

NLWJC - KAGAN

EMAILS RECEIVED

ARMS - BOX 077 - FOLDER -004

[05/20/1998 - 05/21/1998]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Andrea Kane to Elena Kagan et al; RE: Feedback Needed re: Welfare to Work Success Story (2 pages)	05/20/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 WHO [Kagan]
 OA/Box Number: 500000

FOLDER TITLE:

[05/20/1998 - 05/21/1998]

2009-1006-F

db1573

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jocelyn Neis (CN=Jocelyn Neis/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 14:53:43.00

SUBJECT: PIR/WH Coordinating meeting

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

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

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

TO: Michele Cavataio (CN=Michele Cavataio/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TO: Tamara Monosoff (CN=Tamara Monosoff/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Lydia Sermons (CN=Lydia Sermons/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

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

TO: Michael J. Sorrell (CN=Michael J. Sorrell/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

READ:UNKNOWN

TO: Katherine D. Sheckells (CN=Katherine D. Sheckells/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

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

TO: Maurice Daniel (CN=Maurice Daniel/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Audrey M. Hutchinson (CN=Audrey M. Hutchinson/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Claire Gonzales (CN=Claire Gonzales/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TO: Amy W. Tobe (CN=Amy W. Tobe/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

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

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

TEXT:

Thursday's PIR meeting will be at 4pm in the Roosevelt Room. Below is the agenda for tomorrow's meeting.

I. PIR Items

- A. Proposal for June Meeting of the Advisory Board
- B. HHS/PIR sponsored event on Race and Health
- C. Carnegie Endowment/PIR sponsored event on the Immigrant Experience

II. Report from White House Offices

- A. Team Harmony
- B. PBS Presidential forum update

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 09:40:50.00

SUBJECT: Re: Revised POTUS letter -- Bruce is going to show to Erskine, Tom may cha

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

READ:UNKNOWN

CC: Cynthia Dailard (CN=Cynthia Dailard/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: Mary L. Smith (CN=Mary L. Smith/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: 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

TEXT:

I described the nature of the statement to Rob Mangus (Ford's COS) and he was fine -- as long as there is specific supportive language on LEAF.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 17:14:33.00

SUBJECT: Letter on Gorton amdne

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:

Is it possible for Interior to send out this letter to voice concerns about the Gorton amendment?===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D24]MAIL46831793E.126 to ASCII, The following is a HEX DUMP:

FF57504370040000010A02010000000205000000DF1000000002000088FE199AD845D4EEB2B2D6 C352859BA8DAFE3FD5896E4E34B68AF0D6EBD08659D67B9FB8501311C63B02BCF7E00A7D02CA5A

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

CREATION DATE/TIME:20-MAY-1998 10:59:12.00

SUBJECT:

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

TEXT:

Call Rich at 690-7627

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 19:42:53.00

SUBJECT: For Elena to review--Rahm wants to use at early morning gaggle

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:

Here is paper we produced on the MMWR data. I will walk over the hard copy of the CDC fact sheet and the Secretary Shalala's statement, which will be released from Atlanta at 7:00 am. ===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D26]MAIL48808793D.126 to ASCII,
The following is a HEX DUMP:

FF575043BA040000010A02010000000205000000CA1B0000000200005A29148C5720F1E5375397
B554B175C6DB6A79F1E39C51A1FA017567B340F97CEBE019E82DF1BE0260B1259886597B7D3429

[5/20 Draft]
Q&A
May 21, 1998

Q. What were the new teen smoking data released today?

A. Today, the Centers for Disease Control released new data on nicotine addiction and cigarette smoking patterns among teenagers. It confirmed that nicotine hooks our kids and creates an addiction that is extremely difficult to break, the same as it does with adults. Specifically, 86 percent of teens who smoke daily and try to quit are unsuccessful. Young people also underestimate the addictiveness of nicotine -- 75 percent of daily smokers who expect to quit are still smoking five years later. Obviously, this addiction may have very serious implications for their long-term health and threaten their very lives. Today's report "Cigarette Smoking Behavior and Nicotine Addiction Among Teens" in the Morbidity and Mortality Weekly Report just provides one more reason why the Senate needs to pass the McCain legislation in order to dramatically reduce youth smoking in this country.

Q. How many teens smoke in this country and at what rate?

A. Currently, 36.4 percent of high school students have smoked one or more days in the past month. Of adolescents who have ever tried smoking (70 percent), more than a third go on to become daily smokers during high school.

**New Statistics on Teen Smoking Provide More Evidence
Why the Senate Should Pass the McCain Tobacco Legislation**

May 21, 1998 -- DRAFT 5/20

New statistics released today by the Centers for Disease Control confirm that nicotine hooks American children and creates an addiction that is extremely difficult to break. The data show that 86 percent of teens who smoke daily and try to quit are unsuccessful. Young people also underestimate the addictiveness of nicotine -- 75 percent of daily smokers who expect to quit are still smoking five years later. For many young people, this addiction has very serious implications for their long-term health and threatens their very lives.

