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Heather Howard
OPD/DPC
Box 104

Details of Gun Settlement Trigger Uncertainty

By Paul M. Barrett
Staff Reporter of The Wall Street Journal

As fans and foes of guns have a chance to examine the fine print of last week's landmark Smith & Wesson Corp. settlement with the Clinton administration, uncertainty has arisen over the pact's meaning and scope.

The nation's largest handgun manufacturer, Smith & Wesson last Friday agreed to a wide array of restrictions on how it makes and markets weapons.

In exchange, about half of the 29 cities and counties that have sued the gun industry as a whole agreed to drop the company from those court actions. The Clinton administration and the states of New York and Connecticut also agreed not to name Smith & Wesson in suits they have separately threatened to file against the gun industry.

But a week after the settlement's announcement in Washington, lawyers representing at least 12 municipalities—including Chicago, Cleveland, Cincinnati and Wilmington, Del.—are saying that their clients may not sign the pact, raising the prospect of Smith & Wesson still having to defend itself in suits across the country. "Obviously there are positives" in the settlement, "but more can be obtained," Jack Maistros, an outside attorney for Cleveland, says.

The possibility of a significant fraction of dissenting municipalities continuing to litigate against Smith & Wesson makes it unlikely that any other major gun maker would sign onto the agreement. That would severely limit how much the pact could alter the design and marketing of guns generally.

A number of firearm companies, the industry's main trade group and the National Rifle Association, which represents gun owners, all have attacked the agreement as a concession to government extortion during the past several days.

Another question is whether Smith & Wesson's concessions in the settlement may haunt it and other gun companies as they defend themselves in the continuing litigation.

A unit of Britain's Tomkins PLC, Smith & Wesson didn't admit to any wrongdoing or agree to pay any damages in last week's settlement. But it did promise to do things that much of the rest of the industry has insisted are infeasible or impossible. For example, Smith & Wesson said that within three years, it would develop an electronic "smart gun" that allows only an authorized user to fire.

On the marketing side, the company promised to exert broad new authority over retail dealers: curbing the delivery of sales of multiple guns, imposing background-check requirements that go well beyond existing federal law and employing government crime-gun tracing statistics to weed out suspect dealers.

Both developing a reliable smart gun and reining in retailers are demands made in the municipal suits that manufacturers generally have contended are unworkable. Antigun lawyers are sure to argue that Smith & Wesson's concessions prove that other companies could do more and should be held liable for failing to have done more.

"The largest American handgun maker has said, 'Of course we can do these things, and we're doing them,' " observes Dennis Henigan, the top lawyer with Handgun Control Inc., a Washington advocacy group. "You can be sure we will use that against other companies," adds Mr. Henigan, whose organization represents some municipalities that have signed the agreement and others that so far haven't.

Its concessions in the settlement may even be used against Smith & Wesson itself in those cases where it remains a defendant. Chief Executive Ed Shultz says Smith & Wesson will continue aggressively to defend pending suits.

Another huge area of doubt is how the settlement itself would work. One example:

The pact requires Smith & Wesson to have its guns sold at retail only by dealers that agree to a long list of restrictions. One of these limits is that the dealers may "not complete any transfer of a firearm" to a buyer who hasn't passed the federal background check. That sounds like a mere restatement of existing law. But it isn't.

Under current law, if the government hasn't completed a background check within 72 hours, the buyer may obtain the gun. Most background checks are done relatively quickly, using a national computer network. But the Smith & Wesson agreement creates an open-ended waiting period in those instances when the government isn't prepared to approve or disapprove of a gun purchase swiftly.

What isn't clear from the settlement language is whether this new indefinite waiting period would apply to a dealer's sale of only Smith & Wesson guns, or to all of its sales. If the broader version applies, many retailers might stop selling Smith & Wesson rather than impose open-ended waiting periods on customers, dealers say.

Three Asian Businessmen Arrested in Oil-Smuggling Case

By a Wall Street Journal *Staff Reporter*

WASHINGTON—U.S. efforts to crack down on Iraqi oil smuggling took a bizarre twist with the arrest in San Diego of three Asian businessmen, including a former Thai deputy finance minister, on charges they tried to divert $20 million in oil to Asia.

