

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 077 - FOLDER -003

[05/19/1998 - 05/20/1998]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ronald E. Jones (CN=Ronald E. Jones/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:19-MAY-1998 12:00:35.00

SUBJECT: Current (Noon) Bankruptcy SAP

TO: Mark D. Menchik (CN=Mark D. Menchik/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Toni S. Husted (CN=Toni S. Husted/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Joshua H. Raymond (CN=Joshua H. Raymond/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Melinda D. Haskins (CN=Melinda D. Haskins/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: John S. Radzikowski (CN=John S. Radzikowski/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Pamula L. Simms (CN=Pamula L. Simms/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Thomas P. Stack (CN=Thomas P. Stack/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Mark A. Weatherly (CN=Mark A. Weatherly/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Alice Veenstra (CN=Alice Veenstra/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Lisa M. Kountoupes (CN=Lisa M. Kountoupes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Joseph J. Minarik (CN=Joseph J. Minarik/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Sarah Rosen (CN=Sarah Rosen/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Rebecca M. Blank (CN=Rebecca M. Blank/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

TO: Roger S. Ballentine (CN=Roger S. Ballentine/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Janet E. Irwin (CN=Janet E. Irwin/OU=OMB/O=EOP@EOP [OMB])

READ:UNKNOWN

TO: Gary L. Bennethum (CN=Gary L. Bennethum/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Larry R. Matlack (CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Edwin Lau (CN=Edwin Lau/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Francis S. Redburn (CN=Francis S. Redburn/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Ellen J. Balis (CN=Ellen J. Balis/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Wayne Upshaw (CN=Wayne Upshaw/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Courtney B. Timberlake (CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: David J. Haun (CN=David J. Haun/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Janet Himler (CN=Janet Himler/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TO: Christopher D. Carroll (CN=Christopher D. Carroll/OU=CEA/O=EOP@EOP [CEA])
READ:UNKNOWN

TO: Paul E. Begala (CN=Paul E. Begala/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWN

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN

CC: James C. Murr (CN=James C. Murr/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

CC: James J. Jukes (CN=James J. Jukes/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

DRAFT --- NOT FOR RELEASE

May 19, 1998

(House)

H.R. 3150 - Bankruptcy Reform Act of 1998
(Gekas (R) Pennsylvania and 75 cosponsors)

The Administration supports bankruptcy reform that requires responsibility of debtors who have the ability to repay a portion of their debts and prevents abuse of the bankruptcy system. However, the Administration [strongly?] opposes H.R. 3150. One provision of the bill would establish a rigid and arbitrary means test to determine whether a debtor could file for bankruptcy under Chapter 7 or would be required to file under Chapter 13 rules. Bankruptcy courts should have greater discretion to consider the specific circumstances that brought a debtor to bankruptcy.

H.R. 3150 also would make nondischargeable certain credit card debt. The Bankruptcy Code generally makes nondischargeable debts only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. These credit card debts do not rise to that level of public priority, nor has there been sufficient finding that current protections against fraud and debt incurred prior to bankruptcy are ineffective. Moreover, by making these credit card debts nondischargeable, the bill puts them in competition with payments to a former spouse or custodial parent after the debtor leaves bankruptcy, which would diminish the ability of debtors to fulfill their family obligations. Amendments made during the Judiciary Committee mark-up do not effectively eliminate this problem.

The Administration looks forward to working with the Congress on a balanced package of reforms that addresses these concerns and requires responsibility on the part of both debtors and creditors.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 17:47:45.00

SUBJECT:

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])

READ:UNKNOWN

TEXT:

Bruce wants you to do ENACT conf. call right now; call 65584 ASAP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: William P. Marshall (CN=William P. Marshall/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 18:39:18.00

SUBJECT: Child Custody Protection Act Issues

TO: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robin Leeds (CN=Robin Leeds/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: John Podesta (CN=John Podesta/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nelson Reyneri (CN=Nelson Reyneri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Lisa M. Brown (CN=Lisa M. Brown/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Tracey E. Thornton (CN=Tracey E. Thornton/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Charles F. Ruff (CN=Charles F. Ruff/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

The following is a quick list of the issues raised by this legislation. The 'A' list contains the ones that may have political traction. The 'B' list includes the more technical problems.

A. The 'A' List

1. The bill imposes criminal sanctions against family members.
2. The bill imposes criminal liability on persons who may not realize they are violating the law (as when the minor falsely informs the transporter that she has parental consent.) This is because the bill predicates liability on the intent to help the minor obtain an abortion

rather than on the intent to help the minor avoid the application of a state's parental notification requirements.

Note -- When Senator Abraham introduced the bill, he described the offense as involving the intent to avoid parental involvement requirements. He did not describe the offense as it is written in his bill -- the intent to help the minor obtain an abortion.

3. The bill raises troublesome federal law enforcement concerns. Pursuing alleged violations would require the FBI to investigate a minor's family and close personal friends, raising serious privacy concerns. Enforcing this law would also raise federal enforcement resource issues. Should the federal government be expending its resources in conducting the types of investigations that this law would require, and, if not, would passage of the bill merely be a hollow gesture?

4. The bill represents a dramatic incursion into our traditional understanding of federalism. Federalism presumes that a citizen is free to take advantage of favorable laws in other states. This bill curtails that right.

B. The 'B' List

1. The bill may impose the undue burden of having the minor comply with two separate parental notification statutes -- her home state and the state of the provider.

2. The bill does not take into account that some states' parental involvement laws have no mechanism for extra-territorial application. For example, some states impose the duty to notify a parent on the in-state provider. Since, by definition there is no in-state provider in the case of an extra-territorial abortion, there is no person with legal authority to satisfy the state law's requirements. In such circumstances, the federal law would be a complete bar to the minor's ability to have an out-of-state abortion and, in those circumstances, might be constitutionally suspect.

3. The bill requires the minor to comply with the parental involvement laws of the state in which she "resides." This could be a different than the state of her domicile (permanent residence) and if so, could lead to a result in which a transporter who takes the minor to have the abortion in the minor's home state could be held criminally liable. This may be particularly problematic in the case of a minor whose divorced parents reside in two different states.

4. There are serious statutory ambiguities. For example, state parental involvement statutes require taking the health and life of the mother into account, and, for that reason the fact the bill does not contain a health exception is permissible. But, because the bill does provide an exception for the mother's life, it could be read as pre-empting any other exceptions contained in state law (including health). Another ambiguity stems from the statute's definition of a law requiring parental involvement as one that requires the notification to, or consent of "a parent or guardian of that minor." Some states, however, allow other persons to provide consent, again raising the issue of whether the federal law pre-empts state law.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 13:53:59.00

SUBJECT:

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

San Francisco's forest of tobacco billboards will come down by June 1, after an agreement yesterday between the city and two outdoor advertisers who own virtually all the signs.

Outdoor Systems Advertising and Eller Media Co., both with headquarters in Phoenix, Ariz., said they will eliminate the advertising six weeks before a tough new city ordinance banning most of them takes effect.

``We will get them down within two weeks,`` said Stephen Shinn, a spokesman for Outdoor Systems' Northern California office in Berkeley.

Both companies said that by July 1 they will also comply fully with state law that since the beginning of the year has forbidden tobacco billboards within 1,000 feet of a school or playground anywhere in California.

``This is remarkable. I've got to give them credit for doing the right thing,`` said San Francisco Supervisor Gavin Newsom, author of the city ordinance he called ``the most restrictive in the nation.``

A Chronicle story in March revealed that the state law was being widely flouted throughout California.

Yesterday's agreement includes all tobacco advertising displayed by the two companies on billboards, bus shelters and BART and Muni stops in San Francisco.

When the signs are replaced, the city will be the

first major metropolis in America to be cleared of tobacco billboards. Cigarette billboards are not permitted in Salt Lake City, but they never gained a toehold there among its largely nonsmoking Mormon population.

``This is a huge step forward for public health,'' said San Francisco City Attorney Louise Renne, who brokered the agreement along with Newsom.

The advertisers' decision goes beyond the requirements of the city ordinance, which allows some tobacco signs along the Highway 101 corridor after the rules take effect on July 16.

But George Broder, a spokesman for the Oakland offices of Eller Media, said his company decided not to find the few spots where the billboards could still be posted.

``We were not going to get into hair-splitting subjectivity, such as where's the center of the property line, what's a playground, what is not,'' said Broder. ``There will be no more tobacco advertising on billboards in San Francisco.''

Broder said that the company believes that the tobacco billboard restrictions could be vulnerable to a challenge under the First Amendment's guarantee of free speech. However, neither Eller nor Outdoor Systems plans to make a case of it, but such a challenge might still be mounted by the tobacco companies.

The San Francisco ordinance that takes effect in July also bans tobacco advertising in store windows. However, taxicabs are exempt and will still be able to carry the ads their roofs. Neither Eller nor Outdoor Systems owns any taxicab signs.

Civic leaders praised the billboard companies yesterday, but critics are miffed that the state billboard law is being ignored for at least one more month.

``I'm a little uncomfortable patting people on the back for complying with a law that came into being six months ago,'' said Dan Reeves, chief of staff for Assemblywoman Carole Migden, D-San Francisco, author of the state law.

Reeves stressed, however, that the decision to comply with state law was an important milestone in the battle against tobacco use.

Broder said that although the billboard companies were aware of the state law, they were waiting for the state to clear up ambiguities such as defining a playground -- does that mean any city park, or only the areas with outdoor swings and other play

equipment?

After the Chronicle story, the state health department held two informational meetings with billboard operators. The state acknowledged that it had neither the manpower nor the resources to enforce the restrictions, but intended to do so July 1.

Michael Green, executive director of the San Francisco-based Center for Environmental Health, said complying with state law in July isn't enough. ``They should have done it six months ago,'' he said.

Green's organization filed suit March 23 against the two companies in an attempt to force compliance. He said it would be appropriate restitution to have the companies run anti-smoking billboards in the same locations.

At any rate, the decision was good news for a small band of saboteurs who had vandalized tobacco advertisements within the zone forbidden by state law. ``Cool,'' said James Reid, a 48-year-old building contractor who was arrested last month for defacing a Lucky Strike billboard.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: June Shih (CN=June Shih/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 18:10:01.00

SUBJECT: tobacco draft

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Paul E. Begala (CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Eleanor S. Parker (CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D94]MAIL46205783B.126 to ASCII,
The following is a HEX DUMP:

FF575043BA040000010A020100000002050000006218000000020000DDB853765E308978754985
FD73FD955C18B8EEFF4038053818D369B64CFF4DC3B68DA352CDFAB13F21D58806E299BBD3B457

Draft 5/19/98 5:24 pm

**PRESIDENT WILLIAM J. CLINTON
REMARKS FOR TOBACCO-FREE KIDS CAMPAIGN RALLY
THE WHITE HOUSE
MAY 20, 1998**

Nearly 35 years ago -- some two decades before most of the kids here were even born -- the Surgeon General of the United States sounded an alarm that has only grown louder, clearer and more difficult to ignore with every passing year. The warning: Smoking kills.

