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THE WHITE HOUSE
WASHINGTON

June 27, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. Tobacco: We have initiated an interagency process to evaluate the proposed tobacco settlement and present you with a recommendation by the end of July. Though Secretary Shalala is chafing at the timetable -- she joked to the press yesterday that "every President I know wants everything done in 30 days" -- we are off to a good start and should be able to complete our work on schedule. A memo describing the review process, including our outreach and press plans, is attached.

2. Welfare -- Legal Immigrant Benefits: The Senate dramatically improved the legal immigrant provisions of the reconciliation bill this week. It adopted an amendment that would provide SSI and Medicaid to all legal immigrants on the rolls as of August 23, 1996 (as the House bill would provide) and to all other legal immigrants in the country on that date who are or become disabled (as the budget agreement would provide). Covering both these populations would cost \$11.4 billion, as compared with the \$9.7 billion provided in the budget agreement, but Senator Domenici accepted the amendment, saying that taking this version to conference would help resolve remaining differences in the area. At the same time, the Senate adopted proposals to help some legal immigrants arriving in this country after August 1996 -- a Graham amendment to provide Medicaid for all legal immigrant children and a Kennedy proposal to provide SSI and Medicaid to immigrants who cannot naturalize because of severe disabilities. The conference prospects for these two provisions are uncertain.

3. Welfare -- Privatization: In another welcome development on the Senate side, a minority of Senators used a Byrd rule motion to strip the bill of its provision authorizing Texas to privatize food stamp and Medicaid operations. The House bill allows all 50 states to privatize these operations. We expect a big fight in conference over this issue, but we think we can hold the 40 votes in the Senate necessary to strike any provision coming out of conference.

4. Welfare -- Minimum Wage and Worker Protections: The House Republicans softened their proposal regarding the minimum wage and other protections for welfare recipients in workfare. (The Senate legislation has no analogous proposal.) The revised proposal requires, as we have demanded, that workfare participants receive the minimum wage, with only cash assistance and food stamps (not Medicaid, child care, etc.) counting toward that wage. It also would offer workfare participants certain protections against discrimination and health and safety

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hazards. The proposal, however, (1) weakens the welfare law's work requirements by allowing states to substitute job search and training for work if the TANF and food stamp grant is not sufficient to pay the minimum wage for the hours of work that the law requires, (2) fails to set up any enforcement mechanism to ensure that states will comply with the minimum wage requirement, (3) provides a weaker enforcement scheme for job discrimination than other workers receive, and (4) excludes workfare participants from other worker protections, such as workers' compensation. We will continue to oppose the House proposal, but we are also working with DOL, HHS, and OMB to develop a livable compromise in the event we need one. Though any proposal coming out of conference probably would be subject to the Byrd rule, the likely bipartisan support of governors for such a proposal may make keeping forty votes a challenge.

5. Welfare -- Federal Reserve Bank Study: An analysis published in a Federal Reserve Bank of San Francisco economic newsletter suggests a link between the welfare law and an unexpected rise in the number of single mothers entering the job market. While the percentage of single mothers entering the workforce grew by 2.4 percent between July 1995 and July 1996, the increase from August 1996 to March 1997, when annualized, would equal 6.5 percent. (A total of 500,000 single mothers entered the workforce in this seven-month period.) The Federal Reserve economists hypothesize (they have no hard data) that this increase in single mothers' labor force participation is attributable to the welfare law. A chart used in the analysis is attached to this memo.

6. Education -- Vocational Education Bill: On Wednesday, by a 20-18 party-line vote, the House Education and the Workforce committee reported out a bill to reauthorize the Perkins Vocational and Applied Technology Education Act. Committee Democrats opposed the bill largely because it would hurt urban areas through changes in the substate funding formula, a reduction in the minimum grant size for local school districts and postsecondary institutions, and a new option for states to create a 10% set-aside for rural areas. In addition, many Democrats, led by Rep. Mink, objected to ending gender set-asides (though the Administration proposal would do so as well). The Department of Education, in addition to objecting to the bill's funding provisions, expressed concerns about its accountability mechanisms. The bill would severely limit the Secretary's ability to make judgments about the quality of state funding applications and would give the Secretary no role in developing state program performance indicators or benchmarks. We do not believe Republicans have the votes to pass this bill in its current form and expect further negotiations over the bill before it is brought to the floor.

