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Drug Policy

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10-8-96
drug Policy

Home Drug Test Kits

October 8, 1996

- Talking points from Jim O'Hara at FDA are attached. In short, they state that the FDA is now reviewing its policy, which dates back to the mid-1980s, regarding the regulation of home drug test kits and has no intention of taking regulatory action against the marketers of such kits while the review is ongoing.
- The White House cannot comment on an ongoing regulatory review.
- On the general issue of home drug testing kits, however, the President's position is clear. As parents seek to raise their children drug-free, it is important to make all potentially useful tools available to them. The President believes that safe and reliable tests should be available to parents and parents should be able to use them if they choose.

Drafted and Cleared: Kathy McKiernan, Elizabeth Drye, DPC 6-5573

October 4, 1996

Note to HHS, White House press offices

From: Jim O'Hara, FDA public affairs *JOH*

House Commerce Committee chairman Thomas Bliley (R-VA) wrote the President, Secretary Shalala and Dr. Kessler last Friday over the issue of home drug test kits. As agreed to by Committee staff and HHS legislative staff on Monday, the White House, the Secretary and the Commissioner responded to that letter yesterday.

- o The White House letter signed by OMB general counsel stated that FDA's draft testimony on home drug test kits received normal review under procedures dating back to the Administration of Franklin Roosevelt and that the review did not constitute any White House involvement in the formulation of policy.
- o The Department's letter stated that the draft testimony received normal review and again that the review did not constitute formulation of policy or approval of policy. It also noted that the Agency had committed during the September 26 hearing to re-evaluate its policy and thought that was appropriate.
- o The Agency's letter confirmed:
 - Agency officials' statements last week to members of the Commerce Committee that Ms. Sunny Cloud will not be subject to any regulatory action for the marketing of her kit in the past or while the policy is under review. Once a final policy is in place, Ms. Cloud would be expected to comply with it.
 - That while the Agency is reviewing its policy, the Agency intends to exercise its enforcement discretion and not take any regulatory action against any home test collection system that meets specified criteria. Any company doing so would likewise be expected to comply with a final policy. This exercise of enforcement discretion is not a reversal of policy; the policy is being re-evaluated.
 - The Agency will re-evaluate its policy with regard to these products expeditiously.
 - Agency decisions on how to regulate home test collection systems for drugs of abuse date back to the mid-1980s. Public discussions of how the Agency treats these products include a public advisory committee in 1985, a Federal Register notice of the availability of guidance to industry in 1988 and the Congressional testimony of then FDA Commissioner Frank Young in 1989. There is no Agency prohibition against the approval of these products.

10-8-96

THE WHITE HOUSE
WASHINGTON

INTERVAL

October 3, 1996

David A. Kessler, M.D.
Commissioner
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

Dear Dr. Kessler:

I am writing regarding the Food and Drug Administration's (FDA's) policy on home drug test kits. I understand that FDA's approach to reviewing and approving home testing kits, including those for illegal drugs, was developed during the administrations of Presidents Reagan and Bush. The President is pleased that you intend to re-evaluate this policy as it applies to home tests for illegal substances. &

As you know, The President is committed to ensuring parents have the tools they need to prevent their children from using illegal substances. He has supported drug testing of high school athletes and has fought Congress's efforts to cut funds for the Safe and Drug-Free Schools Act. This administration has encouraged states to adopt a "zero tolerance" standard for drivers under the age of 21 who drive while intoxicated. You and the President have worked together to end children's tobacco use.

The President believes parents should also have access to safe and effective home drug test kits. Of course, neither he nor I state a view as to whether the FDA should approve any particular home drug testing product as safe and effective. The President believes, however, that safe and reliable tests should be available to parents, and parents should be able to use such tests if they choose.

As parents seek to raise their children drug-free, it is important to make all potentially useful tools available to them. The President would want you to keep this in mind as FDA reviews its criteria for evaluating home drug test kits.