Every day, 3000 young people become regular smokers in this country, and 1000 will die prematurely as a result. Today's report provides just one more reason why the Senate needs to pass the McCain legislation this week in order to dramatically reduce youth smoking in this country. Yesterday, the President said he believes the McCain bill a good, strong bill that will make a real dent in teen smoking and he urged Congress should pass it without delay. In particular, he praised the significant improvements made to the new bill, including:

- Tough industry-wide and company-specific lookback surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;
- Protection for all Americans from the health hazards of secondhand smoke;
- No antitrust exemption for the tobacco industry;
- Strong licensing and anti-smuggling provisions to prevent the emergence of contraband markets and to prosecute violators;
- A dedicated fund to provide for a substantial increase in health research funding, a demonstration to test promising new cancer treatments, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and cessation, law enforcement efforts to prevent smuggling and crack down on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and
- The elimination of immunity for parent companies of tobacco manufacturers, an increase in the cap on legal damages to \$8 billion per year, and changes to ensure that the cap will be available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than challenging it in court.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Scott R. Palmer (CN=Scott R. Palmer/OU=PIR/O=EOP [PIR])

CREATION DATE/TIME:20-MAY-1998 18:25:27.00

SUBJECT: UC Admissions Numbers

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

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TO: Maria Echaveste (CN=Maria Echaveste/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:

According to figures released today by the University of California System, based on Statement of Intent to Register responses from admitted students, all UC campuses show slight increases in the percentage of underrepresented minority students (i.e., African American, Hispanic, and American Indian students) who accepted their offers of admission for Fall 1998. In other words, the concern that those minority students admitted to UC institutions would choose not to enroll because they would not feel welcome did not materialize.

However, the actual numbers of underrepresented minorities at the most selective UC campuses (e.g., Berkeley and UCLA) show significant declines from last year.

For example, the 1998 freshman class at Berkeley is predicted to include 14 American Indian students (down from 24 in 1997), 98 African American students (down from 260 in 1997), 185 Chicano students (down from 411 in 1997), and 79 Latino students (down from 81 in 1997). Meanwhile, Berkeley is expecting an increase in the number of Asian American freshman in 1998 to 1,527 (up from 1,478 in 1997) and in white students to 1,131 (up from 1,095 in 1997). In sum, the percentage of underrepresented minorities in the freshman class at Berkeley is expected to fall from 21.4% to 10.4%. I will prepare a more complete analysis shortly. Please let me know if you have any immediate questions.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 18:28:04.00

SUBJECT: H-1B update

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

READ:UNKNOWN

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

READ:UNKNOWN

TEXT:

Bruce/Elena:

The House Judiciary Committee today voted out the Smith bill, including the H-1B reforms that we like. No amendments were offered to weaken the reforms. We sent a letter endorsing the bill and strongly opposing a weakening of the reforms. Peter secured a "Dear Colleague" letter from Gephardt, Bonior and others saying the same.

Lofgren and Pease will offer a training amendment on the floor. This was determined by them to be the fastest way to get the amendment and keep the bill moving (bypassing other committees that might have jurisdiction over the training and application fee components).

The final vote was 23 to 4 (with Bryant, Rogan, Cannon and Rothman voting against).

We do not yet know when the bill will hit the House floor.

Julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 17:36:47.00

SUBJECT: Women's Mtg

TO: Virginia Apuzzo (CN=Virginia Apuzzo/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: Stacie Spector (CN=Stacie Spector/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: Marsha Scott (CN=Marsha Scott/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

TO: Lucia F. Gilliland (CN=Lucia F. Gilliland/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

TO: Roberta W. Greene (CN=Roberta W. Greene/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Karen E. Skelton (CN=Karen E. Skelton/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: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

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

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

CC: Francine P. Obermiller (CN=Francine P. Obermiller/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

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

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

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

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

CC: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Tania I. Lopez (CN=Tania I. Lopez/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Marjorie A. Black (CN=Marjorie A. Black/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TEXT:

There will be a Women's Mtg on Thursday at 9am in room 100. Thanks.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Andrea Kane to Elena Kagan et al; RE: Feedback Needed re: Welfare to Work Success Story (2 pages)	05/20/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
WHO [Kagan]
OA/Box Number: 500000

FOLDER TITLE:

[05/20/1998 - 05/21/1998]

2009-1006-F
db1573

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 18:33:19.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

we have POTUS Q&A's for Page interview tomorrow- wait for you or give to them to Bruce?-Laura 65584

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 17:06:37.00

SUBJECT: ENACT Coalition Meetings - Administration Update

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: 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: 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

TEXT:

The Coalition said to tell you that your updates (Bruce and Elena) to the coalition have been very helpful. If you want to do another call in to the group they really appreciate it.

They were thrilled with the event at the White House today.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 11:56:09.00

SUBJECT: local govt. and tobacco

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

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

READ:UNKNOWN

CC: Fred DuVal (CN=Fred DuVal/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:

I am getting calls from the counties, cities, about the lack of clarity on the obligation of states to pass through funds to local govts. who have incurred costs in their health expenditures. There is a feeling out there that the Administration is not being clear on this point. I have repeated what Elena told me, but the anxiety level is high at the moment. Can you give me more to say? On the local lawsuit issue, Sen. Feinstein is offering an amendment that would allow the locals who began suits by 1977 to go forward. I hope we will not oppose that. The National League of Cities had written saying they would not support the bill if that provision were not in--I pushed back and they will simply work hard on Feinstein and see what happens.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 19:15:12.00

SUBJECT:

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

TEXT:

Bruce reviewed POTUS Q&A's so we are all set -Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 08:31:01.00

SUBJECT:

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

READ:UNKNOWN

TEXT:

Press Office called- needs press paper in 10 min to get to press in time
-Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 16:08:56.00

SUBJECT: what else

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

TO: Cynthia A. Rice (CN=Cynthia A. Rice/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:

I've learned (and am sure you knew this) that Sen. McCain is strongly opposed to the Gorton amendments, but that he didn't have the votes to strike in conference. He is signing on to the Campbell amendment to strike Gorton, and as of now, there are 51 Senators who have no idea how they'll vote on this amendment. Gorton is so complicated and so bad for Indian country, that some signal from us or from Interior will be very important so that our friends know where we stand on this. It is also very important to be able to tell Indian country that we took a stand on this. I feel that the President would want to send this signal--the language in the letter of last night was very mild.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Donna L. Geisbert (CN=Donna L. Geisbert/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:20-MAY-1998 16:54:30.00