And for more than a generation, Americans of all ages and all walks of life have answered that alarm -- fighting tirelessly to conquer this deadly threat and protect the health of our people. In the face of some very powerful opposition, our nation has won victories both large and small -- requiring all cigarette packages to carry warning labels ... prohibiting cigarette advertising on the airwaves ... banning smoking on domestic flights ... making all federally-funded facilities that serve children smoke-free.

Today, we stand on the verge of our greatest triumph yet against the scourge of tobacco -- a triumph that could save millions of our children's lives and become the **one of the greatest public health achievements in the history of our nation.**

This week, the Senate is considering historic comprehensive, bipartisan tobacco legislation, proposed by Senator McCain and passed overwhelmingly by the Senate Commerce Committee. I believe this bill is America's best chance to protect the health of our children, to keep them from ever getting hooked on cigarettes in the first place. **I have said I would support any comprehensive, bipartisan bill that meets five principles, and this legislation does so: It raises the price of cigarettes and penalizes companies that sell to kids; it reaffirms the FDA's authority to regulate tobacco products; it stops tobacco companies from marketing to children; it furthers our other public health goals; and it protects tobacco farmers and their communities.**

Over the past few weeks, my administration has worked with Congress to strengthen this bill even further -- toughening penalties against tobacco companies who fail to reduce teen smoking, raising the liability cap on legal damages, protecting Americans from dangerous second-hand smoke in public buildings.

I congratulate every child here for taking responsibility for your own health, for saying "no" to tobacco and "yes" to brighter futures. I wish you well as you make your voices heard on Capitol Hill. Now it is time for America's elected leaders to do our part.

The McCain bill is tough, fair, and most of all, it protects our children. It would help ensure that our children never get roped into lighting up by the Marlboro man, that they never get lured into smoking by Joe Camel. It ends the unscrupulous marketing campaigns that have

targeted our children -- and robbed them of their futures. So I call upon Congress to stay in session for as long as it takes to pass this bill. Don't go home until you have given our children bipartisan, comprehensive tobacco law. They have waited long enough.

Today, here on the South Lawn, stand America's future. For years, the tobacco companies have looked upon these children and seen the "replacement smokers" of the 21st Century. But I see 1,400 unique, irreplaceable children with unlimited potential. I see the scientists and artists; the teachers and Olympic champions; the engineers and leaders of the 21st Century. Everyone of us has the responsibility to make sure these and all children across America have the opportunity to live out their dreams and fulfill their greatest, God-given potential. That is why we must pass this bill.

Let the children standing here be the final, triumphant generation of anti-tobacco activists. And let this Congress be the Congress that saved their lives.

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: June Shih (CN=June Shih/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 21:56:15.00

SUBJECT: tobacco --revised 10 pm

TO: Eleanor S. Parker (CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Paul E. Begala (CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sara M. Latham (CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D50]MAIL46101883C.126 to ASCII,
The following is a HEX DUMP:

FF575043D6050000010A02010000000205000000EA1A0000000200003A550CBBCF310CFC465C30
24B9E743010E53F9E9769788725E853B5B3A609F71DD3191FEF370ACC8430D1EAC7203049C43C9

Draft 5/19/98 10 p.m.

**PRESIDENT WILLIAM J. CLINTON
REMARKS FOR TOBACCO-FREE KIDS CAMPAIGN RALLY
THE WHITE HOUSE
MAY 20, 1998**

Nearly 35 years ago -- some two decades before most of the children here were even born -- the Surgeon General of the United States sounded an alarm that has only grown louder, clearer and more difficult to ignore with every passing year. The warning: Smoking kills.

And for more than a generation, Americans of all ages and all walks of life have answered that alarm -- fighting tirelessly to conquer this deadly threat and protect the health of our people. In the face of some very powerful opposition, our nation has won victories both large and small -- requiring all cigarette packages to carry warning labels ... prohibiting cigarette advertising on the airwaves ... banning smoking on domestic flights.

Today, we stand on the verge of passing legislation that will do more than ever before to stop the scourge of youth smoking.

This week, the Senate is considering historic comprehensive, bipartisan tobacco legislation, proposed by Senator McCain and Senator Hollings. Over the past few weeks, my administration has worked with Senators in both parties to strengthen this bill -- protecting Americans from the dangers of secondhand smoke in public buildings, dramatically increasing health research and funding a nationwide advertising campaign to tell young people not to smoke, and toughening lookback surcharges to make reducing youth smoking the tobacco companies' bottom line.

This bill includes a significant price increase to discourage youth smoking and affirms the FDA's authority to regulate tobacco products. And I hope that in the next few days, the Senate will make sure we do everything we possibly can to protect tobacco farmers and their communities.

This bill includes another provision -- an \$8 billion annual liability cap that is available only to companies that agree to make sweeping restrictions in youth advertising, achieve dramatic reductions in youth smoking, and comply with this legislation instead of tying it up in court. This provision is controversial to some, but it is there to help achieve our goal, which is to stop kids from smoking in the first place. Everybody knows that tobacco advertising lures young people to start smoking, but the First Amendment limits what we can do to stop these harmful practices. Everybody knows that we can pass the toughest law in the world, but we won't achieve our goal of reducing teen smoking and saving millions of lives unless the tobacco companies cooperate in this effort instead of fighting us in court every step of the way. If an \$8 billion annual cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to change the way they do business and join this historic effort to stop teen smoking, it is well worth it for the American people.

I believe this bill is America's best chance to protect the health of our children, to keep them from ever getting hooked on cigarettes in the first place. It is a good, strong bill, and Congress should pass it without delay.

I congratulate every child here for taking responsibility for your own health, for saying "no" to tobacco and "yes" to brighter futures. I wish you well as you make your voices heard on Capitol Hill. Now it is time for America's elected leaders to do our part.

Today, here on the South Lawn, stand America's future. For years, the tobacco companies have looked upon these children and seen the "replacement smokers" of the 21st Century. But I see more than 1,000 unique children who cannot be replaced. I see the scientists and artists; the teachers and Olympic champions; the engineers and leaders of the 21st Century. Everyone of us has the responsibility to make sure these and all children across America have the opportunity to live out their dreams and fulfill their greatest, God-given potential. That is why we must pass this bill.

Today, across America, 3,000 other young people of your generation will take up this deadly habit, and 1,000 young people -- about the number here this morning -- will die early as a result. So when you leave here and go up to Capitol Hill, remind every member of Congress what this legislation is all about. Let this Congress be the Congress that saves those children's lives.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 18:59:59.00

SUBJECT: Child Care Staff Meeting, Wednesday, May 20th 10:30 am in 1416 LHOB

TO: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Charles M. Brain (CN=Charles M. Brain/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barbara Chow (CN=Barbara Chow/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Sandra Yamin (CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Dario J. Gomez (CN=Dario J. Gomez/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

FYI - There's a Dem. Caucus staff child care meeting tomorrow at 10:30am
in 1416 LHOB.

----- Forwarded by Mindy E. Myers/WHO/EOP on 05/19/98
06:51 PM -----

"Marcus, Sean" <Sean.Marcus @ mail.house.gov>

05/19/98 05:34:34 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Mindy E. Myers/WHO/EOP, "Marcus, Sean" <Sean.Marcus @ mail.house.gov>

Subject: Child Care Staff Meeting, Wednesday, May 20th 10:30 am in 1416
LHOB

There will be a Child Care Staff Meeting Tomorrow:

Wednesday, May 20th
10:30 am
1416 LHOB

Message Sent

To:

"Dwyre, Diana" <Diana.Dwyre @ mail.house.gov>
"MacDonald, Cat" <Cat.MacDonald @ mail.house.gov>
"Kero, Ken" <Ken.Kero @ mail.house.gov>
"Gwyn, Nick" <Nick.Gwyn @ mail.house.gov>
"Theil, Lynda" <Lynda.Theil @ mail.house.gov>
"King, Andrea" <Andrea.King @ mail.house.gov>
"Kashen, Julie" <Julie.Kashen @ mail.house.gov>
Mindy E. Myers/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes (CN=Julie A. Fernandes/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 20:51:15.00

SUBJECT: H-1B q&a -- updated

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Elena,
Attached are updated q&a for the press office. They requested an update for tomorrow. Thanks.

Julie

----- Forwarded by Julie A. Fernandes/OPD/EOP on 05/19/98
09:03 PM -----

Cecilia E. Rouse
05/19/98 08:46:02 PM
Record Type: Record

To: Julie A. Fernandes/OPD/EOP
cc:
Subject: Re:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D63]MAIL47520883B.126 to ASCII,
The following is a HEX DUMP:

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1B0B733AA5063DC20FAF92D06BE29DC174BD2A53D729F3E5ABD27A70B5A943F84BE4E955390FFB

**Question & Answer on Immigration: H-1B visas
May 20, 1998**

Q: According to the INS, the annual cap on H-1B visas has been reached. What is your position regarding the call by industry to increase the number of temporary visas available for highly skilled foreign workers?

A: The Administration believes that the first step in increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. That is why the Administration has tried to encourage the private and the public sector to undertake new efforts to train our workers.

However, we also need to improve the temporary visa program to ensure that U.S. workers do not lose their jobs to temporary foreign workers and that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. These reforms would target the visa program's use to employers experiencing genuine skills shortages.

With commitments to increased training and reforms to the H-1B visa program, we would support a short-term increase in the number of visas available for temporary foreign workers.

Q: The House Judiciary Subcommittee on Immigration has approved legislation that increases the number of H-1B visas for temporary foreign workers. What is your position regarding this legislation?

A: We are pleased that Representative Smith's bill is consistent with one of the Administration's primary objectives, insofar as it links a short-term increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. These reforms would help ensure that U.S. workers would not lose their jobs to temporary foreign workers and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. These reforms will effectively target H-1B visas to industries experiencing genuine skill shortages.

Unfortunately, the bill does not contain any provision for additional training opportunities for U.S. workers. Training is a vital component of the Administration's strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries.

The Administration would be pleased to support this bill if it included a meaningful training provision and a more modest increase in the annual cap.

Q: What is your position regarding Senator Abraham's bill that was passed by the Senate on Monday?

A: The Administration strongly opposes Senator Abraham's bill. The bill includes a large increase in the annual number of visas for temporary foreign workers (up to 115,000) and provides no meaningful reform to the H-1B program.

Background

On April 2, 1998, the Administration (Secretaries Daley and Herman and Attorney General Reno) sent a letter to Congress that opposed Senator Abraham's bill and endorsed the approach advocated by Senator Kennedy (that would effect a temporary increase in the cap, but also included reform to the H-1B program and increased training for U.S. workers). On May 11, 1998, we sent a Statement of Administration Policy to the Senate that strongly opposed Senator Abraham's bill and stated that the Secretary of Labor would recommend a veto.

