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COMMONWEALTH OF PENNSYLVANIA  
HOUSE TRANSPORTATION COMMITTEE  
SUBCOMMITTEE ON HIGHWAYS

\* \* \* \* \*

In re: Public Hearing on Secondary Smoke  
House Bill 626

\* \* \* \* \*

Stenographic report of hearing  
held in Hearing Room 22, Capitol Annex  
Harrisburg, Pennsylvania

Tuesday,  
April 26, 1994  
10:00 o'clock a.m.

BEFORE

PETER J. DALEY, CHAIRMAN

\* \* \* \* \*

Pages 1 through 121, inclusive

MEMBERS OF THE TRANSPORTATION COMMITTEE

Majority

Hon. Battisto	Hon. Mihalich
Hon. Daley	Hon. Olosz
Hon. Dermody	Hon. Petrarca
Hon. Laughlin	Hon. Preston
Hon. Markosek	Hon. Roberts
Hon. McCall	Hon. Santoni
Hon. Melio	Hon. Tighe

MEMBERS OF THE TRANSPORTATION COMMITTEE

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Minority

Hon. Brown	Hon. Leh
Hon. Cessar	Hon. Marsico
Hon. Druce	Hon. Moh
Hon. Fairchild	Hon. Pettit
Hon. Hess	Hon. Phillips
Hon. Laub	

1           MR. CHAIRMAN: Being the hour is 10:00, the  
2 Subcommittee on Highways for the House Transportation  
3 Committee will come to order. Today we're going to have a  
4 hearing on House Bill 626 and I have the pleasure of being  
5 the prime sponsor of this legislation. Quite honestly, when  
6 we introduced this Bill several months ago, it received a  
7 tremendous amount of criticism and praise throughout  
8 Pennsylvania and in the nation. House Bill 626 is the first  
9 of its kind anywhere in the United States as well as the  
10 world where there an attempt is being made by a legislative  
11 body be it this legislative body or any legislative body  
12 where we are regulating smoking in the car with children.

13           The first person to testify is Bill Godshall and I  
14 don't see Bill so what -- I do see Bill. Bill is the  
15 Executive Director of Smoke-free Pennsylvania and we're  
16 going to take a couple seconds for Bill to get himself  
17 organized.

18           So I'd like to introduce the members of the  
19 Committee that are with me today. Representative Marsico,  
20 Representative Leh, Representative Laub, Corporate Sales  
21 Executive Director of the Committee. To my right,  
22 Representative Melio, Representative McCall and  
23 Representative Dermody. And I thank all the members of the  
24 Committee for taking the time to come up, also to the public  
25 because quite honestly, what we say here and do here is

1 going to be spread throughout the nation. I think this is a  
2 high watermark in our effort in this regard and, Bill, you  
3 have the floor.

4 MR. GODSHALL: Good morning. I thank Chairman  
5 Daley for holding this hearing on House Bill 626 and for  
6 inviting me to testify. I would also like to thank members  
7 of the Highway Subcommittee for attending this hearing.  
8 Besides founding Smokefree Pennsylvania and serving as its  
9 Executive Director without pay for the past three years, I  
10 also serve as the legislative chair of the Coalition for a  
11 Tobacco Free Pennsylvania. I have a bachelor's degree in  
12 health education from Penn State University and a master's  
13 degree in public health from the University of Pittsburgh.  
14 And I have previously served as Director of Education for  
15 the American Cancer Society in Pittsburgh; and have  
16 instructed graduate school courses in Cancer Risk Reduction  
17 at Penn State University.

18 It is my assessment that House Bill 626 is one of  
19 the most significant pieces of public health legislation  
20 introduced in America in the past 25 years. It is the first  
21 piece of legislation that has been introduced to protect the  
22 most vulnerable citizens, children, from the deadliest  
23 environmental health hazard, tobacco smoke, in locations  
24 where the contamination is the greatest, automobiles. It is  
25 also the first smoking pollution control bill in America

1 that would prevent children from being harmed by the actions  
2 of their own parents.

3 But just as many people thought Dr. John Snow was a  
4 fool when he removed the handle from the Broad Street water  
5 pump in London more than a century ago to halt the  
6 transmission of cholera, last year many newspaper editors  
7 and cartoonists ridiculed you when you introduced this  
8 legislation. While Dr. Snow went onto become the father of  
9 public health, I think that in just five years most people  
10 will wonder how anyone could have ever used to smoke tobacco  
11 in cars with children present.

12 One of the cornerstones of a civilized society, as  
13 compared with barbaric and feudal eras, is that governments  
14 provide children with special protection from disease,  
15 abuse, neglect and exploitation. Commonly referred to as  
16 child abuse, child welfare, and child labor, these laws  
17 protect children from abuses for which adults receive little  
18 or no protection. Additionally, most health, safety and  
19 welfare laws in our society provide greater protection and  
20 additional services for children than for adults.

21 This is why the state intervenes to protect fetuses  
22 from drug addicted mothers and why infants receive state  
23 funded health care. This is why the state requires young  
24 children to be strapped in safety seats in cars and why the  
25 state provides immunizations for dreaded diseases like

1 polio, diphtheria, measles, mumps, rubella and tetanus.  
2 Protecting children is why the state requires children to  
3 attend state subsidized public schools and why motor vehicle  
4 drivers are required to stop for school buses while students  
5 enter and exit. This is also why the state prohibits  
6 retailers from selling tobacco and alcohol, society's two  
7 leading killers, to minors.

8           Article 1, Section 27 of the Pennsylvania  
9 Constitution states that, quote, "THE PEOPLE HAVE A RIGHT TO  
10 CLEAN AIR". The Constitution doesn't mention smoking or  
11 tobacco anywhere. But of the hundreds of statutes in  
12 Pennsylvania to protect children, none protect children from  
13 the third leading cause of death; tobacco smoke poisoning.  
14 According to the Surgeon General, 53,000 American deaths  
15 each year are attributable to environmental tobacco smoke.  
16 This includes 2,650 Pennsylvanians, which is greater than  
17 the number of deaths due to automobile accidents which is  
18 about 2300 a year and far greater than the combined death  
19 toll from homicides which is 750 deaths, illegal drugs about  
20 400 deaths and fires which is about 200 deaths.

21           Last year's landmark EPA Report titled "Respiratory  
22 Health Effects of Passive Smoking", which is the most  
23 thoroughly scrutinized scientific report ever published,  
24 confirmed that tobacco smoke is not only responsible for  
25 killing Pennsylvania adults, but is also extremely harmful

1 to children and infants. According to the report, tobacco  
2 smoke causes up to 300,000 cases of bronchitis and pneumonia  
3 annually, including 15,000 cases in Pennsylvania, in infants  
4 and children under 18 months. The EPA Report also confirmed  
5 that exposure to tobacco smoke causes asthma attacks, and  
6 estimated that up to 1,000,000 asthmatic children, including  
7 50,000 in Pennsylvania, have their condition worsened by  
8 their exposure to tobacco smoke. The EPA Report also  
9 confirmed that tobacco smoke causes ear infections,  
10 respiratory tract irritation, and reduced lung function in  
11 children; and is a risk factor for new cases asthma in  
12 children who have not had previous symptoms.

13           Scientists and physicians have long understood that  
14 children almost always suffer greater damage from exposure  
15 to poisonous chemicals than do adults, which is especially  
16 true for tobacco smoke as the primary route of transmission  
17 is inhalation through developing lungs. Since children are  
18 at greater risks than are adults for most chemical  
19 exposures, our laws usually take this into account. For  
20 example, to protect children from lead poisoning, federal  
21 laws have virtually eliminated lead in gasoline and in  
22 paint. Meanwhile, other laws still permit adults primarily  
23 painters that inhale lead in paint chip dust to be exposed  
24 to far greater levels of that poisonous substance.

25           Perhaps the most harmful substances in tobacco

1 smoke are inhalable particulates, which get trapped in lung  
2 tissues. The EPA already regulates particulates in outdoor  
3 air pollution and has a standard of 50 micrograms per cubic  
4 meter. When this level is exceeded, air pollution alerts  
5 are announced urging people to stay indoors, and fines and  
6 plant shut downs can also result. In 1991, the average  
7 outdoor particulate measurement for Allegheny County,  
8 according to the Air Pollution Bureau, was 33 micrograms per  
9 cubic meter, well within the standard. Particulate  
10 measurements taken in smoke free indoor air locations range  
11 from ten to thirty micrograms per cubic meter, again, well  
12 within the standard. Now, compare this with measurements  
13 taken in smoke filled indoor air locations, where levels of  
14 particulates have been found well over 1,000 micrograms per  
15 cubic meter which is twenty times the allowable limits for  
16 outdoor air pollution.

17 Another dangerous chemical in tobacco smoke is  
18 nicotine which is also an addictive drug and an insecticide.  
19 In comparing average levels of nicotine in tobacco smoke at  
20 various locations where smoking occurred, cars have been  
21 found to be the most contaminated, as this accompanying  
22 chart shows. This is -- I took right off the EPA Report.  
23 Pardon my artwork. This is the residence, homes average  
24 measurement sample of nicotine which is about 11 micrograms  
25 per cubic meter. In offices, it's about 12 or 13 on the



1 average and yet most offices now prohibit smoking to take  
2 place. In restaurants, it's about 19 average. Most  
3 restaurants in this state are required to have separate  
4 non-smoking sections to at least provide partial protection  
5 for non-smokers.

6 But in cars, as you can see, the average is 47  
7 micrograms per cubic meter. This is four times what is  
8 found in a normal home and almost three times what's found  
9 in a restaurant, a smoke filled restaurant. No protection  
10 exists for people in cars, especially those most at risk;  
11 the children.

12 Other poisonous chemicals in tobacco smoke include  
13 acetone which is nail polish remover, ammonia, found in  
14 toilet bowl cleaner, arsenic, which is rat poison, carbon  
15 monoxide, car exhaust fumes, DDT which is banned insecticide  
16 found in tobacco that is imported from other countries,  
17 formaldehyde, which is embalming fluid, hydrogen cyanide,  
18 which is gas chamber poison, methane, swamp gas, methanol,  
19 rocket fuel, naphthalene, which is for mothballs and vinyl  
20 chloride which is used to make PVC.

21 Parents can be severely fined, imprisoned, and even  
22 face losing custody of their children for leaving them "home  
23 alone", how can our society turn its back and ignore  
24 children that are being assaulted daily by hundreds of toxic  
25 poisons, including more than 30 carcinogens, that are in

1 tobacco smoke?

2           Several courts have recently ruled that exposing  
3 adults to tobacco smoke is battery, and the U.S. Supreme  
4 Court last year ruled that exposing a prison inmate to  
5 tobacco smoke can be considered cruel and unusual  
6 punishment. Several Pennsylvania Courts have ordered  
7 smoking parents not to smoke in the presence of their own  
8 children, and one court in Erie ruled that a father could  
9 not smoke in his own house for two days prior to visits by  
10 his son.

11           The Federal Child Abuse and Protection Act of 1973  
12 defines child abuse as quote, "the physical or mental  
13 injury, sexual, negligent treatment, or maltreatment of a  
14 child under the age of 18 years by a person responsible for  
15 that child's welfare under circumstances which indicate that  
16 the child's health or welfare is harmed or threatened  
17 thereby". Thus, exposing children to tobacco smoke in a  
18 small car shouldn't be considered anything less than child  
19 abuse, and as such, House Bill 626 should be welcomed by all  
20 as a less punitive preventive measure.

21           Compared to many laws that regulate behaviors while  
22 in motor vehicles, a ban on smoking while children are  
23 present seems so basic. Although there is little evidence  
24 that a speed limit of 55 mile an hour is any safer than 65  
25 mile an hour on interstate highways, our state vigorously

1 enforces that speed limit law as anyone driving across the  
2 PA Turnpike will see dozens of state police hiding behind  
3 bridges and around bends.

4           Many states have enacted and enforce "open  
5 container laws" that prohibit motor vehicle drivers from  
6 carrying any alcohol drink while driving. Clearly these  
7 laws were not enacted because holding a drink poses a  
8 significant safety hazard. Rather, these laws are based on  
9 a presumption that the driver may have had a previous  
10 alcoholic drink or might consume additional alcoholic  
11 drinks, which could pose a hazard to other drivers.

12           Perhaps more appropriate analogies of traffic  
13 safety laws that are similar to House Bill 626 would be the  
14 laws that require child safety seats as they are intended to  
15 protect children from being harmed while in a motor vehicle.  
16 Even mandatory seat belt laws go far beyond the intent of  
17 House Bill 626, as seat belt laws are primarily intended to  
18 protect the driver, not child passengers.

19           Finally, just as seat belt laws and other smoking  
20 pollution control laws are self enforced, so too will be  
21 House Bill 626. The claims made by opponents that  
22 enforcement would be expensive, infringe upon civil  
23 liberties, and come at the expense of enforcement of more  
24 serious crimes are the same spurious arguments that were  
25 used when mandatory seat belt laws and other smoking

1 pollution control laws were being debated. None of those  
2 exaggerated claims ever became a reality.

3 In summary, since tobacco smoke kills, since  
4 children are most at risk from tobacco smoke exposure, and  
5 since cars are where tobacco smoke contamination is  
6 greatest, common sense is all that is needed to enact House  
7 Bill 626. Thank you.

8 MR. CHAIRMAN: Thank you, Mr. Godshall. Any  
9 members of the committee have any questions? Representative  
10 Leh?

11 REPRESENTATIVE LEH: Yes. Thank you, Mr. Godshall.  
12 Just one question. The goal of your organization is to  
13 prohibit or outlaw smoking throughout the whole state?

14 MR. GODSHALL: No, we oppose prohibition of tobacco  
15 possession or purchase or sale. We think our goal is to  
16 protect non-smokers from exposure to environmental tobacco  
17 smoke and protect children from environmental tobacco smoke  
18 and also illegal sales of tobacco products.

19 REPRESENTATIVE LEH: Would it be safe to assume  
20 that your organization would support such legislation that  
21 would outlaw smoking in someone's home because of the  
22 presence of young children?

23 MR. GODSHALL: I think that issue is a much more  
24 difficult issue. Our organization has never taken a  
25 position on that. However, I do believe if it's -- since

1 tobacco smoke exposure does harm children, it should be  
2 treated as any other activities that would harm a child  
3 whether they take place in a person's home or outside in the  
4 public or in a car.

5           And if somebody would stick the same chemicals that  
6 are in tobacco smoke in somebody's food, they could be  
7 charged with attempted murder. And if you'd inject those  
8 same chemicals in a person's vein likewise. So I think this  
9 is a very serious issue that needs to be dealt with and I  
10 think the contamination levels on the chart that I had shown  
11 indicate that the problem in cars is far more severe than  
12 what would be encountered in homes. And I do think that the  
13 surveys are showing that many smokers do try to avoid  
14 smoking in front of their children in their own home. And  
15 often times the children at least can walk away into another  
16 room if they're being harmed. In a car, they have no such  
17 alternative.

18           REPRESENTATIVE LEH: Okay. That is all I have for  
19 now, Mr. Chairman. Thank you.

20           MR. CHAIRMAN: Any other members? Representative  
21 McCall?

22           REPRESENTATIVE MCCALL: Just one question. You  
23 were talking about the particulate in the car being high.  
24 Is that still within the EPA standards, 15 micrograms?

25           MR. GODSHALL: The measurements -- I have not seen

1 any measurements on particulate levels in cars. The chart I  
2 raised was the nicotine levels in cars. And I think part of  
3 the reason is that it takes much longer to measure the  
4 particulate measures. It takes four to five hours. And I  
5 never seen any.

6 REPRESENTATIVE MCCALL: How did that compare to the  
7 allowable standards?

8 MR. GODSHALL: In terms of particulates the average  
9 for indoor air is one cigarette. Smoke in this room, it  
10 would be about 100 micrograms per cubic meter of  
11 particulates which would about exceed the EPA standard.

12 REPRESENTATIVE MCCALL: What I'm trying to get at  
13 is your chart shows that it's 45 -- 47.

14 MR. GODSHALL: That was nicotine concentrations.  
15 There is no EPA standard for nicotine in the outdoor air.  
16 The particulates -- my guess is -- I've never seen the  
17 studies but as the nicotine levels rise in the tobacco smoke  
18 so do the particulate levels. And based on that assumption,  
19 it can be guessed that the particulate matters in cars from  
20 the tobacco smoke would be greatly in excess probably  
21 somewhere around 1,000 cubic -- micrograms per cubic meter  
22 similar to bars.

23 REPRESENTATIVE MCCALL: Okay. The location that  
24 you identified as indoor air locations where a level of  
25 particulate is well over 1,000.

1 MR. GODSHALL: Yes, most of those levels are found  
2 in bars and bingo halls where there's excessive smoke. And  
3 those also had nicotine levels synonymous of what is it  
4 found in cars.

5 REPRESENTATIVE MCCALL: Thank you, Mr. Chairman.

6 MR. CHAIRMAN: Representative Melio?

7 REPRESENTATIVE MELIO: Could you tell me if you  
8 have any statistics that would tell how many cigarettes you  
9 would have to smoke to make the car dangerous or how long it  
10 would linger in a car or when it would become dangerous for  
11 children?

12 MR. GODSHALL: Because a car is only about two or  
13 three cubic meters of air, I would imagine within ten  
14 seconds after lighting up a cigarette the chemicals in that  
15 car would pose a safety risk especially to asthmatic  
16 children. It's difficult to say what is a safe exposure for  
17 tobacco smoke. Nobody knows.

18 REPRESENTATIVE MELIO: And if the windows were open  
19 in the car?

20 MR. GODSHALL: If the windows were open, it does  
21 increase ventilation but it still would pose a significant  
22 hazard.

23 REPRESENTATIVE MELIO: And for how long would that  
24 last in the car? Do you have any idea?

25 MR. GODSHALL: Based on ventilation rates, based on

1 how many cigarettes are continuing to be smoked, the gases  
2 don't go away just because they're invisible they usually  
3 will latch to whatever materials are around whether it's the  
4 windows in the car or the seats. And over time -- over a  
5 period of say 24 hours, they would decrease to probably  
6 levels that would be within the EPA standards for outdoor  
7 air pollution.

