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Filtering Out Tobacco Laws

By Shawn Zeller, CQ Staff

Tobacco companies weren't able to stop or greatly change last year's law regulating their products, but they have been trying after the fact to tone it down.

Last summer, two of the biggest cigarette makers, R.J. Reynolds Tobacco Co. and Lorillard Inc., filed suit in federal court challenging the new federal advertising restrictions on First Amendment grounds. Now the tobacco industry is bankrolling a campaign that questions the fairness of the Food and Drug Administration's process of writing regulations to implement the law.

Earlier this month, Jim Tozzi, a longtime industry advocate who co-founded a Washington think tank critical of regulation called the Center for Regulatory Effectiveness, launched what he calls an Interactive Public Docket on the tobacco rules. Tozzi says it will allow anyone to weigh in online about the FDA's Tobacco Products Scientific Advisory Committee, a 12-member panel advising the agency on its regulations. The committee has nine voting members -- mostly scientists and doctors -- and three non-voting delegates from the tobacco industry.



Tozzi, who was a deputy administrator of the Office of Management and Budget in the Reagan administration, says such committees just give agencies cover to do what they please on regulations. "If there's ever a shadow government, it's the whole idea of advisory committees," he says. "Advisory committees are picked by the agency to further the agency's goals."

A lot is at stake, such as the future of menthol-flavored cigarettes, an issue that nearly halted the tobacco bill in 2008, when members of the Congressional Black Caucus demanded that the House bill's sponsor, Democrat Henry A. Waxman of California, add menthol to the bill's list of additives that would be banned from cigarettes. Menthol flavor is particularly popular among African-American smokers. But banning it threatened the support of Philip Morris USA Inc., the country's largest cigarette maker, which had backed it because it would provide regulatory certainty. A compromise left menthol for the FDA to decide.

Tozzi makes no bones about who's paying for his effort. "Everyone has a paymaster, even when you work in government," he says. And his public docket, he insists, will allow comments by tobacco critics and supporters alike. "If the government had this kind of transparency on its FDA committee, I wouldn't need this site," he says.

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