Sincerely,



Carol H. Rasco
Assistant to the President
for Domestic Policy

The Clinton Administration Anti-Drug Record

Drug Policy
Aug 20 96

- **The Largest Anti-Drug Budgets Ever.** Year-in and Year-out, President Clinton has proposed the largest Anti-Drug Budgets of any President ever. For FY 1997, he is proposing over \$15 billion in funding. Indeed, under the Clinton Budget now before Congress, the DEA would grow by 18% in one year and 116 new DEA agents would be added. [Source: Office of National Drug Control Policy, The National Drug Control Strategy, April 1996; Department of Justice, FY96 Budget Request]
- **President Clinton has Matched his Words with Action.** President Clinton has been very active and outspoken on the issue of drugs. In his 1996 State of the Union, he challenged parents to talk openly and firmly to their children about the harm of drugs and announced General Barry McCaffrey as the Nation's New Drug Czar. He used international drug control policy as the centerpiece of an annual address to the United Nations. He convened a White House Leadership Conference that specifically addressed the issues of rising adolescent drug use and violence.
- **Combatting youth drug use.** The number one goal of President Clinton's 1996 National Drug Control strategy is to motivate America's youth to reject illegal drugs and substance abuse. The first ever White House Conference on Youth, Drug Use and Violence in March 1996 launched a national media literacy and drug deglamorization campaign aimed at youth.

Accomplishments:

- **Drug testing for High School Athletes.** In January of 1995, the Clinton Administration supported high school athlete drug testing in an amicus brief to the Supreme Court, sending the message to parents and students that drug use will not be tolerated in our schools. [Vernonia School District 47J vs. Acton]
- **Working to end teen tobacco use.** President Clinton has proposed restricting youth access to tobacco products, and reducing the advertising and promotional activities that make these products appealing to young people.
- **Zero-tolerance on underage drinking.** The Clinton Administration has encouraged states to adopt a "zero tolerance" standard for drivers under the age of 21 who drive while intoxicated.
- **Safe and Drug-Free Schools.** President Clinton expanded the Drug Free Schools Act into the Safe and Drug Free Schools Act in 1994, making violence prevention a key part of that program. The President has fought throughout his term for full funding of the program, fighting back a \$266 million cut by the House in 1996. Forty million students in over 97% of the school districts in the country use these funds to keep violence and drugs away from students and our schools.

In Addition:

- He is the **first** President to refuse full certification to Andean source countries blocking them from receiving international loans and most U.S. foreign aid if they do not cooperate with U.S. anti-drug measures.
- He is the **first** President to establish a National Methamphetamine Strategy, bringing law enforcement, medical, environmental and treatment communities to attack it.

THE NATIONAL DRUG CONTROL STRATEGY: 1996

1. Motivate America's youth to reject illegal drugs and substance abuse.
=> *President Clinton has expanded the **Safe and Drug-Free Schools** program.*
2. Enhance the safety of American's by substantially reducing drug-related crime and violence.
=> *President Clinton's 1994 Crime Bill is putting **100,000 new police** on the street.*
3. Reduce health, welfare and crime costs resulting from illegal drug use.
=> *The Administration has expanded **drug treatment** for hard-core users and developed a **drug testing** program for all federal arrestees to help end the cycle of violence and drug abuse.*
4. Shield America's air, land and sea frontiers from the drug threat.
=> *Initiatives such as U.S. Customs' "Operation Hard Line," and increasing the number of border patrols have helped to **close down the border to drug traffickers**.*
5. Break foreign and domestic sources of supply.
=> *The Administration refused full certification to Andean source countries, pressure which resulted in the **arrest of six of the Cali Cartel's top leaders** and the dismantling of the cartel.*

CLINTON GORE 96

The Clinton Administration Anti-Drug Record

The Largest Anti-Drug Budgets Ever. Year-in and Year-out, President Clinton has proposed the largest Anti-Drug Budgets of any President ever. For FY 1997, he is proposing over \$15 billion in funding. Indeed, under the Clinton Budget now before Congress, the DEA would grow by 18% in one year and 116 new DEA agents would be added. [Source: Office of National Drug Control Policy, The National Drug Control Strategy, April 1996; Department of Justice, FY96 Budget Request]

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The Republican Drug Record

When it Comes to Talking About Solutions to Combat Drugs, Republicans Have Nothing to Say. Newt Gingrich's Contract with America never mentions the word "drugs" once. Bob Dole, given an opportunity to address the Nation after the State of the Union, never mentions the word "drugs" once.

