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November 13, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

SUBJECT: DPC Weekly Report

1. **Tobacco -- Proposed State Settlement:** According to the latest rumors, the tobacco industry and eight Attorneys General will announce a proposed settlement of state claims on Monday; states will then have until Friday to decide whether to accept the deal. The proposed settlement will provide a maximum of \$206 billion over 25 years to the states; if states opt out of the settlement, the amount of industry payments will decline accordingly. The \$206 billion includes \$183 billion in annual payments, \$13 billion in up-front payments, nearly \$9 billion in a "strategic contribution fund" (distributed between 2008 and 2017 to the states that have done most work in suing the tobacco companies), \$1.45 billion over five years for counteradvertising and public education, and \$250 million over 10 years for a research foundation. We are working with OMB to estimate the price impact of these industry payments; some Wall Street analysts have suggested that they will cause a 35 cent per-pack price increase over five years. The marketing restrictions in the proposed settlement are similar to those adopted in Minnesota, but less extensive than those in the FDA rule or the June 20th agreement: the settlement will ban billboards, paid product placements, cartoon characters, and promotional items with brand names or logos (such as hats and gym bags). The settlement will not have any provisions for farmers. We are sending you and the Vice President a separate memo setting out an idea for building on this state settlement.

2. **Tobacco -- Great American Smokeout:** The Vice President will appear at an event with the WNBA's Washington Mystics and 500 young people on Thursday, the date of the American Cancer Society's Great American Smokeout. He will designate a National Clearinghouse on Tobacco Counteradvertising at the Centers for Disease Control to make effective tobacco counteradvertising available to all states. He also will unveil a package of the "top-10" youth-oriented anti-smoking ads, including ones featuring supermodel Christy Turlington and the musical group "Boyz II Men."

3. **Health -- Stem Cell Research:** As you know, we worked with OSTP and NIH to draft a letter from you to the Chair of the National Bioethics Advisory Commission, requesting the Commission to consider the serious ethical issues raised by a recent experiment involving the creation of an embryonic stem cell that is part human and part cow. The letter also requests the Commission to review issues related to other stem cell research, involving purely human material, that may have significant medical potential. Dr. Varmus believes that while

the commingling of animal and human material is wholly improper, other stem cell research is both ethical and scientifically beneficial; he would interpret -- or if necessary, amend -- the current law to allow federal funding of some of these research efforts. Senator Spector is planning to hold a hearing on this issue on December 1st; in the meantime, we will try to figure out where Spector is going and work with Varmus on his testimony.

4. Health -- Amicus Brief on Health Insurance Remedies: Within the next two weeks, the Solicitor General will file an amicus brief in the Supreme Court arguing that the Employee Retirement Income Security Act (ERISA) does not preempt state laws allowing injured consumers to sue health insurance plans. Although the federal government took the opposite position during the Reagan Administration, we believe that the Solicitor General's argument has a very strong basis in the language of the statute. We also believe that the argument is consistent with our support for a strong enforcement mechanism in patients' rights legislation. If the Supreme Court accepts our argument, we will still need federal legislation to (1) enforce patients' rights against self-insured plans, which are not regulated by the States, and to (2) enforce patients' rights against insurance plans in States that have failed to provide an adequate remedy. If the Supreme Court rejects our argument, we will need federal legislation to enforce patients' rights against both self-insured and insurance plans in every State. We are now in the process of considering whether we should seek publicity for this amicus brief.

5. Health -- Massachusetts HMO Update: In response to requests from Senator Kennedy, HHS last week offered the four HMOs in Massachusetts that participate in the Medicare program a chance to modify their benefit packages. As you recall, at least one of these HMOs would have dropped out of the program in the absence of this administrative action. The HHS offer was well received by the Massachusetts delegation, the Governor, and the press. As of this writing, three of the four plans have responded by agreeing to provide comprehensive drug benefits if the fourth plan (Harvard Community Health Plan) does so as well. (The plans believe that they will not suffer from adverse selection if they all offer the same drug benefits.) We will know by Tuesday whether Harvard Community will agree to this proposal. If it does not, the other plans probably will submit alternative plans with much lesser drug benefits. Even in this worst-case scenario, Senator Kennedy believes that blame will attach to the HMOs, rather than to HHS.