7. Education -- California Teacher Testing Litigation: The EEOC, Justice Department, and Education Department are considering whether the government should file an amicus brief in a case involving basic skills testing of teachers. A number of California-based civil rights groups challenged the California Basic Education Skills Test (CBEST) in federal district court, on the ground that the test violated Title VII of the Civil Rights Act. The court dismissed the suit, holding that the test was job-related and valid, even though it had a racially disparate impact (with higher pass rates for whites than for others). The case is now on appeal to the Ninth Circuit.

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The EEOC believes that the government should file a brief because the district court, in analyzing the validity of the test, made analytical errors that, if upheld, could undermine Title VII enforcement in a wide range of employment testing cases. The Education Department is opposed to filing a brief, on the ground that doing so would create a perception that the Administration opposes basic skills testing for teachers and would undermine our efforts to raise standards for both children and teachers. The Civil Rights Division of the Justice Department agrees with the EEOC that the trial court made serious errors, but worries that this case (much like Piscataway) is the wrong vehicle to advance these legal arguments.

National civil rights groups, including the Leadership Conference for Civil Rights and the NAACP Legal Defense Fund, have urged the Administration in the strongest terms to file a brief in support of the plaintiffs. The groups agree with the EEOC on the danger this case poses for Title VII enforcement. They have made clear that they view this case as a test of the Administration's willingness to enforce civil rights laws in educational testing cases, and have implied that our decision in this case will affect their stance on your national testing initiative.

At a meeting this week with EEOC, Education, Justice, White House Counsel and DPC staff, Wade Henderson and others from the civil rights community suggested a possible compromise position. They proposed that we work to develop a brief that would underscore our support for educational standards and testing, limit our brief to relatively narrow issues, and oppose only earlier versions of CBEST while not challenging the test currently in use. All present at the meeting agreed that this proposal was a good faith effort to assist the Administration in honoring its commitments to both civil rights and education standards. But many (on both sides) doubted whether such a brief would be legally defensible or politically wise -- or whether it would satisfy any of the competing values at stake. We asked the agencies to outline a brief along the lines Henderson suggested, so that we could better evaluate whether such a brief should be filed. We will consult further with the civil rights groups before making any final decision.

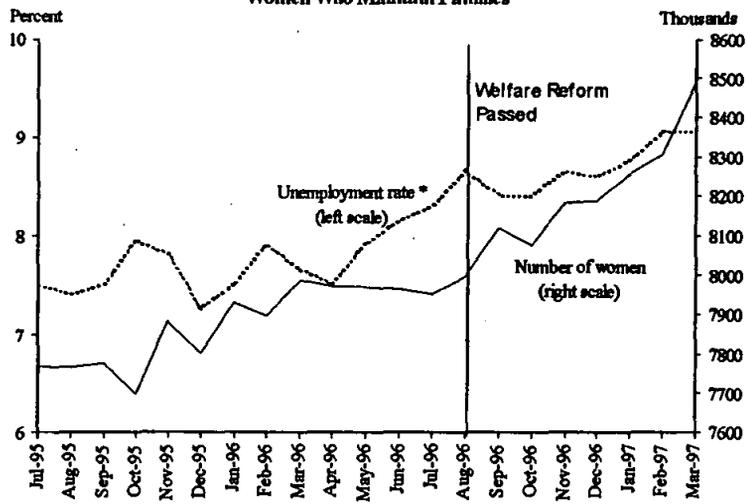
8. Health -- Medicare: Several Medicare provisions passed by the Senate on Thursday are very troubling. These provisions, none of which are in the House legislation, include an income-related premium, an increase of the Medicare eligibility age from 65 to 67, a new home-health copayment, and the elimination of certain balanced billing protections. The income-related premium begins at \$50,000 for a single person and \$75,000 for a couple and is fully phased in at \$100,000 for a single person and \$125,000 for a couple; when fully phased in, the income-related premium would be three times the level of the normal premium. The provision would be difficult to administer and could cause high-income people to opt out of Medicare entirely, leaving poorer beneficiaries in a weakened Medicare program. On the brighter side, the Senate limits the Medical Savings Account demonstration to 100,000 people (the House version would cover 500,000) and preserves your academic health center payment pool (the House eliminated it).

