May 6, 2013

Dear Senator:

We are writing to express our strong opposition to S. 772, legislation that would exempt many cigars from regulation under the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31. We believe the Food and Drug Administration (FDA) should retain the authority to regulate all tobacco products, including cigars. Products containing tobacco cause disease and death, and no tobacco products should be exempted from oversight by the agency.

While the health risks of cigar smoking are not the same as cigarette smoking, cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke. According to the National Cancer Institute, cigar smoking causes cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are at increased risk for an aortic aneurysm. Daily cigar smokers, particularly those who inhale, have an increased risk of heart disease and chronic obstructive pulmonary disease (COPD). Cigar smoking is not limited to adults; it is the second most common form of tobacco use among youth. According to national surveys, 17.8 percent of high school boys currently smoke cigars (i.e., large cigars, cigarillos, and small cigars), and each day more than 3,000 kids under 18 years old try cigar smoking for the first time. Young adults (e.g., 15.9 percent of 18 to 24 year olds) are also much more likely to be cigar smokers than older adults (e.g., 4.9 percent of 45 to 64 year olds).

With strong bipartisan support, in 2009 Congress gave FDA authority over the manufacture, sale and marketing of all tobacco products, including cigars. The statute explicitly defines tobacco products as "any product made or derived from tobacco that is intended for human consumption …" and cigars clearly fall under this definition.

Congress appropriately gave the FDA the flexibility to determine the type of regulation that is appropriate for different tobacco products. While the Act immediately applied all of FDA's new authorities to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, it established a process for the Secretary of Health and Human Services to assert jurisdiction over other tobacco products, including cigars, and determine which requirements are appropriate for the protection of public health.

FDA has indicated that it intends to propose a rule soon that deems all tobacco products, including cigars, subject to Chapter IX of the Federal Food, Drug, and Cosmetic Act (FDCA), but it has not indicated which specific provisions or regulations will apply to cigars. Congress should not reverse course and exempt cigars, or certain types of cigars, from oversight. Maintaining FDA's current authority will ensure that any proposal about cigars is based on science and will be open to participation by all interested parties through Notice and Comment rulemaking.

S. 772 would undermine the science-based process created by the Tobacco Control Act for determining the appropriate level of oversight of tobacco products. FDA would be prohibited from promulgating any regulation related to "traditional large and premium cigars," regardless of how significant the benefit to public health or how minimal the cost to cigar manufacturers or retailers. While the bill includes a somewhat different definition of "traditional large and premium cigar" than legislation introduced in the 112th Congress, we remain concerned it would block FDA oversight of products with known health risks and could cover a broad array of cigars, including those that may appeal to kids. The bill not only would exempt traditional hand-made cigars but also would specifically exempt some machine-made cigars, which tend to be more affordable for young people than hand-made cigars. The new bill also does not prohibit strawberry, grape, cherry or other flavored cigars from qualifying for an exemption. We know that tobacco manufacturers have a history of modifying their products to avoid regulations or attain lower tax rates and are concerned that the number of cigars covered by S. 772 would likely increase over time as cigar manufacturers modify their products or change their manufacturing processes to qualify for the exemption.

Our organizations strongly urge you to oppose S. 772 and, instead, support the current science-based process for determining appropriate oversight of all tobacco products.

Sincerely,

American Cancer Society Cancer Action Network
American Heart Association
American Lung Association
Campaign for Tobacco-Free Kids
American Academy of Pediatrics

American Academy of Family Physicians
American Association for Cancer Research
American Association for Respiratory Care
American Academy of Otolaryngology—Head and Neck Surgery
American College of Preventive Medicine
American Medical Association
American Psychological Association
American Public Health Association
American Society of Clinical Oncology
Association of State and Territorial Health Officials
American Thoracic Society
Community Anti-Drug Coalitions of America
Cancer Prevention and Treatment Fund
Lung Cancer Alliance
National Association of City and County Health Officials
National Latino Alliance for Health Equity
Partnership for Prevention
United Methodist Church, General Board of Church and Society