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Committee on Oversight and Government Reform
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Legislative Hearing on Nonmailable Tobacco
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Mr. Chairman, my name is Bill Corr, and I am the Executive Director of the Campaign for Tobacco-Free Kids, the nation's largest non-profit, non-governmental educational and advocacy organization devoted solely to reducing the harm caused by tobacco use and exposure to secondhand smoke, especially among our children.

Thank you for inviting me to testify today on the proposal to make cigarettes and smokeless tobacco nonmailable matter.

The Campaign for Tobacco-Free Kids and other public health organizations -- such as the American Cancer Society, the American Lung Association, and the American Heart Association -- strongly support this proposal, which is necessary to close the door on the serious problem of illegal Internet sales of cigarettes and smokeless tobacco.

Illegal Internet sales steal money away from all levels of government, both by evading applicable taxes on sales of otherwise legal tobacco products and by providing a distribution and sales network for counterfeit cigarettes and other smuggled and black market tobacco products.

As the members of this Committee are well aware, contraband trafficking and tax evasion are criminal activities that reduce government revenues and hurt honest businesses. That is reason enough to want to address those problems as they relate to Internet tobacco product sales. But there are also a number of very good public health reasons for minimizing illegal Internet sales of cigarettes and smokeless tobacco.

Most importantly, selling tax-evading and contraband cigarettes and smokeless tobacco products allows illegal Internet sellers to charge much lower prices than legal sellers, which

increases overall tobacco use and related harms and costs. Studies show, for example, that every 10 percent increase in real cigarette prices will reduce overall use by approximately three or four percent and reduce the number of youth smokers by six or seven percent. More particularly, one recent study found that smokers who purchased tax-free cigarettes from the Internet significantly increased their consumption over time compared to smokers who reported paying full-price at traditional bricks-and-mortar retail stores.

To make matters worse, tobacco products are typically sold over the Internet without any effective safeguards against sales to kids. That means that minors who find it hard to purchase cigarettes from bricks and mortar retailers in states that have cracked down on illegal sales to minors can simply go to the Internet instead. This problem is compounded by the fact that Internet sellers typically require minimum purchases of at least two cartons, which can turn youth who buy cigarettes over the Internet into suppliers for other underage smokers as well.

Internet-sold cigarettes and smokeless tobacco can also fly under the radar to avoid other federal and state requirements and restrictions. For example, counterfeit and other contraband cigarettes and smokeless products sold over the Internet can be sold without federally-mandated warning labels – and cigarettes sold illegally over the Internet can fail to comply with state fire-safety requirements.

The inability to track or monitor cigarette sales over the Internet can also confound the calculations used to try to determine and allocate the annual tobacco settlement payments owed to the states by cigarette manufacturers. More generally, the unchecked and unrecorded illegal cigarette and other tobacco product sales over the Internet hide the full extent and character of the country's tobacco use problem and interfere with the related data collection and research that is necessary to better understand and address the problem.

For all of these reasons, reducing the problem of illegal Internet sales of cigarettes and smokeless tobacco – through making them nonmailable matter – will produce significant public health benefits.

Right now, the only federal law on the books that tries to stop illegal Internet sales of tobacco products is the Jenkins Act, which was passed decades ago to stop mail order cigarette sales that evade state taxation. It requires mail-order vendors to report their cigarette sales into a

state to the state's tax administrator. But enforcing the Jenkins Act is, to say the least, very difficult – and federal efforts have been minimal. In fact, a U.S. General Accounting Office report of a few years ago found that more than three-quarters of all Internet-selling websites explicitly indicate that they do not comply with the Jenkins Act, and that state efforts to prompt compliance by Internet sellers have not been successful.

At the same time, state governments are not in a position to address this problem adequately on their own. Trying to stop illegally operating Internet sellers through traditional enforcement lawsuits on a case-by-case basis simply cannot work because of the large number of illegal Internet sellers, with many based overseas or in other hard-to-reach jurisdictions, the ease with which new Internet sellers can appear, and the ability of illegal Internet sellers to evade enforcement by closing down and then re-opening at another location or website.