8 REPRESENTATIVE MELIO: Thank you, Mr. Chairman.

9 MR. CHAIRMAN: Thank you. Representative Laub?

10 REPRESENTATIVE LAUB: Just a follow-up to that one.  
11 If I'm hearing you correctly, you say that the gases remain  
12 in the car regardless of whether a cigarette is lit or a  
13 cigar pipe for that matter. This legislation specifically  
14 addresses lit smoking in a vehicle. Are you suggesting that  
15 regardless of whether a cigarette or a pipe or a tobacco  
16 product is lit, that there is danger posed for a child  
17 riding in a car regardless if there had been something  
18 smoked in that car for 24 hour periods that there is a  
19 danger level?

20 MR. GODSHALL: Yes. And for some people -- some  
21 children's danger levels are different than others depending  
22 on the age of the child, depending on the respiratory  
23 function. And I think some of the other witnesses could  
24 testify to that better than I could. But if an asthmatic  
25 child is in that car, it poses a life and death situation.



1           It's like lead poisoning. What is a safe level of  
2 exposure of lead to a child before poisoning occurs? All  
3 the experts would agree that it takes quite a bit to do a  
4 lot of harm and I guess where should you draw the level of  
5 what is harm and what is in harm. Is five points reduction  
6 in IQ level harm? I think the Federal Government considered  
7 two points on the IQ level harm from just lead poisoning  
8 even though there is no resulting of that lead exposure. So  
9 if you look at other chemical exposures, the safe limits are  
10 set usually far below what has been found to be a hazard  
11 because by the time it's a hazard, the person's life could  
12 be destroyed.

13           REPRESENTATIVE LAUB: I guess my point is regarding  
14 this specific Bill judging from that comment that if we are  
15 to discuss this bill and impose a penalty on an adult  
16 smoking in a vehicle with a child under the age of 15, and  
17 from your comments, I believe that regardless of whether  
18 that cigarette is lit or not, if a cigarette has been smoked  
19 in that vehicle, within the previous prior hours, that the  
20 danger level still exists. Am I making a correct assessment  
21 of your remarks?

22           MR. GODSHALL: Yes, it's a lower exposure, a lower  
23 concentration because it gradually diminishes. But, yes, it  
24 could be considered depending on the numbers you're talking  
25 about. But I think most people sit with their windows open

1 after smoking a cigarette, leave it for an hour and get back  
2 in, you'll find that the levels are significantly higher  
3 than even in rooms, in buildings where the smoking has  
4 occurred.

5 REPRESENTATIVE LAUB: Thank you, Mr. Chairman.

6 MR. CHAIRMAN: Any members of the committee -- any  
7 other members have any questions?

8 (No response.)

9 MR. CHAIRMAN: Thank you, Mr. Godshall. The next  
10 group we have testifying is a group of children. Would the  
11 children come forward. We're going to try to place everyone  
12 around the table to testify. We have no particular order.  
13 The first one on my list is Allison Reigle.

14 MS. REIGLE: I have an experiment here. I need  
15 someone to light that.

16 MR. CHAIRMAN: Maybe Jerry can. Why don't we have  
17 each child identify who they are and where they're from and  
18 how old they are before we start the testimony of Allison.

19 MR. BRESNITZ: Darin Bresnitz, I'm 12 years old.

20 MR. CHAIRMAN: Could everyone speak up real clear  
21 and loud so everyone can hear. Darin, could you say your  
22 name again.

23 MR. BRESNITZ: My name is Darin Bresnitz. I'm from  
24 Bala-Cynwyd, PA and I'm 12 years old.

25 MR. BRESNITZ: I'm Greg Bresnitz and I'm 12 years

1 old and I'm from Bala-Cynwyd, PA.

2 MS. BROYER: My name is Daniel Broyer. I'm 16  
3 years old and I'm from Central Dauphin High School.

4 MS. REIGLE: My name is Allison Reigle and I'm from  
5 Halifax Middle School and I'm 12 years old.

6 MS. BASK: My name is Emily Bask. I am 13 years  
7 old and I'm from Narberth, Pennsylvania.

8 MS. GROW: My name is Denise Grow and I'm 15 years  
9 old and I live in Harrisburg, Pennsylvania.

10 MS. WINANT: My name is Johanna Winant. I'm 12  
11 years old and I'm from Philadelphia.

12 MR. CHAIRMAN: And I think we have one more young  
13 man in the back. Let's get a chair over here. And what is  
14 your name young man?

15 MR. COX: Jonathan Cox.

16 MR. CHAIRMAN: And how old are you Jonathan?

17 MR. COX: Twelve.

18 MR. CHAIRMAN: And where are you from?

19 MR. COX: Beaver, Pennsylvania.

20 MR. CHAIRMAN: We'll start with Allison. Are you  
21 ready, Allison? Is your experiment working?

22 MS. REIGLE: No, not yet.

23 MR. CHAIRMAN: Okay. Use the microphone and speak  
24 as loud as you can.

25 MS. REIGLE: Hi, my name is Allison Reigle. I'm 12

1 years old and I'm Vice President of River Valley Riders Club  
2 and a six grader at Halifax Middle School. I'm here today  
3 to demand that kids are protected from harmful second-hand  
4 smoke. My parents don't smoke but a lot of my friend's  
5 parents do. I have ridden in cars with my friends who  
6 parents smoke and I have had to tolerate the lack of clean  
7 fresh air and the awful smell of cigarette smoke.

8 I know my friends can't speak against the ones they  
9 love, so it's up to me to speak for those who can't. I'm  
10 not against the smoker. A lot of smokers are nice people.  
11 I'm against the smoke that goes into the air and affects the  
12 health of others. I have taken every step I know to help my  
13 school friends not become addicted to tobacco. I even have  
14 been blackballed by those kids who tried to tempt other kids  
15 into smoking.

16 Even Penn State's 4-H recognizes that tobacco use  
17 around kids is not good. Our 4-H volunteer's code of  
18 conduct requires 4-H volunteers to refrain from the use of  
19 tobacco or tobacco products in the presence of young people.

20 I brought an experiment with me today to  
21 demonstrate what happens to second-hand smoke in a car.  
22 This is supposed to have smoke in it but I think the  
23 cigarette went out. In the closed container, the  
24 second-hand smoke fills the air of a car. This high  
25 collection of second-hand smoke is like putting a child in a

1 gas chamber. I learned in my health class that what the  
2 human body is exposed to at an early age determines the  
3 health of that body in the future. If what we're taught is  
4 true, then why aren't kids being protected. Kids have  
5 rights to. But it seems to me that lawmakers think smokers  
6 are the only ones who have rights. I want this committee to  
7 stand up for kid's rights and pass a meaningful law that  
8 will help stop the death trap and save kids' lives. Thank  
9 you for allowing me to speak up for all the lives and safe  
10 kids' lives everywhere.

11 MR. CHAIRMAN: Can we just pass the microphone down  
12 to the next person? Identify yourself again please.

13 MS. BROYER: My name is Danielle Broyer, I'm 16  
14 years old and I'm from Central Dauphin High School. Thank  
15 you for inviting me here to testify this morning. I have  
16 asthma. Being in a car with a person who is smoking  
17 adversely affects my asthma in many ways. I start to cough  
18 a lot and my eyes begin to water and they get very  
19 irritated. My lungs also start to hurt and my chest gets  
20 very tight.

21 Being in a car with a person who's smoking makes it  
22 extremely difficult to breathe. All of these factors make  
23 me very uncomfortable especially in a car. This gives me a  
24 feeling of being trapped because I cannot take myself out of  
25 the situation like I normally do. This feeling of anxiety

1 in turn makes my asthma worse. Prolonged exposure to  
2 cigarette smoke will make my symptoms progress into a full  
3 blown asthma attack. This is what makes me not want to be  
4 around or near anyone who's smoking especially in a closed  
5 area like a car.

6           Some of you might say why doesn't you just ask a  
7 smoker to put out a cigarette. But it's a little more  
8 difficult than just asking. I have a lot of friends that  
9 smoke and most of them know that I have asthma. When I ask  
10 them to put out their cigarette, most of them will respect  
11 me and my wishes, but there are always those few ignorant  
12 people who think asthma is a funny thing. Well, it's not  
13 funny to me. I take my health very seriously and I hope you  
14 do too. Thank you for letting me share with you today.

15           MR. CHAIRMAN: Gregory?

16           MR. BRESNITZ: Hello. My name is Greg Bresnitz and  
17 I'm 12 years old and I have asthma. I go to Bala-Cynwyd  
18 Middle School and I live in Montgomery County. My father is  
19 a lung doctor and he has helped his hospital, Medical  
20 College of Pennsylvania or MCP to become smoke free.

21           I am here to testify in support of Bill 626 against  
22 exposing children to environmental tobacco smoke or EPS.  
23 For my asthma, I take medication every day twice a day.  
24 When I have an asthma attack, my back gets itchy, my nose  
25 starts to run. I cough and I wheeze. My causes of asthma

1 are a cold, exercise and ETS. Some places where I deal with  
2 ETS are the Spectrum, restaurants and especially cars.  
3 Children of asthma are going to continue to suffer a lot if  
4 House Bill 626 is not passed because children have no choice  
5 but to be exposed to ETS.

6 Adults make the decisions. In my health class, we  
7 are studying smoke free 2000 which is a program for all the  
8 six graders to become smoke free by the time they graduate  
9 high school. Another program we also need is for adults to  
10 stop smoking in public places and cars. So please pass this  
11 House Bill. Thank you.

12 MR. CHAIRMAN: Darin?

13 MR. BRESNITZ: My name is Darin Bresnitz and I am  
14 12 years old. I live in Bala-Cynwyd, PA and I go to school  
15 at Bala-Cynwyd Middle School. I have had asthma all my  
16 life, and all the medicine and inhalers I take let me  
17 breathe freely.

18 When I get an asthma attack, it feels like getting  
19 kicked in the stomach but worse. It starts out with  
20 coughing and hacking, then a terrible itch on my back and  
21 then more coughing. Some triggers of my asthma attack are  
22 running sports, enclosed areas, and secondary smoke.

23 My exposure to ETS from tobacco have occurred in  
24 many places like the Spectrum, restaurants and cars. Once  
25 riding in my friend's car, his mother was a heavy smoker.

1 She lit up a cigarette and started puffing with very little  
2 window open. I try not to breathe, but holding your breath  
3 for more than three minutes would kill you. What else could  
4 I do? I had to inhale and this brought on one of my worse  
5 asthma attacks. If parents smoke, their children inhale it  
6 in as if they are smoking. Kids aren't going to listen to  
7 their parents because enough adults smoke.

8           So in conclusion, please pass this law and help  
9 kids grow up in a clean air environment.

10           MR. CHAIRMAN: Jonathan?

11           MR. COX: My name is Jonathan Cox. I am a 12 year  
12 old sixth grader from College Square Elementary School in  
13 Beaver, Pennsylvania. I have had asthma since I was about  
14 one year old. Asthma is a problem with the lungs that makes  
15 it hard to breathe.

16           Most of the time I only have trouble with asthma  
17 with heavy exercise or sometimes if I have bronchitis. The  
18 feeling of not being able to breathe is scary and the  
19 medicine that I take doesn't taste very good. Fortunately,  
20 I don't have to take it all the time.

21           The other thing that really sets off my asthma is  
22 cigarette smoke. Last fall, I was riding in a car with one  
23 of my friends to go work on a school project when his mother  
24 lit up a cigarette. It was cool outside and she kept the  
25 windows up. I was afraid to ask her to not smoke since I'm



1 just a kid. She didn't even put it out when I began to  
2 cough. I wonder if all smokers know that they hurt other  
3 people when they smoke?

4 Even though most people don't smoke, I have to be  
5 very careful where I go like the mall or to restaurants  
6 where people smoke. Even if we sit in the nonsmoking  
7 section, there always seems to be smoke everywhere. I feel  
8 like I'm being punished when we can't go eat out at my  
9 favorite restaurants. Why should smokers have the right to  
10 smoke, especially around kids, when we know how much harm it  
11 does?

12 The Environmental Protection Agency has declared  
13 passive smoke a Class A carcinogen, just like asbestos.  
14 Cigarette smoke contains over 4,000 chemicals, 40 of which  
15 are known to cause cancer. Carbon monoxide is also found in  
16 high concentrations and people commit suicide with that.  
17 More importantly to me, cigarette smoke causes over 20,000  
18 cases of asthma each year in children and causes respiratory  
19 diseases such as bronchitis.

20 I would appreciate your supporting this bill not  
21 allowing cigarette smoking in cars where there are children  
22 who can't protect themselves but also to not allow smoking  
23 in public places where children frequent. Thank you.

24 MR. CHAIRMAN: Thank you, Jonathan. Pass it down  
25 to Emily.

1 MS. BOSK: My name is Emily Bosk and I'm 13 years  
2 old. Thank you for giving me the opportunity to speak here  
3 today. It is a privilege to speak to people who I know can  
4 make a difference of in the lives of so many children.  
5 Although I am only 13, I feel very, very strongly about the  
6 issue of secondary smoke.

7 One reason that I feel so strongly about secondary  
8 smoke is that I have asthma. I have only had asthma for a  
9 short time though I have always had a lot of trouble  
10 breathing through my nose. I have been hospitalized a  
11 couple of times for asthma in this past year.

12 I would like to tell you how secondary smoke hurts  
13 me. When I come into contact with smoke, I cringe because I  
14 know what it can and will do to me. When I inhale smoke,  
15 I'm always engulfed by feelings of helplessness. I feel  
16 there is nothing, absolutely nothing, I can do to stop my  
17 body's reactions.

18 Whenever I am near smoke, my body reacts the same  
19 way without fail. The burning and pain in my lungs are  
20 always there. The continuous cough is always there. The  
21 gassing for breath is always there. The wheezing, the tears  
22 in my eyes, the congestion in my nose, are always there.

23 As a child, I can be put in uncomfortable  
24 situations where I feel I have no control over whether I  
25 will be exposed to secondary smoke. I would like to tell

1 you about one of these times.

2           A month ago, I was at a party in the evening that  
3 was held at the Philadelphia Zoo where there were many  
4 adults as well as children. After the party, a couple of my  
5 friends and I were waiting for a ride home. Our ride was  
6 late and so was the time. We were among the last people  
7 there. A very nice woman offered to wait with us until our  
8 ride came. We were relieved because the areas we were in is  
9 not a very safe one. We all stood around talking for  
10 awhile. Then this lady pulled out a cigarette and started  
11 to smoke. I just didn't know what to do. Here we were in a  
12 small enclosed security post with someone going out of her  
13 way to be nice and helpful, but unfortunately, her smoke set  
14 off the chain of reactions that I described earlier.

15           Although my eyes were burning and I was gasping for  
16 breath, I felt I couldn't ask her to please extinguish her  
17 cigarette, and I didn't. Asking someone not to smoke is  
18 very hard, especially if you are a kid. In a situation like  
19 this, I feel trapped. If I don't ask her to put out her  
20 cigarette, I know what will happen: My lungs will burn,  
21 I'll start to cough, and the whole chain will start. But if  
22 I do ask her, she might think that I am rude and even,  
23 ungrateful.

24           I know what I am supposed to do. I know what my  
25 parents have told me over and over to do in this kind of

1 situation. But I just couldn't bring myself to ask. I felt  
2 terrible that I was going to make myself sick by not asking,  
3 but the embarrassment of asking was just too much. I ended  
4 up wheezing and feeling ashamed because I couldn't do the  
5 right.

6 I desperately hope that you can help other children  
7 for being in situations like this. You probably can't  
8 remember what it's like to feel powerless but think of the  
9 four year old who is strapped into a car seat unable to  
10 speak up. You have the power to pass a Bill that would help  
11 all children in this position. Thank you.

12 MR. CHAIRMAN: Thank you, Emily. Denise?

13 MS. GROW: Hi. Thank you for inviting me to talk  
14 today to you about how cigarette smoking affects my asthma.  
15 My name is Denise Grow. I am 15 years old, I go to school  
16 at Central Dauphin High School. I feel that cigarette  
17 smoking affects my asthma in numerous ways. Here are some  
18 of the ways: Number one, it makes my eyes start to get  
19 watery and then itch. It makes me want to cough. Cigarette  
20 smoking has affected me by making my breathing get very  
21 difficult. Number four, I'm beginning to feel congested and  
22 get headaches. It also makes my lungs get tight.

23 I do not like to be around people when they're  
24 smoking cigarettes. I feel that I should go somewhere else  
25 where they are not. Thank you.

1 MS. WINANT: Hi. My name is Johanna Winant. I  
2 live in Philadelphia and attend sixth grade at Springside  
3 School. In the sixth grade, we take a course called "Life  
4 Issues". This includes learning about drugs, alcohol and  
5 other things you might have to face sometime in your life.  
6 We spent six weeks on smoking and its effects.

7 We learned about how dangerous second-hand smoke  
8 is, especially in an enclosed space. I spend between two  
9 and three hours in a car each week.

10 It wouldn't be very polite to say to a smoking  
11 adult, "Hey, you! Will you put out your cigarette? It's  
12 poisoning my lungs and everyone else's."

13 When I've been with a smoking driver, I just suffer  
14 in silence, hoping that my lungs aren't turning black or  
15 that I'm not developing lung cancer.

16 Kids rely on adults. We say we're independent, but  
17 adults have a certain kind of authority. We need adults to  
18 be in control of themselves. When an adult smokes, it's  
19 kind of frightening to me. It makes me worry, "This  
20 grown-up doesn't seem responsible, because they're out of  
21 control."

22 That's especially scary when you're in a car with  
23 someone, since driving takes concentration and control.  
24 Some people might just say, "Open a window". But we can't  
25 do that when it's cold outside. Anyway, the smoke keeps

1 coming at us.

2           And we can't even escape cigarettes after we get  
3 out of the car. The cigarette smell clings to our clothes  
4 all day.

5           I'm glad to be here because I'm helping out other  
6 kids. So only you have the real power to force kids into  
7 breathe dangerous cigarette smoke or give them cleaner air.  
8 I think every kid deserves to breathe clean air. I hope you  
9 agree with me. Thank you very much.

10           MR. CHAIRMAN: Any members of the committee have  
11 any questions for the kids?

12           REPRESENTATIVE LAUB: Buys, we thank you for  
13 coming. But I have just one question to any of you who  
14 choose to answer this. You're here today. Somebody asked  
15 you to come here today. Somebody asked you to write the  
16 essays or you had a contest in school. Is that correct or  
17 are you here because you volunteered?

18           MR. CHAIRMAN: How many kids are here because they  
19 volunteered to be here. Okay. So there was no essay  
20 contest or anything like that for being here.