Republicans Cut \$767 million from the Drug Control Budget in 1996. These drastically needed funds would have gone towards prevention, treatment and law enforcement in the fight against drugs. [Source: ONDCP; Office of Programs, Budget and Research]

Republicans Cut Drug Prevention and Treatment. The Center for Substance Abuse Prevention (CSAP) and the Center for Substance Abuse Treatment (CSAT) are the lead federal agencies whose sole and specific mandate is drug abuse prevention and treatment. Six of the 12 programs under CSAP specifically are directed at drug abuse by at-risk youth. The Republican Congress cut these programs by 62% and 58% respectively in FY 96 and currently is proposing more cuts to the programs for FY 97 -- thereby eliminating numerous substance abuse programs focused on adolescents across the country. [Source: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration; Impact of House Appropriations Subcommittee Mark: FY95-FY97]

Republicans Cut Anti-Drug Education Programs. Earlier this year, the President forwarded to the Congress a request to fund various counter-drug programs totalling \$250 million. In addition to including funding for domestic law enforcement programs to address methamphetamine and other drugs, this funding included a \$15 million Youth Drug Awareness mass media campaign. The overall goal of the initiative is to increase youth awareness of the health, social and economic costs of drug abuse. The Republican Congress rejected this proposal in whole. [Source: Office of National Drug Control Policy]

Republicans Rhetoric Doesn't Match Their Action. In taking control of Congress in 1994, the Republicans began to conduct their own war -- against effective anti-drug programs. They voted to cut funding for the 1996 Federal Drug Control Budget by \$767 million, eliminate funding for Drug Courts, to drastically cut the Safe and Drug Free Schools Program by more than 50%, to cut by more than 50% drug programs targeted at at-risk youth, to cut funding for the DEA by \$5 million, and tried to eliminate the President's 100,000 Community Police Officer Program. [Source: President's Veto Message Re: Commerce, Justice, State Appropriations, 12/19/95; House-passed FY96 Labor/HHS Appropriations Bill; ONDCP; Office of Programs, Budget and Research]

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Drugs
8/15/96

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August 15, 1996

MEMORANDUM TO MIKE MCCURRY
GENE SPERLING

FROM: LARRY HAAS

RE: Drug Funding under this Administration

Because I received a call yesterday about federal drug control funding, I thought I would pass along the material that we put together; we haven't faced this issue for the last time.

As per the enclosed charts, the President has increased total federal drug control funding every year, and he would have increased it more in 1996 but Congress cut his request. The same mostly goes for the Office of Drug Control Policy, which is one piece of drug control funding.

- Total Federal Drug Control Funding:

- 1994, \$12.2 billion;
- 1995, \$13.3 billion;
- 1996, an estimated \$13.8 billion; and
- 1997, the President proposed \$15.1 billion.

For 1996, the President had proposed \$14.6 billion but, as you can see, Congress provided only an estimated \$13.8 billion.

- Office of Drug Control Policy:

- 1994, \$111 million;
- 1995, \$146 million;
- 1996, an estimated \$130 million; and
- 1997, the President proposed \$138 million.

For 1996, the President had proposed \$157 million, but, as you can see, Congress provided only an estimated \$130 million.

