

# National Republican Senatorial Committee

CRAIG M. ENGLE  
GENERAL COUNSEL

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DEPUTY GENERAL COUNSEL

November 19, 1999

BY HAND

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Matter Under Review 4766

Dear Mr. Noble:

I write on behalf on the National Republican Senatorial Committee ("NRSC") regarding two letters from the Commission. On November 9, 1999, the NRSC received a letter from Anne A. Weissenborn inquiring whether the NRSC had received a July 2, 1998, letter from F. Andrew Turley. I investigated whether the NRSC received the letter and, as far as I can determine, it did not. Ms. Weissenborn subsequently faxed me a copy of the July 2, 1998, letter, which purports to notify the NRSC that it was named as a respondent in a complaint filed with the Commission by the National Center for Tobacco-Free Kids.<sup>1</sup>

The NRSC is not a respondent in this matter. The National Center for Tobacco-Free Kids did not allege that the NRSC did anything, let alone anything illegal. Rather, it alleged only that five tobacco companies appeared to have

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<sup>1</sup> I renew the suggestion I made while serving as an Executive Assistant to Commissioner Elliott that the Commission send notifications of complaints by certified mail.

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violated federal election law; it nowhere alleged that the NRSC appeared to have done so. See Complaint at 1 ("the National Center for Tobacco-Free Kids **files this complaint against** Philip Morris Inc., RJ Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co., and United States Tobacco Company...") (emphasis added); See also Complaint at 3 ("The five tobacco companies named in this complaint..."). There was no allegation, and likewise no evidence, that the NRSC was involved in any way with the tobacco companies' issue advertisements if they did in fact occur. Rather, the complaint's sole use of our name is in a description of Senator McConnell as "the Chairman of the National Republican Senatorial Committee." Complaint at 2. That is a reference to Senator McConnell, not us. Such a passing mention to the NRSC is not sufficient to make the NRSC a respondent.

The Commission's regulations require that complaints "clearly identify as a respondent each person or entity who is alleged to have committed a violation." 11 C.F.R. § 111.4(d)(1). If the complaint complies with this and other requirements, the Commission is authorized to send a copy of the complaint only to such respondents as are identified in the complaint. See 11 C.F.R. § 111.5(a). The Commission is not authorized to send a copy of the complaint to anyone who happens to be mentioned in another context in the complaint. Indeed, the Commission's confidentiality rules prohibit the Commission from distributing complaints to other persons without the consent of the true respondents. See 11 C.F.R. § 111.21(a).

There is yet another reason for not treating every person or entity obliquely mentioned in a complaint as a "respondent": it serves no purpose. Including the NRSC as a respondent would only waste the Commission's and the NRSC's resources. Even an announcement by the Commission that it has dismissed the complaint as to the NRSC or found "no reason to believe" that the NRSC committed a violation would cause unnecessary political embarrassment to the NRSC. In short, there is no reason the Commission should say anything at all to implicate the NRSC in this matter.

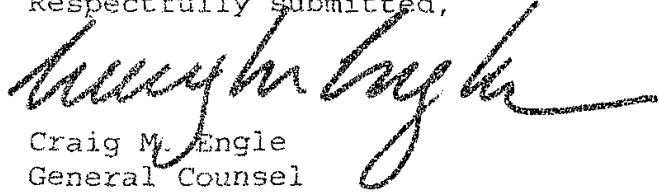
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If, despite these arguments, any response by the NRSC is necessary, the NRSC responds by incorporating in full the original and supplemental responses of Senator McConnell. For your convenience, we have attached copies of these responses.

Respectfully submitted,



Craig M. Engle  
General Counsel

Attachments

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August 10, 1998

BY HAND

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Matter Under Review 4766

Dear Mr. Noble:

As counsel for Senator Mitch McConnell, I respectfully request that the Commission promptly dismiss Senator McConnell as a respondent from Matter Under Review 4766. Senator McConnell was notified of his alleged status as a respondent by the Commission's letter of July 2, 1998, from F. Andrew Turley to Senator Mitch McConnell. By letter dated July 24, 1998, the Commission extended the time for the Senator to respond until August 10, 1998.

Apparently by oversight or design, the Commission staff has added Senator McConnell to MUR No. 4766 as a Respondent. Senator McConnell should be dismissed from this matter forthwith for any of the following reasons: (i) the Speech or Debate Clause in Article I, Section 6 of the Constitution of the United States prohibits the Commission from questioning -- much less sanctioning -- the Senator in connection with legislative activity, including the legislative discussions alleged in the complaint; (ii) the issue advertisements allegedly planned by the tobacco industry are outside the scope of the Federal Election Campaign Act of 1971, as amended ("FECA"); (iii) because the Senator is not and will not be a candidate for federal office in 1998, he has received no in-kind contribution; because he has not and will not pay for any of the advertisements at issue, he has made no in-kind contribution; (iv) the Senator did not engage in coordination regarding the advertisements with any tobacco company representative or with any campaign; and (v) the complaint is otherwise deficient.

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Before addressing each of these points, we note that the advertisements purportedly at issue here have not yet run; rather the claim is that they are planned "to be run in the fall after the critical vote" on the legislation. National Center for Tobacco-Free Kids letter 6/29/98 at p.1. Thus, this purported claim is at best merely hypothetical, or at worst an effort to intimidate the industry Respondents out of exercising their First Amendment rights. But even if it were appropriate for the Commission to consider such hypothetical claims, the claims against Senator McConnell are completely meritless.

1. The Speech or Debate Clause Prohibits Questioning the Senator with Respect to the Legislative Discussion Referred in the Complaint.

Senator McConnell is mentioned in the complaint for one and only one reason: his alleged remarks to Senate colleagues regarding legislation pending before the Senate. That speech is absolutely privileged under the Speech or Debate Clause of the Constitution: "For any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. Art. I, Section 6, cl. 2; *Eastland v. United States Serviceman's Fund*, 421 U.S. 491, 503 (1975). The Supreme Court has read the clause "broadly to effectuate its purposes." *United States v. Johnson*, 383 U.S. 169, 180 (1966). The Clause applies to communications that are "an integral part of the deliberative and communicative processes" by which Congressmen participate in legislative activity. *Gravel v. United States*, 408 U.S. 606, 625 (1972).

The immunity aspect of the Clause extends not only to speech on the Senate floor but also to a Senator's conversations with his Senate colleagues about pending legislation. See *Eastland*, 421 U.S. at 583 (privilege protects committee subpoenas); *Doe v. McMillan*, 412 U.S. 306, 313 (1973) (privilege protects statements in committee reports); *Gravel*, 408 U.S. at 615-16 (privilege protects conduct at subcommittee meetings). Accordingly, Senator McConnell's alleged remarks cannot be the basis for any sanction by any body (including this Commission) under any law (including the Federal Election Campaign Act).

Moreover, the Speech or Debate Clause also prohibits any inquiry by the Commission or anyone else concerning statements made by Senators, Representatives, and their staffs in connection with the consideration of legislation. *Gravel*,

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408 U.S. at 615-17. The broad language of the clause, prohibiting "question[ing]" of Senators and Representatives "in any place" regarding any "Speech or Debate in either House" confirms this preclusion. See Eastland, 421 U.S. at 503; Gravel, 408 U.S. at 616. Indeed, the Commission staff's decision to seek a response from Senator McConnell in this MUR violates the Speech or Debate Clause.

Gravel is illustrative. Senator Gravel had improperly received copies of the "Pentagon Papers," a document classified as "Top Secret Sensitive." As Chairman of the Subcommittee on Building and Grounds of the Senate Public Works Committee -- which had no apparent jurisdiction over the Pentagon -- Senator Gravel unilaterally convened a meeting the evening of June 29, 1971, at which he read excerpts from the papers and placed all 47 volumes in the public record. A grand jury investigating possible criminal conduct relating to the release of the documents subpoenaed Dr. Leonard S. Rodberg, who had been added to Senator Gravel's staff on June 29, 1971, and Senator Gravel moved to quash the subpoenas. The Court deemed "incontrovertible" Senator Gravel's argument that the Speech or Debate clause gave him immunity from subpoena "for the events that occurred at the subcommittee meeting." 406 U.S. at 615-16. Further, the Court held that the immunity extended to Dr. Rodberg. *Id.* at 617. The immunity extends to "'things generally done in a session of the House by one of its members in relation to the business before it.'" *Id.* (citation omitted). Without question, discussion with other Senators in the Capitol about the merits of, the lack of popular support for, and industry opposition to a bill coming to a vote falls squarely within the Speech or Debate clause.

Because Senator McConnell's speech in the Senate regarding legislation is absolutely privileged, and because Senator McConnell values the separation of powers principle that underlies the clause, he declines to comment on the numerous inaccurate news reports about his discussions with colleagues regarding the Senate's vote on a cloture petition involving tobacco legislation. Affidavit of Senator Mitch McConnell, ¶ 6 (attached as Exhibit A).

**2. The Commission Has No Jurisdiction to Regulate the Issue Advocacy Addressed in the Complaint.**

For all its liberties with the facts, the Complaint does not contend that the hypothetical future advertisements at issue will "expressly advocate the election or defeat of a clearly identified federal candidate." More than 20 years of

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Judicial precedent make clear that the First Amendment proscribes any effort by this Commission or any other entity to regulate the issue advocacy contained in these advertisements. *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (applying express advocacy standard to prohibition on corporate "expenditures"); *Buckley v. Valeo*, 424 U.S. 1, 44 (1976) (announcing express advocacy standard); *Clifton v. FEC*, 114 F.3d 1309, 1312 (1st Cir. 1997) (invalidating Commission regulation of issue advocacy voter guides), cert. denied, 118 S. Ct. 1036 (1998); *Maine Right to Life Comm. v. FEC*, 98 F.3d 1, 1 (1st Cir. 1996) (rejecting "electioneering message" standard), cert. denied, 113 S. Ct. 52 (1997); *FEC v. Christian Action Network, Inc.*, 92 F.3d 1178 (4th Cir. 1996) (rejecting "electioneering message" standard); *Faucher v. FEC*, 928 F.2d 468, 471 (1st Cir.) (invalidating Commission regulation of corporate voter guides), cert. denied, 502 U.S. 820 (1991); *FEC v. Furgatch*, 807 F.2d 857, 864 (9th Cir.) (applying "express advocacy" standard with little, if any, weight accorded external contextual factors), cert. denied, 484 U.S. 850 (1987); *FEC v. Central Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 53 (2d Cir. 1980) en banc (rejecting Commission's effort to restrict issue advertisements); *Right to Life of Dutchess County v. FEC*, No. 97 Civ. 2614 (SHS), 1998 WL 186905, at \*5 (S.D.N.Y. June 1, 1998) (rejecting "electioneering message" standard); *FEC v. Survival Education Fund, Inc.*, No. 89 Civ. 0347 (TPG), 1994 WL 9658, at \*2 (S.D.N.Y. Jan. 12, 1994) (FECA reaches "only communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office"), aff'd in part, rev'd in part, 65 F.3d 285 (2d Cir. 1995); *FEC v. National Org. for Women*, 713 F. Supp. 428, 435 (D.D.C. 1989) (granting summary judgment to organization that used exclusively corporate funds for issue advocacy); *FEC v. American Fed'n of State County and Mun. Employees*, 471 F. Supp. 315, 316-17 (D.D.C. 1979) (holding that a poster depicting then-President Ford, wearing a button reading "Pardon Me" and embracing President Nixon, did not "expressly advocate," and was "the type of political speech which is protected from regulation under 2 U.S.C. § 431, et seq."). Thus, such issue advertisements can constitute neither a regulable "expenditure" nor a regulable "contribution."