On April 30, 1998, the Administration sent a letter to the House Judiciary Subcommittee on Immigration supporting Representative Lamar Smith's bill if it is modified to include a meaningful training provision and a more modest increase in the cap. This bill is scheduled to be marked-up by the full Judiciary Committee on May 20th.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 17:37:44.00

SUBJECT:

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD]
READ:UNKNOWN

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

The Governors are sending over a letter opposing the Kerry/Child Care amendment to tobacco. They make a federalism argument. Will forward when received.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 12:05:04.00

SUBJECT: Use this version of the tobacco 3 pager

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

All references to lookback penalties removed (was one left)

Elena Kagan

05/19/98 09:25:32 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Cynthia Dailard/OPD/EOP

cc:

Subject: tobacco 3 pager

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D14]MAIL47859483H.126 to ASCII,

The following is a HEX DUMP:

FF5750432D060000010A02010000000205000000BF2F00000002000033E9139A00149A8090522E
B9BED27C19F43265AE59329172F2A4057F3DA34E1C12E34A99F7FF8F9375676428FCC3E1548951

The Commerce Committee Manager's Package will Dramatically Reduce Youth Smoking

The Commerce Committee manager's package contains significant improvements over the underlying bill which will help to reduce youth smoking and to protect the public health. With these improvements, the bill meets each of the President's principles for comprehensive tobacco legislation. The improvements include:

Tougher Lookback Surcharges:

- The manager's amendment contains an uncapped company-specific surcharge of \$1,000 per youth smoker for every youth smoker by which the company misses its youth smoking targets. This surcharge represents twice the lifetime profits that a company earns from any youth smoker. The companies will not be able to pass these company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

At the levels specified in the manager's amendment, company specific surcharges will reduce profits by \$640 million for every 10 points. The Treasury Department and OMB estimate that a 20-point miss in 2003 would represent one-third of total industry profits. By affecting their bottom line in this dramatic fashion, the company-specific surcharges in the manager's amendment will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children.

- The manager's package also raises the cap on industry-wide lookback surcharges from \$3.5 billion per year to \$4 billion per year. The Treasury Department and OMB estimate that if targets are not met and the full \$4 billion industry-wide surcharge is levied, the price of a pack of cigarettes will rise by about 35 cents.

Enhanced Environmental Tobacco Smoke Protections:

- The manager's package provides that a state can opt out of the national environmental tobacco smoke standard only if the state is able to demonstrate to OSHA that it has an ETS standard at least as protective of the public's health.

Spending:

- The manager's package contains key provisions to fund important public health programs, health research, and assistance for farmers. It also provides funding to states to be used for a variety of programs, including child care.
- Approximately 22 percent of expected revenues from the legislation will go to fund research at NIH, CDC, and AHCPR. Another 22 percent will fund smoking cessation programs, prevention and education programs, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling

and crack down on retailers who sell tobacco products to children. All proceeds from lookback surcharges will go to prevention and education programs.

- Forty percent of expected revenues will go to states, with half unrestricted and half to be used for designated purposes -- the Child Care and Development Block Grant, the Safe and Drug-Free Schools Program, Eisenhower Grants, child welfare programs (Title IV-B), the Maternal and Child Health Bureau's Title V Program, Substance Abuse grant programs, and a limited match for the Children's Health Insurance Program. This entire list is directed at the health and well-being of children and families most in need of assistance.
- The remainder of expected revenues from the legislation will go to protect tobacco farmers and to provide assistance to their communities, through the mechanisms of the LEAF Act.
- Excess revenues will go to the Medicare program.

Improved Liability Provisions:

- The manager's package ensures that the bill's liability provisions (i.e., the settlement of state lawsuits and the annual damages cap) apply only to companies that agree to accept sweeping advertising restrictions and to comply with important provisions of the law (i.e., lookbacks and annual payments), even if those provisions are invalidated by the courts.
- The manager's package raises the annual liability cap from \$6.5 to \$8 billion (indexed for inflation), the same amount as the cap in the Chafee-Harkin bill. It also removes liability protections for parent companies and affiliates; ensures that the industry's attorneys will be subject to suit as under current law; and allows plaintiffs claiming injury from disease to use evidence of addiction in their lawsuits.
- The manager's package strengthens the provisions in the bill that link liability protections to the achievement of youth smoking targets. Under the amended legislation, a company that misses its targets by 20 percent or more has the burden of showing both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

Elimination of Antitrust Exemption:

- The manager's package eliminates the blanket antitrust exemption contained in the underlying bill, which was not necessary to achieve the goals of the legislation and could have had anticompetitive effects.

Stronger Anti-Smuggling Provisions:

- The manager's amendment will strengthen the anti-smuggling provisions in the bill, so as to prevent the emergence of contraband markets. The bill, as amended, will create a "closed distribution system" for tobacco products so that only licensed entities can sell or buy products; it will provide states with resources to establish or improve retail licensing systems; it will require manufacturers to mark packages for export to prevent their diversion; and it will establish and enforce strong penalties for violations. A very similar system has worked to control smuggling of alcoholic beverages for over sixty years.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 16:44:04.00

SUBJECT:

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])
READ:UNKNOWN

TEXT:

I have event briefing & press paper; please advise if I should wait for you or have Bruce review to make 6:00 deadline -Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Amy W. Tobe (CN=Amy W. Tobe/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 17:55:38.00

SUBJECT: USA TODAY interview on Thurs.

TO: Beverly J. Barnes (CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Dawn L. Smalls (CN=Dawn L. Smalls/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: June G. Turner (CN=June G. Turner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jennifer M. Palmieri (CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Eleanor S. Parker (CN=Eleanor S. Parker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Stephanie S. Streett (CN=Stephanie S. Streett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Sara M. Latham (CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dominique L. Cano (CN=Dominique L. Cano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Joseph P. Lockhart (CN=Joseph P. Lockhart/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael D. McCurry (CN=Michael D. McCurry/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Joshua Silverman (CN=Joshua Silverman/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

CC: Lori L. Anderson (CN=Lori L. Anderson/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

CC: Darby E. Stott (CN=Darby E. Stott/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

CC: Nanda Chitre (CN=Nanda Chitre/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

As a reminder: we agreed, in theory, in our last Gang of Four that the President should do an on-the-record interview with Susan Page of USA Today on Thurs. to run on Friday, May 22 (which reaches 3.3 million readers since it's available from Friday through Monday, Memorial Day). Susan would like to talk with the President about tobacco (and I'm sure other issues). Just fyi.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Neera Tanden (CN=Neera Tanden/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 08:35:11.00

SUBJECT: child care talking points

TO: Maureen T. Shea (CN=Maureen T. Shea/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Lisa M. Brown (CN=Lisa M. Brown/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Robin Leeds (CN=Robin Leeds/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

For internal use only - thanks very much:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0:00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D97]MAIL48571383N.126 to ASCII,
The following is a HEX DUMP:

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83B11BE595CDA6DF99F31EDCFE166AD8EA98046E363A3E7F567051DC8943F3330AA1F74837F300

Talking points on the State Tobacco Settlement Funds and Child Care

The Administration has been negotiating with Senator McCain and the National Governors Association on the state allocation of the tobacco settlement funds. Our negotiations have resulted in Senator McCain adopting as a manager's amendment a measure that would allocate \$12.5 billion over five years for states to draw from for seven program options, the largest of which is the Child Care and Development Block Grant. We believe this will result in a significant expansion of child care and that it is an important first step in our efforts to ensure child care is more affordable, accessible and safe.

- **Tobacco legislation is at risk.** If our efforts to reduce teen smoking are going to be successful, tobacco legislation must pass the floor of the Senate this week -- before Memorial Day. A significant number of Republicans, including the leadership, are looking for any and all excuses to walk away from tobacco legislation. Their best cover would be NGA opposition to the Senate bill, particularly because the Governors began the tobacco suits in the first place. Given the current Congress and the difficulty we have encountered in the appropriations process, **including child care as part of tobacco legislation is an important step to advance child care.**
- **Where we began: Harkin-Chafee.** We had to begin discussions with the NGA with Harkin-Chafee language --which is extremely flawed. That legislation gave states 50 percent outright to spend as they please from the \$25 billion overall allocated to the states, and only nominally restricted the other 50 percent. In fact, Harkin-Chafee included 20 program options for the restricted share, including Medicaid and the Social Services Block Grant (which does not require a state match).
- **What we got: Children's programs.** We succeeded in narrowing the list of options for the 50 percent restricted funds -- which is \$12.5 billion over five years -- to seven programs, six of which are exclusively for children. The seventh program, Substance Abuse and Mental Health Administration programs, also has a significant focus on youth. This entire list is directed at the health and well-being of children and families most in need of assistance.
- **Child care is the largest program in the spending options.** Of the seven spending options, the Child Care and Development Block Grant is the single largest program. Thus, if states increased all program spending proportionately, child care would receive about \$5 billion in additional Federal funds over 5 years. And compared to other options on the list, the child care block grant has a lower match, thereby making it even more attractive to states. Therefore, spending on child care could be considerably higher.
- **States have flexibility to spend more.** If the demand for child care continues to grow in the coming years as more people move from welfare to work under welfare reform, states have the flexibility to invest a greater and greater share of overall expenditures on child care.
- **Strong commitment to child care.** Under the President's proposal, only one third of his child care initiative was to be paid for through tobacco legislation. **The Administration strongly supports further Congressional action to direct substantial new federal funding to all the components of the President's child care initiative, including: subsidies for low income working families; child care tax credits for other working families; tax credits for business investments in child care; challenge grants to states and communities to improve**

the quality of child care and early childhood services; grants to schools and communities for after-school care; scholarships for child care works; funding for standards enforcement; and research and evaluation activities.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 09:19:35.00

SUBJECT:

TO: CYNTHIA B (Pager) #DAILARD (CYNTHIA B (Pager) #DAILARD [UNKNOWN])
READ:UNKNOWN

TO: DONNA L (Pager) #GEISBERT (DONNA L (Pager) #GEISBERT [UNKNOWN])
READ:UNKNOWN

TO: JOHN (Pager) #SCHNUR (JOHN (Pager) #SCHNUR [UNKNOWN])
READ:UNKNOWN

TO: JERRY (Pager) #MANDE (JERRY (Pager) #MANDE [UNKNOWN])
READ:UNKNOWN

TO: PAUL J. (Pager) #WEINSTEIN (PAUL J. (Pager) #WEINSTEIN [UNKNOWN])
READ:UNKNOWN

TO: GLEN (Pager) #WEINER (GLEN (Pager) #WEINER [UNKNOWN])
READ:UNKNOWN

TO: SANDY (Pager) #THURMAN (SANDY (Pager) #THURMAN [UNKNOWN])
READ:UNKNOWN

TO: NEERA (Pager) #TANDEN (NEERA (Pager) #TANDEN [UNKNOWN])
READ:UNKNOWN

TO: MARY (Pager) #SMITH (MARY (Pager) #SMITH [UNKNOWN])
READ:UNKNOWN

TO: TODD (Pager) #SUMMERS (TODD (Pager) #SUMMERS [UNKNOWN])
READ:UNKNOWN

TO: LEANNE (Pager) #SHIMABUKURO (LEANNE (Pager) #SHIMABUKURO [UNKNOWN])
READ:UNKNOWN

TO: CHRISTA (Pager) #ROBINSON (CHRISTA (Pager) #ROBINSON [UNKNOWN])
READ:UNKNOWN

TO: CYNTHIA (Pager) #RICE (CYNTHIA (Pager) #RICE [UNKNOWN])
READ:UNKNOWN

TO: NICOLE (Pager) #RABNER (NICOLE (Pager) #RABNER [UNKNOWN])
READ:UNKNOWN

TO: CATHY R. (Pager) #MAYS (CATHY R. (Pager) #MAYS [UNKNOWN])
READ:UNKNOWN

TO: TANYA (Pager) #MARTIN (TANYA (Pager) #MARTIN [UNKNOWN])
READ:UNKNOWN

TO: JEANNE (Pager) #LAMBREW (JEANNE (Pager) #LAMBREW [UNKNOWN])
READ:UNKNOWN

TO: JENNIFER (Pager) #KLEIN (JENNIFER (Pager) #KLEIN [UNKNOWN])

READ:UNKNOWN

TO: BILL (Pager) #KINCAID (BILL (Pager) #KINCAID [UNKNOWN])
READ:UNKNOWN

TO: ANDREA (Pager) #KANE (ANDREA (Pager) #KANE [UNKNOWN])
READ:UNKNOWN

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])
READ:UNKNOWN

TO: CHRISTOPHER (Pager) #JENNINGS (CHRISTOPHER (Pager) #JENNINGS [UNKNOWN])
READ:UNKNOWN

TO: DIANA (Pager) #FORTUNA (DIANA (Pager) #FORTUNA [UNKNOWN])
READ:UNKNOWN

TO: TOM (Pager) #FREEDMAN (TOM (Pager) #FREEDMAN [UNKNOWN])
READ:UNKNOWN

TO: JULIE (Pager) #FERNANDES (JULIE (Pager) #FERNANDES [UNKNOWN])
READ:UNKNOWN

TO: MICHAEL (Pager) #COHEN (MICHAEL (Pager) #COHEN [UNKNOWN])
READ:UNKNOWN

TO: JOSE (Pager) #CERDA (JOSE (Pager) #CERDA [UNKNOWN])
READ:UNKNOWN

TO: ROBIN (Pager) #BACHMAN (ROBIN (Pager) #BACHMAN [UNKNOWN])
READ:UNKNOWN

TO: SARAH (Pager) #BIANCHI (SARAH (Pager) #BIANCHI [UNKNOWN])
READ:UNKNOWN

TEXT:
DPC Staff Mtg. is cancelled!!!!!! -Laura 65565

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 11:48:07.00

SUBJECT: Gorton amendment

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Here are some talking points on why we oppose the Gorton amendment (which is still in the McCain bill) and also a letter that either the President or Interior can send out. Could you please review? Interior has been calling saying that we should send a letter. Also Lynn Cutler has been getting calls from various tribes. ===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D18]MAIL46387483Z.126 to ASCII,
The following is a HEX DUMP:

FF57504370040000010A02010000000205000000DF1000000002000088FE199AD845D4EEB2B2D6
C352859BA8DAFE3FD5896E4E34B68AF0D6EBD08659D67B9FB8501311C63B02BCF7E00A7D02CA5A

DRAFT

THE GORTON AMENDMENT

Q: What does the Gorton Amendment do?

A: The Gorton Amendment modifies Section 604 of the McCain bill to require Indian tribes and tribal corporations to collect state taxes on sales of tobacco products to non-members of the tribe or corporation and then remit those taxes to the federal government, which then must return those funds to the states.

Q: Can the states tax sales of tobacco products on Indian lands?

A: Since the formation of the Union, the United State has recognized Indian tribes as "domestic dependent nations" that exercise governmental authority over their members and their territory. The Constitution vests the federal government with authority over relations with Indian tribes. Because Indian tribes and Indians are governed by tribal and federal law, states have no authority to tax Indian tribes, Indians, or Indian property on Indian lands in the absence of express congressional authorization. States may tax non-Indians who buy pre-packaged goods that have been brought onto Indian lands for resale, but may not tax sales to non-Indians when the value of the goods are generated on the reservation.

Q: How does the Gorton Amendment interfere with tribal sovereignty?

A: Where Indians manufacture tobacco products on their own lands, state taxes on reservation-generated tobacco products would normally be pre-empted under the tribal self-determination doctrine; the Gorton Amendment interferes with this fundamental principle. Even with respect to state taxes collected on sales of pre-packaged goods to non-Indians, the Gorton Amendment violates traditional principles of comity and federalism, which demand that state-tribal relations be developed based on dialogue and cooperation between states and tribes. The Gorton Amendment, by imposing a federally mandated tax collection scheme to replace the cooperative agreements currently used by states and Indian tribes, violates these principles. Some of these state-tribal agreements are authorized pursuant to state statute.

Q: Why is the Gorton Amendment burdensome?

A: The Gorton amendment establishes a complex scheme to address a problem that states and Indian tribes have already resolved. Dual tribal and state taxation of prepackaged goods sold to non-Indians is possible, but many states have agreed that it is not preferable. To that end, eighteen states have entered into state-tribal tax agreement with numerous Indian tribes. These agreements ensure that a single tax is imposed, provide a stable tax framework, and ease tax administration significantly. There appear to be over

200 existing state-tribal tax agreements in these 18 states.

By unilaterally requiring Indian tribes to collect the state taxes and also adding the federal government as an intermediary, the Gorton Amendment enormously increases the burden of collecting taxes, without any benefit to the states or the Indian tribes. Federal accounting, oversight, and administrative costs will increase to implement this new legislative scheme. However, nothing more than anecdotal evidence has been presented to support this overreaching legislative mandate.

Q: Has the administration taken this position previously?

A: Yes, most recently before the Senate Committee on Indian Affairs in a hearing on tribal sovereign immunity on March 11, 1998. In the administration's view, agreements are the best mechanisms for mutually satisfactory resolution of tax collection issues between states and tribes. Even if states and tribes are unable to reach agreement, however, states may impose their taxes at the wholesale level to collect taxes on goods that are destined for sale to non-Indians. Moreover, reliance on agreements preserves tribal governmental authority and sovereignty.

Q: What should the McCain bill do about Indian tribes and state taxes?

A: As originally drafted, the McCain bill did not disturb the current system, which has worked for both the tribes and the states. It permitted the states and the tribes to work together to collect the state's revenues and to share revenues if they so desire. Moreover, it vindicated the federal government's trust responsibility to Indian tribes and recognized their status as domestic dependent nations.

May 18, 1998

Dear Senator McCain,

I support your efforts in helping to pass comprehensive tobacco legislation which dramatically reduces youth smoking and to remove Section 604 which requires Indian tribes to collect state taxes on sales of tobacco products.

Since the formation of the Union, the United State has recognized Indian tribes as "domestic dependent nations" that exercise governmental authority over their members and their territory. Where Indians manufacture tobacco products on their own lands, state taxes on reservation-generated tobacco products would normally be pre-empted under the tribal self-determination doctrine; Section 604, as currently drafted, interferes with this fundamental principle. Even with respect to state taxes collected on sales of pre-packaged goods to non-Indians, Section 604 violates traditional principles of comity and federalism, which demand that state-tribal relations be developed based on dialogue and cooperation between states and tribes.

Section 604 establishes a complex scheme to address a problem that many states and Indian tribes have already resolved. At least eighteen states have entered into state-tribal tax agreement with numerous Indian tribes. These agreements ensure that a single tax is imposed, provide a stable tax framework, and ease tax administration significantly. By unilaterally requiring Indian tribes to collect the state taxes and also adding the federal government as an intermediary, Section 604 enormously increases the burden of collecting taxes, without any benefit to the states or the Indian tribes. Federal accounting, oversight, and administrative costs will increase to implement this new legislative scheme.

Agreements are the best mechanisms for mutually satisfactory resolution of tax collection issues between states and tribes. Even if states and tribes are unable to reach agreement, however, states may impose their taxes at the wholesale level to collect taxes on goods that are destined for sale to non-Indians.

As originally drafted, the McCain bill did not disturb the current system, which has worked for both the tribes and the states. It permitted the states and the tribes to work together to collect the state's revenues and to share revenues if they so desire. Moreover, it vindicated the federal government's trust responsibility to Indian tribes and recognized their status as domestic dependent nations.

I hope that you will continue to work to remove Section 604, as currently drafted, from the legislation. Thank you for your important work in this area.

Sincerely,

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 18:44:02.00

SUBJECT: tomorrow's crime meeting agenda

TO: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Karen A. Popp (CN=Karen A. Popp/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D26]MAIL49466783F.126 to ASCII,
The following is a HEX DUMP:

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16849ADE5136BDD29D02FDDC921BCEF716DE1684C108FE42DBF631EF2F83F84686D15F1A4D6764

Crime Meeting Agenda May 20, 1998

Specific Follow Up

- * COPS Event -- May 29th
- * Meth announcement
 - DUF data
 - COPS grants
- * Curios report
- * Police group outreach
- * Durbin CAP (Child Access) bill

Legislative Update

- * Republican drug strategy update
 - Drug-Free Borders
- * Assaults

Other Potential Events

- * Signing ceremony for police bills
- * Drug courts speech June 4th -- possible release of CASA Report, drug court grants

Miscellaneous/ Pending Items

- * Gang ordinance brief
- * Any other pending events/releases -- DOJ Reports

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 12:17:48.00

SUBJECT: Wednesday

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

We just told HHS that we did not think we'd need Shalala to brief after tomorrow's event. I'm guessing we just want POTUS on camera and that Mike will be able to handle any questions regarding our position on the legislation. Shalala (and/or you guys) would just end up doing the sausage-making on the Hill, and Mike should probably do that. That's my sense right now, anyway. Any thoughts?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 12:58:59.00

SUBJECT: tobacco

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Gov Patton is seeking a letter from the President in support of LEAF. Sen McConnell has apparently now endorsed Lugar and Patton wants our support for his sticking with LEAF in the form of a letter to him emphasizing our position. Is this do-able?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sonyia Matthews (CN=Sonyia Matthews/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 09:50:33.00

SUBJECT: Bankruptcy Meeting today

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Roger S. Ballentine (CN=Roger S. Ballentine/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Alice Veenstra (CN=Alice Veenstra/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Nicole R. Rabner (CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Christopher D. Carroll (CN=Christopher D. Carroll/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

TO: Rebecca M. Blank (CN=Rebecca M. Blank/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Joseph J. Minarik (CN=Joseph J. Minarik/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Ophelia D. West (CN=Ophelia D. West/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Miriam H. Vogel (CN=Miriam H. Vogel/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Marjorie Tarmey (CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Sorry for the short notice, Sarah Rosen needs your attendance today at a 12:30 bankruptcy meeting taking place in room 239. Please RSVP your attendance by e-mail or by dialing ext. 65351. Thank you

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:19-MAY-1998 16:48:37.00

SUBJECT:

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Can you direct me to who is handling the "assisted suicide" issue? Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jose Cerda III (CN=Jose Cerda III/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:19-MAY-1998 16:31:02.00

SUBJECT: Drug Amendments

TO: Leanne A. Shimabukuro (CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

BR:

We finally got our hands on a 2-page summary of the Craig-Coverdell drug proposal. I'm sending it over right now. It think it pretty much touches on all of the things that the R's are likely to touch on. No numbers are included, but the transcript I sent over earlier says they estimate it costing about \$3 billion. Also, it's not clear that they know where they're going to get the funds from. In the transcript, they say some of this could come out of the existing \$16 billion drug budget -- which I don't think is true -- and Chris from Biden's office expressed that they may just tack on authorizations -- which I'm not sure makes sense.