24. FEDERAL DRUG CONTROL FUNDING

TABLE 24-1. FEDERAL DRUG CONTROL FUNDING

(Agency summary; in millions of dollars) ¹

	1994 Actual	1995 Estimate	1996 President's Budget	Req. Change 1995-1996	
				Dollars	Percent
Agriculture:					
Agricultural Research Service	6	6	5	-2	-27.4
U.S. Forest Service	6	10	9	*	-3.9
Women, Infants, Children (WIC)	15	14	15	2	10.8
Total, Agriculture	28	30	30	-1	-2.2
Corporation for National and Community Service	28	39	54	14	36.7
Defense	815	852	812	-40	-4.7
Education	599.0	603	732	129	21.4
Crime Act Funding—Violent Crime Reduction Trust Fund (VCRTF):					
Family and Community Endeavor Schools Grants		2	6	4	179.3
Total, Education	599	605	628	22	3.7
Health and Human Services:					
Administration for Children and Families	90	89	90	1	1.1
Substance Abuse and Mental Health Services Administration (SAMHSA) ²	1,363	1,373	1,405	33	2.5
National Institutes of Health	425	438	452	15	3.4
Social Security Administration	20	158	202	44	27.9
Centers for Disease Control ³	37	44	50	6	12.4
Food and Drug Administration	7	7	7	*	5.7
Health Care Financing Administration	232	252	290	38	15.0
Indian Health Service	43	43	45	2	5.1
Health Resources and Services Administration	33	36	41	5	13.9
Crime Act Funding (VCRTF):					
Family and Community Endeavor Schools Grants		5	14	9	179.7
Total, Health and Human Services	2,250	2,446	2,600	154	6.3
Housing and Urban Development	315	301	290	-11	-3.6
Crime Act Funding (VCRTF):					
Local Partnership Act			*	*	
Total, Housing and Urban Development	315	301	290	-10	-3.5
Interior:					
Bureau of Indian Affairs	22	20	20	1	3.0
Bureau of Land Management	5	5	5	*	-0.2
Fish and Wildlife Service	1	1	1	*	-0.8
National Park Service	9	9	9	*	0.0
Office of Territorial and International Affairs	1	1	*	-1	-84.5
Crime Act Funding (VCRTF):					
Urban Recreation and At-Risk Youth			*	*	
Total, Interior	38	36	36	*	-0.7
The Judiciary	457	499	579	80	15.9
Crime Act Funding (VCRTF):					
Drug Testing For Federal Prisoners			8	8	
Total, The Judiciary	457	499	586	87	17.5
Justice:					
Assets Forfeiture Fund	527	512	502	-10	-1.9
U.S. Attorneys	212	213	211	-3	-1.2
Bureau of Prisons	1,411	1,694	1,929	235	13.9
Criminal Division	18	19	20	1	2.8
Drug Enforcement Administration	768	801	845	44	5.5
Federal Bureau of Investigation	476	540	630	90	16.7
Immigration and Naturalization Service	157	170	226	56	33.2
Interpol	2	2	2	0	25.7
U.S. Marshals Service	246	280	308	28	10.0
Office of Justice Programs	544	172	253	81	47.2
Organized Crime Drug Enforcement	382	375	378	4	0.9
Support of U.S. Prisoners	212	208	207	-1	-0.5

TABLE 24-1. FEDERAL DRUG CONTROL FUNDING—Continued

(Agency summary; in millions of dollars) ¹

	1994 Actual	1995 Estimate	1996 President's Budget	Req. Change 1995-1996	
				Dollars	Percent
Tax Division	•	•	•	•	1.7
Weed and Seed Program Fund	7	7	3	-4	-62.8
Crime Act Funding (VCRTF):					
Community Policing (100,000 Cops) *		364	621	257	70.6
Prisons Grants		2	50	48	
Drug Treatment For State and Federal Prisoners			40	40	
Local Crime Prevention Block Grant			6	6	
Model Intensive Grant Program			2	2	
Drug Courts		29	150	121	417.2
Improving Border Controls		15	28	13	90.6
Department of Justice Crime Fighting			31	31	
Violence Against Women		5	26	21	400.0
Rural Drug Trafficking			10	10	
Byrne Grants		360	208	-152	-42.2
Additional Drug Enforcement Administrative Agents			12	12	
Other VCRTF Funding		•	11	11	
Total, Justice	4,963	5,768	6,710	942	16.3
Labor	91	94	80	-13	-14.0
Office of National Drug Control Policy:					
Operations	12	10	10	•	0.0
High Intensity Drug Trafficking Areas	86	107	110	3	2.8
Special Forfeiture Fund	13	26	37	11	41.8
Total, ONDCP	111	143	157	14	9.7
Small Business Administration	•	•	•	•	
Agency for International Development	•	•	•	•	
State:					
International Narcotics Control Program	100	105	213	108	102.9
Foreign Military Financing/International Military Assistance	15	13		-13	-100.0
Economic Support Fund/Development Assistance	45	14		-14	-100.0
Emergencies in the Diplomatic and Consular Service	•	•	•	•	
Total, State	160	132	213	81	61.5
Transportation:					
U.S. Coast Guard	315	306	321	15	4.8
Federal Aviation Administration	25	18	20	2	13.8
National Highway Traffic Safety Administration	31	29	30	1	2.7
Total, Transportation	371	353	372	18	5.1
Treasury:					
Bureau of Alcohol, Tobacco, and Firearms	159	157	162	5	3.2
U.S. Customs Service	573	536	500	-36	-6.8
Federal Law Enforcement Training Center	20	22	19	-3	-12.1
Financial Crimes Enforcement Network	9	10	11	1	12.4
Internal Revenue Service	113	99	103	4	3.8
U.S. Secret Service	71	73	66	-7	-9.7
Treasury Forfeiture Fund	150	158	148	-11	-6.6
Crime Act Funding (VCRTF):					
Gang Resistance Education and Training (GREAT)		6	5	-1	-20.0
Rural Drug Enforcement Training			•	•	
Treasury Crime Fighting		9	28	19	198.5
Total, Treasury	1,095	1,071	1,042	-29	-2.7
U.S. Information Agency	8	8	8	•	5.2
Veterans Affairs	854	887	929	42	4.7
Other Crime Act Funding (VCRTF):					
Ounce of Prevention Council			4	4	
Total, Federal Programs	12,184	13,265	14,550	1,285	9.7