Nothing in the complaint suggests that the advertisements allegedly contemplated by the tobacco companies would contain express advocacy. Indeed, to the best of the knowledge, information, and belief of Senator McConnell, none of the advertisements that the tobacco companies have run to date expressly advocate the election or defeat of a clearly identified candidate. McConnell Affidavit, ¶ 4. The Supreme

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Court has expressly held that speech paid for by corporations addressing important issues in the political arena -- and no issue in the political arena appears more important to the tobacco industry than the one addressed in these advertisements -- is completely protected from regulation by the First Amendment. *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978) (striking state law prohibiting corporations from airing their views on ballot measures). Indeed, the Supreme Court has struck down even the most rudimentary restrictions on issue advocacy. *McIntyre v. Ohio Election Comm'n*, 514 U.S. 334, 356 (1995) (striking state requirement that issue oriented pamphlets identify the author); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 297 (1981) (striking city ordinance limiting contributions to committee formed to oppose a ballot measure).

The Supreme Court adopted the express advocacy standard precisely to protect issue advocacy such as that allegedly contemplated by the tobacco companies. "[T]he distinction between discussion of issues and candidates and advocacy of the election or defeat of candidates may often dissolve in practical application." *Buckley*, 424 U.S. at 42. Accordingly, the Court held, only the bright-line express advocacy standard provides speakers with the constitutionally required degree of security concerning what speech will and will not be regulated. Anything less would compel speakers to "hedge and trim" their political discourse. *Id.*

Nor would alleged coordination transform otherwise protected issue advocacy into speech that the Commission may regulate. The United States Court of Appeals for the District of Columbia Circuit has recognized that coordinated spending constitutes an in-kind contribution to a candidate only if the spending expressly advocates the election or defeat of a clearly identified federal candidate. *Orloski v. FEC*, 795 F.2d 156 (D.C. Cir. 1986). In *Orloski*, a corporation sponsored a picnic for 1,000 senior citizens in coordination with a candidate shortly before an election. The candidate, who had been criticized for not supporting senior citizens' issues, addressed issues of concern to seniors at the picnic, but studiously avoided appealing for votes. The Commission dismissed a complaint alleging that the costs of the picnic were illegal in-kind contributions to the candidate, and the Court of Appeals agreed:

"Under the Act this type of 'donation' is only a 'contribution' if it first qualifies as an 'expenditure' and, under the FEC's interpretation, such a donation is not an



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expenditure unless someone at the funded event expressly advocates the reelection of the incumbent or the defeat of an opponent or solicits or accepts money to support the incumbent's reelection." *Id.* at 163.

Similarly, the Attorney General of the United States has rejected the argument that coordination transforms issue advocacy into unprotected speech. Notwithstanding credible evidence that President Clinton drafted the text of numerous issue advertisements that the Democratic National Committee funded entirely with so-called "soft money," Attorney General Janet Reno declined to appoint an independent counsel to investigate. She explained:

"With respect to coordinated media advertisements by political parties (an area that has received much attention as of late), the proper characterization of a particular expenditure depends not on the degree of coordination, but rather on the content of the message." Letter of Attorney General Reno to Chairman Orrin Hatch, April 14, 1997, at 7 (Exhibit B) (emphasis added).

The Commission simply has no jurisdiction over the potential future advertisements alleged in the complaint. As the United States Court of Appeals for the Fourth Circuit recently explained: "[I]t is indisputable that the Supreme Court limited the FEC's regulatory authority to expenditures which, through explicit words, advocate the election or defeat of a specifically identified federal candidate." *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (4th Cir. 1997). Pursuing an investigation against Senator McConnell in the instant MUR would be without substantial basis under the Equal Access to Justice Act.

**3. Senator McConnell Did Not Coordinate the Tobacco Companies' Issue Advertisements with Any Campaign.**

Senator McConnell has unequivocally denied in his affidavit attached to this letter that he "arranged, coordinated, or directed any aspect of the tobacco industry's publication or broadcast of their issue advertisements." McConnell Affidavit, ¶ 7.

Even if the Commission were to use its independent expenditure regulations to define coordination, the complaint

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does not allege any conduct by Senator McConnell that could conceivably satisfy such a high standard. The Commission's independent expenditure regulations define "coordination" to require some action "by the candidate" with respect to the content, form, or timing of the advertisement. 11 C.F.R. § 109.1(b)(4)(i) ("any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication"); 11 C.F.R. § 109.1(b)(4)(i)(A) (coordination presumed if "[b]ased on information about the candidate's plans, projects, or needs provided to the expending person by the candidate") (emphasis added). Senator McConnell also denies that he has provided any information to any tobacco industry representatives about any Senatorial candidate's campaign plans. McConnell Aff. at ¶ 7. It is now clear that evidence, rather than Commission presumptions, is necessary to support any finding of coordinated activity -- even assuming (contrary to the law cited in Part II above) that coordination is relevant. *Colorado Republican Fed. Campaign Comm. v. FEC*, 116 S. Ct. 2309, 2319 (1996) ("An agency's simply calling an independent expenditure a 'coordinated expenditure' cannot (for constitutional purposes) make it one.").

Nor would the allegations in the complaint -- even if true -- warrant a different conclusion. Were the Senator to have expressed an expectation in June that the tobacco industry would continue to run issue advertisements in the summer and fall to counter continuing legislative proposals expected to be debated in the House and Senate, he would have been doing nothing more than repeating the widely reported statements of numerous tobacco company officials. See, e.g., William Schneider, "Another Over-Reach, Maybe a New Ending," *The National Journal*, (June 27, 1998) ("'over the next several months leading to the election in November, we are going to have serious discussions with people in this country about the quality of debate in this town and the lack of leadership,' RJR Nabisco Inc. Chairman Steven Goldstone warned on April 8."). Indeed, in light of the unprecedented level of potential government regulation and taxation -- required industry payments would have exceeded \$500 billion over 25 years -- it would be surprising if the tobacco companies did not launch sustained public discussion on the issues.

These statements are, of course, no more an indication of an FECA violation than statements by anti-tobacco advocates expressing an intention to run issue advertisements attacking, by name, Senators who voted to defeat the tobacco legislation. Bill Novelli, a signatory to

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the complaint by Campaign for Tobacco Free Kids, has vowed to attack by name Senators who voted against the legislation:

"Public health advocates . . . added that they plan to make the public aware of the 42 senators who helped bury the tobacco bill. 'We are going to go out there and name names,' said Bill Novelli, president of the Campaign for Tobacco Free Kids." See Bennett Roth, "Tobacco Defeat Has Democrats in Attack Mode." The Houston Chronicle (June 19, 1998).

Of course Mr. Novelli would like to attack Senators who opposed the legislation, while silencing all voices who might respond to his attacks. Neither fairness nor the First Amendment supports such tactics.

**4. The Complaint Alleges No Violation by Senator McConnell.**

The FECA restricts only contributions and expenditures as those terms are defined in the statute. 2 U.S.C. §§ 431(8) and (9). The complaint offers no basis, however, for inferring that Senator McConnell gave or accepted any contribution or made any expenditure. On the contrary, the complaint twice expressly limits the respondents to five tobacco companies. Complaint at 1 and 3. Even under the erroneous assumption that the FECA covers the non-express-advocacy issue advertisements allegedly contemplated by the tobacco industry, there is no basis for inferring that Senator McConnell, whose term will not expire until the year 2003, would receive a benefit to his non-existent campaign. Nor is there any way in which the complaint could be construed as alleging that Senator McConnell will "make" the hypothetical future communications by the tobacco companies. For this reason alone, he should be promptly dismissed from this matter.

**5. The Notice to Senator McConnell Is Improper for Other Reasons.**

The Commission should never have sent notice to Senator McConnell as a respondent in the MUR for several additional reasons.

First, the complaint alleges, at most, a potential future violation. Congress authorized citizens to file complaints only where a potential violation "has occurred."

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2 U.S.C. § 437g(a)(1). Any Commission action on the basis of an individual complaint alleging prospective violations of the FECA is without a statutory basis.

Second, the Commission's regulations require a complaint to "clearly identify as a respondent each person or entity who is alleged to have committed a violation." 11 C.F.R. § 111.4(d). The Commission is authorized by the regulations to notify and seek a response from "each respondent" identified in the complaint. 11 C.F.R. § 111.5(a). The complaint attached to the Commission's letter, however, identifies as respondents only five tobacco companies. It does not allege that Senator McConnell committed any violation.

Third, consistent with its omission of Senator McConnell as a respondent, the complaint intimates that the statutory violation at issue is the prohibition on corporate contributions in 2 U.S.C. § 441b. Senator McConnell, of course, is not a corporation and could not have violated 2 U.S.C. § 441b.

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The complaint is nothing more than an attempt by an interest group to circumvent the legislative process. Neither the FECA nor the Commission's regulations were designed to permit interest groups that lose legislative battles to continue their fight before the Commission or in the courts. Still less are FECA and the Commission's regulations designed to permit a disgruntled interest group to enlist the aid of a federal bureaucracy to institute a punitive investigation against those who win legislative battles. The Commission should dismiss the complaint in its entirety, or, at the very least, cease the threatened Speech or Debate clause violation by promptly dismissing Senator McConnell as a respondent.

Sincerely,

  
Bobby R. Burchfield

Attachment

(A)

AFFIDAVIT OF SENATOR MITCH McCONNELL

SENATOR MITCH McCONNELL, after being duly sworn,  
deposes and says as follows:

1. My name is Addison Mitchell McConnell Jr. I am one of the two United States Senators from the Commonwealth of Kentucky. My office address is 361A Russell Senate Office Building, Washington, DC 20510-1702. I was re-elected in November 1996, and my current term expires in January 2003. I am not up for re-election this year.

2. I have reviewed the complaint filed with the Federal Election Commission by the Campaign for Tobacco-Free Kids. Although that complaint names five tobacco companies (but not me) as respondents, I understand that the Commission's staff has added me as a respondent.