U.S. Customs agents nabbed the men Tuesday after a four-year sting operation aimed at stopping shipments of Iraqi oil to Thailand in violation of United Nations sanctions. The arrest of Surasak Nananukool, a top adviser to Thailand's main opposition party, shook the country's political elite.

Court papers allege that Mr. Nananukool and two other men conspired to ship Iraqi oil to a company in Bangkok, disguising the deal using shell companies in Singapore and the Cayman Islands. An undercover Customs agent acted as a go-between and helped arrest the three men.

Mr. Nananukool is alleged to have put up $150,000 for the first transaction, while the other two men—Simon Tan of Singapore and Amnard Vorachard of Thailand—owned businesses that had contracted to buy and ship the oil, according to court filings. No oil was ever shipped.

Except for some shipments of oil to Jordan, all other Iraqi oil sales are meant to pass through the U.N., which places the proceeds in a special account. The U.S. has become increasingly aggressive in recent months in trying to cut off oil tankers smuggling Iraqi oil through the Persian Gulf.

Senate Approves Changes In Crop-Insurance Program

By a Wall Street Journal *Staff Reporter*

WASHINGTON – The Senate approved several major changes in the federal crop-insurance program to encourage more farmers to buy higher levels of subsidized coverage for a broader range of crops.

The measure, which passed 95-5, would cost $1.5 billion annually in the next four years. It would, among other things, provide insurance for the first time to livestock producers and would expand coverage for produce growers. Policies would be available not only to protect against weather-related losses, but also against market risks, such as lower-than-expected commodity prices.

Sen. Bob Kerrey (D., Neb.) and other farm policy makers are trying to increase program participation, particularly in the South and East, where many farmers don't think crop insurance, subsidized or not, is worthwhile.

The government's share of premium costs now ranges from 13% to 57%, depending on the level of coverage. The Senate bill would have the government pay 45% to 60% on most policies, whereas similar legislation approved by the House last summer would raise that share to 31% to 67%. The lawmakers' objective is to reduce the almost perennial need for federal disaster assistance.

BP Amoco to End Exports Of Alaska Oil if Deal Occurs

By a Wall Street Journal *Staff Reporter*

WASHINGTON (AP)—BP Amoco PLC will halt exporting Alaska crude oil and divert the 60,000 barrels a day to California if it gets approval for its merger with Atlantic Richfield Co., the London-based oil company said.

The company made its intentions known in a letter to Rep. Don Young (R., Alaska), chairman of the House Resources Committee, who pushed legislation five years ago that allows Alaska oil to be exported.

The BP Amoco decision was hailed by Rep. George Miller (D., Calif.) as "the right thing to do" and a "welcomed announcement" at a time when oil shortages are causing gasoline prices to soar, especially on the West Coast.

But BP Amoco spokesman Tom Koch emphasized that the decision to end exports after the current export contract expires is contingent on government approval of the BP Amoco purchase of Los Angeles-based Atlantic Richfield, or Arco as it is commonly called.

The Federal Trade Commission is reviewing a revised proposal that would have Arco sell all of its Alaska petroleum holdings to Phillips Petroleum Co. as a condition for the merger with BP Amoco. The FTC had rejected and challenged in court an earlier proposal because it said the combined company would dominate oil production in Alaska's North Slope.

SEC Checking Accountants Over Shelters

By JOHN D. MCKINNON
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – The Securities and Exchange Commission, in the wake of the Clinton administration's crackdown on aggressive corporate tax shelters, is exploring whether accounting firms are violating conflict-of-interest rules by providing such services to clients that they also audit.

The SEC's concern that the rapidly growing business of shelter promotion creates an inherent conflict of interest for accountants when they sell to their own audit clients. On one hand, accountants are supposed to be independent, objective auditors of a company's financial records. On the other, officials worry that accounting firms might be reaping huge fees by showing the same companies how to save money on taxes through sophisticated—and sometimes legally questionable—accounting gymnastics. In one now-banned shelter that was marketed by investment firms, U.S. companies would lease government buildings in Europe, then lease them back to the local agencies that occupied them, producing a hefty tax savings for the U.S. concerns.