SUBJECT: Weekly Tobacco Strategy Meeting

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

TO: DAILARD_C (DAILARD_C @ A1 @ CD @ VAXGTWY [UNKNOWN]) (OPD)
READ:UNKNOWN

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

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

TO: Peter R. Orszag (CN=Peter R. Orszag/OU=OPD/O=EOP @ EOP [UNKNOWN])
READ:UNKNOWN

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

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

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

TO: MARR_C (MARR_C @ A1 @ CD @ VAXGTWY [UNKNOWN]) (OPD)
READ:UNKNOWN

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

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

TO: Sherman G. Boone (CN=Sherman G. Boone/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

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

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

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

READ:UNKNOWN

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

CC: haverkamp_jennifer (haverkamp_jennifer @ ustr.gov @ INET @ VAXGTWY [UNKNOWN])
READ:UNKNOWN

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

CC: MURRAY_MM (MURRAY_MM @ A1 @ CD @ VAXGTWY [UNKNOWN]) (WHO)
READ:UNKNOWN

CC: Satish Narayanan (CN=Satish Narayanan/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

CC: Dan J. Taylor (CN=Dan J. Taylor/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TEXT:

The Weekly Tobacco Strategy Meeting is cancelled for Thursday, 5/21 at 2:45

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Scott R. Palmer (CN=Scott R. Palmer/OU=PIR/O=EOP [PIR])

CREATION DATE/TIME:20-MAY-1998 14:49:35.00

SUBJECT: UC Admissions Data

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

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

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

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

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

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

TO: Edward W. Correia (CN=Edward W. Correia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/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 UC System will likely be releasing later today its preliminary enrollment data for Fall 1998. I will forward the information to you as soon as it is available. I will also have a complete breakdown of the UC admissions data for your consideration shortly.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Phillip Caplan (CN=Phillip Caplan/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 16:20:15.00

SUBJECT:

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: Sean P. Maloney (CN=Sean P. Maloney/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

I'm very sorry that there was a screw-up here today. Sean and I are looking into the details of how the versions got mixed up. It won't happen again.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:20-MAY-1998 17:09:39.00

SUBJECT: Weekly Health Care Strategy Meeting

TO: Karen E. Skelton (CN=Karen E. Skelton/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: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

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

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

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

TO: David W. Beier (CN=David W. Beier/O=OVP @ OVP [UNKNOWN])
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: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Rahm I. Emanuel (CN=Rahm I. Emanuel/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

CC: Satish Narayanan (CN=Satish Narayanan/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

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

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

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

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

CC: Laura K. Capps (CN=Laura K. Capps/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

CC: Suzanne Dale (CN=Suzanne Dale/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 our weekly Health Care Strategy Meeting tomorrow,
Thursday, May 21, at 4:00 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 14:14:16.00

SUBJECT:

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

TEXT:

I'm faxing drug Q&A's now to 224-0291 -Laura

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sean P. Maloney (CN=Sean P. Maloney/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 17:08:40.00

SUBJECT: Tobacco Letter

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

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

TEXT:

Here's what happened, far as I can tell. Cynthia e-mailed me the correct version; I forwarded it to our typing folks; typing somehow printed out the old version and handed it off to me in the hallway; I ran it up to the Oval and missed the mistake; Bruce and Rahm walked it in the Oval; Bruce brought it back down unsigned, saying the President had approved it; we signed it and faxed it to Elena; apparently, Elena caught the problem and told Bruce; he and I sat down and put a correct version together and faxed it off again; we then created new, signed originals and a press stencil and got everything out the door.

Bottom line is - - I take responsibility for the screw up; I'm the guy whose job it is to catch stuff like this and I didn't. Fortunately, DPC prevented what could have been a much more serious error.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sean P. Maloney (CN=Sean P. Maloney/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME:20-MAY-1998 09:10:19.00

SUBJECT: The President's Trip to MD

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

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

TO: Jonathan H. Adashek (CN=Jonathan H. Adashek/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Dorian V. Weaver (CN=Dorian V. Weaver/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Beth A. Viola (CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

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

TO: Marjorie Tarmey (CN=Marjorie Tarmey/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: Darby E. Stott (CN=Darby E. Stott/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

TO: Dan K. Rosenthal (CN=Dan K. Rosenthal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sarah J. Reber (CN=Sarah J. Reber/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

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

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

TO: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

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

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

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

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

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

TO: Cynthia M. Jasso-Rotunno (CN=Cynthia M. Jasso-Rotunno/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Russell W. Horwitz (CN=Russell W. Horwitz/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

TO: Shelley N. Fidler (CN=Shelley N. Fidler/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

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

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

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

TO: Daniel K. Chang (CN=Daniel K. Chang/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

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

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

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

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

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

READ:UNKNOWN

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

TO: Cecily C. Williams (CN=Cecily C. Williams/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: Christopher Wayne (CN=Christopher Wayne/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael Waldman (CN=Michael Waldman/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: Michael V. Terrell (CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

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

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

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

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

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

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

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

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

TO: Megan C. Moloney (CN=Megan C. Moloney/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Andrew J. Mayock (CN=Andrew J. Mayock/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: 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: Kirk T. Hanlin (CN=Kirk T. Hanlin/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TO: Nancy V. Hernreich (CN=Nancy V. Hernreich/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

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

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

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

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

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

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

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

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

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

TEXT:

On Friday, May 22, 1998, the President will travel to Annapolis, Maryland to deliver this year's commencement address at the U.S. Naval Academy. Deadlines for the President's trip book are as follows:

Background Memos:

DUE THUR., MAY 21, AT 6:00 P.M.

- Political Memo
- CEQ Hot Issues
- Cabinet Affairs Hot Issues
- Accomplishments
- Economic One-Pager

Event Memo:

DUE THUR., MAY 21, AT 6:00 P.M.