Indeed, the only way to stop illegal Internet sellers quickly and efficiently is by blocking their ability to do business. So the states have entered into innovative agreements with common carriers, credit card companies, other payment services, and even cigarette manufacturers to try to make it harder for illegally operating Internet sellers to get the cigarettes, credit card services and delivery services they need to stay in business.

But no matter how comprehensive and effective these state efforts might be, illegal Internet sellers can still evade compliance and enforcement by sending their illegally sold cigarettes and smokeless tobacco through the U.S. mails – and the states have no power or authority over the U.S. mails, at all.

Making cigarettes and smokeless tobacco nonmailable matter would close the door on this enormous enforcement loophole – making it possible for the states to use the other tools at their disposal to address the problem of illegal Internet tobacco product sales effectively and successfully.

Those few states (such as New York) that have chosen to prohibit all Internet sales of cigarettes to their residents cannot successfully enforce their law without a new federal law making cigarettes nonmailable matter. Similarly, the vast majority of states that want to stop only illegal Internet sales -- and allow legal sales -- cannot get the job done without a new nonmailable law.

In fact, making cigarettes and smokeless tobacco nonmailable matter is the only way to open the door to an honest system of legal Internet sales that competes fairly against all other legal sellers of tobacco products.

Put simply, legal Internet sellers cannot compete successfully against illegally operating Internet vendors, primarily because illegal vendors can offer much lower, tax-evading prices. As long as hundreds of illegal Internet sellers can evade compliance with applicable tax and other laws through using the U.S. mails, legal sellers do not have a chance. But making cigarettes and smokeless tobacco nonmailable matter will stop this abuse of the U.S. mails and make it much more difficult for Internet sellers to evade compliance with all relevant laws. More action will be required, at both the federal and state levels to allow for an honest and legal Internet market for cigarettes and smokeless. But making those tobacco products nonmailable is an important, critically necessary next step.

So how would making cigarettes and smokeless nonmailable matter work?

It is, of course, very difficult to stop cigarettes or smokeless tobacco from being sent through the U.S. mails given the difficulty in determining which packages do or do not contain cigarettes or smokeless. That is why all cigarettes and smokeless tobacco products must be made nonmailable. That way, any time U.S. postal service employees or inspectors find cigarettes or smokeless tobacco in the mails, they will immediately know they are nonmailable and illegal and can immediately stop their delivery. There will be no need for any second stage inquiry or analysis to distinguish between mailable and nonmailable types of cigarettes or smokeless that would hinder and delay enforcement efforts.

In addition, implementing a nonmailable matter provision would immediately stop substantial amounts of cigarettes and smokeless tobacco from ever getting into the mails in the first place. Simply making those tobacco products nonmailable – with significant penalties for violations – will stop many of the smaller scale or informal Internet sellers from using the mails.

More importantly, while it is difficult to identify every package that contains cigarettes or smokeless, it is not at all hard to identify the Internet sellers that are illegally selling and mailing cigarettes or smokeless. In fact, their websites usually advertise those facts. Making cigarettes and smokeless tobacco nonmailable, done right, would empower the Postal Service to block

delivery of any packages put into the mails by a known illegal Internet sellers – and would empower Postal employees to refuse to accept any packages for mailing at all from any such entity or person unless the person or entity first shows that the packages do not contain any cigarettes or smokeless tobacco.

In addition, a nonmailable matter law should enable the Postal Service and other enforcement officials to do stings where they order cigarettes or smokeless tobacco from Internet sellers known or suspected of operating illegally and then, if the tobacco products are delivered by mail, stop any future deliveries for those illegal sellers and, where practical, bring enforcement actions against them.

In these ways, making cigarettes and smokeless tobacco products nonmailable would effectively address the most serious and harmful aspects of illegal Internet tobacco product sales and related illegal use of the U.S. mails. It would immediately hinder Internet-based contraband trafficking of tobacco products, better protect honest businesses from illegal competition, protect and increase revenues at all levels of government, and significantly improve public health.

Thank you, again, for this opportunity to testify before this Committee. I would, of course, be happy to answer any questions.