21           REPRESENTATIVE LAUB: Who would ask you?

22           MR. BRESNITZ: My friend Jason back there asked me.  
23 His uncle works with a medical newspaper and he was going  
24 and Jason remembered that I had asthma. And so he asked me  
25 if I would come.

1 MR. CHAIRMAN: Okay. Thank you.

2 REPRESENTATIVE MARSICO: I have a question. I also  
3 want to thank you for being here. Let me ask you, I think  
4 all of you have mentioned that you have asthma. Is that  
5 correct? Who has asthma? Would you raise your hand. So  
6 it's all but one. Okay. Thank you very much.

7 MR. CHAIRMAN: Okay. Representative Melio?

8 REPRESENTATIVE MELIO: Yes. I want to thank you  
9 for being here. You guys are powerful witnesses, and my  
10 father passed away he had emphysema and I can really feel  
11 for all of your concerns. What age do you think should be  
12 on this Bill? Is there a limit to what the age limit should  
13 be?

14 MR. DARIN BRESNITZ: I think it should be that  
15 everybody that nobody should be able to smoke in a car.

16 MS. BOSK: Asthma has other health problems. There  
17 isn't an age where you can't be affected by this. So any  
18 age is good because it will protect people.

19 MS. WINANT: I think the only time you should be  
20 able to smoke in a car is if you're by yourself.

21 MR. CHAIRMAN: Okay.

22 MR. GREG BRESNITZ: I don't even think by yourself  
23 because the smoke will still stay in the car even though  
24 most of it is out some of it will still stay there.

25 MS. REIGLE: It doesn't matter if you have asthma

1 or not, I mean this smoke in the air can really hurt  
2 someone. You don't have to have a cigarette and be smoking  
3 a cigarette to really harm you. It can just be the  
4 cigarette in the air and the smoke I mean that can really  
5 harm someone.

6 MR. DARIN BRESNITZ: I think the age should be 16  
7 because at age 16 you can drive by yourself. So if the  
8 older people want to poison themselves, they should poison  
9 themselves and not me.

10 MR. CHAIRMAN: Mr. Cox, I got a letter from your  
11 father. Could you explain the activity that you had where  
12 you and some other youngsters went around to get cigarettes.

13 MR. COX: It was me and two of my Dad's friends.  
14 We went around Beaver County area to see how many -- how  
15 many places I could get cigarettes. And we visited 57  
16 convenience stores, restaurants --

17 MR. CHAIRMAN: How many?

18 MR. COX: Fifty-seven.

19 MR. CHAIRMAN: Fifty-seven convenience stores?

20 MR. COX: Uh-huh. And 30 out of the 57 were  
21 willing to sell me the cigarettes and I didn't have any  
22 trouble at all.

23 MR. CHAIRMAN: Did anyone ask you are you buying  
24 them for your Dad or your Mom?

25 MR. COX: Very few. A couple of places said you



1 are buying this for your parents, right? And I said, yes.  
2 But anybody can tell a lie. I mean, it's not that hard.

3 MR. CHAIRMAN: Any other questions for the  
4 children. I want to ask you one real quick question kids  
5 and you can respond. I know many times when you're riding  
6 in the car I think someone over here mentioned that they're  
7 riding with their friend's mom or dad and helpless they  
8 felt. How helpless do you feel as a child? I mean, I know  
9 you're 12 years old. Really how helpless do you feel? And  
10 do you think those parents are going to listen to you or  
11 that adult?

12 MS. REIGLE: I think it's really -- you really feel  
13 helpless because you're just a kid. And they might think,  
14 well, we're the boss. We're the adult. What -- since when  
15 can children boss us around?

16 MR. CHAIRMAN: Are you afraid to raise any  
17 questions to them or ask them to put the cigarette out?

18 MS. REIGLE: Yes.

19 MR. CHAIRMAN: Go ahead, Emily.

20 MS. BOSK: I am always afraid to ask someone. It's  
21 very embarrassing to say, well, your smoke is injuring me.  
22 It's very hard. And to ask it's incredibly difficult and  
23 you always feel very --

24 MR. CHAIRMAN: Johanna?

25 MS. WINANT: It's embarrassing to ask someone to

1 stop something they like doing just because of you. It  
2 might not be good for them or not good for us, but it is  
3 still very embarrassing.

4 MR. CHAIRMAN: Go ahead. Then I have one more  
5 question and maybe you guys can answer that.

6 MS. GROW: I'm like older than some of these kids  
7 and I still feel like very like -- it's still really hard  
8 for me to ask people to put out their cigarettes.

9 MR. CHAIRMAN: Do you really believe that adults  
10 take you serious when you ask them to put out the  
11 cigarettes?

12 MR. GREG BRESNITZ: No, because we're just younger  
13 and they think we're just foolish.

14 MR. DARIN BRESNITZ: No, because they don't respect  
15 younger kids. They just think, oh, they don't know what  
16 they're doing. They don't know what they're talking about.  
17 Because they think they're older than us, they're smarter  
18 than us. But if you're smoking, you're probably not as  
19 smart as us.

20 MR. COX: I think some people actually do believe  
21 and they will respect your rights because they might know  
22 that it is harming and they might be trying to quit. But  
23 the tobacco or nicotine addiction can get so strong, you  
24 can't stop for some people. And for some people, they just  
25 don't believe that cigarettes can harm you. They just think

1 that you're stupid and don't know anything and you're just a  
2 little kid anyway.

3 MR. CHAIRMAN: Okay. One last comment.

4 MS. BROYER: A lot of people from what I have had  
5 the experience with especially with some of my friends, like  
6 I said, they think my asthma is funny and I ask them to put  
7 out their cigarettes and most people do respect my wishes.  
8 But a lot of people don't. They just think that I'm a  
9 stupid kid and I don't know what I'm talking about. But I  
10 know what's good for me and what's good for my body and it's  
11 not what I want.

12 MR. CHAIRMAN: Representative Melio?

13 REPRESENTATIVE MELIO: Just one final question.  
14 Why is it so attractive for your peers to smoke? What is  
15 the big attraction? Why do you always see kids on the  
16 corner smoking and wherever they may be?

17 MR. GREG BRESNITZ: One reason is that it could be  
18 that their older brothers or sisters do it because I know  
19 one girl who her brother influenced her not only to smoke  
20 but to try LSD. And a lot of people smoke because it's so  
21 easy for them to get cigarettes and they just needed to try  
22 it and it's so easy, they just can't stop.

23 MR. CHAIRMAN: Pass the mike down.

24 MR. DARIN BRESNITZ: Some people may think one  
25 person may do it and then just give another person a

1 cigarette and then another person and then after a while a  
2 lot of people start doing it.

3 MR. COX: If there is somebody they admire like  
4 their parents or a sports figure and they smoke and they try  
5 to be just like them or if somebody -- they see somebody  
6 walking along the street and they smoke and they see them  
7 smoking a cigarette, they might say, well, if it's good  
8 enough for them, it's good enough for me.

9 MR. CHAIRMAN: Before we pass the microphone down,  
10 let me go into another question that may be you can answer.  
11 You're 12 and 11 and 13, and 15 and 16 and you're with these  
12 kids day in and day out, can you tell the committee and the  
13 public and the media how many kids are addicted to  
14 cigarettes at 12 years old? Are there a lot of kids that  
15 are addicted to cigarettes now at your age? Can someone  
16 answer that question, Emily or --

17 MS. REIGLE: I think there is a lot of kids at my  
18 school that smoke. I've already tried -- I already told the  
19 principal about some kids that I caught with cigarettes and  
20 trying to sell them on the bus. So that's what I meant when  
21 I was blackballed. I mean, I've already gotten caught  
22 telling on them and they're talking behind my back now. So  
23 I think there is very many kids that are smoking.

24 MS. BOSK: I think it's a lot more than people  
25 realize. I know a lot of people that smoke and get away

1 with it behind their parents back without them ever finding  
2 out and it's really scary and surprising.

3 MS. WINANT: This is your answer to the first  
4 question. I think a lot of the kids smoke because it makes  
5 them feel grown up. Adults smoke -- like he said people who  
6 they like smoke. It makes them feel more responsible or  
7 more like an adult to smoke. I don't see why.

8 MR. CHAIRMAN: Kids, what we're going to do is if  
9 there are no other questions from the committee.

10 REPRESENTATIVE MARSICO: Yes, I'd like to just make  
11 a comment. I don't know what that last question of yours  
12 has to do with the Bill at hand. What does that have to do  
13 with smoking in cars?

14 MR. CHAIRMAN: Well, what it has to do is the  
15 children are exposed to second-hand smoke. And there are  
16 studies that have been done that show by exposing that child  
17 to smoke that child can become addicted to cigarettes the  
18 same way as if that child was smoking him or herself.

19 What we're simply saying is children today are  
20 being exposed to an increased degree in cars to smoke by  
21 their parents and in essence then become addicted to smoking  
22 and become smokers themselves. That was the question --  
23 that was the issue I was raising.

24 REPRESENTATIVE MARSICO: Okay. Thank you. A  
25 comment please. Actually I'd like to ask a question again.

1 The -- many of you mentioned that you were afraid to ask the  
2 adult drivers to quit smoking if they were smoking in the  
3 cars while you were riding in the vehicles, okay. How many  
4 of you have asked the adults to stop smoking? Four of you.  
5 Okay. Then put your hands down. What were the responses?

6 MS. BOSK: I've asked twice. And once was yes and  
7 once was no.

8 REPRESENTATIVE MARSICO: One said yes and one said  
9 no. Danielle, you had your hand raised.

10 MS. BOYER: A lot of times they do put it out. But  
11 like I said, there is always going to be those few people  
12 that won't do it.

13 REPRESENTATIVE MARSICO: Well, some have --

14 MS. BOYER: Some have.

15 REPRESENTATIVE MARSICO: -- abided by your wishes?

16 MS. BOYER: Yeah.

17 MS. REIGLE: I only asked once and luckily she put  
18 our her cigarette because like I said smokers are very nice  
19 people. But luckily she put our her cigarette.

20 REPRESENTATIVE MARSICO: Okay. Thank you. And you  
21 had your hand up?

22 MR. COX: Yeah. Sometimes I'll ask people like --  
23 if I'm sitting by them at restaurants or something and  
24 they'll just kind of laugh and they'll just kind of blow it  
25 in my face sometimes.

1 REPRESENTATIVE MARSICO: What about in automobiles?

2 MR. COX: Yeah, they usually do.

3 REPRESENTATIVE MARSICO: They usually do?

4 MR. COX: Um-hum.

5 REPRESENTATIVE MARSICO: Thank you, Mr. Chairman.

6 MR. CHAIRMAN: Any other questions from the  
7 committee members?

8 (No response.)

9 MR. CHAIRMAN: Children, thank you for taking the  
10 time to come out this morning and express your views. I'm  
11 sure that your words will be echoed tomorrow morning in the  
12 media and your concerns. The next person to testify is  
13 Gerald Kupris. He is the Tobacco and Candy Distribution  
14 Association Executive Director of Pennsylvania's  
15 Distributor's Association.

16 MR. KUPRIS: Good morning. My name is Gerald  
17 Kupris. But before I get started, those young ladies and  
18 gentlemen did an excellent job and I for one would never be  
19 smoking in a car with them. I wouldn't be smoking in a  
20 house with them, and I wouldn't be smoking outside of a zoo  
21 with them. They're fine people and they should be treated  
22 like the fine people they are. So my comments are not meant  
23 toward them. They're meant for good understanding adults  
24 and good understanding children.

25 Members of the House Transportation Committee, my

1 name is Gerald Kupris and I'm the Executive Director of the  
2 Pennsylvania Distributor's Association. We're an  
3 association of businesses which distribute billions of  
4 dollars of consumer goods in this Commonwealth; including  
5 products ranging from snack items, gum, paper products,  
6 health products, juices, food stuff and tobacco products.

7 I've been asked to testify and comment on House  
8 Bill 626 legislation which amends the Vehicle Code to  
9 effectively prohibit smoking in vehicles in certain  
10 circumstances. I'm appearing here today to oppose House  
11 Bill 626 because in short someone's got to do it. Someone  
12 has to finally look you in the eye and say with all do  
13 respect, are you guys kidding or what? Now, I don't mean to  
14 insult you by a rhetorical question and I certainly don't  
15 think you mean to insult my intelligence by imposing the  
16 Bill on the merits because the Bill has written us up with  
17 problems which may negate any possible merits the Bill is or  
18 is intended to have.

19 Everyone, including myself, is fully aware of the  
20 problems with children smoking, using tobacco products and  
21 you are all aware of the obligations accompanied by  
22 epidemiological studies which address the issue of  
23 second-hand smoke or involuntary smoking or to put it more  
24 simply, my breathing in your cigarette smoke if I'm in the  
25 same area with you.



1 I'm not here to discuss that issue today and one  
2 thing should be perfectly clear. There are plenty of other  
3 forums available that rant and rave about the tobacco  
4 industry. Just look at Congress last week and the week  
5 before.

6 There are children going to be used in an effort by  
7 anti-tobacco sellers to do what they don't have the guts to  
8 do up-front and honest and that is to outlaw tobacco. If  
9 they took that route, I'd have much more respect for their  
10 cause then for any type of backdoor use of children  
11 approach.

12 I'm not suggesting that the sponsors to this  
13 legislation have done this or that the committee is being  
14 duped into this, absolutely not. I fully expect that the  
15 sponsors of this legislation have as much concern for this  
16 issue as I do but know this full well, I fully challenge  
17 anyone to suggest that either I or my industry objects to  
18 this legislation because it's going to end smoking, quite to  
19 the contrary, it won't do that. That's why I'm seriously  
20 considering that the legislation not be used as a means to  
21 get at the tobacco industry.

22 If this Bill is to address the concerns of children  
23 being placed in a less than positive environment, one which  
24 they cannot control, then we do have something to discuss  
25 and we have substantive issues of philosophy and

1 practicality to deal with here.

2           Having said that, let's look at some of those  
3 issues. First and foremost, it is important to set a limit  
4 as to how far a Government will go or must go to effect a  
5 certain policy. Next, it is necessary to determine exactly  
6 what actions are prohibited. And finally, it is necessary  
7 to determine the best and least means of affecting that  
8 policy.

9           For example, spanking a child is not lawful but  
10 taken beyond a certain point it may cause harm and be  
11 actionable as child abuse. Addressing serious concerns to a  
12 child verbally may be both legal and proper but verbal  
13 lashing and verbal abuse may result in emotional harm and  
14 psychological harm and could be actionable. Bad parenting,  
15 failing to communicate social morals from one generation to  
16 another is not a legal pro se. But may result in social  
17 maladjustment, could result in actionable harm to which the  
18 parents could be responsible.

19           Now, the point is this that a good parent or adult  
20 is responsible enough to act within the realm of proper  
21 behavior. Laws only deal with extreme and outrageous action  
22 and here's a further point. To say it's bad policy to go  
23 driving down a road puffing a tobacco product while infants  
24 are present in a car is quite proper. It is bad policy.  
25 And it's bad for an adult to do that. Any person should be

1 educated that this type of action is inadvisable. But to  
2 make a law to control this behavior when something less than  
3 a law would do is overkill and it's unnecessary governmental  
4 intrusion. Why? Consider this.

5           By the way, I got this next wish from my son when I  
6 was talking to my son who is 12 years old. Cracking a  
7 window exits more air and introduces more fresh air to a  
8 vehicle then when riding with the windows up and having no  
9 air exchange. Pretty logical, pretty simple. You got smoke  
10 in the car, you're driving down the road, you open up the  
11 window, smokes gone. Wow. It's cleaner even when the  
12 occupant is smoking.

13           So if you're taking this Bill seriously, justice  
14 will be made with a crack your window amendment that would  
15 make the air more breathable. But that's kind of silly.  
16 Further, cruising down a road, traveling well within the  
17 speed limit, a state trooper observes what he believes to be  
18 a likely tobacco product being used or at least what appears  
19 to be smoke in the confines of the vehicle. He sees what he  
20 believes to be a person 15 years of age or younger. Is  
21 smoking being done? How can a trooper determine the age of  
22 the occupant? Is there a crime which allows him to stop a  
23 vehicle had probable cause been established? This is not to  
24 be treated as a moving violation nor is it to be held as  
25 level of negligence pro se in a Court action.

1           What if the passenger turns out to be 16? What  
2 about a 13 year old that's looks like he's 18 or she's 18?  
3 The persistent smokers don't want that ladder leaning in the  
4 car. And what about the two occupants in the car arguing  
5 over whose turn it is to take Johnny to the game this  
6 weekend. Johnny is in the back seat. The vehicle stops at  
7 a stop sign. A patrol car pulls up behind. The argument  
8 ensues. It becomes more heated and more heated. The  
9 occupant of the car yells, oh, yeah I'll fix you and screams  
10 Officer, pops a cigarette in the mouth, lights it up. The  
11 occupant gets fined for smoking in the vehicle. Now, more  
12 importantly, that beacon driver would not agree on Johnny's  
13 itinerary; has been caught operating a vehicle while someone  
14 was smoking while there was a passenger in the vehicle 15  
15 years of age or younger. Ridiculous, preposterous out of  
16 touch with what is really intended, absolutely so.

17           There are other means of effecting a public policy  
18 that an action is to be discouraged. Even now Detroit has  
19 seen which way the smoke is blowing by assembling its 1995  
20 models with ashtrays as oxygens rather than standard  
21 equipment. This certainly is a disincentive to smoking in a  
22 vehicle.

23           And before we run full stream into this type of law  
24 mentality, consider legitimate courses of action such as  
25 educations of getting out whatever message it is that you

1 want to send regarding smoking in a vehicle. Being a  
2 concerned parent. It is difficult for me not to sympathize  
3 with the concerns being expressed or the concerns that are  
4 going to be expressed later on.

5 I personally allow no smoking in my vehicle. That  
6 is my good sense and my good choice. And it is based upon  
7 my view of comfort rather than someone else's view of  
8 health.

9 I find using a car phone or people combing their  
10 hair or applying makeup using a rear view mirror to be  
11 dangerous activities while operating a motor vehicle. And  
12 people should have the common sense not to undertake these  
13 activities. And I would never sue for a law to prohibit  
14 such activities. I urge this committee to take my testimony  
15 under advisement and conclude that there are other means of  
16 addressing this situation. And that House Bill 626 should  
17 not move forward. Thank you.