- Commencement Address

Please call or e-mail me if you have any questions. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-MAY-1998 10:26:08.00

SUBJECT:

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

TEXT:

JR called- Nickles is focusing his attack on lookbacks & he needs to know
asap price-per-pack increase under full lookback scenario 224-1251

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-MAY-1998 15:21:28.00

SUBJECT: Interior Letter

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:

Latest draft with just a couple minor changes from DOJ. Everyone else has signed off, and Interior is very anxious to send this out today (They just called again)===== ATTACHMENT 1 =====

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

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D31]MAIL49253604X.126 to ASCII,

The following is a HEX DUMP:

FF57504370040000010A020100000002050000001812000000020000C6AA1013A153B82ADDF495
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Honorable John McCain
Chairman
United States Senate
Committee on Commerce, Science, and Transportation
Washington, D.C. 20510-6125

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 States 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 is at odds with traditional principles of comity and federalism, which counsel 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 states and Indian tribes have already resolved or have the means to resolve. 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 substantial 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 are not without recourse. 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.

Thank you for your important work in this area.

Sincerely,

Automated Records Management System
Hex-Dump Conversion

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-MAY-1998 11:08:26.00

SUBJECT:

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

TEXT:

Please call former Sen. Birch-Baye at 289-8660 re: tobacco

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

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

CREATION DATE/TIME:21-MAY-1998 19:02:37.00

SUBJECT: Here's the compilation of all our tobacco fact sheets

TO: marti.thomas (marti.thomas @ ms01.do.treas.sprint.com @ inet [UNKNOWN])
READ:UNKNOWN

TO: pkaeding (pkaeding @ bangate.fda.gov @ inet [UNKNOWN])
READ:UNKNOWN

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Neera Tanden (CN=Neera Tanden/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: Sarah A. Bianchi (CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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])
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TO: Fred DuVal (CN=Fred DuVal/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: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

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

READ:UNKNOWN

TO: gclaxton (gclaxton @ osaspe.dhhs.gov @ inet [UNKNOWN])
READ:UNKNOWN

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

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

TO: Christopher C. Jennings (CN=Christopher C. Jennings/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: Jerold R. Mande (CN=Jerold R. Mande/OU=OSTP/O=EOP @ EOP [OSTP])
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: 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:

They can be shared outside the Administration, but are not designed for
press.===== ATTACHMENT 1 =====
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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.

Lookback Surcharges Are Constitutional

Opponents of lookback surcharges have argued that the Constitution -- principally, the substantive component of the Fifth Amendment due process guarantee -- prohibits collection of these surcharges unless the government:

- obtains company consent to the lookback regime, or
- exempts companies that have taken specified steps to discourage youth consumption of their products.

We believe that lookback surcharges can be imposed without consent or without a system for exempting companies who demonstrate that they took specified actions to reduce tobacco consumption by minors.

Congress possesses broad authority to enact legislation adjusting the "burdens and benefits of economic life"; the "burden is on the one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976).

The McCain bill minimizes the risk of challenge by:

- Ensuring lookback provisions are primarily a mechanism for increasing prices in order to reduce underage demand and of generating revenues for programs to reduce underage smoking further and to combat its effects. If the government's purpose in imposing lookback surcharges is to increase prices and generate revenues, the refusal to permit an "innocent company" defense is plainly rational.
- Designing its provisions to make clear that altering tobacco company conduct is a secondary objective. If the government's primary purpose in imposing lookback surcharges was to induce tobacco companies to change their marketing and distribution practices, companies could plausibly (though we think incorrectly) argue that it is "arbitrary and irrational" to deny companies an opportunity to avoid surcharges by demonstrating that they took all reasonable steps to discourage youth consumption of their brands.

- Even a lookback scheme that did not allow an innocent company defense and that sought, as a primary objective, to alter company marketing and distribution practices ought to be sustained against a substantive due process challenge. Courts, under current doctrine, should accept the rationality of legislative judgments (1) that an innocent company defense would unduly undermine the deterrent effect of lookback incentives, or (2) that an innocent company defense should not be recognized because companies with excessive youth smoking rates could always do more, including imposing their own price increases, to reduce youth consumption. However, a constitutional defense along either of these lines would raise novel questions and we therefore believe that the risk of invalidation would be greater under this approach.
- Both company-specific and industry-wide surcharges can be imposed without consent. Company-specific surcharges would generate revenue (at the expense of those whose brands are used most heavily by minors) and might tend to increase price. Moreover, company-specific surcharges may be essential to the feasibility of the overall lookback scheme, since company-specific surcharges counter any incentive for individual companies to recruit new underage users at the expense of the entire industry. If company-specific lookback surcharges are designed to serve these purposes (and described accordingly), courts should not find that omission of an innocent company defense would render them arbitrary and irrational for purposes of the substantive due process doctrine.

Youth Smoking Survey

Methodology in McCain Bill Improves Upon Settlement

The ability to accurately measure youth tobacco use is an integral part of an effective system of reducing youth smoking.

The Commerce Committee Legislation contains a lookback surcharge system that is intended to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments designed to lower youth tobacco consumption in a variety of ways: by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and providing support for further reduction efforts.

As part of this system, there would be an annual survey of young people to determine the percentage that use cigarettes or smokeless tobacco. To be sure that any surcharge liability is fairly measured and not open to dispute, the Commerce Committee Legislation proposes that a new survey be conducted that would be far more accurate than current surveys that attempt to measure youth tobacco use.

As part of its June Settlement with the States Attorneys General, the tobacco industry agreed to a system of lookback surcharges where the industry's progress would be measured by a survey conducted at the University of Michigan called "Monitoring the Future." While this survey provides important data about youth tobacco use, it is not sufficient to serve as the basis of an effective lookback system.

