

EXTRA POINT

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Justice v. Tobacco: Justice Loses

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If you're like most Americans, you don't smoke. In fact, you may detest cigarette smoke and you may not have a very high opinion of tobacco companies. Even if all this is true, you should be appalled at the announcement that the U.S. Justice Department has filed a mammoth civil lawsuit against the major tobacco companies. This

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The Justice Department builds its case primarily around two assertions. First, that the health effects of tobacco use cost the government an estimated \$20 billion annually. Second, that tobacco companies fraudulently concealed the dangers of tobacco use and should therefore pay the government's tab.

Let us accept at face value the Justice Department's allegation the government spends \$20 billion annually on tobacco-related illnesses. These asserted costs are only one part of the picture. To start, these costs are partially offset by the federal government's receipts from the tobacco excise, estimated by the Congressional Budget Office at about \$5 billion for 1999, and rising to about \$8 billion by the year 2002.

In addition to these offsetting receipts, there are important savings to the government from tobacco use. Any proper accounting of the cost to the government of tobacco use must address these admittedly unpleasant

issues. For example, while tobacco use imposes large health-related expenses on the government today because smokers get sick, it also reduces those costs for tomorrow because smokers tend to die younger than non-smokers. The federal government pays over 80 percent of the health care costs of citizens over the age of 65.

Also, because smokers die prematurely, as a group they receive fewer retirement benefits than non-smokers, yielding a significant saving to Social Security. And, because of their earlier morbidity, smokers incur much lower nursing home costs than do non-smokers. The federal government currently pays over 60 percent of the national tab for nursing home costs.

When all these costs, tax receipts, and savings are calculated, it turns out the federal government saves about \$29 billion a year in net health and retirement costs due to

The early death of smokers saves the federal government billions of dollars in nursing home costs, Social Security costs and health care costs. On balance, it turns out the federal government saves about \$29 billion a year.

smoking. To be sure, many estimations and assumptions go into the calculation of this figure. It could easily be off by \$10 billion either up or down. Even so, the fact that the

estimate shows a sizable net saving to the government, and not a cost, erodes all credibility from the Justice Department's case. The Justice Department's assertion of a \$20 billion cost tells only one part of the story.

The Justice Department assumes that it is striking a blow at evil tobacco companies. But who, in fact, would it hurt? The retired senior tobacco company executives who may have hidden research? The current executives? No. The mostly low-income customers would pay the higher prices caused by this regressive, back door excise hike.

When the whole financial story is told, it turns out that tobacco use actually saves the government money, on balance.

Beyond the issue of cost, there is the question of responsibility. Tobacco has been and remains a legal product whose use is known to be dangerous. Even if as alleged the tobacco companies withheld the true extent of the danger as indicated by their own analysis, the federal government and other parties have extensively studied the health risks associated with tobacco use. These dangers have been widely publicized, including a long-standing warning on each and every pack of cigarettes sold. It is simply impossible to argue reasonably that smokers have been unaware of the dangers. Indeed, some studies indicate that smokers, particularly teenagers, actually have an exaggerated sense of these dangers. Therefore, even if there were uncaptured costs to the government from smoking, those costs should be borne by the smokers, not the tobacco companies. Of course, it is much easier to go after the politically unpopular tobacco companies, however dubious the allegation, than to go after millions of smokers. The Justice Department may be badly misguided, but it's not stupid.

Finally, the Justice Department lawsuit seems to assume that it would, if successful, in some way strike a blow at these evil tobacco companies. But who, in fact, would it hurt? Certainly not the senior executives who supposedly oversaw the previous and allegedly fraudulent behavior. They've long since retired. Certainly not the current executives,

who would suffer no financial loss from any payments to the government. The companies' customers and its shareholders alone will suffer the loss if the government succeeds in its lawsuit. The customers would bear the burden in the form of higher prices as the companies try to recoup any amounts paid under the lawsuit. Of course, tobacco use is heavily skewed toward lower-income consumers, so such a back door excise hike would be highly regressive. To the extent the companies were unable to recoup the full costs of the lawsuit from their customers, the amounts would come out of the pockets of the hundreds of thousands of pensioners and workers whose holdings today include shares in the tobacco companies.

The Justice Department civil suit against the tobacco companies cannot be justified on economic grounds. It is a wrongheaded attempt to collect a non-existent cost to the government from the wrong group of people — the companies, the burden of which would be borne not by those who perpetrated the alleged misdeeds but by perfectly innocent bystanders — the companies' customers and shareholders. That such a suit would be brought by the federal government should chill the bones of every citizen concerned about the abuse of governmental power. It should also put a scare into every business in the United States because it says that any politically unpopular industry is subject to taxpayer-funded extortion through the courts. Today it's the tobacco companies. Gun manufacturers cannot be far behind, nor beer

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or wine. Automobile manufacturers whose products the government deems to be overly polluting or insufficiently safety conscious are sure to follow. If there is any justice left to be found in her department, Attorney General Janet Reno will scrap this misbegotten effort. ♦



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