

NATION & WORLD

FDA can't regulate tobacco, high court rules

BY LAURIE ASSEO
ASSOCIATED PRESS

WASHINGTON — The government lacks authority to regulate tobacco as an addictive drug even though tobacco use may be "the single most significant threat to public health," the Supreme Court said Tuesday, throwing out the Clinton administration's main anti-smoking initiative.

The 5-4 ruling said Congress did not authorize the Food and Drug Administration to regulate tobacco. President Clinton and others immediately said Congress should pass a law letting the FDA reinstate its rules cracking down on cigarette sales to minors.

"If we are to protect our children from the harms of tobacco, Congress must now enact the provisions of the FDA rule," Clinton said in a statement issued while he was traveling in India.

But Mark Smith, spokesman for Brown & Williamson Tobacco Corp., welcomed the ruling. "Business and in-

dustry throughout the nation ought to breathe a sigh of relief. The highest court in the land has confirmed that a federal agency cannot on its own go beyond its limits of authority set by Congress," he said.

Justice Sandra Day O'Connor, writing for the court in the case that began in Greensboro, N.C., said, "By no means do we question the seriousness of the problem that the FDA has sought to address." She said, "The agency has amply demonstrated that tobacco use, particularly among children and adolescents, poses perhaps the single most significant threat to public health in the United States."

However, she said, "We believe that Congress has clearly precluded the FDA from asserting jurisdiction to regulate tobacco products."

The ruling was a victory for an industry that has been under increasing pressure for selling a product the American Cancer Society calls the leading cause of

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cancer. Cancer society head John R. Sefrin said he was disappointed by the ruling.

The Justice Department also has a lawsuit pending against the industry, which has agreed to pay the states \$246 billion for the cost of treating smoking-related illnesses. Cigarette billboards around the country were taken down last year as part of that agreement.

O'Connor's opinion was joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas.

Dissenting were Justices Stephen G. Breyer, John Paul Stevens, David H.

Souter and Ruth Bader Ginsburg. Writing for the four, Breyer said the 1938 federal Food, Drug and Cosmetic Act's "basic purpose — the protection of public health — supports the inclusion of cigarettes within its scope."

The ruling throws out the FDA's rule requiring convenience stores and other places that sell cigarettes to require identification from anyone under age 27 seeking to buy tobacco products.

Other FDA rules put on hold earlier would have limited vending-machine cigarette sales to adults-only locations, such as bars, and would have limited cigarette advertising. All 50 states already ban tobacco sales to anyone under 18, and the FDA adopted that rule nationwide.

Sen. Tom Harkin, D-Iowa, said, "I ask the convenience stores, I ask our drug stores, I ask our gas stations, other places where kids can buy cigarettes to not pull back. ... I urge this community to keep the cigarettes behind the counter, to keep that ID check sign up" while lawmakers push for federal legislation allowing FDA regulation of tobacco.

NEWS ANALYSIS

Gore dodges 'Hubert Humphrey Syndrome'

Most analysts say China is bluffing when it threatens war over Taiwan's recent election of a pro-independence candidate. Al Gore better pray they're right.

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For the vice president, it's a quandary without a winning scenario; a lose-lose setup if ever there was one.

If the Clinton administration goes to war, it will seem like Vietnam II. Americans will be fighting for the independence of a small Asian political entity (really, a nation) trying to fend off a Communist nation's attack. Gore will have a months-long nightmare of body bags coming home from Asia.

Once again, Taiwan's elections have fallen on the same year as U.S. elections. Once again, China is sending ominous signals to the citizens of Taiwan. Once again, those citizens denied the mainland.

But this time, the stakes are much, much higher.

China has now said any talks with the island it considers a renegade province must take place with only one goal in mind: re-unification. While that is nothing new, scolding editorials in China's state-run newspapers are beginning to hint at the possibility of nuclear war if the United States gets involved in the tension between the two distinct parts of "One China."

The problem for Gore comes from the far edges of the hypothetical: What if? What if China goes to war with Taiwan?

What if the United States gets involved?

It can be called the Hubert Humphrey Syndrome. Humphrey was Lyndon Johnson's vice president, who lost largely because of his unequivocal support of the Vietnam War and the way the Johnson Administration was running it. Loyal, yes; smart, no.

It didn't matter that Richard Nixon was far from a dove. The Johnson Administration was responsible for the war, in Americans' eyes, and it hurt Humphrey.

If the administration chooses not to act, Gore's situation gets worse. There will be cries of cowardice, and Gore will have to choose between distancing himself from the administration (and looking like a hawkish traitor) or defending the administration and being labeled as "weak" and "soft" by the Bush camp.

Again, most analysts agree that Chinese action is unlikely now (though it could occur 3-5 years in the future, meaning even larger troubles for whoever gets elected this go-round). China's military, they stress, is not yet strong enough to mount an invasion of Taiwan; it's certainly nothing to compare to the U.S. Army, though China has about 10 times the U.S. population.

That's probably the reason for the nuke gambit. China knows that its only credible threat, and one that actually scares people in America, because bombs might actually be falling here at home.

But it also shows the perils of election-year politics for the incumbent and is a lesson about foreign policy's importance in U.S. elections.

By and large, Americans don't care about what's going on overseas.

Until "your boys" start coming home dead.

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