We'll keep trying to dig up the actual language for these proposals and run some numbers on what some of these things may cost. Without speaking to the important issue of where the money comes from to fund these proposals, we should be able to support most of them.

Jose'

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 10:20:30.00

SUBJECT: Education Strategy Meeting

TO: Vicky_Stroud (Vicky_Stroud @ ed.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Barbara Chow (CN=Barbara Chow/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Sandra Yamin (CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Jessica L. Gibson (CN=Jessica L. Gibson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Peter A. Weissman (CN=Peter A. Weissman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

We will be having the Education Strategy Meeting tomorrow, Thursday, May 21, at 5:15 p.m. in Bruce Reed's office.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 16:11:31.00

SUBJECT: USA TODAY tomorrow

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

We need some more guidance for the President's press interview tomorrow. The press office says they feel prepared, but they want some guidance on the following 5 questions. They need these by COB tonight whenever that may be.

----- Forwarded by Laura Emmett/WHO/EOP on 05/20/98 04:07 PM -----

Amy W. Tobe
05/20/98 03:22:48 PM
Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: USA TODAY tomorrow

Here an outline of what Susan Page is looking at for her interview with the President tomorrow. Please provide guidance as it pertains to your expertise.

She wants to write the best & newsiest story yet on Tobacco -- we have an opportunity here to deliver great message and advance the story in some way since this will reach over 3.3 million readers across the country. Some of her questions include:

Q: The tobacco bill has encountered problems along the way. Why is that?

Who is to blame?

Do you think the tobacco industry's campaign is working?

Q: The GOP is trying to kill this bill, but what about the voices on the left saying it doesn't go far enough?

On Another Issue:

Q: Will you now reconsider going to China?

Q: If you go, will you raise this with the Chinese gov't?

Q: What do you think about Gingrich's suggestion of a Select Cmt.?

Message Sent

To:

Darby E. Stott/WHO/EOP
Michelle Crisci/WHO/EOP
Douglas B. Sosnik/WHO/EOP
Michael D. McCurry/WHO/EOP
Barry J. Toiv/WHO/EOP
Joseph P. Lockhart/WHO/EOP
Ann F. Lewis/WHO/EOP
Laura Emmett/WHO/EOP
Bruce N. Reed/OPD/EOP
James E. Kennedy/WHO/EOP
CROWLEY_P @ A1 @ CD @ VAXGTWY
Lawrence J. Stein/WHO/EOP
Janet Murguia/WHO/EOP
Paul E. Begala/WHO/EOP
Beverly J. Barnes/WHO/EOP
Lanny A. Breuer/WHO/EOP
Brian D. Smith/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 14:19:40.00

SUBJECT: We will have new data POTUS could talk about tomorrow

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

Melissa has arranged for the 5:00 pm embargo on the MMWR to NOT apply to the tobacco article. Thus, it will be available to reporters starting at 7:00 am tomorrow morning. She gave me a one page fact sheet so long as we promised we would not leak it ahead of that deadline. Dailard is looking at the materials now (and working on possible Q&As) but it looks like info we could use --

Only 86 percent of teen daily smokers who try to quit actually do so.

Young people underestimate the addictiveness of nicotine -- 75 percent of daily smokers who expect to quit are still smoking five years later.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 00:31:08.00

SUBJECT: Lugar vs. Ford budget chart

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Here's the easy to read version of OMB's charts.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D82]MAIL48572093Q.126 to ASCII,
The following is a HEX DUMP:

FF57504359130000010A02010000000205000000782D000000020000F0A739799BC1D90E237992
63733E927E8900C6220D13CF6584922D13834F7D3AE98E8D78923A3221CD85868472C00342DC0C

Lugar Bill Cuts Health Spending by 69 Percent

		NIH and Other Research	Public Health, including Cessation, Prevention, Education, and Enforcement
FY 1999			
	Ford	\$3.4 billion	\$3.4 billion
	Lugar	\$1.6 billion	\$1.6 billion
	Percent Reduction	- 53%	- 53%
FY 2000			
	Ford	\$2.4 billion	\$2.4 billion
	Lugar	\$0.3 billion	\$0.3 billion
	Percent Reduction	- 88%	- 88%
FY 2001			
	Ford	\$2.8 billion	\$2.8 billion
	Lugar	\$0.8 billion	\$0.8 billion
	Percent Reduction	- 71%	- 71%
Total, FY 1999-2001			
	Ford	\$8.6 billion	\$8.6 billion
	Lugar	\$2.7 billion	\$2.7 billion
	Percent Reduction	- 69%	- 69%

	FY99	FY00	FY01	FY02	FY03	FY99-03	FY99-08	FY99-23
Ford	2.5	1.8	2.0	2.0	2.2	10.5	22.8	28.5
Lugar	6.0	6.0	6.0	0.0	0.0	18.0	18.0	18.0

Calculations assume the funding for states remains \$15.6 billion over three years under either farm proposal.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 11:38:57.00

SUBJECT: tobacco letter

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Carole A. Parmelee (CN=Carole A. Parmelee/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

the version I saw last night had a reference to the amendments (offered by Sen. Gorton) that are very problematic for Indian country. I have had many calls on this--it is Gorton's way of attacking sovereignty. Some of the tribes are trying to work on a price parity compromise, but it is not good for this President to appear in any way condoning what the Gorton taxation amendment provides. I would hope that the line that was in the letter last night could be restored.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 11:08:31.00

SUBJECT: Paper on Tobacco Issues

TO: guzy.gary (guzy.gary @ epamail.epa.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: sheketoff-emily (sheketoff-emily @ dol.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: JONATHAN.GRUBER (JONATHAN.GRUBER @ MS01.DO.treas.sprint.com @ inet [UNKNOWN])
READ:UNKNOWN

TO: johara (johara @ osophs.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Anne E. McGuire (CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ron E Blankenship (CN=Ron E Blankenship/O=EOP [UNKNOWN])
READ:UNKNOWN

TO: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Peter G. Jacoby (CN=Peter G. Jacoby/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Charles W. Burson (CN=Charles W. Burson/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: William H. White Jr. (CN=William H. White Jr./OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: kburkel (kburkel @ os.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Glen M. Weiner (CN=Glen M. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barbara D. Woolley (CN=Barbara D. Woolley/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Richard J. Turman (CN=Richard J. Turman/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Toby Donenfeld (CN=Toby Donenfeld/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Here is our package of paper on the McCain manager's amendment, prepared primarily for Hill staff. Feel free to distribute liberally among our friends. ===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D35]MAIL40305493V.126 to ASCII,
The following is a HEX DUMP:

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E720014147A7C87A28D5D79D25322A4A3A97D14259CB23F6E4A07DE00D49CEE11A7CC8F4E260BC

The Commerce Committee Manager's Package will Dramatically Reduce Youth Smoking

The Commerce Committee manager's package contains significant improvements over the underlying bill which will help to reduce youth smoking and to protect the public health. With these improvements, the bill meets each of the President's principles for comprehensive tobacco legislation. The improvements include:

Tougher Lookback Surcharges:

- The manager's amendment contains an uncapped company-specific surcharge of \$1,000 per youth smoker for every youth smoker by which the company misses its youth smoking targets. This surcharge represents twice the lifetime profits that a company earns from any youth smoker. The companies will not be able to pass these company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

At the levels specified in the manager's amendment, company specific surcharges will reduce profits by \$640 million for every 10 points. The Treasury Department and OMB estimate that a 20-point miss in 2003 would represent one-third of total industry profits. By affecting their bottom line in this dramatic fashion, the company-specific surcharges in the manager's amendment will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children.

- The manager's package also raises the cap on industry-wide lookback surcharges from \$3.5 billion per year to \$4 billion per year. The Treasury Department and OMB estimate that if targets are not met and the full \$4 billion industry-wide surcharge is levied, the price of a pack of cigarettes will rise by about 35 cents.

Enhanced Environmental Tobacco Smoke Protections:

- The manager's package provides that a state can opt out of the national environmental tobacco smoke standard only if the state is able to demonstrate to OSHA that it has an ETS standard at least as protective of the public's health.

Spending:

- The manager's package contains key provisions to fund important public health programs, health research, and assistance for farmers. It also provides funding to states to be used for a variety of programs, including child care.
- Approximately 22 percent of expected revenues from the legislation will go to fund research at NIH, CDC, and AHCPR. Another 22 percent will fund smoking cessation programs, prevention and education programs, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling

and crack down on retailers who sell tobacco products to children. All proceeds from lookback surcharges will go to prevention and education programs.

- Forty percent of expected revenues will go to states, with half unrestricted and half to be used for designated purposes -- the Child Care and Development Block Grant, the Safe and Drug-Free Schools Program, Eisenhower Grants, child welfare programs (Title IV-B), the Maternal and Child Health Bureau's Title V Program, Substance Abuse grant programs, and a limited match for the Children's Health Insurance Program. This entire list is directed at the health and well-being of children and families most in need of assistance.
- The remainder of expected revenues from the legislation will go to protect tobacco farmers and to provide assistance to their communities, through the mechanisms of the LEAF Act.
- Excess revenues will go to the Medicare program.