¹ Less than \$500 thousand.² In some cases drug budget requests have been imputed from department budget total.³ Figure represents an estimate based on historical spending patterns based on 1995 SAMHSA spending as well as Block Grant restrictions. The Performance Partnership initiative consolidates SAMHSA demonstration and training authority, while eliminating many set-asides and increasing State flexibility to target funds to their substance abuse priorities. Actual funds to be spent by SAMHSA or States on drug treatment and prevention in 1996 cannot be estimated with precision. Co-morbidity figures are included in this estimate.⁴ Figure represents an estimate based on historical spending patterns. The Performance Partnership eliminates many set-asides, increasing State flexibility to target funds to their substance abuse priorities. Actual funds to be spent by States on drug AIDS counseling and Prevention in 1996 cannot be estimated with precision.⁵ 1995 reflects a \$66 million (drug portion of \$200.9 million) transfer of COPS funding to the Office of Justice Programs.

22. FEDERAL DRUG CONTROL FUNDING

Table 22-1. FEDERAL DRUG CONTROL FUNDING

(Budget authority, in millions of dollars)

	1995 actual	1996 estimate ¹	1997 proposed	Change 1996-1997	
				Dollars	Percent
Agriculture:					
Agriculture Research Service	6	4	5	1	25%
U.S. Forest Service	9	9	9	.....	.....
Women, Infants, Children (WIC)	14	15	15	.....	.....
Total, Agriculture	29	28	29	1	4%
Corporation for National and Community Service	26	33	38	5	15%
Crime Prevention Council	*	1	2	1	100%
Defense	840	814	814	.....	.....
Education	584	618	659	41	7%
Health and Human Services:					
Administration for Children and Families	91	45	83	38	84%
Substance Abuse and Mental Health Services Administration ²	1,372	1,097	1,285	188	17%
National Institutes of Health	437	459	466	7	2%
Centers for Disease Control	45	44	61	17	39%
Food and Drug Administration	7	7	7	.....	.....
Health Care Financing Administration	252	290	320	30	10%
Indian Health Service	43	43	43	.....	.....
Health Resources and Services Administration	36	41	43	2	5%
Total, Health and Human Services	2,283	2,026	2,308	282	14%
Housing and Urban Development	301	290	290	.....	.....
Interior:					
Bureau of Indian Affairs	20	21	21	.....	.....
Bureau of Land Management	5	5	5	.....	.....
Fish and Wildlife Service	1	1	1	.....	.....
National Park Service	9	9	9	.....	.....
Office of Insular Affairs	1	*	*	.....	.....
Total, Interior	36	36	36	.....	.....
Judiciary	471	507	577	70	14%
Justice:					
Assets Forfeiture Fund	507	444	433	-11	-2%
U.S. Attorneys	213	237	256	19	8%
Bureau of Prisons	1,703	1,820	2,037	217	12%
Community Oriented Policing Services (COPS)	429	595	652	57	10%
Criminal Division	21	22	24	2	9%
Drug Enforcement Administration	792	853	1,009	156	18%
Federal Bureau of Investigation	607	624	732	108	17%
Federal Prisoner Detention	199	243	292	49	20%
Immigration and Naturalization Service	177	246	307	61	25%
Interagency Crime and Drug Enforcement	375	360	372	12	3%
INTERPOL	2	2	2	.....	.....
U.S. Marshals Service	281	323	347	24	7%
Office of Justice Programs	488	668	678	10	1%
Tax Division	1	*	*	.....	.....
Total, Justice	5,795	6,437	7,141	704	11%
Labor	60	61	61	.....	.....
Office of National Drug Control Policy:					
Salaries and Expenses, Operations	10	11	17	6	55%
Counterdrug Technology Assessment Center	8	16	18	2	13%
High Intensity Drug Trafficking Areas	107	103	103	.....	.....
Special Forfeiture Fund	21	.....	.....	.....	.....
Total, Office of National Drug Control Policy	146	130	138	8	6%

