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Congress's Marlboro Men

(W*all Street Journal*, July 19, 2004 – EDITORIAL) - To understand what's wrong with the tobacco deal approved by the Senate last week, consider that its biggest fan is America's biggest cigarette-maker, Philip Morris.

Pushed hard by Majority Whip Mitch McConnell of Kentucky and other tobacco state lawmakers, the bill gives federal regulators long-sought authority over the cigarette industry in exchange for a $13 billion buyout of tobacco farmers. Our guess is that Philip Morris is so giddy because it sees what its smaller competitors also see: the makings of a new public utility that will lock into place competitive advantages for the cigarette industry's biggest company and give government a rooting interest in its long-term survival. Meet the new Marlboro Man: Uncle Sam.

One reason some of us opposed the 1998 settlement between Big Tobacco and the
states was that it would make the government a de facto partner with these so-called merchants of death. Sure enough, what supposedly began as an effort by states to recoup Medicare costs has turned into the government using its powers and resources to loot a lawful private industry.

The political class's subsequent addiction to tobacco money is undeniable. Yesterday the Journal reported that 30 states now place caps on appeal bonds with the self-serving goal of "protecting the annual payouts made by major tobacco companies." Heaven forfend a tobacco company should go out of business.
According to a March General Accounting Office report, 54% of the $11.4 billion that states will receive this year from the settlement will be spent on budget shortfalls; 17% on treating smoking-related illnesses; and a meager 2% on tobacco prevention. We've come a long way, baby.

Congress now wants to take us further down this tobacco road in the name of phasing out the Depression-era quotas. The House already passed a bill that includes a smaller ($9.6 billion) buyout to be paid by taxpayers but that omits new federal regulations on cigarette manufacturing and marketing. The Senate version makes tobacco companies finance a more expensive buyout, though the costs surely would be passed on to smokers.

Tobacco-control advocates are partial to the Senate version because they like the idea of yet another level of regulatory oversight from the Food and Drug Administration. And Senator McConnell is Philip Morris's new best friend because
the tobacco giant knows that FDA regulators would severely restrict marketing, which gives it an advantage over lesser-known rivals and lower-priced competitors. Put another way, the federal government would become not only a partner of tobacco but a partner of tobacco monopolists.

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The Bush Administration, sad to say, hasn't shown much better leadership on the issue. Perhaps that's because it's been busy with a separate shakedown of the industry. It was President Clinton's Justice Department that originally sued tobacco companies in 1999 after Congress nullified federal claims to the state windfall. But five years later, the bad decision to continue the litigation belongs to the Bush White House and U.S. Attorney General John Ashcroft.

In a recent 2,500-page court filing, the Justice Department laid out its charges that Big Tobacco has been engaged in a racketeering enterprise for the past 50 years. District Court Judge Gladys Kessler has dismissed the government's claims for medical expenses, so all that's left is a claim for injunctive relief under statutes put in place to catch mobsters.

The allegation is that since 1954 the tobacco industry has conspired to misrepresent the health risks of its products and lie about targeting underage smokers. The government says this amounts to 50 years of fraud, and that it is entitled to $280 billion in ill-gotten profits from the five largest U.S. cigarette concerns.

Never mind that warning labels have been mandated on every pack of cigarettes for 40 years to inform smokers of the health risks. It's also a fact that the 1998 settlement, which fundamentally changed the way cigarettes can be

marketed
and sold, makes much of this lawsuit redundant in terms of changing industry behavior. Joe Camel is no more.

But then this suit is by now no more about tobacco companies behaving badly than it once was about recouping medical costs. This is about politicians trying to raise $280 billion by litigating what would amount to a tax hike on smokers. By funneling this tax hike through the courts instead of the legislature, the government gets the benefit of more revenue without elected officials having to risk the political costs of voting for higher cigarette prices.

This is a clear abuse of the system, and coming from a President who likes to campaign against frivolous lawsuits, it also smacks of hypocrisy. At least the Congressional route is democratic, even if that's the best thing to be said about what lawmakers are trying to do. In the end, Washington wants to have it both ways: Deplore the tobacco industry as a malevolent force even as it soaks up its proceeds to fund the government. It'd be far more honest to ban it outright.