- Because of low participation rates among schools, the results from the Michigan survey are much less reliable than those that would be produced by the survey contained in Commerce Committee Legislation.
- Because only a portion of the overall sample of the Michigan survey is used to measure cigarette use by brand, precise estimates of the number of youth people that use each manufacturer's brands of cigarettes are not possible. In addition, the Michigan survey does not collect brand data on smokeless tobacco use. The Commerce Committee Legislation will permit precise estimates of the number of young people that use each manufacturer's brands of cigarettes and smokeless tobacco.
- The survey contained in the Commerce Committee Legislation would use proven methodologies, such as computer-assisted technology, which increase respondent privacy and confidentiality. The Michigan survey does not employ such methods.

Youth Monthly Tobacco Use is Appropriate Measure of Youth Smoking

The public health community believes that youth tobacco use should be measured based on tobacco use within the last month. This is an appropriate standard that captures a significant amount of youth tobacco use that occurs on a routine, but not daily, basis.

- Data on youth tobacco use indicate that a significant percentage of youths who are occasional users will become addicted smokers, some while they are still teens and others in early adulthood.
- Surveys indicate that about 30% of 12-17 year olds who smoked just 2-9 times in the previous 30 days had become everyday smokers 4 years later.

If we fail to capture these patterns of use when we measure youth tobacco use, the tobacco companies would have little incentive to discourage experimentation and occasional use.

In fact, the tobacco industry may find ways to game the system by targeting their ads in ways that encourage occasional use by older teens on the assumption that these teens will not progress to daily use until after age 17. The industry has demonstrated quite well its ability to target ads to segments of the youth market.

**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 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

**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.

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

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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.

The Cornell Study

- 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.

International Evidence

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

- 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.*

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.

REGULATORY AUTHORITY OVER TOBACCO PRODUCTS IS APPROPRIATELY PLACED AT FDA

- The Food and Drug Administration (FDA) is the leading public health agency with authority to protect public health and to provide regulatory oversight of products that affect the human body, such as foods, drugs, and medical devices.
 - There are other federal public health agencies and there are other federal regulatory agencies. But FDA is the only agency that has extensive experience in both areas. This experience, combined with its recent development of the tobacco access and advertising regulations, makes it the only federal agency that can hit the ground running to implement the regulatory program to combat youth tobacco use in S. 1415.
- Under S. 1415, tobacco products fit appropriately into the regulatory framework that FDA has had in place for over sixty years.
- The scientific and regulatory expertise that resides within FDA is uniquely suited to provide the oversight that will be needed to protect the public health from the hazards of nicotine products. FDA's medical experts already evaluate and approve nicotine replacement drug and device products. In addition, regulatory offices within the agency are experienced in industry-wide product regulation.
- FDA's enforcement authorities, which S. 1415 expressly extends to tobacco products, are essential in order to protect public health. Enforcement actions are necessary to ensure that manufacturers and retailers comply with requirements such as those in the final rule issued in 1996 to protect young people from the hazards of tobacco products, and to protect the public from future violations.
- A distinctive feature of FDA's regulatory authority is the flexibility inherent in the Federal Food, Drug, and Cosmetic Act, and in the new provisions added to that Act by S. 1415, that enable FDA to swiftly and effectively address problems linked to the products for which it is responsible. As tobacco companies design new marketing campaigns or develop new products, FDA has a great amount of flexibility to respond to industry actions that could harm public health.

ID'S OF PURCHASERS UNDER THE AGE OF 27 MUST BE CHECKED

- Under the FDA rule, a retailer must not sell cigarettes or smokeless tobacco to anyone under 18. Therefore, purchasers must be 18 or older.
- Under the FDA rule, retailers must require customers under the age of 27 to present a photo ID (any photo ID with a birth date is acceptable).
 - FDA's rule contains this requirement because the evidence compiled by the agency during its rulemaking showed that it is very difficult to judge the age of many teenagers and young adults simply from their appearance, partly because young people mature at different rates. To ensure that older-looking teenagers are asked for ID, it makes sense to set the requirement to check identification somewhere above 18.
 - FDA's requirement is consistent with a report prepared by twenty-six State Attorneys General recommending that the age for photo ID should be significantly higher than the minimum age of sale.
 - In addition, materials developed and distributed to retailers by the tobacco industry and leading retailer organizations specifically recommended that retailers card anyone who appears to be under 26.
- Under the FDA rule, a retailer is not required to check the ID's of regular customers who are known to be at least 18 years old every time they buy tobacco products. Retailers must check a customer's photo ID at least once to ensure that the customer is at least 18 years old.

**S. 1415 PROVIDES AMPLE OPPORTUNITY FOR CONGRESS
TO REVIEW ANY FDA DECISION TO ELIMINATE NICOTINE
OR A CLASS OF TOBACCO PRODUCTS**

- Because of the importance of any decision by FDA to eliminate all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or to require the reduction of nicotine yields to of a tobacco product to zero, S. 1415 recognizes that it is appropriate for Congress to have the opportunity to review such a decision and enact legislation to override it.
- S. 1415 recognizes this by requiring that FDA may not begin implementing any such standard until at least *two years* after the President notifies Congress that a final regulation imposing the restriction has been issued.
- S. 1415's provision ensures that Congress will have sufficient time and opportunity to review the standard and, if desired, vote on whether the standard should be rejected.
- FDA has no plans to use this authority, but scientific developments in the future may make its use appropriate.
- FDA has demonstrated that it would administer its authority to eliminate nicotine reasonably.
 - Although FDA had the authority to reduce or eliminate nicotine at the time it issued its tobacco regulations, the agency did not do so, because, among other reasons, there was not a sufficient scientific basis to conclude that reducing or eliminating nicotine from tobacco products would reduce tobacco use.
 - FDA's refusal to ban cigarettes or smokeless tobacco products was based in part on the significant weight the agency accorded to the risks that a black market would be created and that addicted tobacco users would suffer as a result of sudden withdrawal from nicotine-containing products.
 - FDA is required under S.1415 to take these same factors into account in promulgating any standard eliminating nicotine from tobacco products.
- S. 1415 imposes many procedural requirements on FDA before the agency can issue a performance standard eliminating nicotine from tobacco products.
 - FDA must issue a notice of proposed rulemaking, containing a finding with supporting justification that the performance standard is appropriate for protection of the public health.
 - The notice must contain proposed findings with respect to the risk of illness or injury that the standard is intended to address.