Table 22-1. FEDERAL DRUG CONTROL FUNDING—Continued

(Budget authority, in millions of dollars)

	1995 actual	1996 estimate ¹	1997 proposed	Change 1996-1997	
				Dollars	Percent
Social Security Administration	149	196	203	7	4%
Small Business Administration	.	.	.		
State:					
Foreign Military Financing	13				
Emergencies in the Diplomatic & Consular Service	.	.	1	1	
International Narcotics Control Program	105	135	193	58	43%
Total, State	118	135	194	59	44%
Economic Support Fund ³	20				
Transportation:					
U.S. Coast Guard	301	330	346	16	5%
Federal Aviation Administration	18	20	22	2	10%
National Highway Traffic Safety Administration	30	30	29	-1	-3%
Total, Transportation	349	380	397	17	4%
Treasury:					
Bureau of Alcohol, Tobacco and Firearms	154	172	176	4	2%
U.S. Customs Service	544	551	588	37	7%
Federal Law Enforcement Training Center	17	20	22	2	10%
Financial Crimes Enforcement Network	12	12	12		
Internal Revenue Service	74	67	68	1	1%
U.S. Secret Service	71	68	73	5	7%
Treasury Forfeiture Fund	196	184	173	-11	-6%
Total, Treasury	1,068	1,074	1,112	38	4%
U.S. Information Agency	10	9	9		
Veterans Affairs	966	1,009	1,056	47	5%
Total, Drug Control Programs	13,251	13,784	15,064	1,280	9%

¹ Less than \$500 thousand² Includes Administration's proposed adjustments to 1996 continuing resolution levels.³ Figures represent estimates based on historical funding patterns. The Performance Partnership eliminates many set-asides, increasing State flexibility to target funds to their substance abuse priorities. Therefore, actual funds for illicit drug treatment and prevention cannot be estimated with precision.⁴ Funding reported under the Department of State after 1995.

TO MMIC
FR RAHM

3-5-96

NEWS

Department of the Treasury
U.S. CUSTOMS SERVICEFOR IMMEDIATE RELEASE
MARCH XX, 1996**DRAFT**CONTACT: BILL ANTHONY
202-927-0549

CUSTOMS ACTS TO BAN "DATE RAPE" DRUG

Washington, D.C.-- Secretary of the Treasury Robert E. Rubin and Customs Commissioner George J. Weise today announced that the controversial "date rape" drug, Rohypnol will be banned from entering the country.

RO-HIP-NOL

Rohypnol, sometimes called Roofies, Rophies, or the forget pill on the street, has been gaining increased popularity among teenagers, especially in South Florida and Texas. It is a sedative 10 times more powerful than valium and is used in some countries to put out surgery patients. It is also hypnotic and creates a drunk then sleepy feeling that lasts up to eight hours.

Secretary Rubin noted that "the drug has no medicinal value that cannot be met with existing approved pharmaceuticals in the United States. We will no longer permit it to enter the country."

Commissioner Weise called the drug "another nightmare for every parent in America. The world is dangerous enough without a so called 'party drug' that can have terrible consequences."

Numerous news reports and several celebrated cases have chronicled incidents where women claim they were assaulted after their drinks had been spiked with the drug. Increasing usage has alarmed law enforcement agencies, especially along the Southwest border and Texas.

#

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- SENT BY:

United States law stipulates that an individual who has obtained a controlled substance lawfully for personal medical use may, in certain circumstances, enter or depart the United States with the substance under certain condition.

Recently the Food and Drug Administration has asked the Customs Service to seize all importations of the drug Rohypnol. The FDA has exercised its enforcement discretion due to incidents of abuse of this substance and as of today, Customs will seize any quantity of rohypnol entering or leaving the United States.

FACTS ABOUT ROHYPNOL

- o Pronounced RO-HIP-NOL.
- o Some street names: Roofies, Rophies, The Forget Pill.
- o A Sedative. It is the brand name for the generic flunitrazepam. It is 10 times more potent than valium.
- o It usually comes in white, 2-milligram tablets in packaging similar to that of cold medicine. (bubble packs)
- o Sells usually for about \$3-\$5 per pill.
- o Teens commonly use it as a secondary drug to alcohol and marijuana.
- o Also used by cocaine addicts to ease the descent from a cocaine high and by heroin abusers to relieve withdrawal and enhance the depressant effects of heroin.
- o Chances of overdose are slim, but more likely if mixed with alcohol and other drugs.
- o Creates a drunk, then sleepy feeling that peaks after two hours and lasts about eight.
- o Rohypnol is marketed and manufactured in Mexico, South America, Europe and Asia by the Swiss-based company, Hoffman-La Roche.
- o Used legally in many countries (60) to battle insomnia.
- o The drug neither is manufactured nor approved for medical use in the United States.
- o Generally found in South Florida and Texas imported from Colombia and Mexico.
- o It is a drug that is often associated with date rape.