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9. Health -- Medicaid: We have three major concerns with the current Medicaid provisions. First, the House and Senate have dramatically different approaches to reducing DSH spending -- both of which differ from your policy. Although this issue is very complicated, your policy best ensures that the few high-DSH states do not bear a disproportionate amount of the cuts. Second, the Senate legislation uses a Medicare block grant, rather than Medicaid, to give states the funds for premium assistance for low-income Medicare beneficiaries. Finally, neither the House nor the Senate legislation would provide the full amount of funding for the District of Columbia and the territories that is specified in the budget agreement.

10. Health -- Children's Health: The children's health provisions in the Senate bill meet most of our requirements. The bill's required benefits package and cost-sharing protections have received good marks from most of the children's advocacy community. The bill also includes an additional \$8 billion, raised by a \$.20 tobacco tax, for children's health coverage -- though the remaining \$6 billion raised by this tax is not dedicated, as we would prefer, to investments in adoption, child care, and other programs for children. The House bill, in contrast, does not meet our criteria for well-targeted, meaningful benefits for children. It allows states to allocate these dollars for services rather than coverage, which will result in fewer children becoming insured. Moreover, even when a state does allocate its dollars to health insurance, the bill's health benefit package is inadequate.

**Labor Force Level and Unemployment Rates
Women Who Maintain Families**



* Unemployment rate is calculated as a three-month moving average.

THE WHITE HOUSE
WASHINGTON

'97 JUN 28 PM 2:35

June 26, 1997

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: Bruce Reed

SUBJECT: Tobacco Settlement Review Process

This memo sets forth the process we will use to evaluate the proposed tobacco settlement and to present recommendations to the President. Our goal is to prepare an analysis for the President by late July that defines our public health and public interest objectives; weighs the settlement's strengths and weaknesses against those objectives; summarizes the views of the public health community, Congress, and other affected parties; and lays out positions the President could take on the settlement proposal.

Interagency Review

The review will be carried out by four major workgroups which have already begun to meet:

- I. **Regulatory Issues** (convened by Elena Kagan). This group will look at: (a) FDA regulation of product content, including nicotine; (b) FDA regulation of access, advertising, and labeling; and (c) restrictions on environmental tobacco smoke in public buildings and workplace settings. Participating White House offices are DPC, OMB, OVP, NEC, and OSTP. Participating agencies are HHS, DOJ, DOL, GSA, EPA, and Treasury.
- II. **Program and Budget Issues** (convened by Chris Jennings). This group will examine proposed uses of settlement funds, including programs to reduce smoking and expand children's health care coverage. In particular, the group will consider the use of settlement funds for: (a) children's health care; (b) education efforts (including grass roots programs); (c) smoking cessation programs; and (d) investments in health research, including nicotine research. White House offices are DPC, OMB, NEC, OVP, and OSTP. Participating agencies are HHS, Treasury, DOL, USDA, Interior, VA, and DOD.
- III. **Legal Issues** (convened by Elena Kagan). This group will review the settlement's provisions on liability, damages, and document disclosure, and will consider constitutional, antitrust, and other legal issues raised by the settlement. White House offices are DPC, OVP, NEC, and Counsel. Participating agencies are DOJ, HHS, Treasury, EPA, and Interior.