18 MR. CHAIRMAN: Thank you, Mr. Kupris. I'd like to  
19 start questioning. I looked at your legislation and it has  
20 a number of statements such as preposterous, ridiculous,  
21 outrageous, vendetta, some of the other languages. Are you  
22 insulting our intelligence -- insult my intelligence by  
23 thinking and so forth. You said are we kidding or what?  
24 Guess what, we're not kidding.

25 MR. KUPRIS: Guess what?

1           MR. CHAIRMAN: Can I finish? We're not kidding.  
2 And EPA has come out with studies stating about the effects  
3 of second-hand smoke. Now, you're saying that you agree but  
4 you don't agree. And it's a matter of philosophy but it's a  
5 matter of politics. It's a matter of choice. It's a matter  
6 of not that choice.

7           Now, my question to you is what is the choice?  
8 Now, you represent the industry that distributes and makes  
9 money off the sales of cigarettes. No one expected you to  
10 come here and support this legislation. But could you tell  
11 the public, in all honesty, that it's good public policy to  
12 have children sit in a car strapped with seat belts in a car  
13 that is rolled up 30 below zero and the mother is going to  
14 roll down the window so she can smoke a cigarette. Is that  
15 good public policy? Is that what we're trying to do here  
16 today?

17           MR. KUPRIS: Mr. Daley, it's always good public  
18 policy and wisdom for adults to have respect for a person  
19 with asthma or a child. It is bad public policy to pass a  
20 law like that. Yes, sir, I will tell you that. This is bad  
21 public policy. It's a bad law.

22           Look, life is tough and the parents should have the  
23 common sense and decency. I'll tell you, these kids were  
24 talking about when they were in a car and somebody lit up  
25 the cigarette. I wonder who the heck was driving that car

1 and lit up the cigarette. Who didn't have the sense that  
2 there was an asthmatic in that car. I don't need a law for  
3 that and there shouldn't be a law for that.

4 MR. CHAIRMAN: How about the people that simply do  
5 not take that into consideration? How about the people that  
6 simply let their child in a car and aren't concerned about  
7 that child in the car and will smoke and let that child sit  
8 in the car and will not roll down the window and let that  
9 child sit back in that car seat. What do we do about those  
10 people? How can we send the message to those people to be a  
11 good parent or be a good adult and practice responsible  
12 interaction with the public?

13 MR. KUPRIS: I don't have a full answer for that.  
14 But one of the answers that is not is this law.

15 MR. CHAIRMAN: Well, my next question to you is are  
16 you trying to draw an analogy that operating a motor vehicle  
17 while being on the car phone, combing your hair, applying  
18 makeup using the rear-view mirror is a dangerous activity as  
19 dangerous as smoking in the car with a child, the effect on  
20 that child's life, the harmful effect?

21 MR. KUPRIS: Mr. Daley, I'm giving you examples of  
22 things that I found offensive and was not making any  
23 analogy. And I would not pursue a law for that. If you  
24 want to make an analogy, you don't compare something which  
25 may be life threatening to an asthmatic. We also don't say

1 because a person has a problem that we're going to pass a  
2 law to deal with every problem.

3           You may want to educate adults and you may want to  
4 educate children to pursue which is a course of action which  
5 is to be courteous and respect the dignity of human beings.  
6 You know, I don't have to respect somebody's dignity. The  
7 law will tell me I have to do certain things. But if you  
8 teach me to respect a person's dignity as a human being,  
9 then you've done it without a law and you've done it  
10 forever. You're bypassing that.

11           You denigrate me as a human being by saying thall  
12 shall not smoke. Hey, I have the common sense. What about  
13 the person who is not going to do that? Let's spend our  
14 time finding them. I'll tell you what send them to me and  
15 I'll take them out to the woodshed and have a few talks with  
16 them.

17           MR. CHAIRMAN: Well, I think you're not being  
18 responsive to the question. Do you think putting makeup on  
19 in a car with a mirror or combing your hair or talking on a  
20 car phone is as dangerous an activity as smoking in a car  
21 with a child?

22           MR. KUPRIS: You know, if you have an accident and  
23 kill yourself it's probably more dangerous, sir.

24           MR. CHAIRMAN: So then it is more dangerous is that  
25 what you're saying?



1 MR. KUPRIS: No, I didn't.

2 MR. CHAIRMAN: It is or it isn't?

3 MR. KUPRIS: I didn't say that, sir. I said that I  
4 am not going to answer the question because you're trying to  
5 equate two things which are absolutely not equatable. We do  
6 not know that smoking -- if a child is in a car, one person  
7 smoking one time is going to have the type of effect of long  
8 lasting, life lasting as a person that might be coming there  
9 and runs into a telephone pole and kills themselves. And  
10 you know full well, sir, that using an analogy is not the  
11 way you use it. An argument which is what I did rather than  
12 making an equal equation, you know that. I know that.

13 MR. CHAIRMAN: Well, quite honestly, why don't you  
14 just do that to plant the seed and I think that's what you  
15 were doing but you will not accept the fact that you were  
16 the planter of the seed. And I'm saying that I assume from  
17 your commentary here that you're saying that smoking in the  
18 car is equated to be a less dangerous activity as people on  
19 car phones and combing their hair in rear-view mirrors.  
20 Does anyone else have a question?

21 REPRESENTATIVE MELIO: I just want to say that  
22 traveling back and forth to Harrisburg on the Turnpike,  
23 there is some areas that I wouldn't want to crack the  
24 window.

25 MR. CHAIRMAN: Members of the Committee?

1 (No response.)

2 MR. CHAIRMAN: Thank you, Mr. Kupris for your  
3 testimony today. The next individual to testify is John F.  
4 Banzhaf, III. John is the Executive Director and the Chief  
5 Counsel of Action on Smoking and Health and is a law  
6 professor at George Washington University. And Mr. Banzhaf,  
7 I know that you have been a natural spokesman. You just  
8 flew in from Los Angeles and San Francisco and we appreciate  
9 you taking the time to be here today.

10 MR. BANZHAF: Thank you very much, Mr. Chairman.  
11 My name is John Banzhaf. I'm a professor of public interest  
12 law at the law center at George Washington University. I  
13 apologize to the Members of the Committee, I have not  
14 prepared written testimony as somebody alluded to we had  
15 some very important things going on with regard to smoking  
16 laws a couple of weeks ago in Washington.

17 However, the report I handed up does summarize many  
18 of the most important points. So I hope that will provide  
19 perhaps second best. Action on smoking and health is a  
20 national scientific and educational organization. It began  
21 by getting anti-smoking messages on the air and throw  
22 cigarette commercials off the air and we started what is now  
23 known as the non-smoker's rights movement back in 1969 by  
24 first getting separate smoking and no smoking sections on  
25 airplanes and of course, by now we got a ban on virtually

1 all domestic flights. We are involved in many of the first  
2 statutes limiting smoking including some in Pennsylvania.

3 We hope to get the first conjunction against  
4 smoking in an office to establish the concept way back in  
5 the mid 1970's with people who have asthma or sinusitis or  
6 dozens of other problems are handicapped persons entitled to  
7 protection then in the Federal Rehabilitation Act today  
8 under the American Lung Disabilities Act.

9 We've been involved in many of the cases where  
10 non-smokers have successfully brought legal actions for  
11 worker's compensation, unemployment, disability compensation  
12 and so on. We were largely responsible for first raising  
13 the issue of smoking in custody and divorce proceedings. At  
14 this point, 12 states including Pennsylvania have now agreed  
15 that it is important enough that smoking by a parent or  
16 subjecting a child to smoke by a parent is important enough  
17 to be a factor in custody divorce proceedings and therefore,  
18 perhaps a half a dozen cases where people have literally  
19 lost custody because they continue to subject their children  
20 to tobacco smoke.

21 We're a group primarily responsible for getting  
22 McDonald's and others to ban smoking in the work place.  
23 Most recently the Maryland Occupational Safety and Health  
24 Administration has proposed a virtually complete ban on  
25 smoking in most public places. Several weeks ago in

1 response to our lawsuit, the Occupational Safety Health  
2 Administration proposed rules which would ban smoking in  
3 virtually all work places. And as Bill mentioned earlier,  
4 we've been involved in a number of suits where Courts have  
5 now held -- subjected somebody else to tobacco smoke may go  
6 beyond mere negligence and be a batter that is intentional  
7 toward for which punitive damages can be awarded.

8 I also happen to have before I became a lawyer and  
9 a law professor a scientific technical background. I have  
10 an MIT degree. I've written a dozen or so papers, developed  
11 a new mathematical concept. So I am prepared to discuss any  
12 of the scientific aspects with you. And what I would like  
13 to do is to divide my testimony into three part. First  
14 explain not in scientific language but in lay language some  
15 of the dangers of environmental tobacco smoke and why the  
16 protection for children is so important.

17 Secondly, to deal with the legal issues which have  
18 been raised which I think are largely a legal smoke screen.  
19 And then to address what I think are really the important  
20 ones and those are the policy issues.

21 First of all, ETS, environmental tobacco smoke is  
22 the most deadly substance to which human beings are  
23 subjected. When smokers inhale it, it causes about 420,000  
24 deaths among Americans each year. For non-smokers, it  
25 causes over 50,000 deaths each year which is more than all

1 the automobile accidents, approximately twice the number of  
2 people who die from guns, almost twice the number of people  
3 who die from AIDS, about five to ten times the number of  
4 people who die from all deadly drugs. It has been  
5 classified as a group A carcinogen which means two things;  
6 first of all, we know that it causes cancer in human beings.  
7 Secondly, we know of no safe lower level.

8           And having a smoking and no smoking section in a  
9 restaurant or car or anywhere else makes about as much sense  
10 as having an asbestos and non-smoking asbestos section in a  
11 restaurant. The EPA fortunately has done a very, very  
12 detailed pure review study of the affects of tobacco smoke  
13 on children.

14           And to summarize it, they report looking only at  
15 children 18 months and under. And that is not magic because  
16 it continues to happen to all the children. Looking at just  
17 18 months and under and looking at the level to which  
18 children are exposed in a home where one parent smokes which  
19 is far less than that which they would get in a car, we're  
20 talking about 300,000 respiratory infections every year  
21 including bronchitis which results in 7500 to 15,000  
22 hospitalizations, some 200,000 to one million asthmatic  
23 attacks, up to 26,000 cases of new asthma, middle ear  
24 infusion which roughly translates into middle ear problems,  
25 middle ear infection which is the major reason why children

1 go to a physician other than regular children visits.

2           The EPA did not report this but there are studies  
3 showing that smoking tobacco smoke in the home doubles a  
4 child's risk of getting lung cancer later on. Now, many  
5 people find a little bit of difficulty accepting this. How  
6 could it possibly be? We know that when the smoker smokes,  
7 that's dangerous. But how could it possibly be across the  
8 room even in a different room, there could be a danger.  
9 Well, let me spell it out very quickly for you.

10           Cigarettes are a little bit like your fireplace.  
11 When you puff on a cigarette, you get a very hot clean  
12 breath. The percentage of dangerous chemicals coming off  
13 are far lower than when it's simply sitting there idling.  
14 Secondly, the smoke that smoker's inhale is filtered. Most  
15 cigarettes have filters on them even though the smoke is  
16 filtered through the tobacco. Third, have you ever observed  
17 or watched a smoker? They smoke probably puff actively on  
18 that cigarette only about 30 to 40 seconds on a cigarette  
19 that lasts anywhere from 10 to 15 minutes. And as a result  
20 of all of this, most of the smoke, most of these deadly  
21 carcinogens, toxins, hazardous chemicals and so on come off  
22 the end of the cigarette where they build up in  
23 concentrations in the room.

24           How high are these? Studies have actually shown  
25 that people in smoking atmospheres like bars will inhale the

1 equivalent of two packs of cigarettes a day. The smoke in a  
2 car as we saw before is much higher than what you would be  
3 inhaling in a car. We also know for a wide variety of  
4 reasons, kids are far more sensitive putting aside the kids  
5 with asthma. Ordinary, everyday healthy kids are far more  
6 sensitive to tobacco smoke. Most of their systems are not  
7 yet developed. They are still developing and they are far  
8 more vulnerable.

9           They have far more lung area than you or I in  
10 comparison to our body weight. Certainly they breathe more,  
11 more rapidly. And this is true even when they're sitting  
12 still which of course they rarely are because they tend to  
13 have a much higher respiratory rate than we do.

14           So for all of these reasons, kids even healthy kids  
15 are at a much, much higher risk from second-hand smoke than  
16 are adults. We also know that the various chemicals in  
17 second-hand smoke do affect non-smokers. We can measure it.  
18 We can measure it in their blood. We can measure it in  
19 their urine. We can measure it in their saliva. Recently,  
20 we found that the children of women who do not smoke but who  
21 have smoking in the office, again a much lower concentration  
22 than what you find in a car, when their newborns are first  
23 delivered and small samples of hair are taken, there are  
24 significant concentrations of nicotine and cotinine which  
25 is a breakdown product of nicotine.

1           Somebody asked before, I think it was this  
2 gentleman here, about the various concentrations. With  
3 regard to lung cancer, environmental tobacco smoke is a  
4 group A carcinogen having been classified that way by OSHA,  
5 by EPA, by MOSHA and by the U.S. Public Health Service.  
6 With regard to any group A carcinogen, there is no safe  
7 lower level. Any level so far as we know may be that  
8 molecule which first triggers the very small change in a  
9 healthy cell to a cancer cell.

10           Obviously, the risk depends upon the length of the  
11 exposure and the amount of the exposure. So far as we know,  
12 there is no safe lower limit. That is why, for example, if  
13 you ask about EPA standards, there is an EPA standard. It's  
14 an insert into what I gave you. The EPA has now issued  
15 guidelines for tobacco smoke. Both of them provide that it  
16 shall be prohibited anywhere indoors unless it is in a  
17 separate room where that air is separately ventilated to the  
18 outside and where you maintain negative preservation.

19           In other words, the EPA, OSHA, MOSHA and NOSHA all  
20 tell you that if you permitted smoking in one of those rooms  
21 way at the end of the hall, you would be subjecting  
22 yourselves to levels in here which are greater than EPA,  
23 OSHA and other regulatory levels permit with regard to other  
24 dangerous chemicals.

25           However, with regard to many of the other problems;



1 particularly asthma, hay fever, sinusitis, various  
2 respiratory problems, there does seem to be a lower level.  
3 It does however vary with the child. Children who have  
4 asthma or hay fever are much more sensitive. Virtually all  
5 children will be affected at some levels. There are levels  
6 which are lower and lower. Unfortunately, while lowering a  
7 window will substantially reduce it, it will certainly not  
8 eliminate it. And all you have to do is ask yourself, would  
9 you want to be in a car where the windows are rolled down,  
10 where somebody was spraying around little bits of asbestos?  
11 Would you want to be in a car where there is a bottle of  
12 benzene and you could smell that benzene even if the windows  
13 were open? And if your answer is no, well, then the dangers  
14 there occur from the second-hand smoke also.

15           Unfortunately, the EPA has found that most of the  
16 Americans -- of the 53 million Americans that smoke, most of  
17 them do subject their children to dangerous levels of  
18 second-hand smoke. This is true even though we've known the  
19 dangers ever since the Surgeon General's report in 1986. So  
20 unfortunately, education simply is not working. But indeed  
21 one of the points I would like to stress with you is I think  
22 one of the most important effects of this legislation after  
23 protecting the children of smokers who of course can't very  
24 well stand up when they're two years old and say, Mommy,  
25 please put out that cigarette. And the children of

1 non-smokers who you heard frequently have to travel with  
2 smokers. But also this will probably do more to have an  
3 educational effect than any kind of multi-million dollar  
4 program which you can enact which of course you're reluctant  
5 to spend additional money on. You're going to have very few  
6 convictions of this just as you probably have very few  
7 convictions of your smoking in public places law. Does  
8 anyone know how many convictions you had in this City by the  
9 way? I know in Washington we've had the law over 20 years  
10 and we've had one trial, one conviction, only one.

11           What I think will happen is you will have a very  
12 small number. These will be publicized. People will be  
13 reminded of it. And this by itself will have a tremendous  
14 educational effect and therefore the great benefit of the  
15 program is not going to be that five or ten or fifteen or  
16 twenty smokers are going to be fined whatever this small  
17 amount is but rather the tremendous educational -- like the  
18 same as, for example, the laws with regard to seat belts for  
19 children.

20           Now, let me look at some of the legal issues that  
21 have been raised particularly by the American Civil  
22 Liberties Union. The ACLU by the way has no maximum policy  
23 on this so far as I've been able to find. First, there is  
24 no legal right to smoke particularly among others. If there  
25 were legal right to smoke tobacco in public, presumably

1 there would be a legal right to chew and spit tobacco in  
2 public. There is no such right.

3 We now have to give up our right to fill up our  
4 cars with unleaded gasoline, our right to burn leaves in our  
5 backyard because they cause pollution. The issue has been  
6 raised several times in the report. It's been raised in  
7 connection with travel which is a first amendment protective  
8 right is thrown out. It has been raised even in the sense  
9 of somebody smoking in the privacy -- well, it wasn't his  
10 own home but it could have been his own home one cigarette  
11 smoked off the job, there is no constitutional right to  
12 smoke. It was thrown out in Dade County on actually voting  
13 and other issues.

14 So certainly there is no legal moral I would  
15 suggest to you moral right to smoke around others any more  
16 than there is to store any other kind of gas. On the  
17 contrary, there are numerous rulings. Some of them are  
18 cited in there on behalf of non-smokers on the job in public  
19 places. And increasingly less than in the Courts. Court  
20 are now routinely writing orders prohibiting smoking in the  
21 home as well as in the car where you have children. Courts  
22 are now literally taking children out of homes. One  
23 recently a physician filed a complaint because a mother was  
24 smoking around an eight month child. That child was sent to  
25 a hospital in respiratory distress. She only got her child

1 back when she agreed not to smoke around the child anymore.

2 So very clearly there are no rights to smoke.

3 There are many rights to be protected from smoke and the

4 Courts have been particularly concerned about children.

5 Secondly, there are no special rights of privacy in cars.

6 Most states require, for example, the front windows be clear

7 glass. This is for exactly the reason so that police

8 officers can see in.