In response to the proliferation of shelters, the SEC has begun trying to determine whether accounting firms are providing shelters and other aggressive services to audit clients. The SEC is particularly focused on whether accounting firms are providing such services on a contingency-fee basis, meaning they collect a percentage of the savings they produce. The SEC and other regulators worry that such arrangements give the auditing firm too much of a stake in the company's bottom line, putting pressure on auditors to uphold the tax strategies, even if they believe the plans aren't proper.

"We have talked to firms regarding contingency fees, asking them to go back and take a look at their own practices and ensure that they aren't getting into contingency-fee arrangements that aren't permitted" under state rules or the profession's own standards, said Lynn Turner, the SEC's chief accountant. "We would be troubled if auditors have been advocating these tax shelters and putting themselves out there in an inappropriate position of advocating for a client, or have done it on a contingency-fee basis."

Peter Faber, a New York tax lawyer and former chairman of the American Bar Association's tax section, said he has seen contingency fees of as much as 40% for firms marketing tax shelters. In addition, he said, "I've talked to plenty of accountants who say they market ideas to audit clients. . . . You wonder whether that creates an independence issue if you get a percentage of tax savings from an audit client."

Mr. Faber recently testified about potential conflicts of interest stemming from tax shelters before the Senate Finance Committee. The panel is considering legislation to further restrict shelters.

Kenneth Kies, co-managing partner of the PricewaterhouseCoopers office here, told the panel that the conflict issue "has to be looked at, but rarely arises." His firm discussed with clients a shelter called the BOSS—for Bond and Option Sales Strategy—that Treasury officials later deemed abusive and moved to ban.

Unaware of SEC Contacts

"Our firm and I'm sure other firms . . . watch those rules very closely and comply with them," Mr. Kies said yesterday, adding that his firm had done nothing improper with regard to audit clients. He said he was unaware of any contacts on shelters from the SEC.

Spokesmen for KPMG LLP and Ernst & Young LLP said they hadn't found any indication of SEC contacts on the issue as of late yesterday.

The Treasury Department recently launched an offensive on shelters, requiring firms that market them to disclose them to the Internal Revenue Service and make available information about which clients buy them.

The SEC's efforts to obtain more information on marketing of shelters comes on the heels of an agency report in January that disclosed problems at PricewaterhouseCoopers. Specifically, that report showed that some 1,885 PricewaterhouseCoopers employees violated SEC independence rules because they or their relatives owned investments in 2,159 of the firm's 3,170 corporate audit clients. Most involved family members. The firm took a number of steps in response, including setting up a computerized tracking system. Similar conflicts are thought to exist at other accounting firms, some of which are also under investigation by regulators.

Contigency-Fee Arrangements

Almost all states prohibit use of contingency-fee arrangements for services sold to audit clients, as does the industry's national oversight body, the American Institute of Certified Public Accountants.

But regulators worry that soaring profits are creating more motivation for corporations and their accountants to find ways to trim tax bills.

"The temptations are there," said Dennis Spackman, chief accountant of the Church of Jesus Christ of Latter-day Saints and chairman of the National Association of State Boards of Accountancy.

The SEC also has asked accounting firms to "beef up their own internal quality standards to make sure they're staying independent of clients," the agency's Mr. Turner said. "Their quality control needs to cover all areas of independence, all areas of practice, including where tax practice and audit practice come together."

In addition, the SEC is re-examining its own rules on independence. The accounting profession is governed by a hodge-podge of state rules, AICPA tenets and the firms' own internal standards, along with SEC regulations for publicly traded companies.

"We're taking a look at those [independence] rules and we're considering what modifications, if any, need to be made," Mr. Turner added.

FTC Says Web Sweep Uncovers 1,600 Sites With Get-Rich Scams

Dow Jones Newswires

WASHINGTON – The Federal Trade Commission said a sweep of Web sites for possible fraud and abuse has netted some 1,600 sites used by con artists to lure victims into various get-quick-rich scams.