3. Beginning last year, the United States Senate began to consider major legislation affecting the tobacco industry. There are approximately 60,000 tobacco growers in Kentucky, and tobacco is the largest cash crop in the state. Since the tobacco industry is important to the economy of Kentucky, and to many of my constituents, I have always paid close attention to any legislative matters that could have a significant effect on that industry. For that reason, I followed the tobacco legislation closely. As the proposed legislation proceeded through the legislative process and was reported out of the Commerce Committee, the bill became a major focus not only of

the Senate but of the news media as well. From approximately April 1998 through June 1998, hardly a day went by during which I was not involved in discussions or meetings concerning the legislation. I made no secret of my view that the legislation was bad public policy and would be seriously detrimental to the interests of my constituents and the public at large.

4. While the tobacco legislation was under consideration by the Senate, the five tobacco companies originally named as respondents in this matter began airing a series of non-candidate-specific, pure issue advertisements opposing the legislation. These advertisements advocated the rejection of the tobacco legislation, but to the best of my knowledge, information, and belief did not advocate the election or defeat of any named candidate. I had absolutely no role in the decision to air those advertisements, the content of those advertisements, or decisions on where to place those advertisements.

5. The industry's advertising campaign appeared to me to be successful in several respects. First, the advertising campaign revealed serious flaws in the legislation that had not been reported by the mainstream media. Second, it generated an enormous volume of mail and telephone calls opposing the legislation to my colleagues in the Senate. And finally, public opinion polls began to show a lack of public support for the extensive federal regulation of the tobacco industry proposed by

the bill. In part due to the industry advertising campaign, as well as closer scrutiny of the bill by the public and the Senate, many of my Senate colleagues began to have serious reservations about the bill.

6. Article 1, Section 6 of the Constitution of the United States contains the Speech or Debate Clause, which provides: "For any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." This provision and the Supreme Court decisions applying it reflect a clear policy that Senators and Representatives cannot and should not comment on their legislative activities in judicial, executive, or administrative investigations. For this reason, I decline to comment on the many inaccurate accounts in the media concerning discussions I allegedly had with my Senate colleagues, and the events at the Senate Republican Caucus on June 17, 1998.

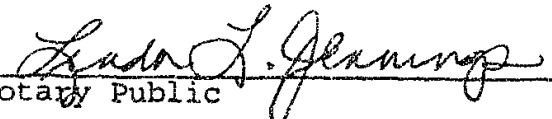
7. At no time have I arranged, coordinated, or directed any aspect of the tobacco industry's publication or broadcast of their issue advertisements. Further, I have not provided any tobacco industry representative with any information about any Senatorial candidate's campaign plans. Nor has any industry representative provided to me any information about the specific locations where such advertisements were or are planned, or the specific content of those advertisements. To put it plainly, I have had absolutely no direct or indirect input into

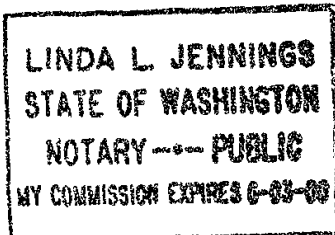
the content, style, medium, publication, or targeting of the industry's advertisements, nor do I intend to have any such direct or indirect input.

Further affiant sayeth not.

  
Addison Mitchell McConnell Jr.

Subscribed and sworn to before me  
this 10<sup>th</sup> day of August, 1998.

  
Notary Public





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March 9, 1999

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BY HAND

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Re: Matter Under Review 4766

Dear Mr. Noble:

On behalf of Senator Mitch McConnell, I renew my request that you immediately find no reason to believe and dismiss the complaint in Matter Under Review 4766. It has now been over eight months since the complaint was filed. The Commission staff unilaterally chose to name Senator McConnell as a respondent, even though he was not so named in the complaint. Moreover, now that the November 1998 election is over, it is plain that the prospective violations alleged by the Campaign for Tobacco Free Kids never actually occurred. Because no reason to believe finding has yet been made, the Commission is still able to dismiss this complaint. It should do so immediately.

On June 29, 1998, more than four months before the 1998 election, the Campaign for Tobacco Free Kids filed the instant complaint. The essential allegation of the complaint was that, in exchange for Senate Republicans voting against cloture on S. 1415 ("the McCain Bill"), the tobacco companies promised to air advertisements supporting those Republican opponents of cloture during the fall campaign. The complaint argued that these potential advertisements would constitute illegal, in-kind, corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"). The complaint did not allege that any violations had occurred;

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rather, it alleged only that violations were possibly going to occur.

Among the obvious problem with this allegation was that there was an insufficient number of Republican Senators running for reelection in 1998 to defeat cloture, and indeed five of the fifteen Republicans running for reelection actually voted for cloture (Senators Bennett, D'Amato, Grassley, Gregg, and McCain).

But in addition to this basic non-sequitur, the complaint rests on a fundamental factual error: the alleged misdeeds predicted by the complaint simply did not occur.

Further, the complaint did not name Senator McConnell as a respondent. Rather, the staff unilaterally and without statutory or regulatory authority added Senator McConnell. As explained in my letter of August 10, 1998, the Commission should rectify this ultra vires action and dismiss Senator McConnell from this matter because, among other reasons, the Speech or Debate Clause of the United States Constitution prohibits the Commission from inquiring into any Senator's participation in legislative activity, and further, the Senator did not coordinate political advertisements with any tobacco company representatives. Now that the election is over, the Commission should immediately dismiss the complaint with respect to Senator McConnell -- and indeed all respondents -- for the additional reason that the potential violations cited by the complaint simply did not occur.

**1. The Alleged Coordinated Advertising Campaign Did Not Occur.**

Evan Tracey is President of Campaign Media Analysis Group, a Virginia corporation that specializes in tracking the nature, quantity, location, and cost of political advertising in the United States. As the attached Declaration of Mr. Tracey demonstrates, his survey of the top 75 media markets in the United States (which comprise 80% of television viewer households) indicates that there were no political advertisements of any kind in November or October that were paid for by the tobacco companies named in the complaint.

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Indeed, no political advertisements by the tobacco company respondents were aired on broadcast or cable television after September 20, 1998. Declaration of Evan Tracey ("Tracey Dec."), ¶ 3. Mr. Tracey has identified only four advertisements (entitled, "Person on the Street," "The Real Hero's [sic]," "Million Against," and "When Will Working People") that were aired between September 1 and 20. Three of the advertisements aired between September 1 and September 8 on just four occasions in three media markets (Birmingham, Alabama; Chicago, Illinois; and Las Vegas, Nevada). The scripts of these advertisements are attached as Exhibits 2-4 of Mr. Tracey's Declaration. See Tracey Dec., ¶ 6 and Exs. 2-4 (attached as Ex. A). The fourth advertisement aired on CNN and CNN Headline News between September 12 and September 20, 1998. Its script is attached as Exhibit 5 to the Tracey Declaration.

None of these advertisements expressly advocated the election or defeat of a Senator who voted against cloture. Indeed, the advertisements did not mention any federal candidate by name. Thus, the advertisements neither supported nor criticized any particular candidate's position on tobacco legislation. Rather, the advertisements merely discussed the tax implications of national tobacco legislation and urged viewers to call their "member of Congress" and tell the member to oppose tobacco taxes. Tracey Dec., Exs. 2-4. Also, the early September advertisements were run in just three media markets across the country, including two states (Illinois and Nevada) that did not even have an incumbent Republican Senator running for reelection in 1998, let alone one that voted against cloture. Id., ¶ 6. Moreover, the tobacco companies spent only a small amount of money to purchase broadcast and cable television time for these three advertisements during September -- just \$1,347, according to Mr. Tracey's estimate. Id., ¶ 3. The remaining advertisement, run between September 12 and September 20, 1998, was broadcast to a nationwide audience and not targeted to a specific state or media market.

While the tobacco company respondents did broadcast advertisements in July and August, those early advertisements do not support the allegation that the tobacco company advertising campaign was intended to aid the campaigns of Senators who voted against cloture.

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Mr. Tracey has estimated that the tobacco company respondents ran approximately \$6,669,337 worth of television advertisements in July and \$1,138,669 worth of such advertisements in August. Tracey Dec., ¶ 3. Two thirds of these amounts, however, were for advertisements that ran in states that had no Republican Senator at all, had no Republican Senator running for reelection in 1998, or had a Republican Senator running for reelection who had voted for cloture. Id., ¶¶ 4-5. Only one third of these amounts was spent on advertisements that ran in states with Republican Senators who both voted against cloture and were running for reelection in 1998. Id. Thus, even if the Campaign for Tobacco Free Kids' allegations were construed to include tobacco company advertisements as remote from the November elections as July and August, the facts of those advertisements completely belie the suggestion that they were intended to be in-kind contributions to Republican Senators who voted against cloture.

In sum, the speculation of the Campaign for Tobacco Free Kids that certain tobacco companies would publish advertisements supporting Senators who voted against cloture is completely refuted because (1) advertisements opposing tobacco legislation that were aired in July and August were aired with no apparent purpose of aiding Republican Senators who voted against cloture; (2) during the first week of September only three spots were aired, again, with no apparent purpose of aiding incumbent Republican Senators who voted against cloture; (3) between September 12 and September 20, 1998, the sole advertisement aired was directed to a nationwide audience and not targeted to a specific state or media market; (4) no such advertisements were broadcast from September 21, 1998, through November 3, 1998; and (5) none of the advertisements that were broadcast so much as mentioned a federal candidate by name, let alone expressly advocated his or her election or defeat.

**2. There Can Be No Finding Of Any "In-Kind" Contribution.**

The complaint in this case alleged potential violations of Section 441b of FECA, which makes it unlawful for a corporation to make "contributions" as defined in Section 441b(b)(2). The facts of the 1998 election preclude any finding of an in-kind "contribution" in this case.

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First, there can be no "contribution" without an actual conveyance of something of value. Contributions are defined to include "any direct or indirect payment, distribution, loan advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate . . . in connection with any election." 2 U.S.C. § 441b(b)(2). Because the tobacco company respondents never ran the advertisements that the complaint speculated they would, the tobacco companies did not give "anything of value" to any candidate. Further, even assuming (contrary to fact) that the tobacco company respondents made an unwritten promise to run such advertisements in exchange for votes against cloture, the definition of contribution was specifically revised by Congress in 1980 to remove "promises," whether enforceable or not, from the definition.

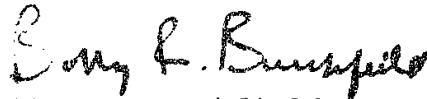
Second, a political advertisement cannot be an in-kind "contribution" under FECA if it does not expressly advocate the election or defeat of a clearly identified federal candidate. In FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 248-49 (1986), the Supreme Court definitively construed the term "expenditure" in Sections 441b and 441b(b) as meaning only a disbursement of corporate "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." The Act itself excludes from the definition of contribution any corporate disbursements that do not constitute expenditures: Section 431 provides that the term "contribution" does not include "any payment made or obligation incurred by a corporation . . . which, under section 441b(b) of this title, would not constitute an expenditure by such corporation." Accordingly, only advertisements containing express advocacy can constitute in-kind "contributions." As noted above, however, the few advertisements that were published by the tobacco companies in September did not expressly advocate the election or defeat of a clearly identified federal candidate. Indeed, none of the September advertisements or any other advertisements run after the June 17 cloture vote so much as identified a candidate, much less advocated his election or defeat. Tracey Dec., ¶ 7.