9 We prohibit open beverage containers. Whether or

10 not you're drinking, we prohibit drinking in cars. We

11 prohibit the carrying of drugs in cars. We prohibit the

12 carrying of firearms in cars. In many states we prohibit

13 the carrying of even fireworks in cars. We certainly

14 prohibit nudity in car. We prohibit sexual activity in most

15 public places in cars. Some states, mine already included,

16 prohibit radar detectors in cars. Some prohibit police

17 scanners in cars. And of course, the closest analogy is

18 when most states, I believe yours is one, not only provide

19 that children must be protected while they're in cars but

20 you yourself, responsible adults must be belted in while you

21 are in cars.

22 So clearly there is no magic about what goes on in

23 a car. There is no reasonable expectation of privacy. The

24 police already looked into them for a wide variety of

25 different kinds of activities. Also there is certainly no

1 general parental right to the law to subject children to  
2 unnecessary circumstances. Virtually every state has under  
3 child abuse, child neglect, child endangerment statutes  
4 which prohibit that. But in extreme cases, Courts have  
5 uniformly held that when a child needs a blood transfusion  
6 that will be -- over the strong religious First Amendment  
7 protective rights of the parent. Even over strong First  
8 Amendment protective rights, children may be held to be  
9 vaccinated.

10           And there are just many, many situations in cars or  
11 homes where there are unnecessary dangers. Homes are even  
12 more protected than cars. And yet, you may or may not know  
13 this but the major reasons why children are taken out of  
14 homes are for things like young children being left alone;  
15 nine year old for two hours, unsanitary conditions, exposure  
16 to other dangerous chemicals like base paint, gasoline in  
17 garages, oven cleaners. All of these are the health basis  
18 to remove children from homes because of unnecessary  
19 exposure to risk.

20           Now, you don't have to spell them out in special  
21 statutes because very few parents are stupid enough to bring  
22 a three year old into a garage while they are using gasoline  
23 to clean an engine. And very few of them are stupid enough  
24 to keep a child in their arms while they're spraying oven  
25 cleaner into the oven.

1           But where you do have and EPA reports all you have  
2 to do is go out and look on your streets one day and look at  
3 all the people who are smoking in cars with young children  
4 or go to restaurants where there are children in the smoking  
5 section or go on an international airline flight where young  
6 children are subjected to it six and eight hours at a time  
7 and you know this is happening and this is happening eight  
8 years after the Surgeon General reported how dangerous it  
9 is.

10           Finally, lawyers like to use the slippery slope.  
11 One of the most favored sayings if you do this, this is  
12 bound to happen. There is no way to stop. Well, my  
13 goodness if you ban smoking in cars, the next thing you're  
14 going to be doing is this, this, this and this. Except that  
15 hasn't happened. Most states have required children to be  
16 belted in in cars. Had they gone on and required them to  
17 wear helmets, shin guards, have inflatable life preservers  
18 because they may roll into a lake or river? Obviously, no,  
19 legislators draw lines.

20           We banned commercials for cigarettes on TV. We  
21 never had commercials for alcoholic beverages. When I first  
22 did that, they screamed are we going to do it for hamburgers  
23 and hot dogs and ice cream and so on? It's now been 30  
24 years and it's never happened because legislators have more  
25 common sense.

1           Smoking bans, when we started talking about smoking  
2 bans in public places. They say, well, if we do it with  
3 smoking, next year they'll be doing it with hairspray and  
4 you're going to be doing it with perfume and aftershave  
5 lotion. Have you all been asked to do that? Is this a  
6 national problem? I don't know of any state which has done  
7 that. I know of one locality in California which has  
8 experimented with it. So if there is a real danger and it  
9 is in one situation, the fact that you deal with that  
10 situation does not mean that you are inevitably moved to ban  
11 smoking everywhere, to invade homes and so on.

12           Let me finally address some of the issues that I've  
13 heard in dealing with just trying to give you my view on it.  
14 Some people say why ban smoking in cars? Why not at home?  
15 After all, children are home probably more than they are in  
16 cars. I think there are three good reasons which coalesce.  
17 Number one, as you heard it, is far more serious in cars.  
18 The concentrations are far greater. Although some asthmatic  
19 children will be affected if there is one adult smoking in a  
20 large room, the great majority of kids I think are not going  
21 to be adversely affected by one person smoking in a large  
22 room at home. And of course, they can always leave the  
23 living room and go into their own room. But when you strap  
24 a young child into a very small car, the concentrations are  
25 huge, number one.

1           Secondly, it is much less inconvenient to smokers.  
2 Most of the trips we take with children -- I think you've  
3 all experienced this -- are short trips. We take them to  
4 school and back and forth. We take them to Karate and camp  
5 and tennis and dancing lessons and this and that. These are  
6 20 minute, 30 minute, 40 minute trips.

7           Anybody can go without smoking for an hour. You  
8 have to do it when you go to a movie. You have to do it  
9 when you go to church. You have to do it when you're on  
10 jury duty. We did it for many years on the airline before  
11 we went the full tilt. So the inconvenience is much smaller  
12 say banning smoking in a home when you're talking about  
13 somebody being there eight or sixteen hours a day.

14           Third, cars are in the street where they are  
15 already policed. We don't have to have a whole new police  
16 force. We don't have to do anything different. As I  
17 mentioned before, we already look into cars at police  
18 activity in cars for dozens of different things. We don't  
19 do that with homes. We don't have police driving by looking  
20 in windows. We don't have smoke police anymore. We have  
21 other kinds of police dealing with homes.

22           Finally, the law is very clear. There is virtually  
23 no expectation of privacy in a car in terms of something  
24 which is easily observed. If you want to search a car, yes.  
25 But your Bill is not talking about searching a car. Your



1 Bill is talking about a non-felony which mines as I  
2 understand it, the police officer has to observe the  
3 violations not have probable cause, reason to believe but  
4 actually observe the violation.

5 Another big argument I heard, well, why not rely on  
6 education? And I think the answer is a number of things.  
7 First of all, we've known about these risks over eight  
8 years. The problem remains -- the EPA said the majority of  
9 parents subject their children to dangerous levels of  
10 environmental tobacco smoke.

11 Secondly, this is one of the most pervasive things  
12 in the news, in the signs, nobody could possibly miss this  
13 as compared with more obscured things; when you put your  
14 baby on the belly or back with regard to SIDS. Nobody can  
15 escape the pervasive publicity about the second-hand, the  
16 dangers of second-hand tobacco smoke. It's hard to see what  
17 other educational campaigns you're going to come up with.

18 Yet despite this, we continue to have millions of  
19 people subjecting their children to it. Finally, so far as  
20 I know, we do not rely solely on education when we're  
21 talking about risk to others. We educate people not to  
22 drive drunk, but we prosecute them. We educate people not  
23 to use drugs, but we prosecute them. We educate people not  
24 to speed, not to drive after drinking and not to do a lot of  
25 other things, but we prosecute them when they do.

1           Education are most appropriate when the danger is  
2 to the individual and where that is a responsible adult.  
3 We're not going to tell you not to eat hamburg. We may tell  
4 you to cut down. You may want to provide the information  
5 for you, but nobody is going to prevent you from eating  
6 hamburg.

7           And then finally, I think in most cases, this is  
8 going to be the major educational force. And I see no  
9 reason, Mr. Chairman, I know I haven't had an opportunity to  
10 discuss this with you, but if education is going to be a  
11 beneficial way of doing this, could this not be put into  
12 effect for a three to six month period on a warning only  
13 basis. Let the police issue warning tickets for a period of  
14 three to six months. Let the newspapers write this up for  
15 three to six months. Let people be pulled over and given  
16 only a warning for three to six months. Surely that would  
17 be enough education.

18           Then if there are a few recounts to drivers who  
19 continue, then let the prosecution go on. But to rely  
20 endlessly on education, education, education, when we know  
21 what's happening, I think is very, very wrong.

22           Finally, there have been suggestions we might have  
23 other measures. Why don't we open a window? Well, of  
24 course, nobody opens windows when it's very cold. Nobody  
25 opens windows when it's steamy hot and you're running that

1 air conditioner as it frequently is in Pennsylvania. And  
2 even if your window is open, the levels of air pollutants in  
3 that car are probably going to be higher than EPA standards  
4 even for particulate matter. How many of you have ever been  
5 in Los Angeles during the worse air pollution emergency? I  
6 have. I've been in rooms where I've opened windows and I've  
7 never been in a room where I can look across that room and  
8 in that room see particles in the air. Now, tell me how  
9 many of you have been in a room where people have been  
10 smoking and you couldn't see particles in the air.

11           You asked before about the EPA standard just on  
12 particulate matter. Well, the ETS standard is clear. No  
13 smoking. Simply on particulate matter, the EPA standard we  
14 found several years ago that in most any restaurant with the  
15 best ventilation system, the EPA emergency standard would be  
16 triggered on the average within two hours. This is simply  
17 for particulate -- inert particulate matter.

18           So if you think just opening one window or having  
19 the driver stick their hand out the window every once in a  
20 while is going to work, it isn't. And obviously there are  
21 going to be major enforcement. How far open it is, fully  
22 open, half open, cracked, how many windows are we going to  
23 have. I think we have a serious situation. You deal with  
24 that situation.

25           And finally, the only argument legitimately that I

1 heard against this is the slippery slope. I mean, even the  
2 general tobacco industry admits this is a serious problem.  
3 But of course, he has no solution other than education. You  
4 can do this now at no cost, literally negative cost with  
5 very serious little inconvenience to any smoker because most  
6 of the trips on which children go are shorter than two  
7 hours. And if you're driving with a child and you're  
8 driving a long period, you're probably going to stop every  
9 two hours to let that child get out and walk around.

10           You can attack a major threat to children's health.  
11 One which is a significant factor as any pediatrician will  
12 tell you, any EMB will tell you, any allergist will tell you  
13 in the health care cost for treating children including  
14 those on Medicare and Medicaid and all the other programs.  
15 And you will have a major educational program which probably  
16 will trickle down from the car into the home because every  
17 time that parent gets in the car and recognizes or is  
18 reminded or remembers they can't smoke because that child is  
19 in there, it may start to trickle down that maybe we ought  
20 to do the same thing in the home. And nobody so far as I'm  
21 aware is calling for a ban on smoking in the home. Smoke  
22 police are indeed a ban on smoking. I thank you very much  
23 for your attention. I'll be delighted to take any questions  
24 you might have.

25           MR. CHAIRMAN: Thank you, John, for your testimony.

1 When I watched you several months ago on the Oprah Winfrey  
2 show, there was a panel in which you were invited to  
3 participate. And am I correct in my assumption or at least  
4 in my recollection, there was some discussion that this  
5 is -- if smoking around your child is child abuse, why can't  
6 we arrest the parents that take the children out and  
7 overindulge in junk food? And they should be arrested for  
8 child abuse for that. And we hear this argument all the  
9 time. And I think that question was raised on the Oprah  
10 Winfrey show and I think you addressed that.

11 MR. BANZHAF: Let me try to address it if I can.  
12 First of all, I don't think that anybody who is planning on  
13 smoking in front of their child is always child abuse.  
14 There have been a few cases. We're talking about children  
15 with very serious problems where they have in all cases that  
16 I'm aware of literally had to be rushed to hospitals in  
17 ambulances in respiratory distress because the parents were  
18 smoking. The parents have been told not to smoke around the  
19 child and they continue to smoke around the child.

20 One of the big differences I think here is that  
21 smoking is an activity which certainly doesn't benefit the  
22 child. This is something that benefits solely the adult. I  
23 have a 12 year old boy. I have to make decisions that many  
24 of you do with children. What risks to -- should you let  
25 them play football, should you let them play soccer, should

1 you let them ride a bike? All of those have risks but they  
2 also have corresponding benefits. We have to weigh and  
3 balance those.

4           If you let your child go riding around in most  
5 states by the way without a bicycle helmet, you will be  
6 cited. But certainly there we have a risk and a benefit,  
7 and we have to weigh the one against the other. So we do  
8 not have a clear case of child abuse. But where you have  
9 something which solely benefits the adult and there is no  
10 corresponding benefit whatsoever to the child. And where we  
11 know that that child has a very serious problem with it,  
12 then it seems to me it can be child abuse. And, indeed, so  
13 the Courts are beginning to hold because here we're only  
14 talking about imposing a relatively small fine.

15           I'm telling you across the country increasingly  
16 Courts are taking children away from parents over this. So  
17 they certainly regard it as a very, very serious problem. I  
18 would draw this analogy. Overfeeding a child ordinarily;  
19 giving a child ice cream on certain days is child abuse even  
20 if the child is overweight. But let us suppose the child  
21 has been diagnosed as having a very severe allergy to dairy  
22 products that some children have or nuts that some children  
23 have. If that parent continues day after day feeding that  
24 child ice cream and peanuts and peanut ice cream and that  
25 child keeps coming down with a reaction that they can't

1 breathe and they are rushed to the hospital, it seems to me  
2 in that case we're talking about child abuse and child  
3 neglect endangerment. Although, certainly feeding ice cream  
4 and feeding peanuts to a child is not.

5           The other thing I think which is important that  
6 came out of that Oprah Winfrey show is you recall that there  
7 was a parent who had a child, who continued smoking around  
8 that child because she really didn't understand how  
9 dangerous it was. And I suspect that if her state adopted a  
10 law and publicized the law and began enforcing the law which  
11 said you cannot smoke around that child in the car, she and  
12 millions of other mothers like her would have a much greater  
13 appreciation for risk.

14           MR. CHAIRMAN: Thank you.

15           REPRESENTATIVE LAUB: Just a quick question. Thank  
16 you for testifying. I appreciate your compassion. I just  
17 have a quick question and please don't take this wrong but  
18 you are the head of an organization. You are the chief  
19 counsel and you are the executive director and so obviously  
20 you are making money somehow from this effort. I assume you  
21 get paid by this organization.

22           MR. BANZHAF: Well, I'm paid by the law school.

23           REPRESENTATIVE LAUB: Okay. What is the source of  
24 their funding?

25           MR. BANZHAF: The law school's funding?

1 REPRESENTATIVE LAUB: Well, you have a --

2 MR. BANZHAF: The action on smoking and health is  
3 entirely funded by taxes and contributions. And people send  
4 us money in response to direct mail fundraising.

5 REPRESENTATIVE LAUB: Okay. So you are a  
6 fundraising organization?

7 MR. BANZHAF: No, we're an educational organization  
8 that raises funds.

9 REPRESENTATIVE LAUB: You receive your money from  
10 fundraising?

11 MR. BANZHAF: Yes, sir.

12 REPRESENTATIVE LAUB: Are you a lobbying group?

13 MR. BANZHAF: We are a 501C3 with the election  
14 which means that we can spend only a limited amount of our  
15 resources on attempting to influence the passage of  
16 legislation. And we have to carefully account for it. I  
17 think our limit is about 15 to 20 percent of our  
18 expenditures actually comes to less than 5 percent of our  
19 expenditures.

20 MR. CHAIRMAN: Any other questions by members of  
21 the Committee? Representative Marsico?

22 REPRESENTATIVE MARSICO: No.

23 MR. CHAIRMAN: Mr. Banzhaf, thank you very much for  
24 taking the time to speak today.

25 MR. BANZHAF: We thank you very much. And let me



1 say by the way that the eyes of the country are on you. We  
2 issued several press releases on this hearing. We've been  
3 getting lots of calls from all over the country about what  
4 you are doing here and I have no doubt that first of all  
5 this kind of Bill will be standard in three to five years.  
6 I hope you are the first to do it. I think you're poised to  
7 do it. If you are not, certainly somebody else will do it  
8 in I think five to ten years from now everybody will be  
9 wondering why we did allow these enormous concentrations of  
10 tobacco smoke in cars with very young defenseless children  
11 with them. You have the opportunity. The eyes of the  
12 country are on you. I hope you will pass the Bill. Thank  
13 you.

14 MR. CHAIRMAN: Thank you. We're going to take a  
15 short break. The Stenographer's fingers are about ready to  
16 fall off and she needs to change her paper. We're going to  
17 take a five minute break.

18 (Whereupon, a brief recess was taken.)

19 MR. CHAIRMAN: The next person to testify is Dr.  
20 Mary Consevage. Mary is a member of the Pennsylvania  
21 Chapter American Academy of Pediatrics.

22 MS. CONSEVAGE: Hello, my name is Mary Consevage.  
23 I'm a pediatrician in Harrisburg, Pennsylvania. This is my  
24 son, Stephen. As a pediatrician and mother in support of  
25 House Bill 626, I would like to address the detrimental

1 effects of passive cigarette smoke on our children. It is  
2 estimated that 40 percent of children under five live in  
3 households where at least one member smokes. In the medical  
4 literature there's no shortage of evidence linking passive  
5 smoking to numerous health problems. Sadly, I am reminded  
6 of these statistics each day in my practice. My discussion  
7 today will outline the very significant health issues  
8 affecting infants, children, and adolescents exposed to  
9 passive cigarette smoke.

10 Most commonly, passive smoke exposure is associated  
11 with an increased frequency of upper and lower respiratory  
12 tract infections, including sinusitis, pneumonia,  
13 bronchiolitis and bronchitis; occurring twice as often as  
14 if a parent smokes. EPA reports estimate that second-hand  
15 smoke contributes to 300,000 lower respiratory tract  
16 infections annually in children under 18 months, leading to  
17 thousands of possible hospitalizations.

18 Children experience a higher prevalence of otitis  
19 media or middle ear infections with persistent middle ear  
20 effusion. This carries a risk for hearing loss and other  
21 infectious complications, frequently requiring surgical  
22 intervention such as insertion of tympanostomy tubes which  
23 is the most common operation performed on children and/or  
24 adenoidectomy. A Scottish study confirmed a significant  
25 association of middle ear effusion with the levels of

1 cotinine in children's saliva. Cotinine is an important  
2 metabolite of nicotine and a marker in measuring passive  
3 exposure to tobacco smoke. If you observe the diagram of  
4 the child's ear, you'll notice the middle ear and right in  
5 that space behind the ear drum is where the fluid  
6 accumulates and can remain and leading to increased risk of  
7 hearing loss and infection.

8           In addition to enhancing allergic sensitization, it  
9 has long been known that cigarette smoke is an extremely  
10 potent trigger of acute asthma; contributing on a chronic  
11 basis to cough, wheezing and excess mucous production; and  
12 more emergently to the acute onset of respiratory distress,  
13 sometimes necessitating hospitalization. Thus, it increases  
14 the frequency and severity of acute asthma attacks. In my  
15 own experience, it has not been unusual for me to see an  
16 asthmatic child as an emergency in severe respiratory  
17 distress after exposure to passive cigarette smoke.  
18 Epidemiologic evidence also suggests that environmental  
19 tobacco smoke is a risk factor for inducing asthma in  
20 previously asymptomatic children and may predispose them to  
21 chronic obstructive pulmonary disease in later life. The  
22 lungs of a young child are particularly susceptible to  
23 environmental insults since they are undergoing significant  
24 growth and remodeling.