The FTC's Internet-investigations group coordinated the operation with local and state officials, Securities and Exchange Commission Internet specialists and U.S. postal inspectors, as well as consumer-protection officials from Norway to New Zealand and law-enforcement officials from around the world.

The FTC launched its 21st such Internet sweep as part of a continuing plan to step up policing of cyberspace. Officials from 150 agencies and consumer-advocacy groups from 28 countries surfed the Web covertly and sent their data to the FTC's headquarters here for analysis.

The 1,600 sites snagged will soon get e-mail reprimands from the FTC, warning operators of possible violations. Law-enforcement officials will conduct a second phase of the sweep in about a month, and act against operators by midsummer. In previous sweeps, agency officials said, the success rate for closing down sites has ranged from 20% to 70%, but has been improving.

Pharmacia-Monsanto Merger

PEAPACK, N.J.—Pharmacia & Upjohn Inc. and Monsanto Co. said the shareholders of both companies approved their planned $31 billion merger, which is slated to close by April 1.

The companies said that more than 75% of the outstanding shares, and 94% of the total votes cast, were cast in favor of resolutions to merge the companies.

Pharmacia Chief Executive Fred Hassan will run the combined company from Pharmacia's headquarters in Peapack. Monsanto is based in St. Louis. Under the arrangement, Monsanto CEO Robert B. Shapiro is expected to become nonexecutive chairman and retire after 18 months.

March 22, 2000

High Court Holds F.D.A. Can't Impose Rules on Tobacco

Rebuffing Clinton, 5-4 Vote Finds That Congress Was Bypassed

By LINDA GREENHOUSE

WASHINGTON, March 21 -- The Supreme Court today dealt a sharp blow to the Clinton administration's efforts to curb smoking, ruling 5 to 4 that the Food and Drug Administration had never received authority from Congress to regulate tobacco products.

The decision, rejecting rules proposed by the agency in 1995 to restrict the marketing of cigarettes to children and teenagers, hands the question of national tobacco regulation back to Congress. An effort to confer jurisdiction on the Food and Drug Administration won some bipartisan support in Congress in 1998 but became mired in a broader debate over whether to give the cigarette industry immunity from damage suits.

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TOBACCO DEBATE

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The ruling today was notable for the strong language that both the majority and the dissenting opinions used in describing the dangers of smoking, which causes some 400,000 deaths a year in the United States. Although essentially a straightforward ruling on a question of administrative law, the decision paid more than usual attention to the underlying policy issues, as if in recognition that the debate will continue elsewhere.

The ruling was welcomed by the industry, but it left cigarette makers still obligated to pay hundreds of dollars to revover state health care costs. [News Analysis]. It also prompted both Vice President Al Gore and Gov. George W. Bush to call for Congressional enactment of stricter conrols on tobacco products. [Related Article]

Justice Sandra Day O'Connor, who said in her majority opinion that the food and drug agency had "amply demonstrated" that tobocco use was "perhaps the single most significant threat to public health in the United States," sounded at times almost apologetic for her conclusion that the Food, Drug and Cosmetic Act, which the agency used to assert jurisdiction, could not be stretched far enough to accommodate the regulations.

In the dissenting opinion, Justice Stephen G. Breyer said that given nicotine's highly addictive nature and the "life-threatening harms" of smoking, the Food and Drug Administration's authority should be interpreted in light of "its basic purpose -- the overall protection of public health." He said the court should avoid an "overly rigid"

interpretation of the Food, Drug and Cosmetic Act "that is divorced from the statute's overall health-protecting purposes." [Full Text]

Dr. David A. Kessler, the former Food and Drug Administration commissioner who led the agency in reversing its long-held position that it could not regulate tobacco, said today that the loss in court had "in some ways moved the issue forward" through the justices' recognition of the dimensions of the problem as a public health issue. "We're in a very different place than we were five years ago," Dr. Kessler, now the dean of Yale Medical School, said in an interview.

The majority today applied a settled principle of administrative law: if Congress has spoken clearly on a question of an agency's jurisdiction, or lack of jurisdiction, Congress has the last word. "The F.D.A.'s claim to jurisdiction contravenes the clear intent of Congress," Justice O'Connor said.