\* \* \*

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Page 6

Because it is now clear that the prospective, potential violations hypothesized in the complaint never occurred, we respectfully request that the Commission immediately find no reason to believe a violation occurred, and dismiss the complaint forthwith.

Respectfully submitted,



Bobby R. Burchfield

Attachment

cc: The Honorable Scott E. Thomas, Chairman  
The Honorable Darryl R. Wold, Vice Chairman  
The Honorable Lee Ann Elliott  
The Honorable David M. Mason  
The Honorable Danny L. McDonald  
The Honorable Karl Sandstrom

(A)

BEFORE THE FEDERAL ELECTION COMMISSION

In re: Matter Under Review 4766

DECLARATION OF EVAN TRACEY

I, Evan Tracey, hereby declare as follows:

1. My name is Evan Tracey. I am President of the Campaign Media Analysis Group, a Virginia corporation specializing in tracking the nature, quantity, location, and cost of political advertising in the top 75 media markets in the United States (which comprise 80% of television viewer households).

2. I and my staff have undertaken a comprehensive survey of political advertisements discussing national tobacco legislation that were paid for by Philip Morris, Inc., RJ Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., McMillard Tobacco Co., or United States Tobacco Co. ("the tobacco company respondents") following the Senate's June 17, 1998, vote against cloture on Senate Bill No. 1415, more commonly known as the "McCain Bill."

3. My survey concluded that the tobacco company respondents spent an estimated \$6,669,337 in July, \$1,138,669 in August, and \$203,127 during the first three weeks of September to purchase air time on cable and spot market television across

the United States for political advertisements opposing national tobacco legislation. The tobacco company respondents ran no political advertisements in the top 75 media markets from September 21, 1998, to November 3, 1998.

4. As the table attached as Exhibit 1 to this Declaration demonstrates, of the estimated \$6,669,337 in television broadcast time purchased by the tobacco company respondents in the top 75 media markets in July 1998, about two thirds (\$4,208,073) was spent in states in which no Republican incumbent was running for reelection (\$3,530,863) or in which the Republican incumbent running for reelection actually had voted for cloture (\$677,210). Only about one third (\$2,461,264) was spent in states with a Republican incumbent Senator running for reelection who had voted against cloture.

5. Similarly, of the estimated \$1,138,669 in television broadcast time purchased by the tobacco company respondents in the top 75 media markets in August 1998, about two thirds (\$758,554) was spent in states in which no Republican incumbent was running for reelection (\$614,532) or in which the Republican incumbent running for reelection actually had voted for cloture (\$144,022). Only about one third (\$380,115) was spent in states with a Republican incumbent Senator running for reelection who had voted against cloture.



6. In the first three weeks of September 1998, the tobacco company respondents ran four different advertisements discussing national tobacco legislation on cable and broadcast television stations in the top 75 media markets. Three of the advertisements did not air after September 8, 1998. These advertisements were aired on just four separate occasions in the following markets: Birmingham, Alabama; Chicago, Illinois; and Las Vegas, Nevada. The scripts of those three advertisements are attached as Exhibits 2, 3, and 4 to this Declaration. I estimate that the tobacco company respondents spent only \$1,347 in broadcasting these three advertisements. An additional advertisement was broadcast on CNN and CNN Headline News to a nation-wide audience between September 12 and September 20, 1998. The script of this advertisement is attached as Exhibit 5 to this Declaration. I estimate that the tobacco company respondents spent \$201,780 in broadcasting this advertisement. None of the advertisements broadcast in September expressly advocated the election or defeat of a clearly identified federal candidate.

7. My review of all of the advertisements run by the tobacco company respondents in the top 75 media markets following the June 17, 1998, vote on cloture, indicates that none of the advertisements expressly advocated the election or defeat of a clearly identified candidate. Indeed, not one of

the advertisements so much as mentioned a federal candidate by name, much less advocated his or her election or defeat. The scripts of all of these advertisements are attached as Exhibit 6 to this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

  
EVAN TRACEY

Executed on: March 8, 1999

**Television Advertisements by the Tobacco Company Respondents**  
**7/1/98 to 7/31/98**

<u>MARKET</u>	<u>SPOT COUNT:</u>	<u>GRP:</u>	<u>COST:</u>	<u>REPUB. SEN. INCUMBENT FACING RE-ELECTION</u>	<u>VOTE ON CLOTURE</u>
<b>ALBANY</b>	349	1800.3	\$157,392	Y	Y
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>ATLANTA</b>	460	2244.8	\$428,739	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					
<b>BIRMINGHAM</b>	394	2013.1	\$191,811	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>BOSTON</b>	21	14.5	\$6,788	N	
TOB/TC The Tax Tree Fell?					
<b>BUFFALO</b>	331	1944	\$216,225	Y	Y
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>CHARLOTTE</b>	249	1124.4	\$119,131	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
<b>CHICAGO</b>	709	2126.7	\$982,519	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC Right Back At It					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					
<b>CINCINNATI</b>	394	1991.6	\$210,941	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					

**Television Advertisements by the Tobacco Company Respondents**

**7/1/98 to 7/31/98**

<b>COLOMBUS, OH</b>	352	1871.9	\$258,974	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					
<b>DAYTON</b>	26	166.1	\$13,100	N	
TOB/TC The Tax Tree Fell?					
<b>DENVER</b>	303	1481.1	\$325,498	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
<b>DES MOINES</b>	15	119.2	\$4,959	Y	Y
TOB/TC Right Back At IT					
TOB/TC The Tax Tree Fell?					
<b>DETROIT</b>	15	100.7	\$23,445	N	
TOB/TC The Tax Tree Fell?					
<b>GRAND RAPIDS</b>	436	1991.3	\$225,730	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC GOP Against Taxes					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					
<b>HARTFORD</b>	7	0	\$664	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
<b>LAS VEGAS</b>	272	1121.5	\$195,316	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
<b>LEXINGTON</b>	1	1	\$48	N	
TOB/TC Million Against					
<b>MINNEAPOLIS</b>	268	1170.1	\$292,033	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
<b>NASHVILLE</b>	24	142	\$15,420	N	
TOB/TC It's Christmas					
TOB/TC The Tax Tree Fell?					

**Television Advertisements by the Tobacco Company Respondents**  
**7/1/98 to 7/31/98**

<b>NEW ORLEANS</b>	284	1729.4	\$126,080	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>PHILADELPHIA</b>	594	2003.4	\$924,820	Y	A
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Tax Tree Fell?					
<b>PITTSBURGH</b>	248	1394.5	\$194,689	Y	A
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
<b>ROCHESTER, NY</b>	407	2148.4	\$165,408	Y	Y
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>SACRAMENTO</b>	464	1989.2	\$375,449	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
<b>SALT LAKE CITY</b>	35	108.5	\$14,628	Y	Y
TOB/TC Right Back At It					
TOB/TC The Tax Tree Fell?					
<b>SEATTLE</b>	674	2534.8	\$660,585	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC Right Back At It					
TOB/TC The Real Hero's					
TOB/TC The Tax Tree Fell?					
<b>SPOKANE</b>	50	189.5	\$10,428	N	
TOB/TC The Tax Tree Fell?					
<b>ST. LOUIS</b>	329	2002.1	\$276,576	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Tax Tree Fell?					

Television Advertisements by the Tobacco Company Respondents

7/1/98 to 7/31/98

<u>SYRACUSE</u>	368	2036.6	\$118,598	Y	Y
TOB/TC At Election Time					
OB/TC At Election Time (man)					
TOB/TC Person On the Street					
<u>TOLEDO</u>	353	2276.3	\$133,343	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC Person On the Street					
TOB/TC The Real Hero's					
Subtotal for Markets w/ incumbent Rep. Senator running for re-election who voted against cloture:					
	2577		\$2,461,264		
Subtotal for Markets w/ no incumbent Rep. Senator running for re-election or w/ incumbent Rep. Senator running for re-election who voted for cloture:					
	5855		\$4,208,073		
<u>TOTAL:</u>	8432		\$6,669,337		

**Television Advertisements by the Tobacco Company Respondents**

**8/1/98 to 8/31/98**

<u>MARKET</u>	<u>SPOT COUNT:</u>	<u>GRP:</u>	<u>COST:</u>	<u>REPUB. SEN.</u> <u>INCUMBENT</u> <u>FACING RE-ELECTION</u>	<u>VOTE ON</u> <u>CLOTURE</u>
<u>ALBANY</u>	75	371.6	\$32,627	Y	Y
TOB/TC The Real Hero's					
<u>ATLANTA</u>	103	527.9	\$102,640	Y	N
TOB/TC The Real Hero's					
<u>BIRMINGHAM</u>	105	485.4	\$47,513	Y	N
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC The Real Hero's					
<u>BUFFALO</u>	66	399.2	\$48,025	Y	Y
TOB/TC The Real Hero's					
<u>CHICAGO</u>	104	441.6	\$218,286	N	
TOB/TC The Real Hero's					
TOB/TC Million Against					
<u>CINCINNATI</u>	84	436.8	\$46,034	N	
TOB/TC At Election Time					
TOB/TC At Election Time (man)					
TOB/TC The Real Hero's					
<u>COLUMBUS, OH</u>	79	409.9	\$57,368	N	
TOB/TC The Real Hero's					
<u>GRAND RAPIDS</u>	93	423.1	\$48,702	N	
TOB/TC The Real Hero's					
<u>HARTFORD</u>	2	0	\$139	N	
TOB/TC At Election Time					
TOB/TC The Real Hero's					
<u>NEW ORLEANS</u>	67	366.7	\$26,202	N	
TOB/TC The Real Hero's					
<u>PHILADELPHIA</u>	84	385.5	\$167,155	Y	A
TOB/TC The Real Hero's					
<u>ROCHESTER, NY</u>	78	441.3	\$33,974	Y	Y
TOB/TC At Election Time					
TOB/TC The Real Hero's					
<u>SACRAMENTO</u>	79	372	\$68,159	N	
TOB/TC At Election Time (man)					
TOB/TC The Real Hero's					
TOB/TC The Real Hero's					
<u>SEATTLE</u>	116	461.4	\$119,813	N	
TOB/TC The Real Hero's					

**Television Advertisements by the Tobacco Company Respondents**

**8/1/98 to 8/31/98**

<b>ST. LOUIS</b>	67	442.5	\$62,807	Y	N
DB/TC The Real Hero's					
<b>SYRACUSE</b>	75	443.8	\$29,396	Y	Y
TOB/TC The Real Hero's					
<b>TOLEDO</b>	81	503.1	\$29,829	N	
TOB/TC The Real Hero's					