25           I'd like to interject here if I may that just on

1 Saturday night I saw a little boy as an emergency who had  
2 his first case of acute asthma. He has -- he suffers from  
3 some allergies, and he was fairly sick and came in reeking  
4 of cigarette smoke. And I talked at length to the parent  
5 about the hazards and not smoking in the home and in the  
6 car. And this little boy applauded me and thanked me.

7           A Canadian study found a highly significant  
8 correlation between the number of cigarettes smoked by the  
9 parent in the home and the deterioration of lung function  
10 tests, indicating a dose-response relationship. A recent  
11 large British study revealed a clear relationship between  
12 exposure to passive smoke and reduced lung function by  
13 measuring salivary cotinine as a marker for tobacco  
14 exposure. A child's respiratory systems will be aggravated  
15 further by exposure to passive smoking in a vehicle where  
16 the levels of carbon monoxide and carcinogens are much  
17 greater than in the home. The EPA estimates that as many as  
18 one million asthmatic children are affected by second-hand  
19 smoke. If you'll refer to the table on the last page,  
20 basically the fifth page, this reiterates what Mr. Godshall  
21 had said about the levels of carcinogens in the car as  
22 compared to some common indoor environments. And if you'll  
23 notice the level of tobacco specific nitrosamines is far  
24 greater than in restaurants and in the homes in approaching  
25 the level of some bar rooms.

1 Prenatal exposure to tobacco detrimentally affects  
2 the elastic properties of the developing lung. Smoking is  
3 also associated with an increased risk for late fetal death,  
4 neonatal, and infant death, even after controlling for other  
5 variables. The death rate is particularly high for  
6 respiratory disease and sudden infant death syndrome or  
7 SIDS. A recent, large, case-controlled study revealed very  
8 strong evidence linking prenatal and postnatal maternal  
9 smoking with a greater risk of SIDS. Paternal smoking was  
10 also significantly associated with SIDS and the risk of SIDS  
11 increased with increasing levels of parental smoking. My  
12 discussion cannot end without mentioning the statistically  
13 significant association of passive smoking and lung cancer  
14 found in numerous U.S. and international studies.

15 In summary, I have outlined the more common health  
16 problems that plague our children exposed to passive  
17 cigarette smoke: An increased incidence of upper and lower  
18 respiratory tract infections, a higher prevalence of otitis  
19 media with effusion and possible hearing loss, allergic  
20 sensitization, a deterioration of bronchial asthma and lung  
21 function in general, and a higher risk for late fetal,  
22 newborn and infant mortality, including SIDS. In addition,  
23 passive smoking increases the child's overall lifetime risk  
24 of cancer. Every year we are presented with additional data  
25 emphasizing the harm of active and passive smoking. We need

1 no additional studies to prove this. We must protect the  
2 health of our children, especially when we consider that one  
3 half to two thirds of children under age five may have  
4 significant exposure to tobacco smoke. Thank you.

5 MR. CHAIRMAN: Thank you very much for your  
6 testimony. Do any members of the committee have any  
7 questions?

8 REPRESENTATIVE MELIO: Only I want to ask you does  
9 your son want to make a statement.

10 MR. CHAIRMAN: No other questions. I thank you  
11 very much for your testimony. The next individual to  
12 testify is Josh Mittledorf with the Clean Air Council.

13 MR. MITTLEDORF: Good morning. My name is Joshua  
14 Mittledorf. This is my daughter, Sarah. I'm a software  
15 consultant and an expert in financial computation. I am a  
16 graduate of Harvard University with a PhD in physics from  
17 the University of Pennsylvania. In my testimony today, I am  
18 representing the Delaware Valley Citizens' Council for Clean  
19 Air, where I've been a member of the board for five years  
20 and a volunteer for 12 years.

21 The Clean Air Council is Pennsylvania's oldest and  
22 most respected grass-roots environmental organization. For  
23 30 years, the Council has taken moderate pro-environmental  
24 stances, firmly grounded in science and public policy. We  
25 have worked closely with government organizations to promote

1 sound environmental policy, and to prompt more effective  
2 enforcement of existing laws.

3 I want to talk to you today about the history of  
4 our understanding of air pollution and its effects on  
5 health, and how the legislation under consideration here  
6 fits into that history.

7 Back in the early 80's, I worked at the Center for  
8 Energy and Environmental Studies of Princeton University.  
9 Before that time, environmentalists focused exclusively on  
10 outdoor air. Air pollution was synonymous with smog, and  
11 auto exhaust was the big culprit. Then scientists at the  
12 Princeton Center put together two observations to make a  
13 simple point that the environmental community had not yet  
14 appreciated. First, that most people spend most of their  
15 time indoors, and second, that the quality of indoor air is  
16 significantly less healthful than outdoor air.

17 The Princeton Center began surveying indoor air  
18 contaminants for the first time. They discovered new  
19 species of pollutants associated with home and work  
20 environments: Radon seeping out of basements, formaldehyde  
21 from rugs and upholstery and ozone from office copiers.

22 Each of these pollutants constitute larger health  
23 risks than the smog which we have been fighting since 1970.

24 But by far the worse indoor pollutant is tobacco  
25 smoke. Counted in terms of acute health effects like asthma

1 bronchial infection, or in terms of deaths from heart  
2 disease, cancer and emphysema, second-hand cigarette smoke  
3 is the single largest pollution problem in America today.

4 We're not talking about the effects on smokers  
5 here. We're speaking strictly of non-smokers exposed  
6 involuntarily to sidestream tobacco smoke. Smoking kills  
7 more non-smoking Americans every year than automobile  
8 accidents. More than homicides. More than AIDS.

9 The health effect of environmental smoke depends on  
10 the concentration, and the concentration in the presence of  
11 a burning cigarette is determined by the ventilation rate  
12 and the size of the enclosed space.

13 The ventilation rate in automobiles is generally  
14 quite high. But the enclosed space is extremely small. The  
15 result of the two is such that smoke concentration from a  
16 single burning cigarette in an automobile can reach far  
17 higher levels than are usually encountered in a home or  
18 office environment. You've seen the display Mr. Godshall  
19 brought that shows how smoke levels in cars can reach  
20 concentrations much higher than in these other areas. This  
21 is from the EPA's report last year.

22 The last of my concerns are children. Why do we  
23 single them out for special protection? Because children  
24 are more vulnerable than adults. They are more vulnerable  
25 socially; it is a rare child who is gutsy enough to stand up



1 directly to an adult, even when the adult's smoke is making  
2 it difficult for them to breathe. I want to remind you that  
3 the children who came here to testify were self-selected as  
4 being particularly articulate, particularly brave children.  
5 Even they testified how difficult they find it to stand up  
6 to an adult who's smoking. And children are also more  
7 vulnerable. Medically, asthma children much more commonly  
8 than adults. And lung infections are both more severe and  
9 more frequent in small children than in adults. In fact,  
10 the EPA estimates that 300,000 excess cases of bronchitis  
11 and pneumonia occur each year just among infants under 18  
12 months, as a direct result of tobacco smoke inhalation.

13           So to review, it's been the consensus of  
14 environmental scientists for about a decade that the health  
15 effects of indoor air quality are more important than  
16 outdoor air quality. Two, tobacco smoke is far and away the  
17 worst of the indoor air pollutants. Three, because of the  
18 very small size of the enclosed space, cars pose the worst  
19 hazard of all indoor environments. Four, children are an  
20 especially vulnerable segment of the population, both  
21 because their lungs are more subject to asthma and  
22 infections and because they lack the social stature to  
23 demand that adults refrain from smoking.

24           Therefore, we believe that this legislation is  
25 useful and valuable. It is very appropriate for the

1 government to regulate smoking in enclosed spaces. And it  
2 makes sense to begin with those who are most vulnerable, and  
3 in the environment where the concentrations are highest.

4           The only arguments advanced against this Bill have  
5 cited so-called "civil liberties". Americans treasure their  
6 government-guaranteed civil liberties: freedom of speech,  
7 and of religion. The right to assemble for political  
8 action, the right to fair treatment regardless of race, sex,  
9 or ethnicity.

10           But there is no right to take drugs. No  
11 constitutional guarantee that you can drink a beer wherever  
12 and whenever you want to. Psycho-active substances such as  
13 tranquilizers and stimulants are heavily regulated by the  
14 state. For historical reasons, tobacco has long been an  
15 exception, and has been subject to far less regulation than  
16 similarly addictive substances. This situation is changing  
17 rapidly.

18           Even among smokers, there is broad support for this  
19 change in the legal status of tobacco. The fact is that at  
20 any given time, 75 percent of smokers are actively trying to  
21 quit. No one hates smoking more than smokers themselves.  
22 Many see themselves as primary victims of the cigarette  
23 companies.

24           No, all of this pious talk of "civil liberties"  
25 comes from people who don't smoke themselves. People who

1 would protest loudly if you tried to light a cigarette in  
2 their own cars, and who would cry out in anguish if their  
3 youngsters became addicted to tobacco.

4 Don't be fooled. The only civil liberty their  
5 interested in is the liberty of the tobacco conglomerates to  
6 haul in profits at the expense of people who are trying to  
7 stop smoking, but can't.

8 I'd like to add a pineal comment. I've been an  
9 outspoken supporter of civil liberties and a member of the  
10 ACLU for many years all my adult life. I've supported the  
11 ACLU and cheered for them when they take on causes that I  
12 don't believe in simply as offenders of the rights of people  
13 to hold those views and to take those actions.

14 And therefore, it's come as a great blow to me  
15 personally to what has happened to the ACLU and this issue  
16 in recent years. Just in the last several years, the ACLU  
17 has accepted money from Philip Morris Corporation and  
18 coincidentally has become active against the rights of  
19 non-smokers during the same time period. And I look forward  
20 to the day in the not too distant future when the ACLU comes  
21 back home to their constituency and the integrity that's  
22 their legacy and their history.

23 MR. CHAIRMAN: Thank you very much for this  
24 testimony. Do any members have any questions? Yes,  
25 Representative Marsico?

1           REPRESENTATIVE MARSICO: Thank you, Mr. Chairman.  
2 On page four of your testimony at the top of page four, I  
3 guess it would be the second sentence and it makes sense to  
4 begin with. Do you have that in the top paragraph?

5           MR. MITTLEDORF: Yes.

6           REPRESENTATIVE MARSICO: You're saying and it makes  
7 sense to begin with those who are most vulnerable. Let me  
8 ask you a question. Is there more coming? The next step  
9 being the privacy to ban the smoking in the privacy of the  
10 homes.

11           MR. MITTLEDORF: This is your business and not  
12 mine. Speaking on behalf of the Clean Air Council, the  
13 Clean Air Council has no position on whether smoking should  
14 be banned in homes. Speaking for myself personally, I  
15 believe that this society is not ready for such a ban that  
16 the enforcement would create chaos and that socially we're  
17 not -- our attitude toward smoking is not such as to make  
18 that at all possible at present. I wouldn't rule it out in  
19 the future if societal attitudes change.

20           REPRESENTATIVE MARSICO: Okay. So you're saying  
21 personally you think that it would be the next step. Is  
22 that what you're saying?

23           MR. MITTLEDORF: I wouldn't have said that. I said  
24 if society changes. If our attitudes as a society --

25           REPRESENTATIVE MARSICO: But you're speaking

1 personally?

2 MR. MITTLEDORF: This is me personally. The Clean  
3 Air Council has no position on this subject.

4 REPRESENTATIVE MARSICO: But your statement though  
5 is letterhead of the Clean Air Council and I read this as  
6 it's coming from you as well as the Clean Air Council. And  
7 you're saying that to begin with it makes sense to begin  
8 with our children is what this is saying who are most  
9 vulnerable to ban smoking in automobiles with our children.

10 Now, you're saying that -- I guess my question  
11 again is you think the next step is going to be the banning  
12 of smoking in homes?

13 MR. MITTLEDORF: No, that is certainly not the next  
14 step. I think there is another Bill under consideration by  
15 this legislature right now maybe 2424 if I remember the  
16 number correctly that would ban smoking in public places.  
17 And the Clean Air Council is on record in support of that  
18 Bill.

19 REPRESENTATIVE MARSICO: Okay. Thank you.

20 MR. CHAIRMAN: Yeah, I was going to say the context  
21 of the whole paragraph as opposed to the one sentence in the  
22 paragraph. I think it's very important for the government  
23 to begin regulating smoking in enclosed spaces and continue  
24 with those who are the most vulnerable and that's the  
25 children. And where the children are in enclosed places

1 that's the car. I think that is what the context of --

2 REPRESENTATIVE MARSICO: Well, a home is an  
3 enclosed space too.

4 MR. CHAIRMAN: I understand what you're saying but  
5 I think -- and I'm sure he can answer for himself. He's  
6 talking about the automobile has the most enclosed by using  
7 the diagram where he's showing the most concentration is the  
8 car. And I think that is the analogy you're presenting. Am  
9 I correct, sir?

10 MR. MITTLEDORF: Exactly.

11 MR. CHAIRMAN: I'm sorry. Representative Dermody?

12 REPRESENTATIVE DERMODY: Thank you, Mr. Chairman.  
13 I just have a brief comment and question. I think part of  
14 the problem we're talking about may be by the ACLU is  
15 involved or some of the concerns by the people on the  
16 committee. I mean, clearly I don't think anybody here  
17 advocates you should sit around in cars with closed windows  
18 smoking. I don't think anybody would condone that.

19 However, the problem is -- I think part of the  
20 problem is enforcement. That is I think the Bill if I  
21 understand correctly provides that it's a summary offense  
22 and that can be a substantive offense, that is it's not a  
23 secondary offense like seat belts wherein if you're stopped  
24 for some other reason there is probable cause to pull you  
25 over for some other reason and you don't have your seat belt

1 on you can be cited. A police officer could pull you over  
2 for smoking in your car and issue a citation.

3           And I think some of the concerns that some of us  
4 have have to do with the abuses that could come as a result  
5 of trying to enforce that law much like trying to enforce it  
6 in your home. I think those are some of the concerns. And  
7 I understand they'll be very tolerable. When you talk about  
8 the civil liberties argument, you must also understand  
9 you're really looking for some abuse. Everybody would be  
10 perfect in this society if we tried to enforce this law.  
11 And I think if there are concerns, those are the concerns  
12 that we have.

13           MR. MITTLEDORF: I think Mr. Banzhaf spoke most  
14 articulately to this question of whether it's an invasion of  
15 privacy in looking in someone's cars and see whether they're  
16 smoking. The only thing I want to say about the ACLU is had  
17 the ACLU independently come out and been cited independently  
18 to support smoker's rights over non-smoker rights, I would  
19 have said they have a different opinion from me but that's  
20 still the ACLU there my ACLU and I support them. But while  
21 they're taking money from Philip Morris and then they take  
22 that position, I think it's highly --

23           REPRESENTATIVE DERMODY: I didn't know they were  
24 doing that. But those are some of the concerns and I think  
25 they are real ones.

1           MR. CHAIRMAN: Representative Dermody, you missed  
2 John Banzhaf and that was one of his commentaries and he did  
3 address that issue. Maybe when we get a copy of the  
4 testimony you and I can go over that. Any other questions?

5           (No response.)

6           MR. CHAIRMAN: Thank you very much for your  
7 testimony. The next individual to testify is Larry Frankel,  
8 ACLU. Thank you for being with us this morning.

9           MR. FRANKEL: Thank you for having me here  
10 Representative Daley and other members on the Subcommittee  
11 on Highways. I have prepared testimony. I'm going to have  
12 to deviate from it somewhat because of certain issues that  
13 were raised here today which I would like to address now  
14 that I have an opportunity. Although I will also be  
15 referring to my testimony.

16           I am the Legislative Director for the American  
17 Civil Liberties Union in Pennsylvania. We have almost  
18 10,000 members in Pennsylvania. We have approximately  
19 300,000 members across the nation. And we are dedicated to  
20 upholding the civil liberties guaranteed in the federal  
21 Pennsylvania Constitutions.

22           And I would like to just emphasize before I get  
23 into the substance of my testimony. There's been discussion  
24 about civil liberties. Well, there's one very important  
25 liberty that wasn't mentioned by anyone else and that's the



1 right to be left alone by the government. To be left alone  
2 by the government intrusiveness in the areas of private  
3 lawful behavior. And I think that is the issue that was  
4 raised here.

5           We have behavior and I think Representative Dermody  
6 just said, I think there is no disagreement that smoking in  
7 a car with children in it is not behavior we approve of.  
8 But it's a whole other step to go from disapproval to making  
9 that unlawful or criminal. And at some point we have to use  
10 common sense. We have to listen to what people say.

11           We can also look at what the Constitution and the  
12 Courts have said about privacy; privacy within automobiles  
13 and family privacy. But the bottom line and the reason the  
14 Civil Liberties Union takes this position is because we are  
15 talking about the criminalizing behavior that is lawful,  
16 that is legal, that is done in private and it's private  
17 behavior.

18           And we do have national policy. We support but we  
19 do not oppose. I should say we do not oppose carefully  
20 tailored regulation of smoking in public places. The  
21 various bills that have come before the legislature  
22 regarding smoking in public places, we do not see the ACLU  
23 of Pennsylvania or the ACLU nationally opposing that  
24 legislation.

25           However, when we move from the public ground into

1 the private ground, it becomes a different issue. And I  
2 think that is a very important distinction to keep in mind.  
3 I also -- one of the other misstatements that I heard today  
4 was that this hasn't been introduced anywhere else in the  
5 nation. It was introduced in the state of Washington and I  
6 believe although I haven't looked in the last year since  
7 this was first introduced here, it did not pass into law in  
8 Washington. So this isn't the first time effort that a  
9 legislative body has looked at it. And I don't want the  
10 reporters or any members of the panel to believe that this  
11 is the first time any delivered body in the United States  
12 has examined this issue.