G:\ROOFIES

1/30/97



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, JANUARY 29, 1997

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MEDIA ADVISORY

WASHINGTON, D.C. -- The Justice Department today filed a "friend of the court"--or amicus--brief in the Ninth Circuit Court of Appeals saying a lower court was right to temporarily ban state officials from implementing Proposition 209--the California Civil Rights Initiative. Prop. 209, passed in November, would generally prohibit affirmative action in public contracting, education, and employment throughout California.

In December, the Justice Department concluded Prop. 209 was unconstitutional under existing Supreme Court precedent, and indicated it would enter the case at an appropriate time. Shortly thereafter, the U.S. District Court in San Francisco ruled Prop. 209 was likely unconstitutional and barred its implementation until a full hearing on the merits could occur. The Justice Department's amicus brief today opposes a request for a stay of that injunction. The Justice Department is not a party in the case.

Copies of the 28-page brief can be obtained through the Justice Department's Office of Public Affairs, 10th Street & Constitution Avenue, Room 1228.

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TALKING POINTS ON CALIFORNIA PROPOSITION 209
(1/29/97)

- The Justice Department today filed a 'friend of the court'--or amicus--brief in the Ninth Circuit Court of Appeals saying the district court was right to temporarily ban state officials from implementing Proposition 209--the California Civil Rights Initiative. Prop 209, passed in November, would generally prohibit affirmative action in public contracting, education, and employment throughout California.
- California has requested a stay of the district court's so-called preliminary injunction, until the appellate court determines if the lower court was right to issue the injunction in the first place. We oppose the state's request.
- In December, the Justice Department concluded Prop 209 was unconstitutional under existing Supreme Court precedent, and indicated it would get involved in the case at an appropriate time. The stay proceeding is an appropriate stage to enter the case.
- California's stay request is like a dress rehearsal for the appeal: to grant a stay, the appeals court must find the district court misapprehended the law in concluding that Prop 209 is probably unconstitutional.
- Today's brief agrees with the district court that Prop 209 violates the Equal Protection Clause. It says Prop 209 impermissibly distorts the political process in California along racial and gender lines by erecting unique obstacles for minorities and women. Specifically, Prop 209 singles out programs designed to benefit minorities and women--and only those programs--and treats them differently.
- Minorities and women seeking affirmative action measures in California that would meet the demanding federal constitutional standards for affirmative action programs now must first try to amend the California Constitution to overturn Prop 209, while those lobbying for preferential treatment on other bases may do so through the ordinary state and local political process.
- The Justice Department based its position primarily on the Supreme Court's 1982 decision in Washington v. Seattle School District No. 1, which invalidated a Washington ballot initiative barring local school districts from voluntarily adopting busing programs to overcome de facto school segregation and promote integration. The Supreme Court determined that the initiative singled out a racial issue--busing to integrate schools--for adverse treatment in the political process. Those seeking busing for any number of reasons were free to petition their local school boards, while those seeking busing for racial integration could not.

Drafted/Cleared: Myron Marlin, DOJ, 616-2777 & Dawn Chirwa,

- The Department's position does not mean that affirmative action can never be repealed, or that it is constitutionally mandated. Rather, the brief expressly says that units of state and local government can, through their normal political processes, decide whether affirmative action is appropriate as a matter of law and policy, and then implement or discontinue such programs.
- If minorities and women press state and local government in the normal course for affirmative action, but lose out in that process, there is no constitutional violation. But what the Constitution forbids are changes to the usual rules of the political process that place minorities and women at a unique disadvantage by forcing them to jump through the extraordinary hoop of a constitutional amendment in order to adopt measures that benefit them, instead of simply petitioning state and local bodies for such measures.
- A hearing before a panel of the Ninth Circuit on California's stay request is set for February 10. We do not expect to participate in the oral argument. California's brief appealing the merits of the preliminary injunction ruling is due later this week. The responsive brief of the plaintiff class, which includes a broad coalition of civil rights groups and individuals, would be due on February 28. No date has yet been set for a hearing on the merits of the appeal.