- FDA must invite interested persons to submit an existing or draft performance standard.
 - FDA must invite participation from informed persons, including industry representatives.
 - FDA must consider the risks to the health of tobacco users and non-users from elimination of nicotine, including the risk that a black market will be created.
 - FDA must, at the request of an interested party, refer the proposed standard to an advisory committee.
- A performance standard eliminating nicotine could not be issued in the absence of scientific evidence that such elimination would significantly reduce the risks of illness or injury from tobacco products.
 - Development of such evidence would require reliable information showing that elimination of nicotine would reduce the risks of tobacco use, and that the benefits of this reduction in use were not outweighed by the risks of a black market or of precipitous withdrawal by addicted tobacco users.

S. 1415 APPROPRIATELY MAKES EXPLICIT FDA'S AUTHORITY TO RESTRICT TOBACCO PRODUCT ADVERTISING

- S. 1415 expressly provides that FDA may by regulation require that a tobacco product be restricted to sale, distribution, or use upon such conditions, *including restrictions on the access to and the advertising and promotion of the tobacco product*, if FDA determines that such regulation would be appropriate for the protection of the public health.
 - This provision has no effect on FDA's regulation of drugs and devices.
- Advertising restrictions are a critical component of FDA regulation of tobacco products.
 - Two recent, comprehensive analyses by the National Academy of Science's Institute of Medicine and the Surgeon General found that tobacco advertising plays a significant role in the decisions of young people to use cigarettes and smokeless tobacco.
 - The two studies are the Institute of Medicine's Report, *Growing Up Tobacco Free, Preventing Nicotine Addiction in Children and Youth* (1994), see especially chapter 4; and the Department of Health and Human Services' Centers for Disease Control and Prevention's Report, *Preventing Tobacco Use Among Young People, A Report of the Surgeon General* (1994), see especially chapter 5.
 - The Institute of Medicine's 1998 Report, *Taking Action to Reduce Tobacco Use* (1998) reaffirms the 1994 IOM Report.
 - In addition, the nation's largest psychological association, the American Psychological Association, concluded that tobacco advertising "plays directly to the factors" that are most appealing to youth.
 - During its rulemaking, FDA found, based on the evidence and comments received, that comprehensive advertising restrictions are necessary to ensure that the access restrictions on access are not undermined by the product appeal that advertising for these products creates for young people.
 - Otherwise, tobacco companies will continue to use advertising to appeal to kids, associating tobacco with fun, sex, glamour, and sports. As long as the tobacco companies are allowed to advertise to kids and create a demand for tobacco products, it will be impossible to effectively address the problem of youth tobacco use.

- FDA also concluded that *both* access *and* advertising restrictions are necessary to meet public health goals because they are complementary —
 - The effectiveness of access restrictions on youth access would be substantially diminished if the manufacturers were free to entice children and adolescents to circumvent the access restrictions.
- Because advertising restrictions are so critical, the agency's authority in this area should not be left ambiguous and open to lengthy court challenges.

S. 1415 ENSURES THAT FDA WILL ADEQUATELY CONSIDER WHETHER A PROPOSED REGULATORY ACTION WILL RESULT IN HEIGHTENED DEMAND FOR CONTRABAND

- S. 1415 requires that FDA find that regulations to be imposed on a tobacco product “are appropriate for the protection of the public health.”
 - In making this finding, FDA is directed to consider the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and
 - Taking into account the increased or decreased likelihood that: (1) existing users of tobacco products will stop using such products, and (2) those who do not use tobacco products will initiate use.
 - FDA is to weigh a variety of consequences resulting from possible new regulations on tobacco products, *including the use of contraband products and the development of black markets*, and consider the effects of the regulation on both users and nonusers of the products.
 - This standard is not be applied to any other product regulated under the Federal Food, Drug, and Cosmetic Act.
- Requiring FDA to affirmatively *find* that a particular regulatory action will not result in the heightened demand for contraband would severely restrict the Agency’s authority as it would be forced to prove an unknown.
 - It could be very difficult to prove a negative—that a black market will not occur.
 - If FDA makes the finding, its decision would be delayed by extended litigation.
- FDA’s 1996 tobacco rule reflects the agency’s consideration of the contraband issue:
 - Considering the large number of Americans who are currently addicted to nicotine, FDA determined that a ban on cigarettes and smokeless tobacco would unlikely be effective in protecting consumers from the serious risks of these products. FDA found that black markets and smuggling could develop, offering products that likely “would be even more dangerous than those currently marketed.”

- FDA concluded that, to address effectively the death and disease caused by cigarettes and smokeless tobacco, addiction to these products must be eliminated or substantially reduced.
- FDA found that this goal could be achieved best by preventing minors from beginning use of tobacco products, and not by banning the products.