Subtotal for Markets w/ incumbent Rep. Senator running for re-election who voted against cloture:

359                      \$380,115

Subtotal for Markets w/ no incumbent Rep. Senator running for re-election or w/ incumbent Rep. Senator running for re-election who voted for cloture:

999                      \$758,554

**TOTAL**              1358                      \$1,138,669





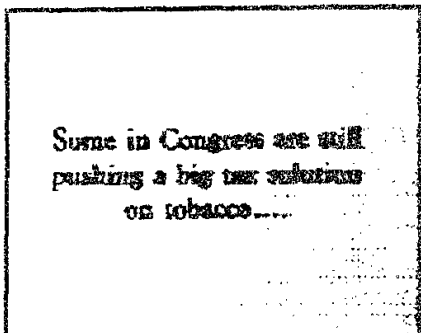
# Ad Detector

BRAND: TOBACCO RESOLUTION+  
 TITLE: TOB/TC Person On the Street  
 COMMERCIAL: TOB/TC Person On the Street  
 LENGTH: 30  
 FRAMES: 7

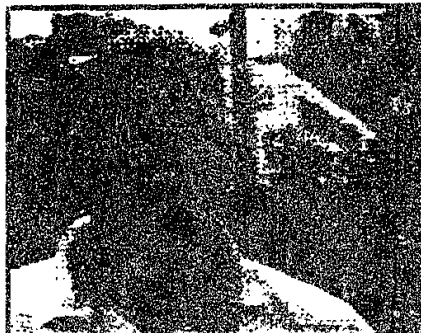
CMAG  
 REPORTS

1 of 1

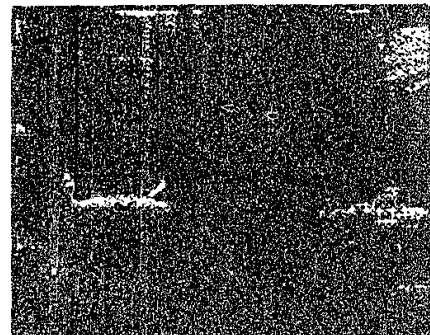
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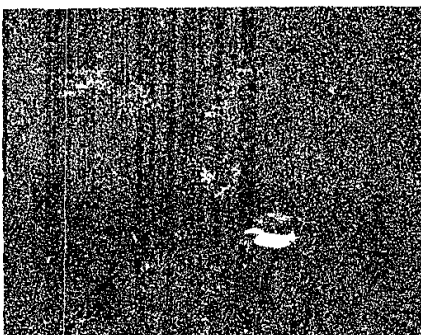
[Announcer]: Some in Congress are still pushing a big tax solution on tobacco. What do Americans think?  
 [Man]: "Working people get



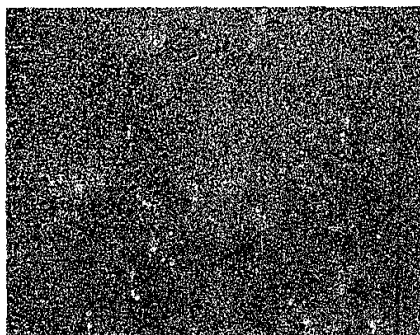
stuck paying all the taxes." [Woman]: "I think that Washington's answer to everything is new taxes."



[2nd Man]: They're just basically milking that cash cow one more time."  
 [2nd Woman]: "There's got to be some other way."



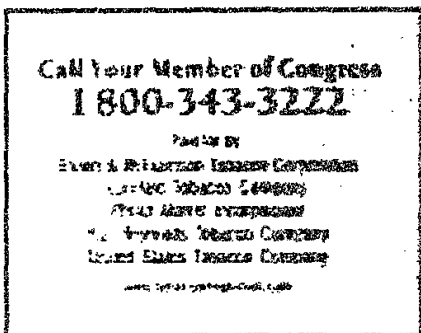
[3rd Man]: "Big government and taxes are not the way to go." [3rd Woman]: "The government is too much involved in



our lives as it is." [4th Man]: "It's another way of the government getting into their pockets." [5th Man]: "When are



they going to get the message? I don't know." [Announcer]: Contact your member of Congress. Tell them to



oppose new tobacco taxes.



## Ad Detector

BRAND: TOBACCO RESOLUTION+  
TITLE: TOB/TC The Real Hero's  
COMMERCIAL: TOB/TC The Real Hero's  
LENGTH: 20  
FRAMES: 8

1 of 2

CMAG  
REPORTS

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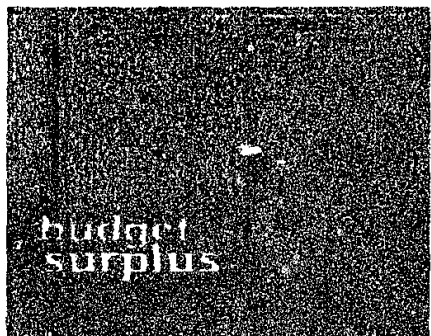
[Announcer]: These are the real  
heroes of the American economy:  
men and women across this country



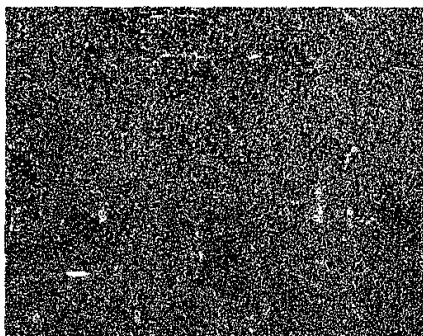
who work hard for their families.  
Their sacrifices brought our economy  
back



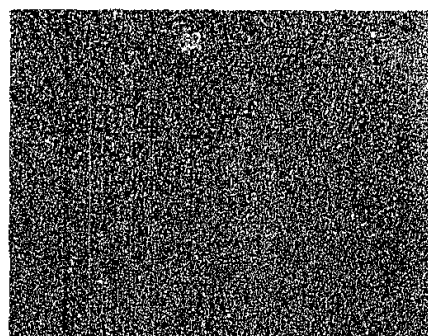
and their tax dollars have given us the  
first budget surplus in almost thirty  
years.



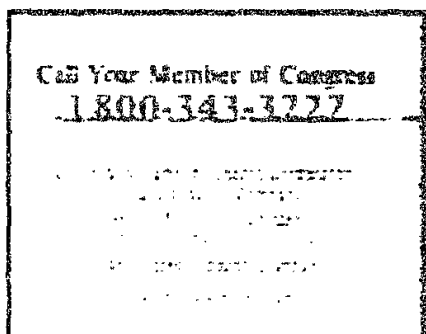
But even with the \$1.6 trillion surplus  
some



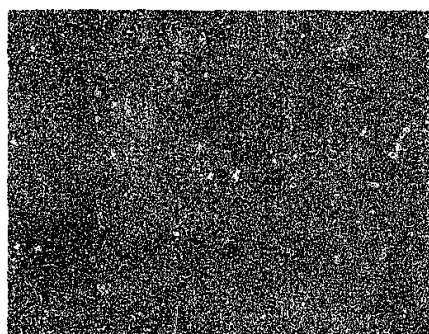
in Washington still want more than  
\$500 billion in new tobacco taxes.



Isn't it time to give hard-working  
Americans a break? Contact



your member of Congress. Tell them  
to oppose new tobacco taxes.



Campaign Media Analysis Group

703-683-7110

[www.cmagtracks.com](http://www.cmagtracks.com)

02/17/99

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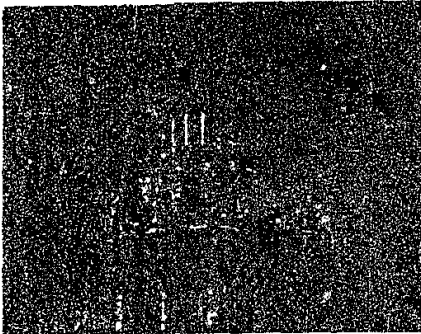
## Ad Detector

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TITLE: TOB/TC million against 15  
COMMERCIAL: TOB/TC million against 15  
LENGTH: 15  
FRAMES: 4

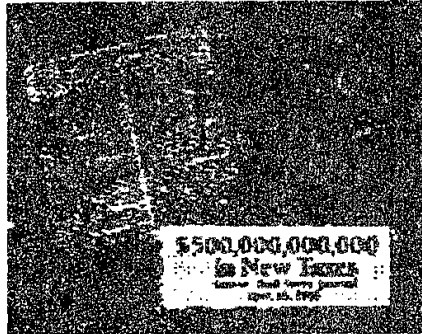
1 of 1

CMAG  
REPORTS

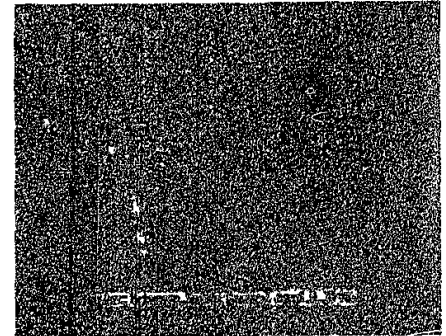
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Washington's tobacco legislation.  
What's in it for you? Half a trillion



dollars in new taxes, new spending,  
cigarettes



at 5 dollars a pack, creating a black  
market. No wonder it's opposed



by millions of hard working  
Americans.