Improved Liability Provisions:

- The manager's package ensures that the bill's liability provisions (i.e., the settlement of state lawsuits and the annual damages cap) apply only to companies that agree to accept sweeping advertising restrictions and to comply with important provisions of the law (i.e., lookbacks and annual payments), even if those provisions are invalidated by the courts.
- The manager's package raises the annual liability cap from \$6.5 to \$8 billion (indexed for inflation), the same amount as the cap in the Chafee-Harkin bill. It also removes liability protections for parent companies and affiliates; ensures that the industry's attorneys will be subject to suit as under current law; and allows plaintiffs claiming injury from disease to use evidence of addiction in their lawsuits.
- The manager's package strengthens the provisions in the bill that link liability protections to the achievement of youth smoking targets. Under the amended legislation, a company that misses its targets by 20 percent or more has the burden of showing both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

Elimination of Antitrust Exemption:

- The manager's package eliminates the blanket antitrust exemption contained in the underlying bill, which was not necessary to achieve the goals of the legislation and could have had anticompetitive effects.

Company-Specific Youth Lookback Surcharge will Change Industry Behavior

The uncapped company-by-company surcharge of \$1,000 per youth smoker contained in the Commerce Committee manager's package will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children. Industrywide surcharges are passed directly to price, and are designed to drive up the price to discourage teens from smoking.

Company-specific surcharges are designed not to drive up the price of cigarettes, but to come straight out of the companies' bottom line if they sell to children. Companies cannot pass company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

- Without a company-specific surcharge, any company can still make a profit by selling to kids. The \$1,000 per youth smoker surcharge contained in the manager's amendment will force a company to surrender twice the lifetime profits it makes from addicting a teen in the first place.
- This penalty is uncapped, and will take a large bite out of after-tax profits. The total after-tax profits of the domestic tobacco industry are \$5 billion (\$7.5 billion pre-tax). The Department of Treasury estimates that after-tax profits will drop to about \$3.4 billion by 2003 (in constant dollars) under the McCain bill. The company-specific surcharges reduce the companies profits by about \$640 million for every 10 points. A 30-point miss would reduce profits by over \$1.9 billion, which is more than half of projected profits. A 60-point miss would reduce profits by \$3.8 billion, which amounts to more than projected total profits.
- These penalties are large enough to prevent companies from being able to pass them onto price. Assume, for example, that the total volume of cigarettes sold in 2003 is 15 million packs (about halfway between CBO and OMB estimates). Because Philip Morris's market share is 50%, or 7.5 million packs, a 30-point miss would cost the company about \$1.2 billion. If Philip Morris passed that amount along to price, it would have to raise the price of Marlboros by 16 cents a pack, or \$1.60 a carton. A similar price differential between Philip Morris and RJR cigarettes in 1993 cost RJR so much of its adult market share that the company has never recovered.
- In addition, any company that misses its targets by more than 20% stands a significant chance of losing its liability protections altogether under the manager's amendment. As amended, the bill provides that a company that misses its targets by this amount has the burden of showing both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

Stronger Anti-Smuggling Provisions:

- The manager's amendment will strengthen the anti-smuggling provisions in the bill, so as to prevent the emergence of contraband markets. The bill, as amended, will create a "closed distribution system" for tobacco products so that only licensed entities can sell or buy products; it will provide states with resources to establish or improve retail licensing systems; it will require manufacturers to mark packages for export to prevent their diversion; and it will establish and enforce strong penalties for violations. A very similar system has worked to control smuggling of alcoholic beverages for over sixty years.

**The Commerce Committee's Manager's Package
Funds Critical Public Health, Health Research, Farmers, and State Programs**

The Commerce Committee's manager's package funds critical funding for public health, health research, farmers and farming communities, and the states, including significant funds for child care.

Public Health Programs: 22 percent of funds (about \$14 billion/5 years)

The bill funds critical public health programs, including tobacco prevention and education programs, cessation programs, counter-advertising, Indian health services, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling and crack down on retailers who sell tobacco products to children.

Health Research Programs: 22 percent of funds (about \$14 billion/5 years)

The bill provides 22 percent of funds for research at the National Institutes of Health, the National Science Foundation, the Centers for Disease Control, and the Agency for Health Care Policy and Research. The bill would also fund a demonstration to permit Medicare beneficiaries to participate in certain federally sponsored cancer clinical trials.

Farmers and Communities: 16 percent of funds (about \$10 billion/5 years)

The bill provides 16 percent of funds to assist the transition of both flue-cured and burley tobacco growers and their communities. The bill contains \$28.5 billion for tobacco farmers and their communities over 25 years, including payments for lost tobacco quota; payments for sale of quotas; payments for community economic development block grants; a worker transition program; and higher education assistance programs.

Grants to States: 40 percent of funds (about \$26 billion/5 years)

Recognizing the important role states have played in enabling this legislation, the manager's amendment provides that 40 percent of funds be transferred to the states, \$196.5 billion over 25 years, with half unrestricted and half to be used for designated programs for the health and well-being of children and families most in need:

- Child Care and Development Block Grant
- Maternal and Child Health Block Grant
- Child welfare (Title IV-B)
- Substance Abuse and Mental Health Services Administration grants
- Safe and Drug-Free Schools
- Professional Development (Eisenhower) grants
- Match for the Children's Health Insurance Program (limited to 6 percent of restricted funds)

If states were to spend their restricted funding in proportion to current federal expenditures, and use 6% for the Children's Health Insurance Program, at least 40% of the funds, or over \$5 billion over five years, would go to child care.

Medicare: Additional Revenues

In the event that the bill generates more receipts than estimated, the balance of funds will be directed to the Medicare HI Trust Fund.

**The Manager's Amendment Narrows
the Scope of Liability Protections
for the Tobacco Industry**

Senator McCain's Manager's Amendment contains key improvements in the bill's civil liability provisions. As amended, the bill establishes a higher, \$8-billion-per-year cap on damages, which will be available only to tobacco companies that finally change the way they do business by agreeing to restrict advertising to youth and abide by the terms of the legislation rather than tying it up in court. The new version of the bill also removes special protections for parent companies of tobacco manufacturers.

The Manager's Amendment significantly improves on the bill reported out of the Commerce Committee by:

- Ensuring that the bill's liability provisions -- *i.e.*, the settlement of state lawsuits and the annual damages cap -- apply only to companies that agree to accept sweeping advertising restrictions and to comply with the key terms of the law, even if those provisions are struck down;
- Raising the annual liability cap from \$6.5 billion to \$8 billion (the same amount as in the Chafee-Harkin-Graham bill), with all damage judgments to be paid by the industry;
- Strengthening the provisions in the bill that link liability protections to the achievement of youth smoking targets, by removing liability protections from a company that misses its targets by 20 percent or more unless it proves that it used best efforts to reduce youth smoking;
- Permitting suits against parent companies and affiliates of tobacco manufacturers; as well as their attorneys;
- Ensuring that individuals with tobacco-related disease can use evidence of their addiction in suits against tobacco companies; and
- Ensuring that tobacco companies cannot escape their obligations by making fraudulent transfers or declaring bankruptcy.

Moreover, the Manager's Package retains important features of the bill reported out of Committee:

- The bill contains no limits on class action lawsuits and does not limit the amount that anyone can recover from a tobacco company; and
- The bill assists plaintiffs who have minimal resources in suing big tobacco companies by recognizing two well established facts -- that nicotine is addictive, and that the use of tobacco causes a wide array of diseases.

The Commerce Committee Manager's Package Contains Tough Anti-Smuggling Provisions

The Commerce Committee manager's package creates a strong licensing and enforcement system that will minimize smuggling by creating a closed distribution system for tobacco products, labeling all products for export, and imposing tough penalties on manufacturers and other firms involved in smuggling.

An Effective Licensing System is the Key to a Closed Distribution System: To prevent black market activity, the manager's package regulates tobacco products in a manner similar to the way the federal government has regulated alcoholic beverages for over 60 years.

Under this closed distribution system, only manufacturers, wholesalers, exporters, importers, and distributors that hold a federal license would be allowed to engage in those businesses. Licenses would be issued based on certain specified criteria and could be revoked or suspended for certain specified violations. Those conducting business without a permit would be subject to civil monetary penalties of up to \$10,000 per offense, a prison term of up to five years, and property forfeiture. Tobacco companies implicated in smuggling would lose their liability protections. Licensed entities would be authorized to sell tobacco products only to other licensed entities. Licensing of retailers would be done by the states.

Additionally, all tobacco product packages would be marked with a serial number to facilitate tracking, and all exported packages will be labeled FOR EXPORT FROM THE UNITED STATES to prevent them from being smuggled back into the U.S. and sold illegally.

A Closed Distribution System will Prevent Black Market Activity: A closed distribution system will ensure that products moving outside the legal channels of distribution can be easily earmarked and targeted for prosecution. This system would drastically limit smugglers' ability to enter products into a legitimate distribution channel. Potential black marketeers would not be able to move products through legitimate wholesalers or distributors. Nor would they be able to sell products to retail consumers at local convenience stores or other licensed retail outlets. Instead, without a way to place contraband in the market legally, smugglers would have to sell cigarettes outside channels of legitimate distribution. This would be very risky and criminal provisions and penalties would act as a significant deterrent to persons contemplating the unlawful diversion of tobacco products.

Funding for Enforcement: The manager's amendment authorizes funding for anti-smuggling enforcement as part of the public health spending account and enables the Secretary of the Treasury to collect fees to cover enforcement costs.

Comprehensive Tobacco Legislation will Not Cause Bankruptcy

Claims by the tobacco companies that the McCain bill will drive them into bankruptcy are not convincing for two key reasons. First, the legislation is designed to facilitate the pass-through of manufacturer payments to the prices of tobacco products, minimizing the impacts on the profits of the manufacturers themselves. Second, the industry has a significant cash flow and net assets to absorb the reduced volume as prices rise.

The Payments are Made by Tobacco Consumers, Not Tobacco Manufacturers: The primary goal of comprehensive tobacco legislation is to reduce youth tobacco use. The single most effective means of accomplishing this goal is to raise the price of tobacco products. As a result, the McCain legislation and other bills facilitate the pass-through of industry payments to the price of tobacco products. Mechanisms such as the allocation of industry payments by market share, and volume adjustments which reduce industry payments as volumes fall, will ensure that these payments are made by consumers, not manufacturers.

Payments Made by Tobacco Consumers Have Modest Impact on Manufacturer Profitability: The opinion of the objective experts at the Federal Trade Commission is that even large price increases will have little impact on profits. They find that the AG settlement, which raised prices by 62 cents, lowered the profitability of the tobacco industry by only about 15%. By their method, the \$1.10 price increase in the McCain bill would lower profitability by less than 25%.

The Tobacco Industry Has Substantial Financial Resources: The U.S. tobacco industry is large, well-diversified, and financially strong; the operating earnings for the top five tobacco manufacturers was \$23.6 billion. The industry leader, Philip Morris, is particularly well positioned to absorb decreases in their domestic tobacco earnings:

- Their stock is currently valued at almost \$100 billion.
- They had \$4.7 billion in domestic tobacco operating profits in 1997.
- They also had operating profits of \$4.6 billion on their international tobacco business.
- They are also a well diversified company that has operating profits of almost \$5 billion from other lines of business such as food and beer.