Questions and Answers

Q: Why is the Department filing now, as opposed to filing at the district court last year or waiting until the actual hearing on the merits of the state's appeal?

A: This is the first occasion for the Department to present to a court its views on the constitutionality of Prop. 209 since the Department decided to participate in the case. [By the time that the Department concluded that Prop 209 was unconstitutional under existing Supreme Court precedent, it was too late to file in the district court for purposes of the preliminary injunction proceedings there.]

Q: Why did the Department decide to file an amicus brief rather than intervening as a party?

A: At this stage of the litigation, we determined that our views could be adequately presented in the form of an amicus brief. The Department could decide at some later date to become a party to the case.

Q: Prop 209 says that there shall be no discrimination against anybody, black or white, on the basis of race. How can it violate the Equal Protection Clause for a state to treat everybody equally?

A: Prop 209 does not treat everybody equally. For women and minorities seeking affirmative action, it blocks an avenue of political recourse that is otherwise left open to others. While seemingly neutral on its face, Prop 209 singles out programs designed to benefit minorities and women--and only those programs--and treats them differently.

Minorities and women seeking otherwise lawful affirmative action measures in California, including programs designed to overcome discrimination, now must first jump through the extraordinary hoop of getting an amendment to the California Constitution to overturn Prop 209. Meanwhile, those lobbying for preferential treatment on other bases may do so through the ordinary operation of the state and local political process. It is this distortion of the political process along racial and gender lines that violates the Equal Protection Clause under Supreme Court precedent.

Q: The Supreme Court has said that affirmative action is itself highly suspect as a constitutional matter. Isn't what California has done entirely in keeping with the Supreme Court's jurisprudence.

A: It is true that the Supreme Court has said that affirmative action is subject to strict judicial scrutiny. However, it has explicitly rejected the argument that affirmative action is per se unconstitutional, and has declined to impose a flat ban on it.

Justice Sandra Day O'Connor, writing for a strong majority, has admonished that affirmative action is still warranted in some circumstances to break down patterns of exclusion. Prop 209 goes way beyond the Supreme Court's rulings on affirmative action by banning even those measures that would meet the strict scrutiny standard, including vitally important efforts to overcome discrimination.

Q: Why isn't the Department's position anti-democratic: the people have spoken in California at the ballot box, and you are running into court seeking to frustrate their will.

A: Just because something is favored by a majority of voters does not make it constitutional. Indeed, it is a bedrock principle of our Constitution that it forbids the majority from impermissible trammeling the rights of minorities.

Q: Minorities and women together constitute a majority of the voters in California. Thus, doesn't the passage of Prop 209 reflect their will?

A: The Supreme Court has rejected the notion that the racial or sexual make-up of a population should dictate the level of scrutiny that is given to a measure that operates along racial or gender lines. In any event, minorities overwhelmingly voted against Prop 209. Women also voted against Prop 209, albeit by a narrower margin. It is therefore very misleading to say that Prop 209 reflects the will of minorities and women together.

Q: If you thought that Prop 209 was unconstitutional, why didn't you say so during the election campaign instead of waiting until the initiative was adopted by the voters of California?

A: The Administration devoted its energy to defeating the measure at the ballot box, and almost succeeded against long odds. It was not until the initiative was approved that the Justice Department had occasion to examine its constitutionality.

Q: Last year, Senator Dole sponsored a bill that would prohibit affirmative action by the federal government. Is that unconstitutional too?

A: The constitutional issues posed by such a bill are different from those presented by state ballot initiatives like Prop 209 that distort the ordinary operation of the legislative process at the state and local level. In any event, the Justice Department strongly opposes any federal legislative ban on affirmative action, and we would urge the President to veto such a bill.

Q: Why doesn't the Department's brief address the argument made by the plaintiffs and accepted in part by the district court that Prop 209 is preempted by various federal civil rights laws?

A: The district court's preemption holding only applies to that part of Prop 209 that bars affirmative action in public employment. Its equal protection holding applies to all aspects of Prop 209 and thus is sufficient to support the preliminary injunction in its entirety. For purposes of opposing California's request to stay the preliminary injunction, the Department has focused on the equal protection issue.