The dispute between the majority and dissent was over the clarity of Congress's intent, which the dissent found to be much less evident.

The decision upheld a 1998 ruling by the United States Court of Appeals for the Fourth Circuit, in Richmond. Four cigarette manufacturers -- the Brown and Williamson Tobacco Corporation, a division of British American Tobacco P.L.C.; the Philip Morris Companies; the Lorillard Tobacco Company, which is a division of Loew's, and the United States Tobacco Company -- along with the National Association of Convenience Stores had gone to federal court to challenge the regulations as soon as the food and drug agency formally issued them in 1996. A 1997 ruling by Judge William L. Osteen Sr. of Federal District Court in Greensboro, N.C., upheld the agency's jurisdiction over controlling children's access to cigarettes, but struck down the regulations' restrictions on advertising and promotion.

Dealing a setback to the administration's antismoking initiatives.

Under the authority of the district court's decision, the agency has since 1997 been spending about $34 million a year on contracts with the 50 states to help monitor compliance with state laws barring the sale of cigarettes to those under 18. The agency began today to send letters to the states announcing an "orderly shutdown" of the compliance program in light of the Supreme Court ruling.

The majority opinion today, Food and Drug Administration v. Brown & Williamson, No. 98-1152, was joined by Chief Justice William H. Rehnquist and by Justices Antonin Scalia, Anthony M.

Kennedy and Clarence Thomas. Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg joined Justice Breyer's dissenting opinion.

This particular 5-to-4 split has become familiar in the last few years, with the more conservative justices on one side and the relatively more liberal ones on the other. Yet there was nothing overtly ideological about the essentially historical question of whether a 1938 statute, or any subsequent legislative developments, conferred jurisdiction on a federal agency.

But a distrust of the power of administrative agencies has long been a watchword of legal conservatives, and this case reached the court within a broader context of renewed ferment over the constitutional boundaries of the modern administrative state.

The federal appeals court here issued a startling decision last year, holding that in authorizing the Environmental Protection Agency to issue certain regulations under the Clean Air Act, Congress engaged in an unconstitutional "delegation" of its legislative powers to an executive branch agency. As the justices were undoubtedly aware, the Clinton administration has recently asked them to review that ruling.

In his dissenting opinion today, Justice Breyer appeared to go out of his way to refute any suggestion that an agency's action is insulated from political accountability. "Insofar as the decision to regulate tobacco reflects the policy of an administration, it is a decision for which that administration, and those politically elected officials who support it, must (and will) take responsibility," Justice Breyer said, adding:

"I do not believe that an administrative agency decision of this magnitude -- one that is important, conspicuous, and controversial -- can escape the kind of public scrutiny that is essential in any democracy."

The Food and Drug Administration regulations were based on the premise that most people who become lifelong smokers start smoking in their early teens. To discourage teenage smoking, the regulations prohibited the sale of cigarettes to those under 18; the distribution of free samples or the sale of packages of fewer than 20 cigarettes; and the use of self-service displays or vending machines except in adults-only locations.

Retailers were required to verify, through photo identification, the age of all purchasers younger than 27. There were also restrictions on outdoor advertising near playgrounds and schools and on promotional items and sponsorship of various events by cigarette companies.

The agency claimed its authority under the Food, Drug and Cosmetic Act, which gives it jurisdiction to regulate "drugs" and "devices." Drugs are defined in the 1938 law as articles, other than food, "intended to affect the structure or any function of the body." Nicotine was such a substance, the agency said, and cigarettes were devices for delivering nicotine.

The agency's assertion of authority over tobacco in 1995 came after decades of disclaiming such jurisdiction. The agency justified its about-face by pointing to newly disclosed internal cigarette industry documents showing that the industry understood and intended to achieve nicotine's effects -- thus meeting for the first time the statute's requirement that any effect be intentional.

The tobacco industry objected immediately that Congress had never meant to give the Food and Drug Administration jurisdiction over tobacco. Parsing the statute, industry lawyers provided a syllogism that the majority today found persuasive. The agency's core mission, the industry argued, was to make sure that drugs reaching the market were safe and effective.

