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From: Scruggs, John
Sent: Thursday, January 25, 2001 9:32 AM
To: Parrish, Steve; Szymanczyk, Mike E.; Berlind, Mark; Laufer, David; Nicoli, David; Pfeil, Michael E.; Keane, Denise
Subject: Teitz with Senator Kennedy

Yesterday Mark Berlind and I met with Senator Kennedy's HELP Committee Counsel Jeffrey Teitz. The purpose of the meeting was twofold, first to explore whether Kennedy would be willing to move legislation BEFORE a firm agreement was secured and second to seek further clarification on Kennedy objections to the Frist bill.

Clearly Kennedy will NOT support action on FDA until "certain minimum requirements are met" in any FDA legislation that may be processed by the HELP Committee. This is an obvious and smart legislative strategy on his part, given our supposed ability to bring everything back to the center in a conference committee. Thus, Kennedy will be problematic unless we can reach some compromise on the outstanding issues. I will let Mark Berlind provide a fuller explanation, but Kennedy's objections to the Frist bill are as follows:

Advertising was the first issue raised by Teitz and is clearly the most important to him (see below). Kennedy wants full FDA authority over the advertising of tobacco products. However, he is willing to consider some limitation on that authority if language can be drafted that would narrowly limit advertising to adults who smoke.

Kennedy is also concerned about the "unacceptable for adult consumption" limitation on the performance standard. He believes that rather than solving a problem, this will merely result in years of litigation. However, he asserts that he does not want FDA to have the authority to make cigarettes unpalatable. He is more concerned with the ability to force us to take ingredients out, rather than put them in.

Kennedy wants to have the FDA rule legislatively implemented, allowing us to then bring any First Amendment challenges we may have. In his view, the Frist bill's legislative declaration of adequacy of the record is insufficient. He asserts that the Frist staff never put the notion of legislative implementation of the marketing and access restrictions of the rule on the table during the negotiations. He appeared interested in that concept.

Teitz's position has not changed on reduced risk products. He believes cessation and initiation need to be considered beyond mere marketing, but seems very receptive to fuller discussions in this area. He understands our goals and desires in this area and believes our business motivations to be very positive. He will insist that FDA make a determination of "significant" harm reduction. Clearly, he is not opposed to having reduced harm products brought to market under appropriately regulated circumstances.

At the conclusion of our discussion Teitz made a fairly dramatic offer. He indicated that if we could make significant movement on advertising, we could "work out" the other issues. He also stated the advantages of making a deal with Kennedy. These include the Senate floor not "spinning out of control" and his assurance that the bill would not be attacked from the left or by the public health community. Kennedy would oppose all amendments and would expect us to do the same throughout the process. He assumes we could do much the same from the other side of the aisle and political spectrum.