Even the most vulnerable in this industry, RJR Nabisco, has substantial financial resources:

- For 1997, RJR Nabisco's domestic tobacco business had operating profits of \$1.5 billion
- The company also has a rapidly growing international business which had \$670 million in operating profits in 1997.
- In addition to their tobacco businesses, RJR Nabisco has a substantial asset: its holdings of 80 percent of Nabisco, valued at almost \$10 billion dollars. This exceeds by \$5 billion the company's outstanding debt (excluding Nabisco).

**The McCain Bill's Price Increase will
Substantially Reduce Youth Smoking and
Prevent Premature Death**

The single most important step we can take to reduce youth smoking is to raise the price of a pack of cigarettes significantly. The Treasury Department analysis has found that the \$1.10 price increase in the McCain bill will, by itself, reduce youth smoking by 32% in 2003. Taken in conjunction with a conservative estimate of the impact of the other non-price provisions in the legislation, such as access and marketing restrictions, the overall impact is an average 42% reduction in youth smoking and premature deaths in every state.

Why do we need to significantly increase the price of cigarettes to prevent youth smoking?

According to the Treasury Department, the per-pack price increase in the McCain bill combined with advertising and access restrictions will result in an average reduction of 42 percent in underage teenage smoking in the year 2003. The percentage reductions in underage teen smoking and resulting premature deaths range from 33-36 percent in states like Washington, Massachusetts, and Michigan, to 47-51 percent in states like Wyoming, Tennessee, and Kentucky. Fifteen states will see reductions above 45 percent in 2003.

Over the next five years, the number of young people kept from smoking would be about 3 million young people for the country as a whole. Individual states will see reductions ranging from a few thousand in the smaller states up to about 248,000 in California and 205,000 in Texas. And about a million young people will be saved from premature death, including 56,000 in Florida, 57,000 in Ohio, 37,000 in Michigan, 83,000 in California, and 24,000 in Missouri.

Can one million lives really be saved over 5 years if Congress passes comprehensive legislation?

The Treasury Department's analysis shows that the McCain bill's price increase of \$1.10 per pack over five years coupled with sales and advertising restrictions will reduce underage smoking by nearly half, stopping 3 million teens from smoking and saving a million lives over the next five years. This analysis includes a conservative estimate that advertising and access provisions will reduce teen smoking by 15 percent. The rest of the reduction is attributable to the price increase.

Don't some experts say a price increase will have no effect on young people's behavior?

In fact, there is a substantial consensus in the economics literature that price increases have a dramatic impact on youth smoking. The model used by the Treasury Department reflects that consensus. Indeed, an independent analysis from the Congressional Budget Office recently reviewed the literature and concluded that youth smoking is very responsive to price.

Doesn't the international evidence contradict this contention?

Again, the clear consensus of the U.S. literature, as confirmed by CBO, is that youths are very responsive to price in their decisions to smoke. International comparisons are much less informative for the response of youths in the U.S. to price changes. If one insists on international comparisons, perhaps the best one to use is Canada, where a doubling of the price of cigarettes over the 1981 to 1991 period led to a 50% fall in youth smoking -- almost exactly what would have been predicted by Treasury's model.

Background on Youth Smoking Elasticity Estimates

The Treasury Model

- The Treasury model of youth smoking starts from a participation elasticity of -0.7 at the current price level of about \$1.95 — which means that a 10% increase in price above its current level would reduce the number of teen smokers by 7%.
- But this relationship only holds for very small price changes. For larger and larger price increases, the Treasury model predicts somewhat smaller proportional reductions in teen smoking. This reflects the fact that the teens most likely to respond to price signals are also the first to be discouraged from smoking by a price increase.
- Using this model, a \$1.10 increase in the real price of cigarettes is projected to reduce youth smoking by 32%. Since a \$1.10 increase in the real price in 2003 represents a 53% rise, the associated “average” elasticity is actually -0.6.¹

Previous Academic Studies

- A number of studies have attempted to estimate the responsiveness of youth smoking in the U.S. to price changes — the participation elasticity, or the change in the number of teen smokers due to price changes. This literature is based on comparisons of youth smoking rates in high and low tax states, and on changes in youth smoking within states as tax rates change.
- The CBO recently summarized this literature by stating that most of the evidence points to participation elasticities ranging from -0.50 to -0.75. **The Treasury estimate is in the range used by the CBO.**
- The results from this literature are shown in the Table below. Because differences in elasticity estimates may be less intuitive, the table shows — for each analysis of youth smoking — the projected reduction in teen smokers from a \$1.10 price increase (along with the Treasury estimates). This approach recognizes the fact that the Treasury model allows the elasticity to decline for larger price increases.

¹The semi-logarithmic demand function underlying this analysis is based on a standard model used to predict overall cigarette demand. Under it, every dime (\$0.10) increase in price reduces demand by the same *percent*, but since it is doing so from a smaller and smaller base at each step, the *absolute* reduction in teen smoking from each 10 cent increment declines slightly.

Study of Teen Smoking	Percent Reduction in Teen Smoking from \$1.10 Real Price Increase
Lewit, Coate, and Grossman (1981)	65%
DeCicca et al. (1998)	46%
Grossman et al. (1983)	41%
Chaloupka and Grossman (1996)	36%
CBO (midpoint)	34%
Treasury	32%
Evans and Huang (1997)	28%
Wasserman et al. (1991)	0-9%

- It is clear that the Treasury estimate is within the range of professional consensus on this question. Indeed, our estimates are more conservative than what most of the recent work in this area would suggest.
- One study which estimates a very different response from the remainder of the literature (Wasserman et al.) focuses exclusively on the late 1970s. During this period some surveys indicate that youth smoking fell precipitously without a price increase. We believe a more appropriate interpretation of the data during the late 1970s is that youth smoking was driven down by the broader dissemination of facts about smoking's dangers. According to one major survey, only half of 12th graders saw a great risk in smoking a pack or more of cigarettes a day in 1975 — the lowest level in the survey — but this number increased by nearly 25% between 1975 and 1980. Thus, rather than indicating that price does not affect youth smoking, we believe this data shows that other things can influence teens *in addition to price*.
- This same problem has led to a misinterpretation by some of the Evans and Huang paper. As Professor William Evans of Maryland pointed out in a recent letter to the Commerce Committee, the findings of his paper have been misquoted. *As noted in the Table above, the estimate that Evans stands behind is very close to the Administration estimate.* The confusion over his findings arises from the fact that his estimates which include data from the late 1970s show a smaller youth elasticity than his estimates which focus on the 1980s and 1990s. As Prof. Evans has noted, however, the data are less reliable for this earlier period; in addition, as noted above, this was an era when non-price factors were driving teen smoking down in the face of constant prices.

- Some have cited the recent study by DeCicca et al. as refuting the previous literature. In fact, this study finds higher estimates than the remainder of the literature when standard estimation techniques are used on their full sample of 8th-12th graders.²
- The study does find smaller effects when they choose the particular sample of 12th graders who weren't smoking in 8th grade, and try to model whether they start smoking. But there is no obvious explanation for this anomalous result; after all, removing from their model a population that is more addicted to cigarettes — individuals smoking from 8th to 12th grade — should *raise*, not *lower*, the elasticity estimate. It is troubling that dropping only 5% of their sample — the 5% of teens that are most addicted — reduces their estimate so dramatically.
- The likely explanation for this anomalous finding is problems with their empirical methodology. A recent re-analysis of their data by Professors Thomas Dee of Georgia Tech and William Evans of Maryland has found these results to be very sensitive to the particular sample restrictions imposed by the Cornell authors. As these experts note, “The results appear to be purely an artifact of the way that the authors constructed the analysis sample”. When a broader sample of observations is used, there is a very significant effect of taxes on youth smoking in their onset model - indeed, the results are quite comparable to the previous literature.
- This partly explains why the results of the Cornell study are so statistically imprecise. For example, in this particular model, they estimate that a \$1.10 price rise would reduce smoking onset by only 7%. However, given the level of statistical imprecision in their model, their findings would be equally consistent with a reduction in youth onset of 50% or more from this \$1.10 price increase — a range which encompasses the Treasury estimate, as well as their own estimates using a more straightforward methodology.
- One criticism levied by DeCicca et al. against the earlier literature is that it does not control for differences across states at a point in time that might determine youth smoking propensities; low tax states may have high smoking because of other regulatory or cultural factors. But their approach does not solve this problem; it still relies on point-in-time comparisons of smoking onset across states, making it difficult to separate out other differences across those states. Other studies address this problem much more directly. Chaloupka and Grossman (1996) do so by including a variety of state characteristics, including state anti-tobacco regulations. Evans and Huang (1997) address the problem even more directly by examining only the effect of within-state price changes on youth smoking. The fact that these estimates are so similar to that used by Treasury highlights the robustness of the conclusions, and indicates why the previous scientific consensus is not undermined by one set of anomalous results.

²The estimate cited in our Table is an average of their elasticities for 8th, 10th, and 12th graders.

International Evidence

- There has also been much recent attention paid to the fact that youth smoking remains high in other countries with much higher cigarette prices. In particular, Wall Street analyst Martin Feldman noted in his testimony of March 19th that youth smoking rose in the U.K. between 1988 and 1996, despite a 26% rise in the real price of cigarettes. The inference that is often drawn from this type of evidence is that higher prices won't deter youth smoking in the U.S.
- *But these international comparisons do not tell us much of anything about the response of youth in the U.S. to price changes.* The fact that youth smoking rates remain high in other countries reflects other cultural factors that influence youth to smoke, and is not a rejection of the fundamental relationship between price and demand. And increased smoking among youth in the U.K. between 1988 and 1996 may have more to do with other factors, such as a recession which raised youth unemployment rates by 25% over this period, than with changes in the price of cigarettes.
- In light of this concern, it is certainly preferable to rely on careful, controlled analysis of U.S. teen smoking than on this type of anecdotal international evidence.
- Nevertheless, if one is going to make international comparisons, then the most appropriate one would be to Canada, since it is more similar to and faces many of the same cultural influences as the U.S. The two economic studies which estimate the effects of cigarette prices on Canadian teens are both consistent with the findings in the U.S. literature — teens are not only responsive to price changes, but they are more responsive than adults. In fact, the Canadian youth elasticity estimates are higher than those for the U.S.
- Moreover, the pattern of youth smoking in Canada confirms the sensitivity of youth to price changes. In 1981, Canada had a youth smoking rate that was about 50% higher than that in the U.S. *Over the next decade, Canada raised its cigarette prices by over 100%, and teen smoking fell by almost half.* During this period there were no substantial change in teen smoking rates in the U.S., so by 1991 Canada's teen smoking rate was lower than ours. The implied Canadian elasticity of -0.42 is very close to the estimate that would be computed by the Treasury model (which allows the price responsiveness to fall as the magnitude of the price increase grows) for this large a price rise, which is an elasticity of -0.48.
- Teen smoking then rose again in Canada between 1991 and 1994, as Canada lowered dramatically its federal excise taxes. Of course, teen smoking was on the rise in the U.S. over this period as well, so it is not as easy to attribute all of the rise in Canada over this time period to price impacts. But the fact remains that *for the country most comparable to the U.S., teen smoking rates fell as prices rose, and rose as prices fell.*

S.1415 Protects Tobacco Farmers and

Advances Public Health

The Long-Term Economic Assistance for Farmer (LEAF) Act, sponsored by Senator Ford and Hollings and included in S.1415, contains critical protections for farmers and farming communities, to ensure that they are not adversely affected by comprehensive tobacco legislation.