Because the agency found cigarettes to be unsafe, it was required under the law not simply to regulate them but to ban them. But, the argument went on, Congress clearly did not intend that result, because since 1938, it has passed a half-dozen measures dealing with smoking that were obviously based on the assumption that cigarettes would continue to be marketed. The notion that the agency could treat tobacco as it would an ordinary drug was simply misbegotten, the industry said.

Adopting that argument, Justice O'Connor said today that "the inescapable conclusion is that there is no room for tobacco products" within the law's structure. "If they cannot be used safely for any therapeutic purpose, and yet they cannot be banned, they simply do not fit," she said.

Where the majority found certainty, the dissent found Congress's treatment of smoking to be "critically ambivalent" in several important respects. For administrative law purposes, the difference between Congressional clarity and ambiguity is crucial, because once the court decides that Congress has spoken ambiguously about an agency's authority, its precedents require judges to defer to the agency's view of the matter.

Tobacco/ FDA Supreme Court Case
Q&A
March 21, 2000

Q: What is the Administration's reaction to the Supreme Court ruling against the FDA regulation and will you support a legislative change instead?

A: We are disappointed that the Supreme Court ruled that the Food and Drug Administration cannot proceed to protect our children from tobacco. This administration has done everything possible to protect our children from the dangers of tobacco. Five years ago, the FDA put forward an important proposal to protect children from tobacco by eliminating advertising aimed at children and curbing minors' access to tobacco products. Today's Supreme Court ruling, while holding that Congress has not given FDA the authority to regulate tobacco products, does affirm our view that tobacco use by young people "poses perhaps the single most significant threat to public health in the United States." If we are to protect our children from the harms of tobacco, Congress must now enact the provisions of the FDA rule. Fortunately, there is strong bipartisan support in the Congress for enacting those protections: in 1998, 57 Senators supported a bill negotiated by Senators Bill Frist and John McCain containing provisions comparable to those included in the FDA regulation.

So the President has called upon the leadership of Congress to take up the bipartisan Frist legislation and act now to protect our children from tobacco. Nearly 4 million children under the age of 18 smoke cigarettes – every day more than 6,000 try their first cigarette, 3,000 become regular smokers, and 1,000 will have their lives cut short as a result. Every year, more than 400,000 Americans die of tobacco-related diseases; nearly 80 percent of them started smoking as children. Some in the tobacco industry – after fighting the FDA rule in court – now say they support regulation of tobacco. We challenge them to demonstrate that support by endorsing the Frist-McCain legislation. We believe that by working together across party lines, we can protect our children and save lives.

Q: What does this mean and what's the immediate effect?

A: We are still reviewing the opinion so that we clearly understand the Court's ruling. However, one immediate effect of this decision is that the FDA youth access enforcement program cannot continue. This program, operated through FDA contracts with states, was designed to keep young people from purchasing cigarettes. Nevertheless, we believe it is encouraging that the court shares our view that tobacco use by young people "poses perhaps the single most significant threat to public health in the United States".

Q: Where does FDA currently have contracts and what are these contracts for?

A: When the tobacco companies filed suit after the final rule was published in August 1996, the federal district court ordered the FDA not to put in place the rule's restrictions on tobacco advertising and other marketing aimed at children, but did allow the FDA to go

forward with certain important rules restricting youth access to tobacco products. These access restrictions set 18 as the minimum age for purchasing tobacco products and require retailers to check photo ID of anyone younger than age 27. FDA, through an appropriation with Congress, enforced these restrictions through inspections, conducted primarily through contracts with the states and territories. FDA had arranged for enforcement of the rule in all 50 states plus D.C., the Virgin Islands and American Samoa.

Q: Does this decision have any effect on the Synar amendment requirements on states?