**GREGG AMENDMENT MAKES IT HARDER TO STOP TOBACCO ADVERTISING
AND HARDER TO CHANGE THE WAY TOBACCO COMPANIES DO BUSINESS**

- **The McCain Bill Gives No Immunity to Tobacco Companies**

The bill passed by the Senate Commerce Committee did away with most of the major liability limitations of the June 20th settlement between the tobacco companies and the attorneys general, which had banned class action lawsuits and punitive damages. The manager's amendment went even further, by eliminating special protections for tobacco parent companies and affiliates, ensuring that the industry's attorneys will be subject to suit as under current law, and allowing plaintiffs claiming injury from disease to use evidence of addiction in their lawsuits. Under the McCain bill, anybody can sue the tobacco companies, and get whatever damages a jury will award.

- **The Cap Is Available Only to Companies that Agree to Make Sweeping Advertising Restrictions and Comply with the Law, not Challenge It in Court**

No company will be eligible for the annual damages cap unless it agrees to sweeping changes in the way it does business. To be eligible, a company must sign a binding protocol that requires it to:

- **Accept sweeping restrictions on advertising that would otherwise be unconstitutional under the First Amendment. Tobacco advertising is one of the most important factors in luring young people to start smoking. A recent study in the Journal of the American Medical Association estimated that 34% of young people start smoking because of tobacco advertising and marketing. The First Amendment limits what government can do to stop the tobacco companies' harmful advertising practices without the companies' consent. To qualify for the cap in the McCain bill, a tobacco company must agree to give up advertising that contains any human or animal image or cartoon character, all outdoor advertising, advertising on the Internet, and much more. The protocol in the McCain bill is the only way to get rid of the Marlboro Man, and ensure that Joe Camel never comes after our kids again.**
- **Comply with the terms of the legislation, not tie in up in court. Tobacco legislation will be far more successful in its central goal -- reducing youth smoking -- if the companies cooperate instead of tying the bill up in court for decades. Under the protocol in the McCain bill, a company must agree to abide by the rules of the legislation, not file endless legal challenges to thwart its intent. Participating companies must agree to make payments and lookback surcharges even if those provisions are struck down in court.**

- **The Cap Is a Powerful Incentive for Companies to Change Their Behavior, Because Any Company That Doesn't Play by the Rules Will Lose Eligibility.**

Without any incentive to sign onto the protocol, companies are bound to go to court to strike down every part of the tobacco bill they can. But under the McCain bill, once a company has signed the protocol, the government will have a powerful tool to make that company change its ways or lose liability relief altogether. A participating company will lose eligibility for the cap if it violates the protocol. For example:

- **A Company Must Make Dramatic Reductions in Youth Smoking or Lose Eligibility for the Liability Cap.** The manager's amendment strengthened the provisions in the bill that link liability protection to the achievement of youth smoking targets. Under the amended legislation, a company that misses its youth smoking 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. **The cap is in effect a powerful company-specific penalty to ensure that youth smoking goes down.**
- **Any Company Caught Smuggling Will Lose Eligibility for the Cap.** Most anti-smuggling experts agree that it would be extremely difficult for smuggling to occur on a massive scale without the company's knowledge. Under the McCain bill, if a company's management is found guilty of taking part in a smuggling scheme, the company will lose any liability relief. This will serve as a powerful and necessary incentive to keep tobacco companies from orchestrating a black market.
- **The Cap in S. 1415 Is Even Tougher on Tobacco Companies than the Cap in the Highly-Regarded Chafee-Harkin-Graham Bill**

Senators Chafee, Harkin, and Graham sponsored a tough, comprehensive tobacco bill that also includes an \$8 billion liability cap as a way to get tobacco companies to stop marketing to children. Under that bill, tobacco companies were able to pay \$4 billion a year in judgments out of their annual payments to the government. Under the McCain bill, the tobacco companies would have to pay every penny of damage awards -- up to \$8 billion a year, indexed for inflation -- on top of their annual payments.

TALKING POINTS ON WHAT'S NOT IN TITLE XIV

* **Title XIV Does Not Limit The Tobacco Companies' Liability**

Participating manufacturers who comply with the rigorous restrictions in the protocol and the other requirements of Title XIV have their liability limited to \$8 billion per year. If they owe more than \$8 billion in a given year, they will simply have to pay the additional amount in the next year.

* **The Bill Does Not Prevent or Limit Anyone From Recovering**

Every dollar that a person wins in a lawsuit against the tobacco industry will be paid. The bill does not limit the amounts that people can win. It only postpones payment until the next year if the tobacco companies owe more than \$8 billion in a given year.

* **The Bill Does Not Limit A Person Who Claims that They Are Addicted From Recovering**

The bill provides for extensive smoking cessation and other public health programs. The bill eliminates lawsuits against participating manufacturer only if those suits seek to create public health programs, such as smoking cessation programs. It does not limit any person from recovering any damages that they themselves have suffered.

* **The Bill Does Not Limit the Evidence that May Be Discovered or Introduced Against Tobacco Companies**

The Manager's Amendment removed provisions that would prevent plaintiffs from discovering or introducing in court evidence of reduced-risk tobacco products

* **The Bill Does Not Limit Tobacco Companies' Obligation to Produce Documents in Litigation**

The Manager's Amendment removed a provision that might have allowed the tobacco industry to avoid its obligation to produce documents in lawsuits. Under the Manager's Amendment, a person wishing to sue a tobacco company may review documents publicly disclosed under Title IX of the bill and may seek documents in discovery

* **The Bill Does Not Protect Attorneys, Advertising Agents, or Parent Companies**

The Manager's Amendment expressly allows lawsuits against tobacco manufacturers and their parent companies. It does not change current law with respect to suits against attorneys and advertising agents, and thus does not preclude such suits.

