

SENATOR ROBERT MORGAN
RESEARCH STATIONS SUMMER MEETING
SHERATON MOTOR INN
ASHEVILLE, NORTH CAROLINA
JULY 18, 1980

DEFENDING TOBACCO

With increasing frequency, I hear attacks on the price support program for tobacco growers and the right of people to smoke. I have often defended the tobacco support program by showing the economic impact on farmers, warehousemen, and manufacturers. This morning, I would like to explore a new theme--the right of the individual to be free from unnecessary regulations--the right to be free.

Those who would end the support program and destroy the tobacco farmers present one more group that attempts to dictate how we will spend our lives. To my mind, there are already too many regulations that limit our freedom, regulations that go beyond what is necessary for the common good. I will be the first to admit that some regulations are good, others improve our lives, and some insure that the products that we buy are safe. But increasingly there are rules that take away our freedom, that burden us with paperwork, and that make life miserable.

In some respects we are being conditioned just like a laboratory dog to fear the realities of the world. Every time a bell rings, people salivate for the federal government to step in. No problem is too small, no issue too insignificant, no irritation so small that we don't call for the government. Our state governments, meanwhile, are increasingly overlooked in the rush for federal intervention.

The debate over tobacco is really a one-sided diatribe by people, many of them ex-smokers, who would convert everyone to their new faith. This movement has instructive parallels in our history. Our early history records that many Americans were moderate drinkers, some had wine with their meals and others frequented bars. Some people objected to excessive drinking and came out for temperance. They joined what was called the "Cold Water Army" and vowed to drink only cold water. The crusade for temperance, or moderation in drinking, evolved into one for the complete prohibition of all alcoholic concoctions.

The opinions of non-drinkers were thus forced upon the entire populace with Prohibition during the 1920s and early 1930s. You are familiar with how dismally this failed. Instead of stopping drinking, the 18th Amendment

adopted in January 1919 created a gigantic bootlegging empire run by organized crime and drove those who wanted to drink to frequent speakeasys. Ultimately, this attempt to force an end to drinking failed. It did not succeed because most Americans had tolerated moderate drinking for centuries, and those who drank in moderation did not think that they were criminals.

Similarly, tobacco has been a part of our culture since the founding of Jamestown in 1607. Three years before that settlement in Virginia, King James wrote a violent pamphlet against the use of tobacco entitled, "Counter-Blaste to Tobacco," in which he declared that smokers were "guilty of sinful and shameful lust." But this pamphlet did not deter the colonists who quickly discovered that the Jamestown colony could grow tobacco and prosper. By 1619, they were growing it in the streets, and the first colonial assembly in our country passed legislation to cut the supply of tobacco in order to raise the price. After centuries of fluctuation in prices and disaster to farmers in hard times, the administration of Franklin D. Roosevelt started the program of price support that is now so successful. The precedent, of course, started in 1619.

Thus, our country became a leading producer of tobacco, and throughout the years, farmers, warehousemen, and manufacturers have developed what can be called a culture of tobacco. Research stations have done their part to improve yield and protect farmers against plant disease and pests.

Growers now, as in the past, feel that they have the right to grow the sot-weed, as it used to be called. Their occupation, farming, is a noble one, and the fact that they grow tobacco is a source of pride--not shame. Would it be right at this point to pass legislation that would deprive them of a right that has existed since 1607? Had King James ruled that no tobacco could be grown in the colony, chances are that people would have grown it anyway--in order to survive. There is a chance that the southern colonies might have taken an entirely different historical evolution had not tobacco saved the Jamestown colony and spread across Maryland and North Carolina.

Our early days as colonists were characterized by what historians call "salutary neglect"--that is, the neglect produced a beneficial result. Our age has turned this

philosophy around to the point where no aspect of our lives is free from regulation. There are rules governing everything. And I would be the first to observe that some of these regulations have been beneficial. But there are rules that increasingly border on the trivial and some that are simply innane.

Our history is characterized by a spirit of independence, a desire to be free from regulation. That was one of the prime justifications of the American Revolution. Today, I hear an increasing cry from across the land from people who are simply getting to the point that they feel their independence is threatened by rule makers. The question arises: How far can the government go in making rules that affect our lives? How much protection do we need?

Today, when one flies there are non-smoking areas of airplanes, and since many people have allergies and others do not like smoke, this has proved beneficial. But there are no non-drinking areas in these airplanes. Several weeks ago a man sat down beside me on an airplane and had three drinks for breakfast. He became intoxicated, and it was a burden to me to have to sit beside him. The smoke would not have bothered me nearly as much as the drinking did. Should

airlines also have designated non-drinking sections? Is it possible to create in this world a perfect environment? Or must we become more tolerant of what others do? Or if we object to something simply take it upon ourselves to request a courtesy? Must we rely on the government to fight all of our battles?

I realize that the people who oppose smoking argue that smoking is dangerous to our health. Statistics support this position, and I would certainly urge moderation in smoking just I would urge moderation in drinking. The Bible is a good source on moderation, for it says that "The fruit of the Spirit is . . . temperance." (Galations 5:22)

Beyond the various economic and social issues, there is a constitutional and political side to the tobacco issue. Our constitutional system was established to protect people from an overzealous government. The people possess rights, not the government. The people, be they in a minority or majority, have a right to personal choice and privacy.

In the most famous case on personal privacy, Olmstead v. United States, Justice Brandeis, in dissent, noted,

" The makers of our Constution undertook to secure conditions favorable to the pursuit of happiness. They

recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . . They conferred as against the government, the right to be let alone-- the most comprehensive of rights and the right most valued by civilized men."

He went on to note:

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

What Justice Brandeis set forth was a basic rule that the people have rights, including the right to privacy, which the government cannot intrude upon without a compelling interest. As lawyers will tell you, a compelling interest is the most difficult to demonstrate in a court of law.

Of note to me was the 1967 Supreme case of Katz v. United States in which the court noted that the Constitution protected a person in his home and from other forms of Federal intrusion. The court added: "But the protection of a person's general right to privacy--his right to be let alone by other

people--is, like the protection of his property and of his very life, left largely to the law of the individual States.

I have long advocated our federal form of government and I, too, feel that the rights of individuals are best protected when left to the States. Certainly we need broad protection for all citizens, but States are in the best place to regulate for the health and welfare of the people, if the people so desire.

One State court recently acted to carry the right of privacy to the point of denying the State the right to intervene to save a person's life. While we may not agree with the ultimate determination by the court, the reasoning is important.

The Appeals Court of Massachusetts noted in the case of Lane v. Candura, that:

"The constitutional right to privacy, as we conceive it, is an expression of the sanctity of individual free choice and self-determination as fundamental constituents of life. The value of life as so perceived is lessened not by a decision

to refuse treatment, but by the failure to allow a competent human being the right of choice."

We must start, then, from a premise that the use of tobacco is part of an individual's life and as such is subject to government regulations only on the most compelling showing of a State need.

In conclusion, our heritage and our laws as interpreted by the courts demonstrate a love of freedom. Laws that challenge such an ingrained custom as tobacco smoking would fail, just as those that sought to prohibit liquor failed. Smokers certainly have the right to be left alone by the government, and I will support that right. And I will, as I have in the past, strongly support all aspects of the tobacco industry--from the plantbed to the retail counter.