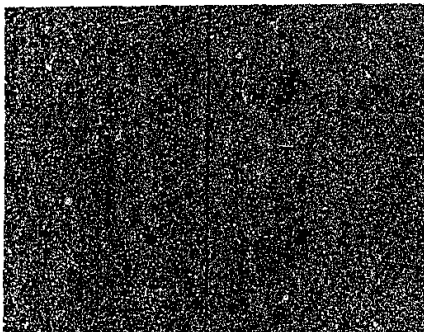
## Ad Detector

BRAND: TOBACCO RESOLUTION+  
TITLE: TOB/TC When Will Working People  
COMMERCIAL: TOB/TC When Will Working People  
LENGTH: 30  
FRAMES: 7

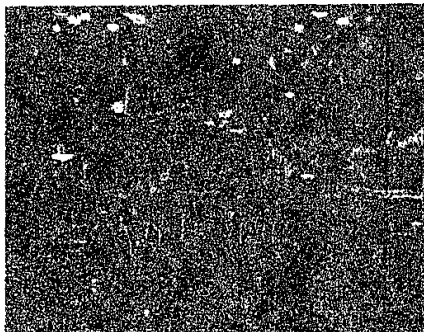
1 of 1

CMAG  
REPORTS

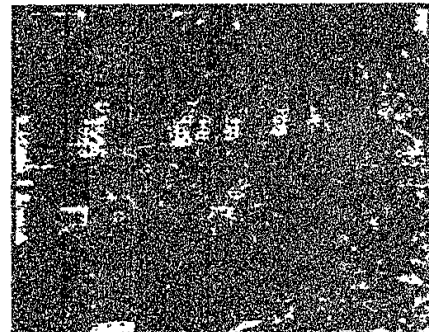
A005LEL ESB



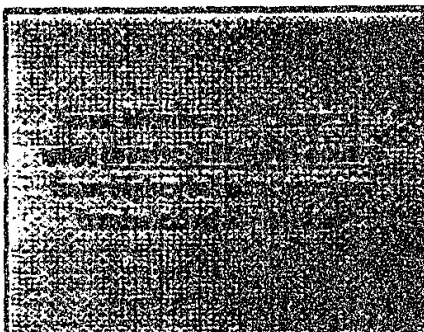
[Announcer]: When will working people in this country get a break? They paid the taxes that brought our economy back giving us a projected



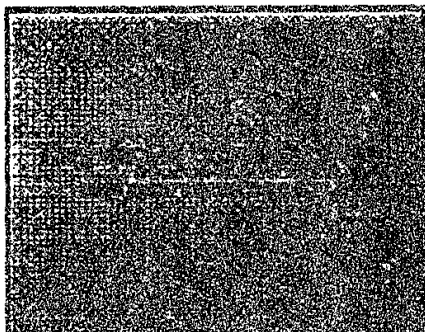
\$1.6 trillion budget surplus. But some still think big government and tax



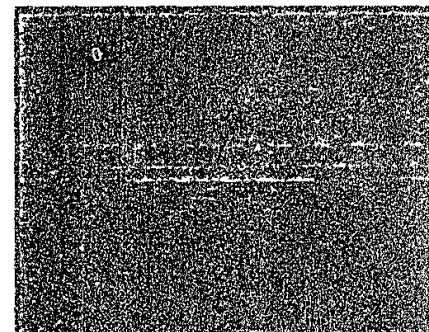
and spend policies are the way to go. Some members of Congress want to raise billions of dollars



from higher tobacco taxes on hard working Americans. They want to expand the power



of government agencies, hire new bureaucrats, and spend billions of tax dollars



new programs. Isn't it time to put working people first for a change?



Contact your member of Congress and tell them where you stand.



## Ad Detector

BRA: TOBACCO RESOLUTION+  
 TITLE: TOB/TC Person On the Street  
 COMMERCIAL: TOB/TC Person On the Street  
 LENGTH: 30  
 FRAMES: 7

1 of 1

CMAG  
 REPORTS

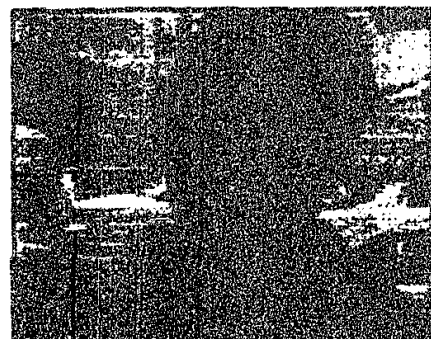
A005EYNG.ESB

Some in Congress are still  
 pushing a big tax solution  
 on tobacco....

[Announcer]: Some in Congress are still pushing a big tax solution on tobacco. What do Americans think?  
 [Man]: "Working people get



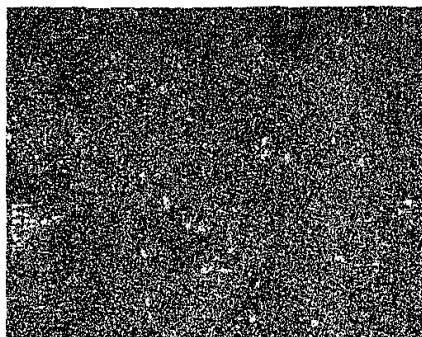
stuck paying all the taxes." [Woman]: "I think that Washington's answer to everything is new taxes."



[2nd Man]: They're just basically milking that cash cow one more time."  
 [2nd Woman]: "There's got to be some other way."



[3rd Man]: "Big government and taxes are not the way to go." [3rd Woman]: "The government is too much involved in



our lives as it is." [4th Man]: "It's another way of the government getting into their pockets." [5th Man]: "When are



they going to get the message? I don't know." [Announcer]: Contact your member of Congress. Tell them to

Call Your Member of Congress  
 1 800-343-3222

TOBACCO RESOLUTION+  
 TOB/TC Person On the Street  
 TOB/TC Person On the Street  
 TOB/TC Person On the Street  
 TOB/TC Person On the Street  
 TOB/TC Person On the Street  
 TOB/TC Person On the Street

oppose new tobacco taxes.

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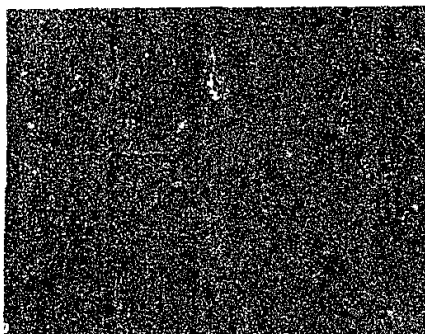
# Ad Detector

BR: TOBACCO RESOLUTION+  
 TITLE: TOB/TC At Election Time  
 COMMERCIAL: TOB/TC At Election Time  
 LENGTH: 30  
 FRAMES: 8

1 of 1

CMAG  
 REPORTS

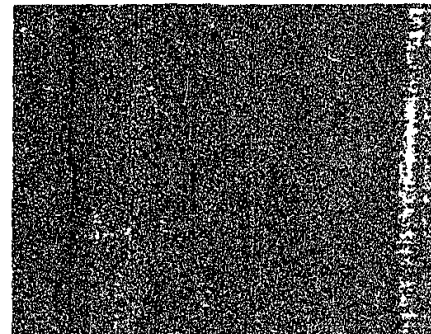
A005FX3Y.ESB



[Woman] "At election time, politicians are always telling us that they are against taxes and



for working people. Now they have a chance to prove it before the elections.



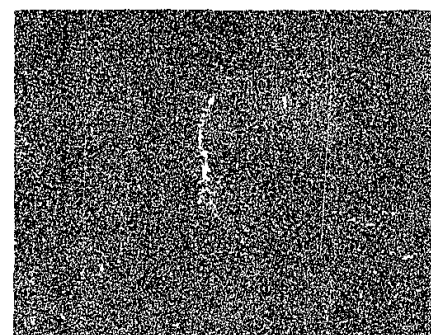
The Tobacco Tax some in Congress are talking about doesn't make any sense.



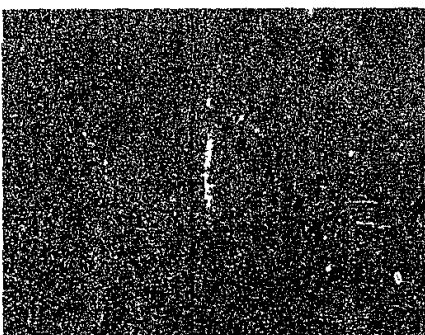
How is more than half a trillion dollar tax increase on working people



going to stop kids from smoking? It's more taxes and more big government.



I'm going to remember this fall what the politicians do this summer."



[Announcer] Contact your member of Congress and tell them to oppose new tobacco taxes.

Call Your Member of Congress  
**1800-343-3222**  
 Funded by:  
 B&W Tobacco Company  
 Lorillard Tobacco Company  
 R.J. REYNOLDS TOBACCO COMPANY  
 U.S. TOBACCO COMPANY  
 W.D. & H.O. WILLS TOBACCO COMPANY

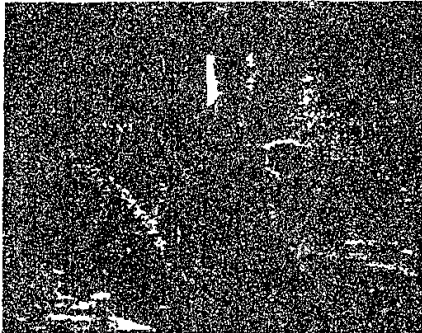


## Ad Detector

BR: TOBACCO RESOLUTION+  
 TITLE: TOB.TC At Election Time (man)  
 COMMERCIAL: TOB.TC At Election Time (man) 1 of 1  
 LENGTH: 30  
 FRAMES: 8

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AJFFCDA ESB



At election time, politicians are always telling us they are against taxes and for the



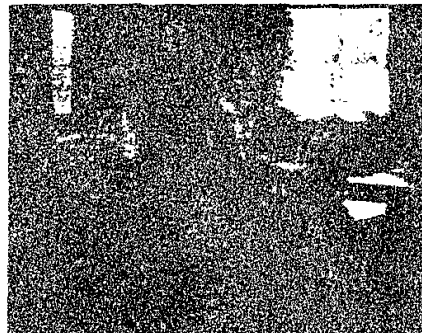
working people. Now they have a chance to prove it before the



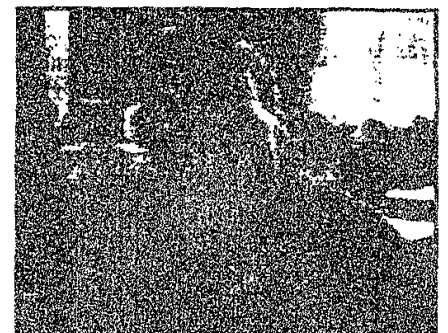
election. This tobacco tax some in Congress are talking about



doesn't make any sense. How does more than half a trillion dollar tax increase on



the working people stop kids from smoking. It's just more taxes from



big government. I'm going to remember this fall what the politicians do this summer."



[Announcer] Contact your member of Congress and tell them to oppose new tobacco taxes.

