April 29, 2009

The Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510
Fax: (202) 224-2417

Dear Senator Kennedy:

We are writing to express our strong opposition to S. 579, the Federal Tobacco Act, which has been introduced by Senator Richard Burr (R-NC) and Senator Kay Hagan (D-NC). This legislation is a deeply flawed response to the public health threat posed by tobacco products, which are the leading preventable cause of death in the United States. The Burr-Hagan bill would again allow tobacco companies to escape the effective oversight needed to protect our children from tobacco addiction and reduce the more than 400,000 deaths and $96 billion in health care costs caused by tobacco-related diseases every single year.

S. 579, the Burr-Hagan bill, creates a new and untested bureaucracy with inadequate authority to oversee tobacco products, fails to provide sufficient resources to do the job, gives the tobacco industry undue influence over the regulatory process, and fails to protect consumers from the tobacco industry's deceptive health claims.

We urge you to support real and effective regulation of tobacco products as embodied in H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, bipartisan legislation that was approved by a 298 to 112 vote in the House of Representatives on April 2 and will be considered soon by the Senate. This bill is very similar to legislation that was introduced in the 110th Congress by Senator Kennedy, approved by the HELP Committee and had 60 sponsors and co-sponsors.

H.R. 1256 places tobacco regulation in the best qualified and most experienced agency – the U.S. Food and Drug Administration (FDA), provides the necessary resources through a user fee paid by tobacco companies, protects our children from tobacco marketing, and relies on science-based regulations that will protect the public health from tobacco products.

Here is a comparison of key provisions that demonstrates how S. 579, the Burr-Hagan bill, is fundamentally flawed:

The Burr-Hagan bill would create a new bureaucracy that lacks the experience, expertise and resources to effectively regulate tobacco products. The FDA is the right agency to regulate tobacco products because it is the only agency with the regulatory experience, scientific expertise, and public health mandate to do the job. The Institute of Medicine and the President's Cancer Panel have both endorsed giving the FDA this authority. H.R. 1256 would fund the FDA's tobacco responsibilities through a user fee on tobacco companies so that no resources are taken from the FDA's existing responsibilities. In contrast, the Burr-Hagan bill provides inadequate funding to effectively regulate tobacco products – less than one-fourth of the amount provided by H.R. 1256.

The Burr-Hagan bill does not give the FDA any meaningful authority to require changes in tobacco products. Under H.R. 1256, the FDA could regulate nicotine levels and require other changes to tobacco products to protect public health, such as the reduction or removal of harmful ingredients and constituents. Under the Burr-Hagan bill, the new agency could not mandate reductions in nicotine or the reduction or removal of any specific substance in tobacco smoke, no matter how harmful.

The Burr-Hagan bill would actually harm public health because it perpetuates consumers' misperceptions that they can reduce their risk of disease by switching to so-called "low-tar" cigarettes. The Burr-Hagan bill mandates the use of the same test to measure tar and nicotine levels that the Federal Trade Commission recently disavowed. The FTC concluded that this test misleads consumers because it does not accurately predict the amount of tar consumers receive or provide meaningful information about the relative health risks of different cigarettes.

The Burr-Hagan bill does not strengthen warning labels in a meaningful way. H.R. 1256 would require warning labels that cover at least 30 percent of the front and back of the package and would allow for graphic warning labels that cover 50 percent of the package. The Burr-Hagan bill does not increase the size of the lettering of current tobacco warning labels and prohibits any requirement that warnings, or any other disclosures, be placed on the front of the package.

The Burr-Hagan bill does not adequately protect consumers from misleading health claims about tobacco products. H.R. 1256 would allow manufacturers to introduce new products and even make reduced risk claims, but appropriately gives the FDA authority to ensure such claims are adequately supported by the science and appropriate for the protection of public health. The Burr-Hagen bill sets a much weaker standard for allowing reduced risk claims and would make it much easier for tobacco companies to continue to mislead consumers.

The Burr-Hagan bill gives the tobacco industry license to create new ways to market to youth. While the Burr-Hagan bill restricts some current forms of tobacco marketing, it prohibits the new agency from going beyond these restrictions. It would not allow additional restrictions on new and innovative marketing strategies the tobacco industry introduces in the future. Given the tobacco industry's history of circumventing marketing restrictions, it is critical that the FDA have the authority to respond to new efforts by the tobacco companies to target kids and mislead the public. H.R. 1256 would provide the FDA with that authority.

The Burr-Hagan bill would give the tobacco industry undue influence and create gridlock on the important Scientific Advisory Committee by giving the tobacco industry the same

number of voting representatives as health professionals and scientists. Giving the tobacco companies equal decision-making representation guarantees inaction and is not consistent with the way other manufacturers are regulated.

Tobacco products are the most deadly products on the market today, yet they have escaped common-sense public health regulations that apply to other consumer products. H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, would at long last end this special protection for the tobacco industry and protect our children and our nation's health instead. It is supported by more than 1,000 public health, medical, faith, and other organizations across the nation. It was recently endorsed by former Health and Human Services Secretaries Tommy Thompson and Donna Shalala, former Surgeons General Richard Carmona and David Satcher, former CDC Director Julie Gerberding, and former FDA Commissioner David Kessler.

We strongly urge you to oppose S. 579 and ask for your support of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, meaningful and effective regulation of tobacco products. Thank you for your attention to our concerns.

Sincerely,

American Academy of Family Physicians
American Academy of Nurse Practitioners
American Academy of Oral Medicine
American Academy of Pediatrics
American Association for Respiratory Care
American Cancer Society Cancer Action Network
American College of Cardiology
American College of Chest Physicians
American College of Preventive Medicine
American College of Occupational and Environmental Medicine
American Heart Association
American Lung Association
American Medical Association
American Public Health Association
American School Health Association
American Thoracic Society
Asian & Pacific Islander American Health Forum
Association of Schools of Public Health
Association of State and Territorial Health Officials
Campaign for Tobacco-Free Kids
Lung Cancer Alliance
National Association of City and County Health Officials
National Association of Local Boards of Health
Oncology Nursing Society
Partnership for Prevention
United Church of Christ, Justice and Witness Ministries
United Methodist Church – The General Board of Church and Society