13 I'll make it clear we strongly oppose House Bill  
14 626 believe that the harms of passive smoke are sufficient  
15 to justify carefully tailored government regulations of  
16 smoking in public places. As I said before, we do have a  
17 national policy on that, but we do not think the government  
18 should regulate smoking in private places. We  
19 think that House Bill 626 is objectionable not because  
20 passive smoking poses little or no risk to children or adult  
21 passengers. Rather, we object to the legislation because it  
22 attempts to address a significant public health concern in  
23 the wrong manner - criminalizing otherwise lawful behavior.

24 This raises significant privacy concerns. I'm not  
25 here to argue that there is a constitutional right to smoke.

1 There is no constitutional right to smoke. But there is a  
2 constitutional right to be left alone. There is a right of  
3 privacy in one's automobile. It's a complicated area of law  
4 with regard to supreme court decisions and search and  
5 seizures as to what is and is not permissible. But the  
6 Court has recognized that there are rights of privacy that  
7 attach to an automobile. It's not as high as -- it's not as  
8 comprehensive as what occurs in the home, but it's certainly  
9 higher than what occurs in other public places.

10           And the reasons that police officers can stop cars  
11 relating to criminal activity or activity that endangers  
12 public safety on the highway. There is nothing about  
13 smoking in cars or possibly lighting the cigarette that I  
14 can think of that raises the issue of safe travel on the  
15 highway. You don't have that kind of compelling  
16 justification to stop a vehicle.

17           People are entitled to have their right and  
18 expectations to be left alone in the car unless they are  
19 otherwise, you know, fleeing a police car, engaging in some  
20 criminal activity or there is some probable cause to believe  
21 that they have engaged in criminal activity to not be  
22 stopped. And I think that people in their reaction to this  
23 legislation, that is their expectation that they feel is  
24 violated by this law.

25           This Bill also interferes with family privacy. We

1 strongly believe that society will not tolerate the  
2 establishment of a health police force or use the police  
3 that already exist to enforce health regulations,  
4 regulations that go to parents' child-rearing practices.  
5 While passive smoke may have an adverse impact on a child's  
6 health, the danger is not so immediate and life threatening  
7 as to warrant state intervention. It is nothing but crass  
8 political manipulation for anyone to justify the  
9 criminalization of smoking in the presence of one's child by  
10 analyzing it to the horrible problems of physical abuse of  
11 children. And I've heard that analogy made today. And it  
12 offends me because I think it diminishes the real and  
13 considerable problem that we have in dealing with physical  
14 violence perpetrated on the children of this Commonwealth  
15 and how many children are injured that the law can't even  
16 take care of that and we are considering a Bill to  
17 criminalizing this behavior. Smoking may be obnoxious. It  
18 may be unhealthy. It may be dirty, but it is not violent  
19 and it is not traumatizing behavior.

20           If House Bill 626 justifiable, and maybe this is  
21 the dangerous slippery smoke argument, well, what is to  
22 prevent the state from trying to regulate smoking in one's  
23 home? Why should we limit the state regulation to the realm  
24 of passive smoking? Is the next step a monitoring of what  
25 parents feed their children, when they send them to bed and

1 whether they make sure they get enough exercise? All of  
2 these affect children's health immediately and over the  
3 course of their lives. We all recognize that there are  
4 limits on the kind of control which the state can exercise  
5 over child-rearing. We believe this proposal goes too far  
6 and intrudes too deeply into the realm of family  
7 relationships.

8           It is not like the seat belt law. The seat belt  
9 law is directly related to the safety of a child because the  
10 child is in a motor vehicle that is moving and may get in an  
11 accident, and you're protecting the child from getting hurt  
12 in an accident.

13           It was pointed out also even that law is a  
14 secondary offense. It's not a direct offense. We don't  
15 have the police checking to make sure they have the children  
16 strapped in unless they pull them over for another reason.  
17 It's unlike -- smoking in cars is not like carrying alcohol  
18 in a car or carrying firearms or fireworks or any kind of  
19 activities we've made illegal because of the direct physical  
20 danger that is posed by those activities.

21           And while we are primarily motivated by the privacy  
22 concerns I've addressed, there are some practical issues  
23 that we think must be confronted. Given the existing  
24 demands on our law enforcement officials throughout the  
25 state, does this General Assembly really want to burden them

1 with the responsibility for stopping cars because somebody  
2 is smoking? What kind of hearings will there be? There is  
3 no specification about that in the Bill for those charged  
4 with the offense. Who will bear the burden of proof at  
5 those hearings and how is the Commonwealth going to pay for  
6 the costs associated with these hearings and the additional  
7 police time to go to the hearings? Will such a law breed  
8 disrespect for the law and the police among otherwise  
9 law-abiding citizens?

10 I was speaking with a friend of mine who's a doctor  
11 who has two young children, and doesn't smoke. The other  
12 night he raises this issue to me. Now, he remembered when  
13 he was a teen-ager and how teen-agers felt about the police  
14 and how he's grown out of the teen-age rebellion attitude of  
15 his life with the police. But he can see that this kind of  
16 law where people come to resent the police for intruding  
17 again and kind of what I want to be left alone. I want to  
18 be left alone so I can get back home.

19 When the children were here testifying earlier and  
20 they talked about their helplessness, you know, hearing that  
21 testimony concerned me because of the lesson the children  
22 may be learning from these kind of proposals. Rather than  
23 teaching them to overcome that feeling of helplessness and  
24 how to take care of situations themselves, I think the  
25 message goes out. We have to pass a law to take care of

1 them. And I don't think that's how we want to approach  
2 children in teaching them how to deal with problems and  
3 growing into mature adults.

4           The problem in helplessness isn't passing laws.  
5 The problem in helplessness is teaching and working with  
6 children so that they can be assertive. They can learn to  
7 say I have asthma and I will feel sick if you continue to  
8 smoke. Will you please stop smoking? So if it isn't the  
9 cars, it's going to be in their friend's home or it's going  
10 to be in another place we don't regulate. And we need to  
11 teach them how they can stand up for themselves.

12           I have attached to my testimony 11 editorials all  
13 opposing the Bill not to show that I can collect them. But  
14 I think it shows the common sense of the people of this  
15 Commonwealth. They don't think this is something the  
16 Government should be doing.

17           I know as an advocate for a group with a particular  
18 interest, I can be zealous and compassionate in my point of  
19 view. And I heard that kind of zealousness and compassion  
20 here today. But we have to sometimes get back to some  
21 common sense approaches to problems, use persuasion. This  
22 press release talks about how they persuaded McDonalds to  
23 ban smoking in their restaurants; persuasion, education not  
24 coercion; incentives not penalties and punishment are the  
25 way to address these kinds of problems.

1           The education that needs to go on to parents in  
2 this kind of Bill. And I think this law would be harmful  
3 not helpful because the reaction is there is the Government  
4 getting in my life again, rather than receiving the message  
5 that passive smoke is hurting my children.

6           I believe that there is widespread agreement among  
7 the people of this Commonwealth. The General Assembly  
8 should not make behavior illegal just because it's offensive  
9 or unhealthy. There has to be something more for that kind  
10 of law to kick in. The citizens of Pennsylvania do not want  
11 it or need this kind of regulation and criminal legislature.

12           My last comment I'd like to address this issue that  
13 was raised about Philip Morris. When a bill like this comes  
14 up, I don't look and nobody on my board and nobody on my  
15 staff looks at who our contributors is to determine what  
16 position we take on a Bill. We have a national policy  
17 manual. We have resolutions that have been passed by the  
18 state Board. We look at the Constitution. We look at Court  
19 cases. We look at the Bill of Rights. We do not look at  
20 our contributor list to make decisions.

21           And certainly, if Philip Morris was so influential,  
22 we would be here testifying against those Bills to regulate  
23 smoking in public places. And I think it is ill-informed to  
24 suggest that Philip Morris in any way can control the  
25 decisions of this, the organization that I represent because



1 no individual contributor or corporate contributor could  
2 ever exercise that kind of control over the contrary on our  
3 boards.

4 MR. CHAIRMAN: Thank you. Any members of the  
5 committee have questions? Representative Melio?

6 REPRESENTATIVE MELIO: When you mentioned about the  
7 young people that were here earlier, and you said they came  
8 here to ask us about the legislation. I think one of the  
9 young ladies, Allison Reigle didn't ask us, she demanded  
10 that we pass this legislation. And I think we have to take  
11 into consideration the concerns of these young people.

12 And I think that is one of the good reasons for  
13 having these hearings are to hear sides from opposing views  
14 and the people who are for the Bill. And it seems to me  
15 that there are quite a few people here supporting the Bill  
16 and there are people here also who have opposition to the  
17 Bill. But I think that we have to take into consideration  
18 all of the testimony that we hear here today.

19 And I think especially on me the youngsters had a  
20 great impact. And I think as far you mentioned also about  
21 the seat belt law and Representative Dermody mentioned about  
22 the abuses that could happen, would you be satisfied if  
23 something like an Amendment came about being a secondary  
24 where it would have to be someone who was stopped for  
25 another reason and then saw this particular violation before

1 someone who was arrested or convicted of the violation?

2 MR. FRANKEL: I can't say I would be satisfied. I  
3 would be ameliorated somewhat. I think that the privacy  
4 issue should remain and whether we want to be policing this  
5 kind of activity remain. Certainly, it's a far more  
6 sensible use of police resources to only make it a secondary  
7 offense. Whether that is capable of enforcing, because  
8 people have time to put out their cigarettes obviously  
9 raises an issue.

10 But I want to go back to what you mentioned  
11 earlier. I don't deny anybody an opportunity to come and  
12 testify and to demand. I'm sure your constituents demand  
13 things of you all the time and you don't necessarily pass  
14 those laws that they might be demanding. What I was  
15 reacting to was the sense that when they were asked if they  
16 felt helpless and it concerns me that if we are teaching  
17 children if not adults that you got a problem, the way to  
18 resolve it is to convince the legislature to pass the law  
19 rather than look at alternative ways to solve the problems.

20 And I hope -- and I don't know whether any of the  
21 children are still here that there is another lesson that  
22 there needs to be learned and that we have a constitution  
23 that protects peoples' rights. And that can be important in  
24 respecting that and solving problems can coincide. They  
25 don't always have to conflict. And one of the ways to

1 resolve it is by helping children feel comfortable about  
2 saying I'm asthmatic. I'm allergic to cigarette smoke.  
3 Would you please put out your cigarette. Because there's  
4 going to be situations where the legislature is never going  
5 to intervene on their behalf.

6 MR. CHAIRMAN: Thank you. Representative Dermody?

7 REPRESENTATIVE DERMODY: I have a couple questions  
8 for you, Larry. First of all you talk about -- and I have  
9 so many questions I hope I get to them all. You said that  
10 the Constitution protects people's rights. And the thing  
11 that strikes me so violently is how about the kid's rights  
12 in the car. The four year old or the three year old that  
13 can't articulate, hey mom, hey dad, hey aunt, hey uncle, hey  
14 sister, hey brother put out the cigarette. Or how about the  
15 child that says, Dad, I have a right. Would you put out  
16 that cigarette that's bothering me. And the Dad turns  
17 around and spanks the child.

18 Does the Constitution just protect those that vote,  
19 those that can articulate, those that are in the forefront,  
20 middlemen or does it protect even the child in the car?

21 MR. FRANKEL: Certainly it protects the child in  
22 the car but it doesn't justify passing the law. I mean, as  
23 I recall when there was the debate earlier this year about I  
24 think it was House Bill 1,001 which would revise child abuse  
25 laws in Pennsylvania. There is much discussion about what

1 bounds you achieve between when the state intrudes and when  
2 the state does not intrude. And there is no clear and right  
3 line. But certainly when there is no immediate physical  
4 danger to the safety of the child, I think the general  
5 public would react and say, wait, hold on a minute.

6 REPRESENTATIVE DERMODY: Are you saying -- let me  
7 correct the record here because we're taking this down --  
8 that cigarette smoking in the car is no immediate danger to  
9 the child in the car? I mean, I'm assuming that's what  
10 you're saying.

11 MR. FRANKEL: It's not as an immediate danger as  
12 beating the child's head against the wall is.

13 REPRESENTATIVE DERMODY: But it is in danger --

14 MR. FRANKEL: It can over a long period of time  
15 with repeated exposure be a danger.

16 REPRESENTATIVE DERMODY: So it is a danger to the  
17 child.

18 MR. FRANKEL: But it's not the same kind of danger  
19 of beating the child or spanking the child.

20 REPRESENTATIVE DERMODY: Okay. My question to you  
21 is you said there was a Bill of Rights and the ACLU looks at  
22 the Bill of Rights before it takes a position on the issue.  
23 I have a problem with again the issue of the child. Does  
24 the child fit into that equation? And you said that the  
25 Constitution says we have a right as Americans to be left

1 alone by our Government, obviously, and I think you left  
2 that out. I just graduated from law school and I know  
3 you're an attorney. I don't know where it says in the  
4 Constitution anywhere that we have the right to be left  
5 alone by the Government. Where does that say that  
6 specifically?

7 MR. FRANKEL: There are a whole series of cases  
8 going back to the early 60's that have developed a right of  
9 privacy which is not specifically articulated in the  
10 Constitution but based on the 1st, 4th, 5th, 9th and 14th  
11 Amendment. And if I have it correctly, the Supreme Court  
12 has found repeatedly there is a right of privacy and there  
13 has to be way against that right whether the dangers of what  
14 is the justification for the law. And it has to satisfy in  
15 most but not all cases a strict scrutiny analysis.

16 REPRESENTATIVE DERMODY: What is the public  
17 interest analysis at the state level?

18 MR. FRANKEL: It develops some inconsistency but  
19 it's not even a rational basis. It is a stronger test than  
20 a rational basis test. And there is a right of privacy but  
21 it's been recognized by the Court. It's not specifically  
22 stated in the Constitution but going back when Justice  
23 Brandice first articulated in the early part of the century  
24 and later on adopted in a series of decisions in the 60's  
25 that has the recognition of a right to be left alone by the

1 Government.

2 THE CHAIRMAN: The number of rights.

3 REPRESENTATIVE DERMODY: Right. But there is no  
4 where in the Constitution that says you have the right to be  
5 left alone. It's case law that establishes the certain  
6 privacy rights that we all have.

7 MR. FRANKEL: Well, it's case law decided by the  
8 Supreme Court and upheld for over 30 years.

9 REPRESENTATIVE DERMODY: Right. Now, you're saying  
10 criminalizing this activity and you've been saying that from  
11 the outset of this legislation. If you're riding in your  
12 car and you're smoking in your car and the police pull you  
13 over, if this Bill passes and becomes law, what happens to  
14 you? Do you get a criminal record when the police take you  
15 to the magistrate and cite you for this and you pay a fine?  
16 Is there a criminal record?

17 MR. FRANKEL: Under certain circumstances and they  
18 vary from county to county as to what kind of records they  
19 keep for summary offenses. Summary offense is what it says  
20 in the Bill. I mean, that is a crime. It is lower than a  
21 misdemeanor, but it is a crime. And you have the right to  
22 appeal it based on a summary offense.

23 REPRESENTATIVE DERMODY: Absolutely. And you're  
24 saying that if someone is cited that they are as a criminal  
25 would be the same as someone going through a stop sign,

1 someone not having a seat belt on their child, someone not  
2 having a child in the car seat, that same type of criminal  
3 activity. Because when we talk about criminal activity, we  
4 think about felonies, we think about things such as that.  
5 What are you specifically saying here?

6 MR. FRANKEL: I would have to check how the statute  
7 defined driving through a light or not having a seat belt.  
8 This bill says summary offense and a summary offense is a  
9 crime in Pennsylvania.

10 REPRESENTATIVE DERMODY: Am I understanding seat  
11 belts, speeding, are all non-moving summary offenses under  
12 the code in Pennsylvania?

13 MR. FRANKEL: It very well might be, I don't know.  
14 But I also know and this is for my practice in Philadelphia  
15 that if one does get a moving violation, one appeals it from  
16 traffic court into the criminal courts and those criminal  
17 standards do apply even to traffic violations.

18 REPRESENTATIVE DERMODY: The standards of evidence  
19 and procedure, am I correct?

20 MR. FRANKEL: It's a rather loose procedure in  
21 Philadelphia, yes.

22 REPRESENTATIVE DERMODY: Well, we understand that  
23 but we cannot be held accountable for the rest of  
24 Pennsylvania. Let me ask you this question. You're talking  
25 about family privacy and the state is moving into this

1 child-rearing activity by saying you can't smoke in the car  
2 with your kids. I don't understand what you're saying here.

3 We're into people's lives everyday in terms of  
4 inoculations, vaccinations in sending your child to school.  
5 And in essence, if you do not feed your child or if you  
6 abuse your child, the state -- the Courts can step in in  
7 loco parentis of the parents and regulate activities. Are  
8 you saying the state shouldn't be doing these types of  
9 things?

10 MR. FRANKEL: I'm not saying the state shouldn't be  
11 doing these types of things. But I think there are areas  
12 where the state just does not get involved unless there is  
13 immediate and physical danger to the children. Inoculations  
14 have been ordered in cases where there have been epidemic  
15 breakouts and people are inoculating their children and  
16 getting them immunized.

17 To equate driving in a car and smoking, these kind  
18 of dangers do minimize those dangers and I think there is a  
19 great deal of disservice to try and educate people about why  
20 they shouldn't smoke in a car because what they hear is  
21 Government wants to regulate every little detail of my life  
22 and they resent it and they don't get the message. That is,  
23 you know, maybe I sound a little angry but that is true. We  
24 get the calls in, what is the government up to now.

25 REPRESENTATIVE DERMODY: Well, that's a whole other



1 issue about the government's involvement in the public  
2 interaction with us. But you said something I think that  
3 really needs to be challenged. You said violent and  
4 traumatizing behavior. Cigarette smoking is not violent and  
5 traumatizing behavior to the child in a car. And you tell  
6 these kids that have asthma that it's not violent and  
7 traumatizing. I mean how can you say that with a straight  
8 face?

9 MR. FRANKEL: You tell a child that has been beat  
10 up by their parent that smoking a cigarette in the car is  
11 the same thing and I'd like to see their reaction.

12 REPRESENTATIVE DERMODY: That is a different  
13 analogy altogether. You're telling me that when that child  
14 sits in that car and mom and dad smokes or aunts or uncles,  
15 that that is not violent and traumatizing to that child's  
16 lungs, that child's health. I mean, we can say beat the  
17 child or whatever you want to say but I'm saying about this  
18 specific incidence.