IV. Industry Performance and Accountability (convened by Bruce Reed). This group will analyze the economic effects of a settlement. The group will assess: (a) the economics of the industry and the settlement's effects on industry performance, international markets, federal revenues, consumers, farmers, etc.; and (b) the set of incentives and penalties in the settlement to reduce tobacco use, especially by children. On a separate track, Dan Tarullo will oversee a look at Administration policy on tobacco-related trade and international issues, which the settlement does not directly address. White House offices are DPC, NEC, CEA, OVP, OMB, and OSTP; participating agencies are: HHS, Treasury, DOL, USDA, USTR, State, and DOD.

Public Outreach

We will work with OPL and HHS on a tightly focused public outreach effort designed to demonstrate that the President is conducting a thoughtful, thorough review focused on public health issues. Many groups covering a wide range of interests are affected by the proposed settlement. We will emphasize the President's focus on health by hosting 6-8 highly visible White House meetings with small, select groups of health experts. Working with OPL, we will encourage other interested groups (e.g., children's advocates, women's organizations, and farmers) to share their views through written comments and, where appropriate, meetings with agency and White House staff.

Donna and I will host the White House meetings over the next three weeks. We will convene experts from national health organizations; Koop-Kessler advisory group participants; experts on tobacco products and nicotine addiction; local grass-roots advocates; state and local tobacco control officials; and children's health advocates.

We will start by bringing in members of the Koop-Kessler advisory group, including the American Cancer Society, American Medical Association, and American Heart Association, the week of July 7. Future meetings will include: Action on Smoking and Health; American Academy of Pediatrics; American Public Health Association; Americans for Nonsmokers' Rights; and National Center for Tobacco-Free Kids, Joe Califano, and leading academics.

Congressional Outreach

We will need to take into account Congressional views on the settlement proposal. Multiple committees in both the House and Senate would have jurisdiction over legislation enacting an agreement. The goal of our Congressional outreach process will be to strengthen relationships on the issue with key members and to keep the debate bipartisan and balanced. We will consult with the leadership, anti-tobacco advocates, and representatives of tobacco states. Today and tomorrow HHS is making calls to key Republican and Democratic members to seek their input on how best to consult with the Hill in the coming weeks. We are working with Legislative Affairs and HHS on a detailed list of Congressional meetings to begin the week of July 7. There are many critical members, including Senators Lott, Daschle, Hatch, Kennedy, Lautenberg, Ford, and Durbin; and Congressmen Gephardt, Gingrich, Bliley, Waxman, Dingell, Hansen, Meehan, Gordon and others.

Press Plan

This issue is certain to attract considerable press attention throughout our review. Major news organizations have assigned entire teams to cover the tobacco settlement. After devoting so much coverage to the negotiations, the networks are determined to keep this issue alive. We should take advantage of that heightened interest to advance our public health message.

On Friday, Donna and I are prepared to brief the White House press corps on how we will conduct this review, who will be involved from within the Administration, and what groups and outside experts we plan to consult.

During the week of July 7, while the President is away, Donna and I will conduct the public health and Congressional meetings described above. This will give the press something to write about, and show that we are running an open process. During the week of July 14, we will continue public health and Congressional meetings and bring in two groups of attorneys general - the enthusiasts and the skeptics. The Vice President is willing to hold a public hearing with us in mid-July if we need one.

Schedule

We have planned the following schedule. Some do not believe the review can be completed within 30 days, as the President suggested. But we will work as quickly as possible to preserve that option and ensure a decision by early August at the latest.

- Week of June 23: DPC convenes work groups and assigns analytic tasks to members.
Donna and Bruce brief press on process and conduct.
- Week of June 30: Groups provide preliminary assessments of key issues.
DPC and agency staff begin meetings with public health experts.
- Week of July 7: Groups develop options for key issues.
Bruce, Donna and others continue meetings with public health groups and begin meetings with members of Congress.
- Week of July 14: Principals review workgroup assessments and meet to discuss options.
Bruce, Donna and staff continue meetings with public health experts and Members of Congress.
Possible public hearing with the Vice President.
- Week of July 21: Initial meeting with the President.
- Late July/
early August: Presidential decision and announcement.