Key provisions of the LEAF Act include:

- Necessary Funding: The bill is supported by a wide variety of farming groups because it contains sufficient funds for tobacco farmers and their communities, \$6 billion over the next three years and continued funding over the next 25 years, including resources for crucial community assistance to help farmers and farming communities adjust to the reduced demand for tobacco that would occur under the bill. The funds would go toward: payments for lost tobacco quota; payments for sale of quotas; payments for community economic development block grants; a worker transition program; and higher education assistance programs.
- Price Stabilization: The LEAF Act maintains the price stabilization program, which for decades has offered security to tobacco farmers at no net cost to the government. The tobacco program also places limits on the amount of tobacco grown in the United States, winning it support from key public health groups like the Campaign for Tobacco-Free Kids.
- Optional Buyout: The bill gives farmers the option to have their quotas bought out.

In contrast to the LEAF Act, the alternative legislation sponsored by Senator Lugar, entitled the Tobacco Transition Act, ends the quota program and fails to protect farmers adequately:

- Would Require Drastic Cuts in Health Spending: The proposal requires \$18 billion to be paid to farmers over a three-year period (FY1999 through 2002). If this new spending is added and state spending is kept the same, the bill's spending on health research and public health programs would have to be cut by 69 percent in those three years to make up the difference.
- Increases the Amount of Tobacco Grown: If there is no quota program, the amount of tobacco grown in the U.S. could increase dramatically. Maintenance of the tobacco quota program makes it possible to control the amount of tobacco grown in the United States. That is why public health groups, such as the Campaign for Tobacco-Free Kids, support maintaining a tobacco control program such as that advocated by Senators Ford and Hollings.
- Hurts Family Farms: Ending the quota program will destabilize prices and reduce margins, making it difficult for small farmers to survive. The bill will have a disproportionately adverse impact on minority farmers.

Lugar Bill Cuts Health Spending by 69 Percent

	NIH and Other Research	Public Health, including Cessation, Prevention, Education, and Enforcement
Total, FY 1999-2001		
Ford-Hollings	\$8.6 billion	\$8.6 billion
Lugar	\$2.7 billion	\$2.7 billion
Percent Reduction	- 69%	- 69%

	FY99	FY00	FY01	FY02	FY03	FY99-03
Ford-Hollings	2.5	1.8	2.0	2.0	2.2	10.5
Lugar	6.0	6.0	6.0	0.0	0.0	18.0

Based on estimates of revenue from S. 1415. Calculations assume the funding for states remains \$15.6 billion over three years under either farm proposal.

Affirming FDA Authority to Prevent Advertising and Marketing to Children

By reaffirming the full authority of the FDA to regulate tobacco products, S.1415 will prevent the tobacco industry from advertising and marketing to children, and establish tough access restrictions on tobacco products to stop sales to children.

Reaffirms 1996 Rule: Many of the measures to reduce teen smoking and protect the public health contained in S.1415 are in the 1996 FDA rule, but have not yet gone into effect because of pending litigation. The bill would put these provisions into effect immediately, protecting American children from the dangers of smoking. These provisions include: 1) banning outdoor advertising within 1000 feet of schools and playgrounds; 2) restricting advertising to black-and-white text only except in adult only facilities or publications with predominantly adult readership; 3) prohibiting the sale or giveaway of promotional products with brand names or logos; 4) prohibiting brand-name sponsorship of sporting or entertainment events; 5) setting the minimum age for purchase of tobacco products at 18 years and requiring age verification for anyone age under 27.

Creates a Separate Chapter for Regulating Tobacco: S.1415 creates a separate chapter in the Food, Drug and Cosmetic Act that gives the FDA explicit authority over access to and advertising of tobacco products, in order to ensure that FDA regulation of tobacco does not impinge on the regulation of other products.

Establishes New Standard for Regulating Tobacco: Instead of requiring tobacco products to meet the traditional safety and efficacy standard required of drugs and devices, S.1415 imposes a new standard which would require FDA regulation of tobacco products to be "appropriate for the protection of public health". This standard better meets the characteristics of tobacco products and allows the FDA to take the addiction of over 40 million Americans into account in making decisions about how to regulate these products.

Provides Necessary Flexibility: Full FDA authority to regulate tobacco products provides the agency with the flexibility it needs to protect the public health. However, any FDA effort to eliminate any particular class of tobacco products or eliminate nicotine cannot go into effect for two years in order to provide Congress with an opportunity to weigh in and vote on the measure.

Preserves State and Local Authority: S.1415 makes clear that except as expressly provided, states and localities may adopt and enforce tobacco product requirements that are in addition to, or more stringent than, requirements established under the Food, Drug and Cosmetic Act for tobacco products.

Provides Full Enforcement Authority: S.1415 provides for the same civil and criminal penalties that the agency may use in enforcing device law.

Summary of FDA Provisions in S.1415

- **Overview of FDA Provisions:** S. 1415 creates a separate chapter in the FDCA that explicitly gives FDA authority over access to and advertising of tobacco products. In nearly all respects this authority is comparable to the authority that FDA asserted in its 1996 rule, which asserted FDA jurisdiction over tobacco products on the ground that nicotine is an addictive drug and that cigarettes and smokeless tobacco products are combination drug/device products under the Federal Food, Drug and Cosmetic Act (FDCA). S.1415, however, created a separate chapter in order to respond to concerns raised by medical device companies that tobacco statutory interpretations and other policies issued under the device provisions of the FDCA could adversely affect those companies.

The most significant difference between S. 1415 and current law is the standard that products must meet in order to be marketed. Under current law the standard is “reasonable assurance of safety and effectiveness.” This standard obviously does not fit tobacco products because tobacco products are inherently unsafe. Therefore, S. 1414 adopts the standard of “appropriate for the protection of the public health,” which allows FDA to take into account the fact that over 40 million Americans are addicted to tobacco in making decisions about how to regulate the product.

- **1996 FDA Tobacco Rule in Effect:** S. 1415 provides that the tobacco regulation that FDA finalized in 1996 will remain in effect as though it were issued under the new law. Because the effective date of certain portions of the regulation has been delayed due to the industry’s judicial challenge to the rule, the bill would authorize FDA to establish effective dates for those provisions not yet in effect.
- **Access Restrictions:** S. 1415 authorizes FDA to establish restrictions on the sale or distribution of tobacco products. By affirming the 1996 rule’s access restrictions, the bill sets the minimum age of purchase at 18 years; requires age verification by photo ID for anyone 26 or younger; requires face-to-face sales (except for mail order sales); bans vending machines and self-service displays except in facilities where only adults are permitted; prohibits the sales of single cigarettes or “loosies”; bans free samples; and sets the minimum package size at 20 cigarettes. However, S. 1415 constrains FDA from prohibiting the sale of tobacco products in face-to-face transactions by specific categories of retail stores (such as a ban on sale of cigarettes by gas stations).
- **Advertising Restrictions and Warning Labels:** S. 1415 expressly authorizes FDA to establish restrictions related to the advertising and promotion of a tobacco product. By affirming the 1996 rule’s advertising restrictions, the bill bans outdoor advertising within 1000 feet of schools and public playgrounds; restricts advertising to black-and-white text only (publications, outdoor, point of purchase, direct mail, etc.), except in publications with a predominant adult readership or at adult only facilities; prohibits the sale or giveaways of products like caps or gym bags that carry cigarette or smokeless tobacco product brand names or logos; and prohibits brand-name sponsorship of sporting or

entertainment events, but permits it in the corporate name.

S. 1415 also requires stronger and larger warning labels than existing law on tobacco products (to replace the “Surgeon General’s warning”), and provides authority for FDA to modify the text, format, and type size requirements of these statements.

- **Submission of Health Information to the Secretary:** S. 1415 requires tobacco product manufacturers and importers, within 6 months of enactment (and annually thereafter), to submit to FDA specific categories of information relevant to FDA regulation of tobacco products.
- **Good Manufacturing Practice Requirements:** Authorizes FDA to issue regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, of a tobacco product conform to good manufacturing practice (GMPs). The bill also makes explicit that the Secretary has the authority to grant either temporary or permanent exemptions or variances from a GMP requirement.
- **Performance Standards:** S. 1415 confirms FDA’s authority to issue standards for tobacco for tobacco products (for example limiting the amount of certain ingredients) if FDA determines that a standard is appropriate for protection of the public health. This authority is the same as that for devices.
 - In issuing a performance standard, FDA must consider the health effects on tobacco users as well as potential users (such as children).
 - In order to give Congress a chance to vote on any standard that eliminates all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or requires the reduction of nicotine yields of a tobacco product to zero, such a standard will not go into effect until two years after the President has notified Congress of such a standard.
- **Testing and Reporting of Tobacco Smoke Constituents:** S. 1415 directs the Secretary to issue regulations to require the testing, reporting, and disclosure of tobacco smoke constituents (e.g., tar, nicotine and carbon monoxide) and ingredients that “the Secretary determines should be disclosed to the public in order to protect the public health.”
- **Reduced Risk Tobacco Products:** S. 1415 contains a provision that allows FDA to designate a product as a “reduced risk tobacco product” if it finds that “the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect the public health.”

- **Preservation of State and Local Authority:** S. 1415 makes clear that except as expressly provided, states and localities may adopt and enforce tobacco product requirements that are in addition to, or more stringent than, requirements established under FDCA for tobacco products.
 - State and local requirements related to access and advertising are not preempted by the FDCA.
 - State and local requirements related to performance standards, good manufacturing practices, and other similar FDCA requirements, are preempted, but States and localities may apply for exemptions pursuant to procedures that parallel provisions in device law.
 - S.1415 modifies the Federal Cigarette Labeling and Advertising Act in order to ensure that restrictions on advertising imposed under State laws are not preempted.
- **Full Enforcement Authority:** S. 1415 provides for the same civil and criminal penalties that the agency may use in enforcing the device law. The bill also provides that FDA may issue, after an administrative hearing before an Administrative Law Judge, a no tobacco sale order prohibiting the sale of tobacco products at a particular retail outlet based on repeated violations by that outlet. The bill also imposes the same requirements for the export of tobacco products that do not meet the requirements of the FDCA that apply to devices.