Call Your Member of Congress  
**1 800-343-3222**  
 For more information  
 contact your Member of Congress  
 or call 1-800-343-3222  
 or visit our website at  
 www.tobaccoaction.org

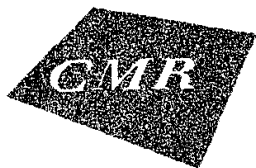
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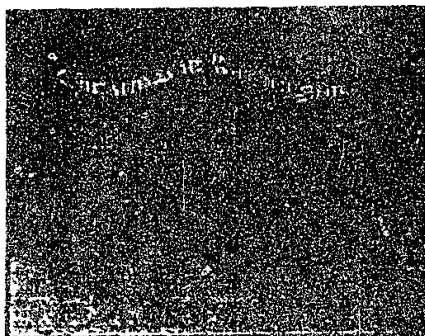
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BRAND: TOBACCO RESOLUTION+  
 TITLE: TOB/TC Its Christmas  
 COMMERCIAL: TOB/TC Its Christmas  
 LENGTH: 30  
 FRAMES: 7

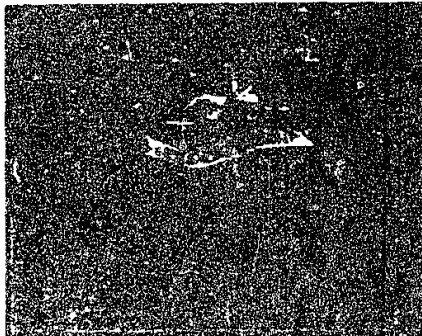
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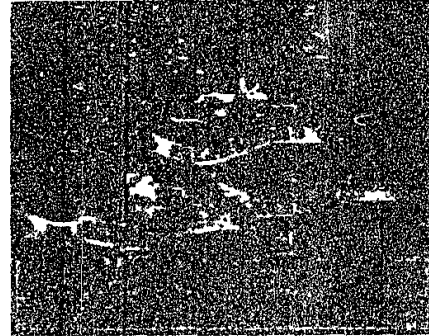
A005D0CK.ESB



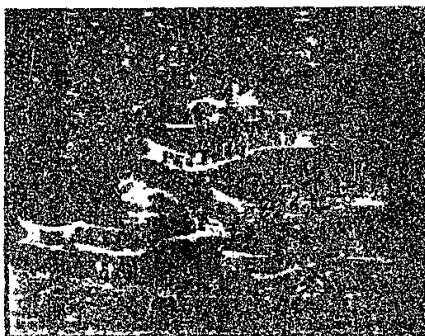
It's Christmas in Washington and they are piling big presents under the tax tree. New spending on pet



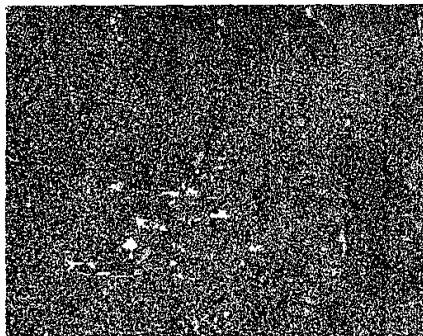
projects. A black market in cigarettes. Tax cuts



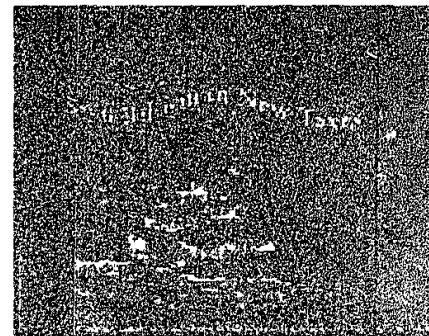
for the wealthy few. Lots of money for new government bureaucracy. Yes



it is the season of giving in Washington. But remember it is your



money they are giving away. \$800 billion in new taxes. Merry Christmas



from Washington and it is only summer. Contact your member of Congress now

**Call Your Member of Congress  
 1 800-343-3222**

For more  
 Brown & Williamson Tobacco Corporation  
 Lorillard Tobacco Company  
 Philip Morris Inc.  
 R.J. Reynolds Tobacco Company  
 United States Tobacco Company  
 www.tobaccoaction.org

and tell them you oppose the McCain tobacco tax.

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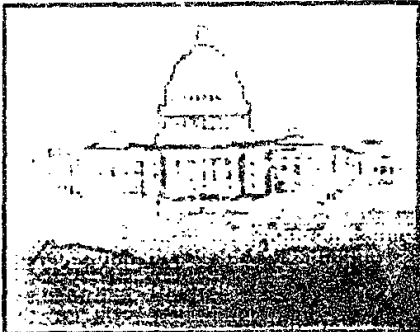
## Ad Detector

BRA: TOBACCO RESOLUTION+  
 TITLE: TOB/TC Right back at it  
 COMMERCIAL: TOB/TC Right back at it  
 LENGTH: 30  
 FRAMES: 7

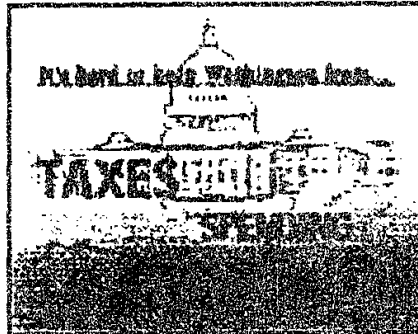
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A005DXR ESB



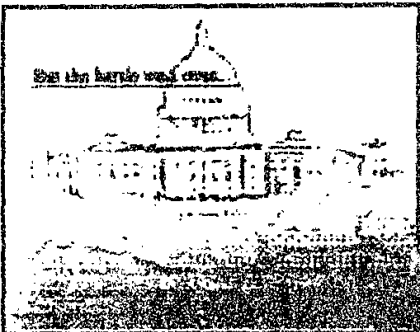
[Announcer]: It's hard to keep Washington from taxing and spending. Recently, hard working Americans



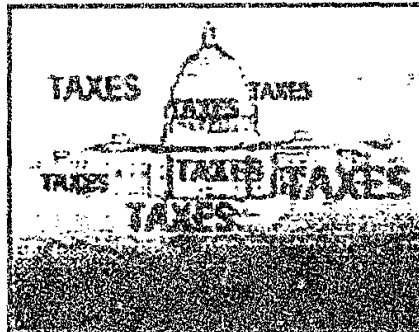
sent a message to Congress. They said no to \$800 billion in



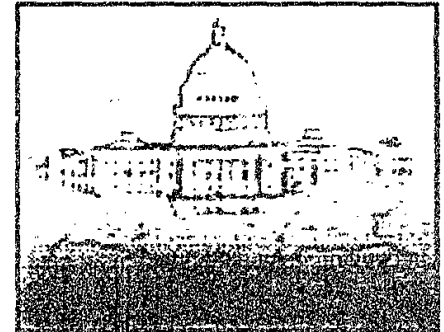
new tobacco taxes and huge new federal spending, but the battle isn't over. Some in Washington



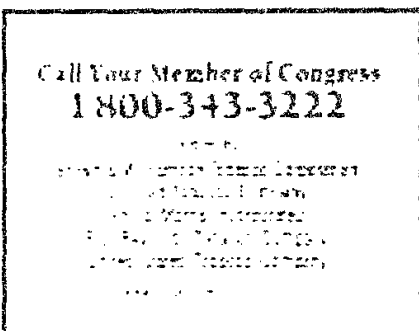
are right back at it. They're still proposing huge new taxes. When



will they get the message? Americans oppose youth tobacco use but know that



massive new taxes and spending aren't the answer. Contact your member of Congress, tell them to



stand up for working people and against a new tobacco tax bill.

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## Ad Detector

BR: TOBACCO RESOLUTION+  
TITLE: TOB/TC GOP against taxes  
COMMERCIAL: TOB/TC GOP against taxes  
LENGTH: 30  
FRAMES: 7

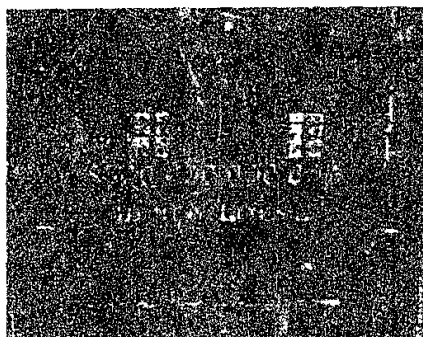
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CMAG  
REPORTS

A005B85Q ESB



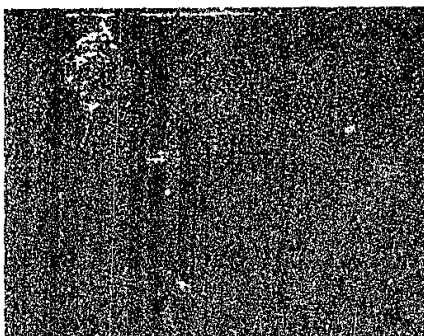
[Announcer:] Two years ago Washington said it would cut youth tobacco use in half without a penny in new taxes. Now Washington is voting to



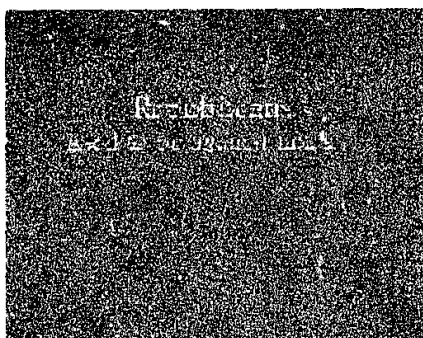
raise half a trillion dollars in new tobacco taxes paid mostly by American's earning less than



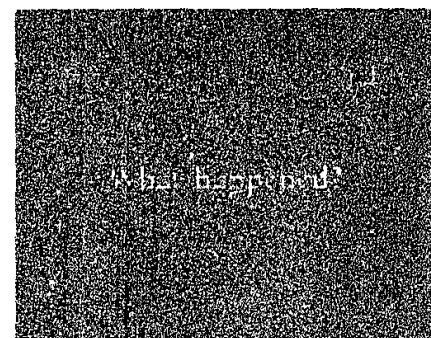
\$30,000 a year. Washington says it's about kids but a leading tobacco opponent admits that



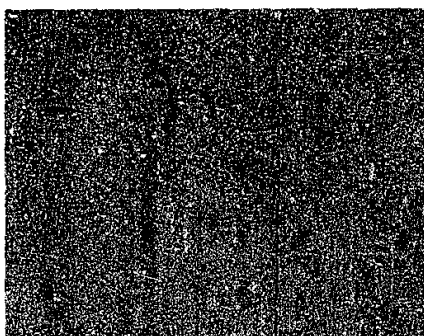
"the thing that is driving us now is the hunger for money." Republicans



used to be against taxes. Democrats for working people. What happened?



Contact you Senators now and tell them you oppose the McCain Tobacco Tax.





