philip Morris Tobacco Company launched its Great American Smoker's Campaign. One week later, five men traveling together in a US Air jetliner lit cigarettes and refused to put them out when the flight attendants asked them to do so after the entire aircraft was declared non-smoking. The five passengers were arrested at the airport in Boston when the plane landed and they were charged with interference with a flight crew. It seems that one of the macho guys went to the lavatory with a lighted cigarette and set off a smoke alarm, and another refused to fasten his seat belt and pushed a flight attendant away in the process. The flight captain left the cockpit on two occasions to try to settle the disturbance and finally radioed to the airport to have state troopers there to meet the aircraft.

There is clear evidence against the tobacco industry's claim that common courtesy is a solution. Some people simply are not courteous.

In East Boston District Court on Nov. 28, 1986, the five men paid \$115 each in court costs under a provision of Mass. state law that permits first offenders who pay costs to have their cases continued "without finding" for three months, after which the record is expunged if the defendant has had no more trouble with the law.

The men pleaded "no contest", they were fined, and the airline chose not to prosecute. However, the story doesn't end there. In what can probably be termed the quintessential definition of "chutzpah" the men who jeopardized the safety of everyone on the aircraft have turned around and are now suing the airline.

In a letter to former Secretary Dole concerning the U.S. Air incident, I wrote:

"The Dept. of Transportation has the right and the obligation to protect the safety of citizens who travel by any form of public transportation. Both a safety and health issue come into play when people are flying 35,000 feet up in the air, and that alone is a compelling reason to ban smoking entirely. Your Department has the authority to act. No passenger has the right to jeopardize the safety of other travelers. Airline pilots must be left to properly perform the duties of their jobs. The evidence for banning smoking in-flight is clear and overwhelming. Your immediate attention to this important matter is requested."

Former Secretary Dole ignored the letter the same way she ignored the Surgeon General's report of 1986 on Involuntary Smoking. She acted like it didn't exist.

The incident prompted me to write a guest editorial which was published in the CINCINNATI ENQUIRER on Feb. 19, 1987. The newspaper titled it "What 'Rights' For The Smoker" and it is attached at the conclusion of my testimony as is a second guest editorial published Sept. 23, 1987 which synthesizes the many and varied reasons why a total ban is necessary and who stands to benefit from such legislation.

I am also submitting for the record the results of a survey done by the Association of Professional Flight Attendants, the union of flight attendants working at American Airlines. The study documents the harm to flight attendants caused by sidestream tobacco smoke.