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The FDA's Misguided Nicotine Crusade

Why is the agency trying to ban companies that have no role in smoking-related health problems?



E-cigarettes for sale at a store in Sacramento, Calif. PHOTO: ASSOCIATED PRESS

By **HOLMAN W. JENKINS, JR.**

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E-cigarettes do not contain tobacco. They contain nicotine, a chemical derived from tobacco and other plants.

Plain English was never a deterrent, though, to regulators on an empire-expanding mission. The Food and Drug Administration this week rolled out new regulations on e-cigarettes based on a 2009 law giving the agency power over products that “contain tobacco.”

That law, we’re duty-bound to add, was practically written by Philip Morris (now called Altria).

Plain English also does not authorize inclusion of e-cigarettes under the 1998 Master Settlement Agreement, the deal struck between the cigarette industry and 46 states that settled a bunch of lawsuits by imposing a government-run cartel to jack up the price of cigarettes (in the name of curbing consumption, naturally) and distribute the excess profits to the states and a handful of now-plutocrat trial lawyers.

To this day, e-cigarettes enjoy a considerable retail price advantage over products covered by the MSA. If you don't think this fact plays a role in the move to regulate e-cigarettes, Donald Trump has some inaugural ball tickets to sell you.

Lovers of freedom and enemies of regulatory overkill do not exaggerate when they say FDA rules are designed to murder numerous small manufacturers and thousands of "vape" shops that account for about half the electronic-cigarette business.

E-cigarettes, let's remember, operate by heating a solution containing nicotine, rather than burning tobacco. These small operators are unlikely to afford the estimated million-dollar cost of submitting each and every existing product and product variation for retroactive consideration by the FDA, as required by the law. Their trade group, the Smoke-Free Alternatives Trade Association, estimates that 99% of existing products therefore will exit the market during the two-year phase-in of the prohibitory new rules.

While government is laying waste to this small-business sector, expect to hear a great deal about how e-cigarettes represent unknown dangers, how they induce youngsters to smoke who wouldn't otherwise smoke, how they aren't really useful for smokers trying to quit or curb their usage.

As the redoubtable Jacob Sullum of Reason Magazine puts it, "The FDA's regulatory scheme, in other words, privileges the most dangerous nicotine delivery devices (conventional cigarettes) while threatening to eliminate much safer alternatives and blocking the introduction of even better products."

In time, what remains of the market will be consolidated in the hands of Big Tobacco companies that already dabble in e-cigarettes, i.e., Altria and Reynolds. Then expect to hear more about the benefits of e-cigs: a British study finds them 95% safer than traditional smokes; their market consists largely of smokers trying to cut down their risks.

At this point, unless we miss our guess, loud will become talk of the need to "level the playing field" with the MSA-covered brands—i.e., to bring e-cigs under the government-sponsored cartel (in the name of suppressing nicotine addiction of course) before they undercut the states' \$23 billion annual haul from Marlboro, Winston, Newport, etc.

All this will serve what purpose? To placate anti-smoking groups that have already shown themselves willing to be satisfied with “victories” over Big Tobacco that amount to big wet kisses to Big Tobacco? To assuage the need of politicians to pose as enemies of smoking while simultaneously receiving most of the profits of smoking?

Unasked will be the question: Has our nicotine prohibition gone too far now that we are trying to ban products that never caused the health problems that prompted the original smoking crackdown? Nicotine is not alcohol or even pot, which is legal in many places. Nicotine is more like caffeine or aspirin—an excellent drug, with few serious side effects (though mildly addictive) and many fine properties: It relieves bad feelings, improves concentration, calms the nerves.

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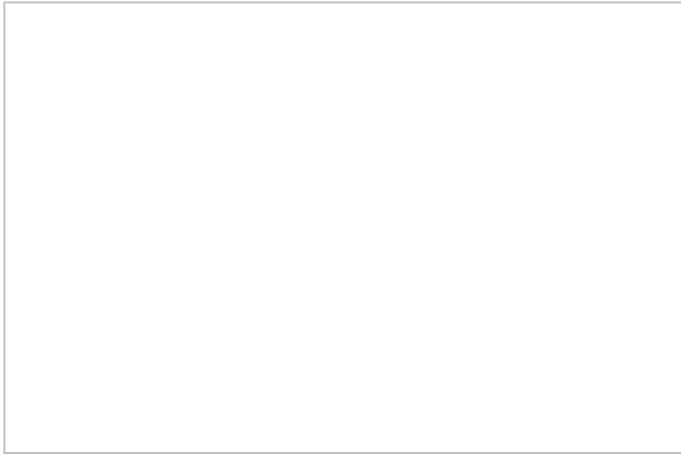
Is the
real
problem
here
that
many
organized
activists

have made careers out of opposing smoking (or redistributing the revenues of smoking)? To desist would be to deprive themselves of a leverage point that can continue to pay personal and political dividends. Like an army formed to oppose a real enemy, when the war is over, instead of disbanding, it turns to plundering the people it was supposed to protect.

In the latest issue of the Yale Journal of Regulation, Case Western’s Jonathan Adler and several co-authors describe the e-cig fight in terms of classic “Baptist” and “bootlegger” coalition, in which do-gooders and self-interested parties cooperate to impose regulation that mostly benefits the self-interested parties—in this case, Big Tobacco.