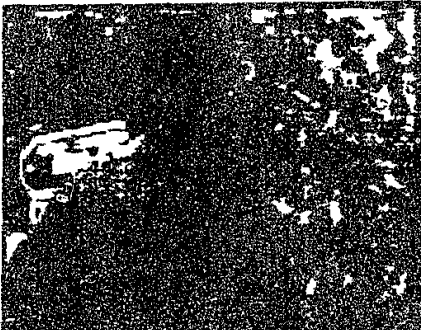
BRA: TOBACCO RESOLUTION+  
TITLE: TOB/TC The Real Hero's  
COMMERCIAL: TOB/TC The Real Hero's  
LENGTH: 20  
FRAMES: 8

1 of 2

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## Ad Detector

A005HCLN ESB



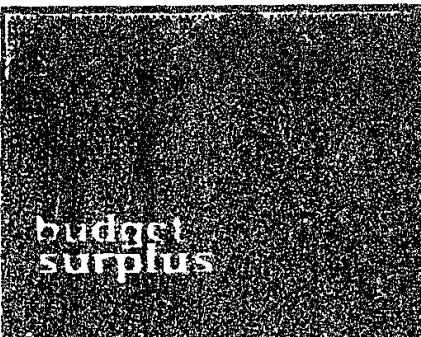
[Announcer]: These are the real  
heroes of the American economy:  
men and women across this country



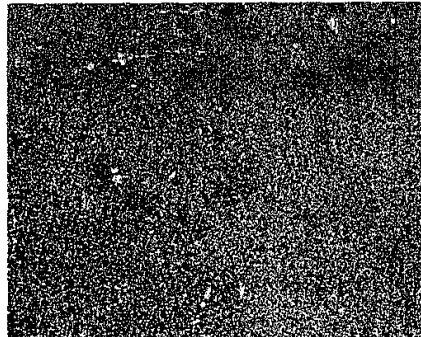
who work hard for their families.  
Their sacrifices brought our economy  
back



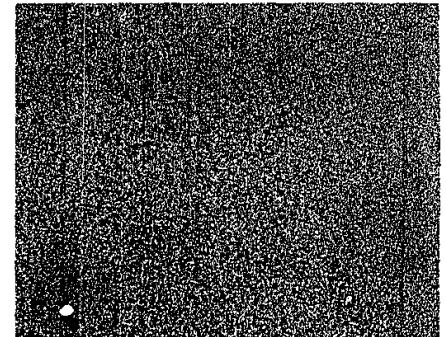
and their tax dollars have given us the  
first budget surplus in almost thirty  
years.



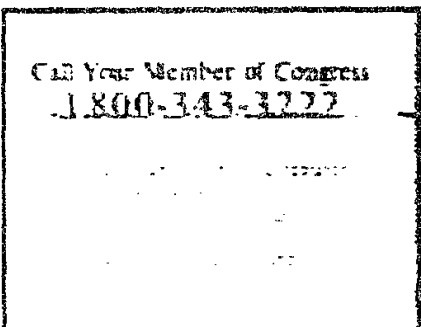
But even with the \$1.6 trillion surplus  
some



in Washington still want more than  
\$500 billion in new tobacco taxes.



Isn't it time to give hard-working  
Americans a break? Contact



your member of Congress. Tell them  
to oppose new tobacco taxes.





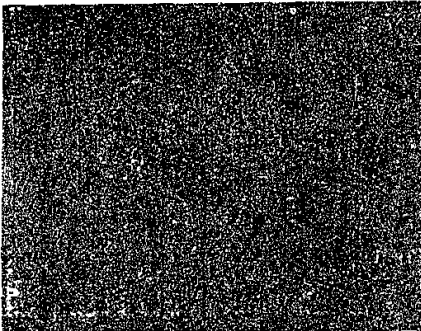
## Ad Detector

SR: TOBACCO RESOLUTION+  
 TITLE: TOB/TC The Tax Tree Fell?  
 COMMERCIAL: TOB/TC The Tax Tree Fell?  
 LENGTH: 30  
 FRAMES: 6

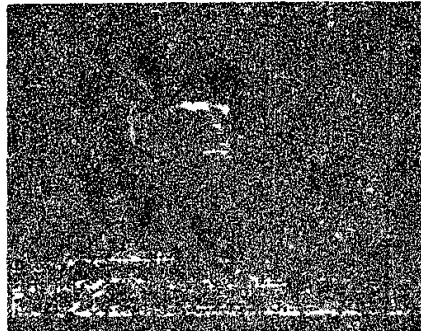
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REPORTS**

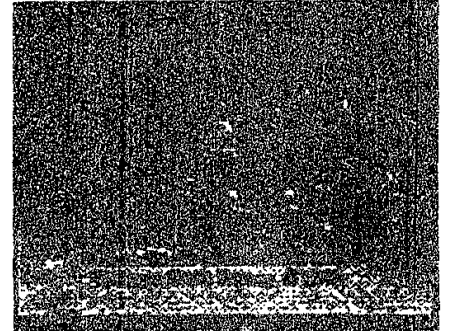
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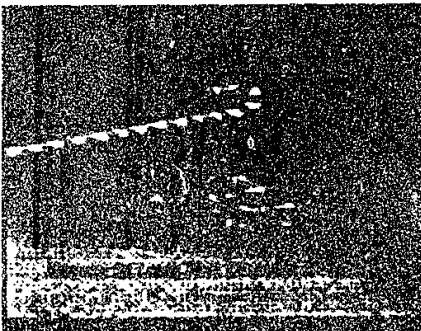
[Announcer]: The Christmas Tax Tree fell over in Washington because hard working



Americans sent a message to Congress. They said no to \$800 billion



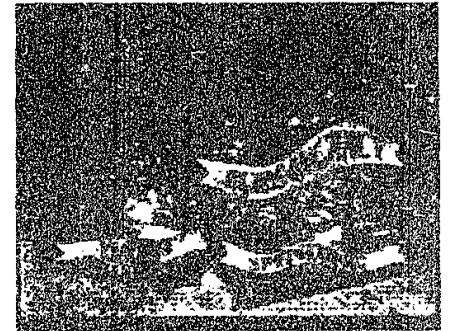
in new tobacco taxes, but now, some people are already trying to



put the tree back up, loading it with new taxes, and spending,



and massive new federal bureaucracy. It's still the season of giving in Washington,



and it's still your hard earned money they're trying to give away. Contact your member of Congress,



tell them to stand up for working people and against a new tobacco tax bill.

Call Your Member of Congress  
**1 800-343-3222**

Patricia  
 Susan L. Anderson Tobacco Education  
 United Tobacco Company  
 1000 North Washington  
 421 North Capitol Cityway  
 United States Tobacco Company  
 4000 16th Street NW

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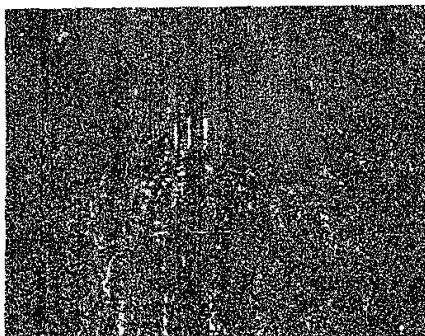
## Ad Detector

BRAND: TOBACCO RESOLUTION+  
TITLE: TOB/TC million against 15  
COMMERCIAL: TOB/TC million against 15  
LENGTH: 15  
FRAMES: 4

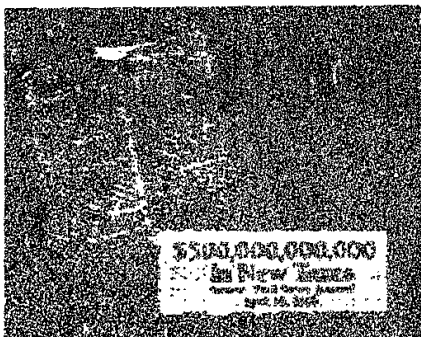
1 of 1

CMAG  
REPORTS

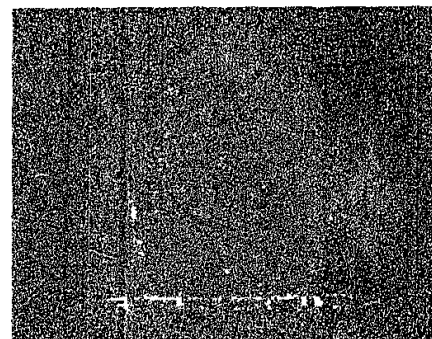
A005AAL2.ESB



Washington's tobacco legislation.  
What's in it for you? Half a trillion



dollars in new taxes, new spending,  
cigarettes



at 5 dollars a pack, creating a black  
market. No wonder it's opposed



by millions of hard working  
Americans.





## Ad Detector

BRA

TITLE:

COMMERCIAL:

LENGTH:

FRAMES:

TOBACCO RESOLUTION+

TOB TO When Will Working People

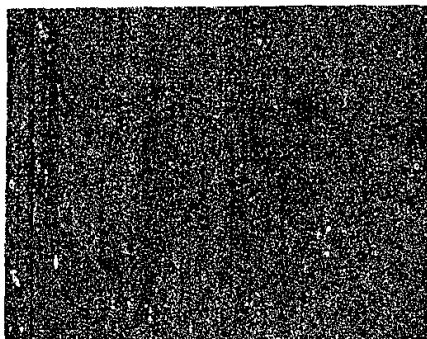
TOB TO When Will Working People

30

7

CMAG  
REPORTS

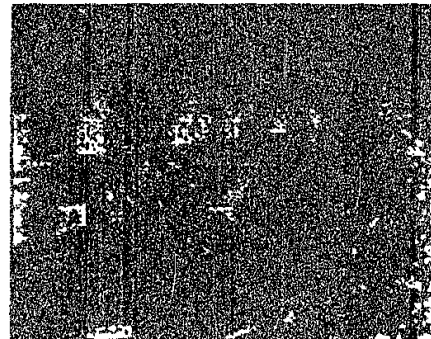
Ad 1 of 1



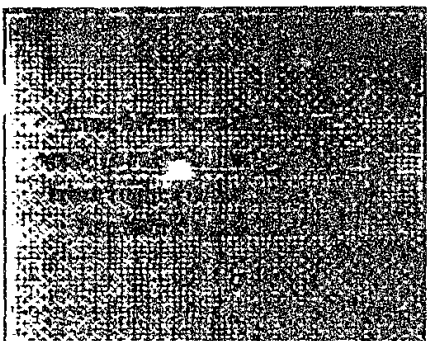
[Announcer] When will working people in this country get a break? They paid the taxes that brought our economy back giving us a projected



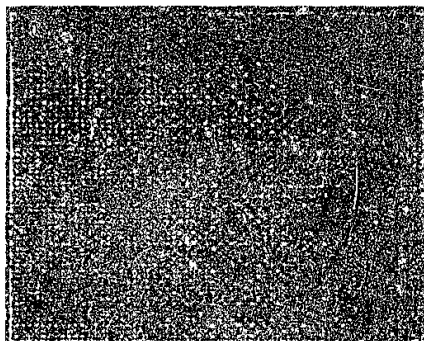
\$1.6 trillion budget surplus. But some still think big government and tax



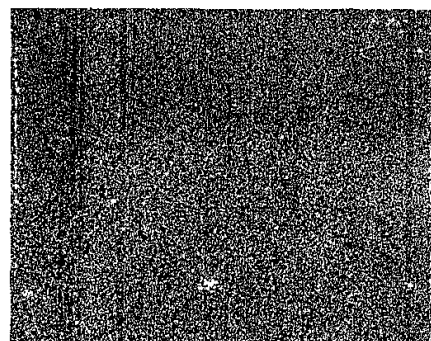
and spend policies are the way to go. Some members of Congress want to raise billions of dollars



from higher tobacco taxes on hard working Americans. They want to expand the power



of government agencies, hire new bureaucrats, and spend billions of tax dollars



new programs. Isn't it time to put working people first for a change?



Contact your member of Congress and tell them where you stand

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