6. Health -- Racial Disparities in Heart Disease: The Morbidity and Mortality Weekly Report of the Centers for Disease Control (CDC) published a report last week showing increased racial disparities in heart disease. The report found that between 1981 and 1995, the ratio of blacks to whites who died from heart disease increased by nearly 20 percent. The racial disparity increased across all age groups, but particularly for individuals between the ages of 45 and 54. The disparity also increased during each of the three five-year time periods examined. This study underscores the need for your racial health disparities initiative, which seeks to eliminate disparities in six critical health areas, including heart disease, by the year 2010.

7. Welfare Reform -- New York City Food Stamp and Medicaid Procedures: HHS, USDA, and welfare advocates have serious concerns that New York City is inappropriately requiring families to wait until their second visit to a human services office before applying for food stamps and Medicaid. Although the welfare law allows agencies to adopt this practice for TANF assistance (the agencies, for example, can require an applicant to search for a job first), Food Stamp and Medicaid law require agencies to provide applications on the first visit. As a result, both USDA and HCFA are requesting information from city and state officials about their application procedures. Mayor Giuliani's welfare commissioner (Jason Turner) initially responded to these requests in a highly cooperative and forthright manner. Giuliani himself, however, decided to take a different tack, insisting that the review is an attack on his work-first welfare agenda. We are confident that HCFA and USDA are trying to resolve this issue as quietly and expeditiously as possible, consistent with the Food Stamp and Medicaid guarantee; we are unsure, however, whether Giuliani's stubbornness will make such a resolution hard to achieve.

8. Welfare Reform -- Welfare-to-Work Study: A new study presented at the Southern Economic Association meeting last week provides encouraging data on the employment rates of families leaving the welfare rolls. The report tracked welfare recipients in Atlanta, Baltimore, Houston, and Kansas City by matching welfare case data with employment data submitted by employers through the Unemployment Insurance reporting system. The study found that between 1993 and 1997, the proportion of people leaving the welfare rolls who were working in the following quarter increased in all four cities -- from 55 percent to 67 percent in Kansas City, 47 percent to 57 percent in Atlanta, 45 percent to 56 percent in Baltimore, and 43 percent to 47 percent in Houston.

9. Welfare Reform -- Vice Presidential Welfare-to-Work Event: The Vice President will announce the second round of Welfare-to-Work competitive grants on Thursday at a town hall meeting with civic and faith-based organizations, employers, and individuals who have moved from welfare to work. You announced the first round of competitive grants at an event in May. Although the Department of Labor is still finalizing the grants, we expect to award approximately 75 new grants totaling over \$250 million to communities across the nation. Secretaries Herman and Shalala will join the Vice President, and Secretaries Slater and Cuomo may amplify the welfare-to-work message at similar events around the country.

10. Education -- National Board: The National Board for Professional Teaching Standards (NBPTS) announced on Thursday that 924 teachers from 37 states earned master teacher certification during 1997-1998. This brings the total number of Board-certified teachers to 1,836 in 45 states and the District of Columbia. States with the greatest number of master teachers are North Carolina (536), Ohio (337), and California (129). The newly certified teachers include the first from Arkansas: Susan Lockhart, from Rena Elementary School in Van Buren. Mike Cohen will meet with NBPTS President Jim Kelly next week to map out plans for putting the board on a stronger and more bipartisan footing in the next

Congress.

11. Crime -- Chicago Gun Industry Law Suit: The City of Chicago and Cook County filed suit against the gun industry on Thursday, charging manufacturers, distributors, and dealers with engaging in practices that promote illegal gun use. The suit comes at the end of a three-month sting operation in which Chicago police officers, posing as gang members, bought hundreds of guns from suburban gun shops for obviously illegal purposes. The suit claims that the defendants have "created a public nuisance" because they "knowingly design, market and distribute firearms in order to facilitate their illegal entry into and possession in Chicago, where they are illegal to possess -- and where they are often used in crimes." The suit seeks \$433 million in damages for costs incurred since 1994 by the Chicago Police Department, the Chicago Fire Department's emergency medical services, the City Law Department, Cook County Hospital, and the Cook County criminal justice system.

12. Crime -- Survey on Gun Ownership: The Center to Prevent Handgun Violence released a survey on Friday showing that 43 percent of households with children have guns, and that of those households, 23 percent keep their guns loaded.