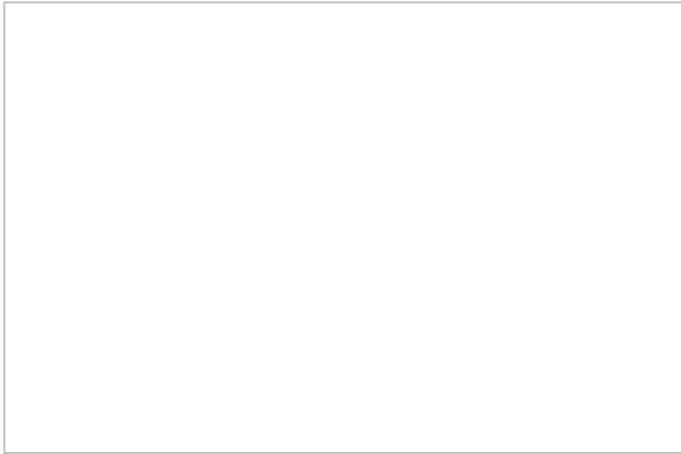
Their theory perhaps needs to be updated for when the do-gooders degenerate into do-gooders manqué, existing only to prettify the market manipulations that politicians undertake on behalf of big business. What’s more, if you don’t think such activities play a role in the U.S. economy’s poor performance in recent years, Hillary Clinton has an entire economic agenda to sell you.

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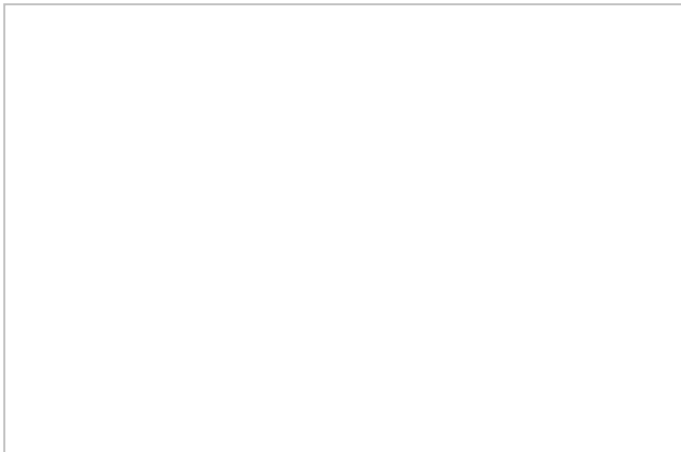
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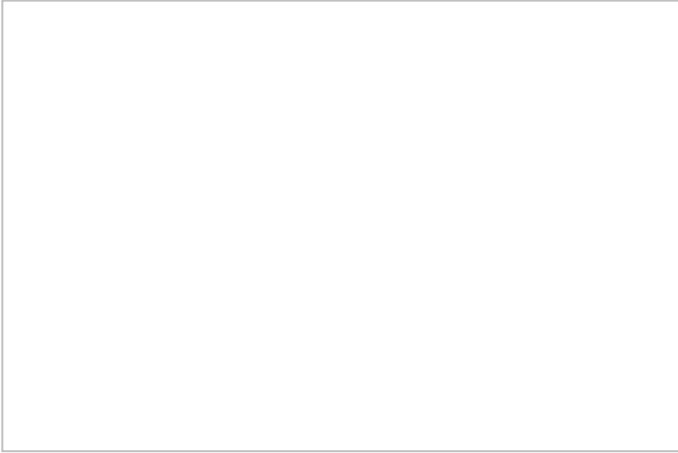
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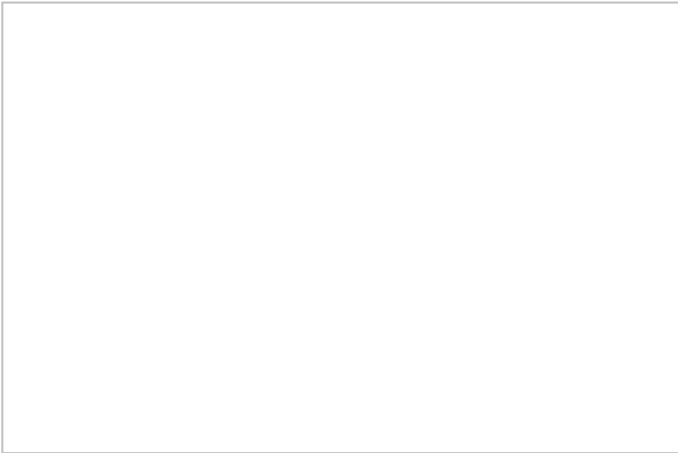
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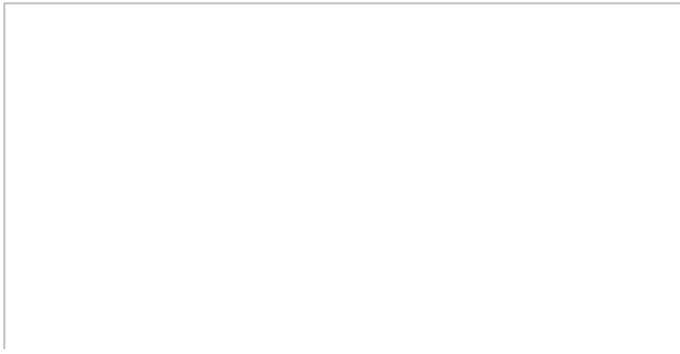
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