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**TESTIMONY OF DAVID S. LAPP**  
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**BEFORE THE HOUSE SUBCOMMITTEE ON CRIME, TERRORISM, AND**  
**HOMELAND SECURITY OF THE HOUSE JUDICIARY COMMITTEE**  
**MAY 1, 2008**

I appreciate the opportunity to testify today in support of the Prevent All Cigarette Trafficking Act (PACT Act). The State Attorneys General, working jointly through the National Association of Attorneys General (NAAG), are acutely aware of the increasing problems caused by illegal tobacco product sales accomplished through Internet, mail order and other remote purchases. We applaud congressional efforts to correct these significant problems through comprehensive legislation.

The PACT Act furthers the important policy of improving accountability for and control of cigarettes and smokeless tobacco products shipped in interstate commerce. The Act will enable states to more effectively protect their citizens from the economic and public health problems associated with Internet tobacco sales. Such sales allow easy youth access to tobacco and cause states to lose significant revenues through tax avoidance.

Of particular importance to the states are the provisions in the PACT Act that:

- Designate most cigarettes and smokeless tobacco as nonmailable and therefore undeliverable by the U.S. Postal Service.
- Require Internet sellers of cigarettes or smokeless tobacco products to comply with all state laws regarding the collection of state and local taxes on cigarettes and prohibit distribution of such products unless all applicable tobacco excise taxes have been collected and paid .
- Require Internet sellers of cigarettes or smokeless tobacco products to use a delivery method that allows for age verification, to help prevent easy access by youth to tobacco.
- Make it a felony to sell or cause to be delivered products of a tobacco manufacturer that are not in compliance with state laws enacted to complement the Master Settlement Agreement.

- Grant states authority to collect, in federal court, lost state tax revenue resulting from unlawful Internet sales, and to enforce the Jenkins Act, without interfering with the states' ability to bring enforcement actions in state court under state law.
- Increase from a misdemeanor to a felony violations of the Jenkins Act.

Cigarettes are highly addictive and profoundly deadly. At greatest risk of addiction are young people, who lack the judgment necessary to resist tobacco marketers and to protect themselves. In Maryland, the Office of Attorney General works to limit youth access to cigarettes through our Program to Reduce Youth Access to Tobacco. This program involves working with state and local law enforcement agencies to enforce laws denying youth access to cigarettes, and with retailers who want to adopt policies and practices to reduce sales to youth.

These efforts by Maryland, similar to those efforts of other states to deny youth access to tobacco, are impeded by cigarettes that are sold through hundreds of Internet sites. As Justice Ginsberg recently emphasized in her concurring opinion in *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. \_\_\_\_ (Feb. 20, 2008), "State measures to prevent youth access to tobacco ... are increasingly thwarted by the ease with which tobacco products can be purchased through the Internet." Internet sites are a highly attractive means for youth to purchase tobacco products since most sites fail to use adequate age verification procedures and most all avoid payment of state excise taxes, making the cigarettes cheaply available. Indeed, studies show that Internet sales of tobacco to youth are increasing at an alarming rate, and as states work to enforce their retail age-verification laws and increase their excise taxes on cigarettes, Internet cigarette sales will continue to rise.

Accordingly, a focus of our efforts in Maryland to limit youth access to tobacco has been to stop Internet sales, which are prohibited in Maryland and in four other states. Along with other state Attorneys General, we have obtained agreements with retailers, the major credit card companies and the major delivery companies, including UPS, FedEx and DHL to stop Internet sales of cigarettes. Thus, we have curbed deliveries by all the major carriers except one – the U.S. Postal Service, which asserts that it has no legal authority to refuse cigarette shipments. In Maryland our Internet stings show that the U.S. Postal Service continues unabated in delivering cigarettes to Maryland consumers. Moreover, some state laws governing delivery of cigarettes may be challenged in wake of the Supreme Court's recent *Rowe* decision, which struck down Maine's Tobacco Delivery Law as preempted by federal law.

Comprehensive federal legislation over Internet and mail-order cigarette and smokeless tobacco sales is sorely needed to enable states to address the problems of tobacco sales to youth and to address state excise tax avoidance. The need for such legislation is particularly urgent in the wake of *Rowe*. As noted by Justice Ginsberg, *Rowe* leaves a "large regulatory gap ... perhaps overlooked by Congress, and [illustrates] the urgent need for the National Legislature to fill that gap." The PACT Act fills this gap, and on behalf of National Association of Attorneys General, I encourage you to support its enactment.