* **The Bill Allows Class Actions and Third-party Claims to Go Forward**

* **The Bill Does Not Limit Recovery for Punitive Damages**

**Low Income Groups See Smallest Rise in Spending
and Greatest Benefits from McCain Bill**

Lower Income Adults Are Most Responsive to Price

- Two recent studies have evaluated the effect of cigarette prices on smoking participation (the decision to smoke at all), and have documented an important fact: the smoking participation decision of lower income adults is much more responsive to price than that of higher income adults. In particular, both studies find that those individuals at the median income or below are *more than four times as likely* to not smoke in response to price increases as are those individuals above median income.³
- The professional consensus is that for every 10% rise in cigarette prices, there is a roughly 4.5% decline in the total number of packs of cigarettes consumed. These studies find that individuals at the median income or below are more than 50% more responsive to price in their smoking decisions than the overall average. This implies that every 10% rise in cigarette prices will cause the number of packs consumed to fall by about 7%.⁴
- Using this elasticity, estimates show that there is a 33% reduction in smoking for those at the median income or below from the \$1.10 price increase, as compared to the 23% reduction on average, and only about an 8% reduction above median income.

So Lower Income Families Will See Only a Modest Increase in Spending on Cigarettes

- The implications of this finding are that the price increases in the McCain legislation will not cause a significant increase in cigarette spending for lower income individuals. This is because, on average across individuals at or below the median income, for every two packs on which this group spends an extra \$1.10, there will be one pack on which they save the \$2 base price.
- These effects roughly cancel, resulting on net in only a small increase in spending on cigarettes in this population. In particular, total spending on cigarettes, on average, for a median income family will rise by only about 3%. This is only about \$20 per year for a median income smoker.

³Ringel, J. and W. Evans, "Public Finance Aspects of the Global Tobacco Settlement", Working Paper, University of Maryland, 1998; Farelly, M., J. Bray, T. Pechacek, and T. Woolery, "The Response to Increases in Cigarette Prices by Race, Income, and Age Groups," Working Paper, Research Triangle Institute, 1998.

⁴These studies focus only on the smoking participation decision. But a conservative assumption is that the number of packs per smoker will follow the same income relationship. This is conservative because it is likely that the first source of response by lower income smokers will be to reduce packs rather than to quit altogether.

Lower Income Groups Will Benefit Disproportionately from Cessation Spending

- An important use of the funds raised by the McCain bill is to fund increased cessation spending so that those smokers who want to quit this addictive habit can do so.
- Unfortunately, cessation treatment can be expensive - more expensive in the short run than the cost of cigarettes. As a result, it is low income individuals who are least likely to avail themselves of cessation treatment.
- Thus, increased cessation spending should benefit lower income groups the most, since these are the individuals who cannot afford cessation treatments now.
- Cessation programs have been shown to be effective in reducing smoking. This reduction will produce further savings for lower income groups in particular, since they will not be spending their hard-earned income on cigarettes.

Low Income People Will Gain More in Health Terms:

- As noted above, recent evidence indicates that lower income individuals are more responsive to price increases than are those above median income. As a result, they will benefit disproportionately from the health benefits that come from reduced smoking.
- In particular, the number of packs smoked in families with incomes below the median income will fall by 33 %, while the number of packs smoked by families with incomes above the median will fall by only 8%. This means that the *health benefits will be 4 times as large* for lower income families as for higher income families.
- Moreover, lower-income individuals spend a higher percentage of their income on health costs. They therefore stand to gain the most from reducing smoking-related health costs.

**FORD APPROACH IS BEST FOR PUBLIC HEALTH, PROTECTS FARMERS,
AND AVOIDS HANDING A WINDFALL PROFIT TO TOBACCO INDUSTRY**

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• **Lugar Bill Would Require Drastic Cuts in Health Spending** ~~File~~ Dump Conversion

The Lugar bill requires the government to “buy-out” farmers from the quota program over a three-year period (FY1999 through 2002). The cost of this buy-out over the three years is \$18 billion dollars. **If the Lugar farmer spending is added and state spending is kept the same, the McCain Manager’s Amendment spending on health research and public health programs would have to be cut by 69 percent to make up the difference.** (See chart below). In contrast, the Ford-Hollings approach costs \$2.1 billion a year during those years and has no effect on the levels of spending in the McCain Amendment for NIH research, cessation, prevention, education and enforcement efforts.

• **Ford Limits Amount of Tobacco Grown; Lugar Dramatically Increases U.S. Production**

Senator Ford’s bill (LEAF Act) maintains limits on the amount of tobacco that can be grown in the United States. Under the competing Lugar approach, very large producers would quickly expand their production. A U.S. Department of Agriculture analysis concludes production of flue-cured tobacco is likely to increase by as much as 50% and burley tobacco is projected to increase by as much as 20%. That is one reason why the Campaign for Tobacco-Free Kids, the American Cancer Society, and the American Heart Association support continuation of the tobacco program.

• **Ford-Hollings Protects Small and Minority Farms**

The increased production with lower profit margins under the Lugar approach will benefit large corporate farmers, however, the legislation would have a disproportionately adverse impact on minority and limited-resource tobacco producers. Market uncertainties and reduced margins on small sales will destabilize many family farming operations. This will have a particularly harsh effect on small African-American farms -- fully 90% of African-American farms have sales of less than \$25,000.

• **Lugar Leads to a Financial Windfall for Companies**

The creation of a free market in tobacco production will dramatically lower the prices the companies will pay to buy tobacco. USDA estimates that under the Lugar bill, the price of flue-cured tobacco would fall from \$1.72 a pound to \$1.15, and the price of burley would plummet from \$1.89 to \$1.35. Given that the companies average almost 1.5 billion pounds of purchases a year, USDA estimates a financial windfall by the companies of at least \$800 million annually or \$20 billion over 25 years. The Ford approach is consistent with the overall tobacco control legislation. It avoids generating windfall profits for the tobacco companies with which the companies will offset the payments designed to force them to reduce youth smoking rates.

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.

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