19 MR. FRANKEL: It is not traumatizing and violent in  
20 the same manner or even close in the same manner. When I  
21 grew up, I was allergic to cigarette smoke. This isn't  
22 foreign to me. And I was around people who smoke. It  
23 certainly wasn't comfortable. But it certainly didn't make  
24 me ever think I wanted the law to intrude. It certainly  
25 didn't make me think that it was violent or traumatizing.

1 It was unpleasant. It was obnoxious. But it was not  
2 illegal and should not be illegal.

3 REPRESENTATIVE DERMODY: You said you grew up with  
4 cigarette smoke like all of us probably have. You said that  
5 the children ought not to be here because we're teaching  
6 them a sense of helplessness and what they ought to do is we  
7 ought to teach them to articulate to their moms and dad,  
8 hey, mom, hey dad, stop smoking. Children ought to be,  
9 quote, "to be assertive, stand up for themselves." I mean,  
10 Larry, let's be serious here. How are we going to teach  
11 these children to stand up for themselves when they're three  
12 and four and five and six, eight years old? Tell us how  
13 we're going to do that. Tell the media, tell Pennsylvania  
14 and tell all of these children how are they actually going  
15 to do that, Larry.

16 MR. FRANKEL: I think we can start doing that in  
17 schools and I think there's an effort to do that in schools.  
18 People seem to resist trying to teach children to stand up  
19 for their parents at times. I think that children -- and I  
20 never indicated that children shouldn't be here. I  
21 indicated that I have concern that we teach children that  
22 they need Government to help them when they can be taught to  
23 help themselves. And I think it's important that our -- we  
24 understand that our society is based on Government not  
25 interfering without some very strong justification for that

1 interference. And when we lose that sense, when we lose  
2 that common understanding of the limits on Government, we  
3 move to a stage where Government is big brother and big  
4 protector. And I don't want and ACLU doesn't want and I  
5 think the people of Pennsylvania do not want the state  
6 government to be big brother and take care of all of our  
7 problems for us.

8 REPRESENTATIVE DERMODY: Well, the problem, Larry,  
9 is if you tell a kid to stand up to his mom and dad, that  
10 mom and dad are going to slap that kid down. Why didn't you  
11 stand up to your mom and dad when you knew smoking in the  
12 car with you was wrong. And the only reason why I couldn't  
13 because my dad would slap me in the face and your dad  
14 probably would have done the same thing.

15 And that does not -- that reinforces that  
16 helplessness that you want to try and correct, Larry, and  
17 it's simply not going to happen. And you're talking about  
18 the 11 editorials you attached and you said that I think  
19 this proves that there's a common sense of people across  
20 Pennsylvania. Eleven editorials are written by 11 people.  
21 I have letters in my office from 5,000 students that say,  
22 no, we want it stopped. This is 11 against 5,000. This  
23 doesn't prove anything. It proves 11 people have a position  
24 in the newspaper to articulate certain concerns. And my  
25 last comment, Larry --

1 MR. FRANKEL: Can I respond to that comment?

2 REPRESENTATIVE DERMODY: Yes, sure.

3 MR. FRANKEL: Two things. One is I attached the  
4 editorial because I do represent public opinion.

5 REPRESENTATIVE DERMODY: It represents 11  
6 individuals.

7 MR. FRANKEL: They do not represent an organized  
8 effort. Those 11 editorial writers did not get together and  
9 decide we'll write about this. And in many cases, editorial  
10 boards meet and decide whether editorials should be written.  
11 I don't know what the majority vote would be, but certainly  
12 on this kind of legislation to see that kind of a response  
13 in the newspapers and these aren't the big city newspapers,  
14 these are the newspapers from the small towns across the  
15 state demonstrates that there is concern about Government  
16 butting in where it shouldn't be butting in.

17 REPRESENTATIVE DERMODY: No, it demonstrates that  
18 11 people or may be 30 people on an editorial board has  
19 taken a position where they know that they take certain  
20 advertisements in the paper. I think it's based upon the  
21 dollar which raises another question, Larry. The ACLU last  
22 year took a donation from Philip Morris for over a half a  
23 million dollars. Is that true, Larry? Are you aware of  
24 that?

25 MR. FRANKEL: I would not be aware of how much

1 money Philip Morris gives because as I stated earlier, I  
2 look at the Constitution. I look at the Bill of Rights. I  
3 look at our policy manual. I think compared to a lot of  
4 legislators I know a lot less about who contributes to my  
5 organization than legislators know about who contributes to  
6 their campaigns. That is not how we make policy. And if  
7 that's 500,000 for the entire national organization which is  
8 in 50 states, that is insignificant compared to the  
9 individual membership donation which we rely on for most of  
10 our lobbying and legislative efforts in individuals who  
11 donate to this organization over 300,000 nationwide.

12 REPRESENTATIVE DERMODY: I think a half a million  
13 bucks is not insignificant, Larry. My understanding is the  
14 way your policy is created when you come up with a position,  
15 it's sent to Washington D.C. especially on this issue it was  
16 approved by D.C. Your position that you're making now in  
17 public here in Pennsylvania, am I correct on that  
18 assumption?

19 MR. FRANKEL: You are not correct.

20 REPRESENTATIVE DERMODY: My understanding is that  
21 that position had to be approved by Washington D.C. and it  
22 was preapproved by D.C. based upon the financial budget that  
23 Phillip Morris and R.J. Reynolds makes to the ACLU.

24 MR. FRANKEL: I will reiterate what I said at the  
25 beginning which is true I do not know what your source of

1 information is. Our national policy manual specifically  
2 states our position on public places and regulating smoking  
3 in public places. It is very clear to me on the basis of  
4 that national policy statement, what our policy would be in  
5 reaction to a Bill like this. I did not have to call  
6 Washington. I did not have to submit anything to  
7 Washington. I had to consult with my executive director  
8 because I do not make policy announcements on my own. But  
9 we did not look into who contributed what.

10           We got some letters from members who were upset  
11 when we explained to them the Constitutional basis for our  
12 objection and they all agreed with us. And I think that  
13 there is a disservice going on in trying to represent the  
14 only basis for any Civil Liberty objections contribution  
15 from Philip Morris. That is nothing but an outright  
16 misstatement of what our position is, how we come to take  
17 the position. And I think it's an absurd defensive measure  
18 being taken by the components of the --

19           REPRESENTATIVE DERMODY: My last question is that  
20 the ACLU was established many years ago based upon  
21 protecting the first ten Amendments and those rights that  
22 people think are very important to be protected. My  
23 question to you is how do the non-smokers rights, not the  
24 kids, how about the guy that sits in the car or the girl  
25 that sits in the car and the other person is smoking, how

1 about those rights? Because it seems to me that we're  
2 protecting the smokers and their right to smoke, how about  
3 the 75 percent of the other Americans that don't smoke? How  
4 about their rights?

5 MR. FRANKEL: I don't know what 75 percent of other  
6 Americans think. But I do know that there are plenty  
7 members of my organization and people who are not members of  
8 my organization who do not let Government intrusiveness into  
9 private behavior. And they don't look at this as a smoker's  
10 right versus non-smoker's right. It's a right about where  
11 Government regulation ends when it comes to private  
12 behavior. And we're talking about defending the rights of  
13 the public; the smoker and the non-smoker to be left alone,  
14 to be left alone free from Government interference and  
15 private affair.

16 REPRESENTATIVE DERMODY: And then the follow-up  
17 would be to leave them alone so they can do what they want  
18 to endanger their children's lives regardless of any fact as  
19 long as the Government is non-intrusive to their privacy  
20 right?

21 MR. FRANKEL: I think the role of those who are  
22 interested -- role is the wrong word. I think the manner to  
23 try and resolve this problem is not to look to Government to  
24 pass a law. It is persuasion. It is getting out in public  
25 and in private places and persuading people what they do is

1 wrong. That is what is important. I'm not saying don't,  
2 you know, everybody hands off. You can't do anything.  
3 We're talking about what is appropriate for Government to  
4 do, and what is appropriate for all of those other entities  
5 in this country who do not have the coercive powers of the  
6 Government, the power to pass laws that require people to  
7 pay fines, and what happens to the person that doesn't pay a  
8 set of fines? Is he going to go to jail? We're talking  
9 about how you approach a public health issue. Do you  
10 approach it with criminal law or do you approach it through  
11 other less coercive means?

12 REPRESENTATIVE DERMODY: Thank you.

13 MR. CHAIRMAN: Thank you. Representative Dermody?

14 REPRESENTATIVE DERMODY: Thank you, Mr. Chairman.

15 I think I just have a comment. We talked quite a bit  
16 recently about what the involvement of the children and what  
17 we're teaching them by relying on the Government. I don't  
18 know whether it's right or wrong. But I think one thing  
19 that's been left out of the discussion a little bit. You  
20 heard from Dr. Mary Consevage who talked about a patient she  
21 examined the other evening with I believe it was an ear  
22 infection or a respiratory infections. And she mentioned  
23 the child came in smelling like smoke, and she had a long  
24 conversation with the parents.

25 It seems to me that we can spend some time



1 educating parents about what they're doing for their  
2 children. It seems to me if those parents walked in with  
3 their kid reeking with smoke, they had no idea that they  
4 were killing their child, damaging that child's lungs,  
5 affecting their health for years to come.

6           Whether this should be a law or not, I'm not sure.  
7 I do know this. We need to start encouraging in education  
8 in anyway the Government can to encourage the medical  
9 profession or whoever else, the public health profession,  
10 the parents need to understand they can't subject their  
11 children to these types of health hazards and may be we  
12 ought to put some efforts into that. Thank you.

13           MR. CHAIRMAN: Thank you.

14           MR. FRANKEL: Thank you very much.

15           MR. CHAIRMAN: The next individual to testify is  
16 Jeffrey Barg, Physicians' News Digest. And we only have two  
17 more people to testify with Juli McGreevy being last.

18           MR. BARG: Thank you, Mr. Chairman. I will be  
19 brief. It's been a long morning going into the afternoon  
20 here. I'd just like to make a few brief points and be happy  
21 to take any questions that you might have.

22           My name is Jeffrey Barg. As editor of Physicians'  
23 News Digest, richly every month studies come across my desk  
24 further supporting to back those position as the number one  
25 cause of premature death and disease in this country. One

1 of the most troubling aspects of the information is the way  
2 that we recklessly endanger the lives of our children with  
3 our complacency towards tobacco.

4 We allow huge billboards glamorizing tobacco to  
5 cast a shadow on our schools, playgrounds and to appear on  
6 Septa buses which carry many of our children to school. We  
7 allow cigarettes to be sold in vending machines along side  
8 candy or packaged with caps, t-shirts and alike and blazing  
9 with cartoon characters.

10 Most cigarette retailers don't even think twice  
11 about illegally selling cigarettes to minors. I know there  
12 was testimony earlier about this point. But in a study  
13 conducted in March by the Physicians' News Digest found that  
14 over 75 percent of the time, 14 and 15 year old volunteers  
15 were able to purchase cigarettes in Philadelphia area  
16 pharmacies, convenience stores and restaurants.

17 And all too often, we recklessly expose children's  
18 vulnerable lungs to toxic environmental tobacco smoke. As  
19 has already been testified to children are particularly  
20 vulnerable to the hazards of environmental tobacco.

21 Aside from the estimated 53,000 deaths a year  
22 caused by environmental tobacco smoke, children fall victim  
23 to 150,000 to 300,000 cases of bronchitis and pneumonia  
24 caused by ETS. Fifteen thousand of which lead to  
25 hospitalization. I want to emphasize that point. I mean,

1 we had a representative from the ACLU talking about this as  
2 ETS being merely offensive or unhealthy. We're talking  
3 about kids having acute asthmatic attacks and other  
4 respiratory problems that leads to 100,000 hospitalizations  
5 a year. If that isn't, you know, a clear and present  
6 danger, I don't know what is. Aside from the fact that it  
7 is deadly.

8           Now, the deadliness may not happen immediately  
9 although it may happen in some cases due to these asthmatic  
10 attacks, it happens over time. But still it causes 53,000  
11 deaths a year. So I just want to make that clear. Not  
12 surprisingly, ETS in cars was found to have the highest  
13 concentration of nicotine compared to other complications.  
14 I think that is fairly common sensible which was another  
15 thing we were supposed to use as our common sense.

16           ETS in cars has four times the average nicotine  
17 level as in restaurants, five times the level. In offices,  
18 where we do -- the state does have laws that provide some  
19 protection as we -- as it may be at this point.

20           So what are some of the arguments about modest  
21 measures such as House Bill 626 which would fine people \$50  
22 for smoking in a car carrying children 15 years of age or  
23 younger. Few people seem to object to the requirements of  
24 infants in safety seats in cars or with seat belts or with  
25 laws against drunk driving. And yet, fatalities caused by

1 automobile accidents are fewer than those caused by ETS.  
2 This is common sense.

3           The tobacco industry and the beneficiary would have  
4 you believe that this is a radical assault on smoker's civil  
5 liberties and an outrageous invasion of privacy. But I  
6 don't hear anybody arguing that laws against drunk driving  
7 violate drinker's civil liberties or invade their privacy.

8           Others will want to characterize those measures as  
9 putting children against their parents; intruding on the  
10 parent-child relationship. But I don't hear anyone arguing  
11 that laws requiring child safety seats or seat belt laws put  
12 children against their parents if they don't use them  
13 intruding on the parent-child relationship.

14           And I will say there is a punitive measure against  
15 smokers and properly extending the role of government into  
16 our lives. But more so our assessment shows that this is a  
17 less troublesome measure for smokers than the law against  
18 smoking on all domestic airplanes. Smokers are free to pull  
19 over to the side of the road or pull into a rest area and  
20 get out of their car and smoke. And it only applies at  
21 times when they are carrying children under the age of 16.  
22 It doesn't seem that onerous to me.

23           In sum, this bill is not designed to punish smokers  
24 but rather to protect the health of children; a perfectly  
25 legitimate and wrongful role for government. As to the

1 issue of enforcing the Bill, I would refer to another  
2 important role of legislation in the legislative process;  
3 that is to inform the public.

4 I give smokers more credit than to the opponents of  
5 this Bill. Given the facts on this issue, be it the  
6 legislative process and the passage of this Bill, I believe  
7 most smokers will comply with the law without the leave for  
8 enforcement. Certainly a number of target enforcements that  
9 are publicized would aid in this as well.

10 After all, most smokers regret the day that they  
11 became addicted to tobacco and wish that they could quit.  
12 They don't want their children to smoke and they support  
13 reasonable tobacco control measures. Non-smokers are not  
14 their nemesis but rather the tobacco industry which spent  
15 billions of dollars to seduce them into starting to smoke in  
16 most cases while they were children.

17 So in closing, I urge the members of the  
18 subcommittee to summon up their courage to show some  
19 leadership on this issue and put the interest in  
20 Pennsylvania's children ahead of the interest of the tobacco  
21 industry. Thank you.

22 MR. CHAIRMAN: Thank you very much, Jeffrey. Any  
23 questions from any members of the committee?

24 (No response.)

25 MR. CHAIRMAN: Thank you. It seems like your

1 testimony was fitted in like as if you had known Mr.  
2 Frankel's comments and you had answered some of his  
3 concerns.

4 MR. FRANKEL: They were easily anticipated.

5 MR. CHAIRMAN: The last person to testify is Juli  
6 McGreevy. Okay. This is a private citizen wishing to  
7 testify before the committee.

8 MS. MCGREEVY: My name is Juli McGreevy, and I  
9 am here today to talk about traffic laws and personal  
10 freedom. It is my opinion from working in traffic safety  
11 since 1985 that all motor-vehicle laws designed to protect  
12 the health and safety of the public are an infringement on  
13 personal freedom. For example, the section of the vehicle  
14 code which says drivers must stop at stop signs is an  
15 infringement of the freedom to drive as you want and yet all  
16 motorists understand and accept the benefit of this law.

17 The question then, for me, is not whether a bill  
18 like House Bill 626 is an infringement on personal freedom.  
19 The question is whether the potential health and safety  
20 benefits of the Bill outweigh the infringement.

21 The Environmental Protection Agency, as you have  
22 heard in previous testimony, says that environmental tobacco  
23 smoke in cars is at a very high level, higher than that  
24 found in other places where people smoke. Children under  
25 the age of 16 are not mobile enough to get around without

1 the help of adults and should not be forced to sit in an  
2 environment where the air is so toxic.

3 We have other traffic laws that are working to  
4 protect children. For example, in the 1980's, Pennsylvania  
5 passed and implemented a child safety seat law and a seat  
6 belt law. The mere existence of these laws and the  
7 publicity surrounding their passage encourages parents and  
8 others to protect their children by buckling them up.

9 Posters like this one were used in Pennsylvania and  
10 throughout the United States to help parents understand the  
11 health risks of not buckling up children. The picture is of  
12 a three-year old sitting in the back seat of a car without  
13 either a seat belt or a child safety seat. The headline  
14 reads, "The most common form of child abuse." The reason  
15 the Keystone Safety Belt Network, the organization I was  
16 executive director of at the time, and other groups found  
17 this poster and a similar billboard so successful was that  
18 the message got good parents to question their behavior  
19 regarding protecting their children in cars.

20 We didn't view parents who failed to put their  
21 children in seat belts as "bad" parents. We felt they just  
22 didn't understand the risks that their behavior imposed upon  
23 their children. Having these laws helped people understand  
24 the risks and increased safety seat and seat belt use to  
25 over 65 percent.

1 I see House Bill 626 a similar law, a law whose  
2 health benefits make an infringement on personal freedom a  
3 valid trade off. Passing House Bill 626 into law would help  
4 parents understand the risks to their children of smoking in  
5 motor vehicles and be a reminder to smoke elsewhere.

6 MR. CHAIRMAN: I thank you very much. Any member  
7 of the committee have any questions?

8 (No response.)

9 MR. CHAIRMAN: Thank you very much. This concludes  
10 this hearing. I want to thank everyone for taking the time  
11 to testify and participate and listen, and I guess all of us  
12 are learning the process. As many of the individuals that  
13 testified today has stated that education is a major effort  
14 in what we're trying to do here. Being the fact that we had  
15 the hearing, it's part of that education process. We  
16 anticipate talking to the Chairman to see which direction  
17 this bill will go. We'll be voting in this Committee or the  
18 full Committee or it will be voted on the floor of the  
19 House. Thank you very much for your testimony today.

20 (Whereupon, at 1:10 p.m., the hearing adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

  
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