A: No. Under the Synar amendment, states must have laws forbidding tobacco sales to children under age 18, must enforce these laws, and must meet increasing performance standards regarding the percentage of retailers that sell to underage youth, or lose a portion of their federal Substance Abuse Block Grant. These rules, in statute before the 1996 FDA rule was promulgated, will continue. However, these rules do not hold retailers who sell to underage youth accountable through fines and other action, as the FDA rule does, nor does it ensure retailers seek photo ID from young people up to age 27 to ensure underage youth who appear older do not purchase tobacco products. Instead, the Synar amendment holds states accountable for monitoring enforcement of their laws. While this decision does not effect Synar requirements on states, it will disrupt the major vehicle by which states test and enforce compliance with those requirements. Currently, states and SAMHSA rely on the FDA's youth access enforcement contracts to implement Synar. The Court's ruling will force FDA to discontinue those contracts. SAMHSA will be working with states to ensure that there is no disruption in the enforcement of Synar requirements.

Q: How exactly would the FDA rule have regulated tobacco?

A: These provisions would have helped stop young people from smoking before they start by eliminating advertising aimed at children and curbing minors' access to tobacco products. Provisions include:

- Restricting Advertising Aimed at Children – including banning outdoor advertising within a 1000 feet of schools and public playgrounds and limiting advertising ion publications with significant youth readership to black-and-white text.

- Discouraging Tobacco Sales to Minors – including requiring age verification by photo ID for anyone appearing age 26 or younger and banning vending machines except in adult-only facilities.

Another critical component of the effective tobacco regulation was ensuring that the FDA has sufficient authority to impose additional restrictions as future circumstances warrant.

Q: Are the FDA advertising restrictions really needed, now that the tobacco companies agreed to certain restrictions – such as eliminating billboards – as part of last year's settlement with the states?

A: Yes, the FDA's restrictions were needed to halt tobacco advertising and marketing aimed at children. The FDA's rules were far more comprehensive than those the tobacco companies agreed to in the settlement and will do much more to prevent youth smoking. For example the FDA rule would have limited tobacco ads in newspapers and magazines with significant youth readership to black and white text, while last year's settlement did not limit print advertising at all. Moreover, the FDA rule would have banned all tobacco advertising within 1,000 feet of a school, and limited all outdoor advertising to black and white text, while the state settlement allows retailer and other non-billboard ads near schools and with color images that appeal to children.

Q: What is the Administration planning to do next on tobacco?

A: The President will continue to fight to protect this nation's children from the death and diseases caused by tobacco. We should not let the tobacco industry recruit 3,000 young people a day as "replacement" smokers and sentence 1,000 of those to early deaths from lung cancer and other diseases.

The President and Vice President call upon the leadership of Congress to take up the bipartisan Frist-McCain legislation and act now to protect our children from tobacco. In 1998, 57 Senators supported a bill containing provisions, negotiated by Senators Bill Frist and John McCain, like those included in the FDA regulation, and these measures were in the bill agreed to by the Senate Commerce Committee by a 19-1 vote. It's our hope that we can work together across party lines to protect our children and save lives.

The Administration will continue to fight to reduce youth smoking with proposals that hold the tobacco industry accountable by charging the tobacco industry an assessment for every underage smoker, increasing the price of cigarettes by 25 cents a pack, protecting tobacco farmers and their communities and putting in place an important initiative to ensure Medicaid beneficiaries have access to drug treatments to help them quit smoking. The Justice Department is also working to recover from the tobacco companies the billions of dollars in direct health costs incurred by the federal government as a result of smoking.

Q: How does the Supreme Court case relate to the case brought by the Justice Department against the tobacco industry?

A: These cases are completely separate and different. The Justice Department should comment on the specifics of either case but the suit filed against the tobacco industry by the Justice Department last September is about recovering the federal costs of smoking-related illnesses. Smoking has cost taxpayers billions of dollars through Medicare, veterans' health and other federal health care programs. Today's Supreme Court ruling was on a challenge by the tobacco industry to the Food and Drug Administration's regulation protecting children from tobacco.

Q: What else is the Administration doing in the meantime to reduce youth tobacco use?

A: We will not stand still and let new generations of our citizens become victims of nicotine addiction. Eighty percent of those who use tobacco begin before age 18. We will continue to:

- Fight to reduce youth smoking with budget proposals that hold the tobacco industry accountable by charging the tobacco industry an assessment for every underage smoker and increasing the price of cigarettes by 25 cents a pack.

- Advocate that states use the money from the master tobacco settlement for tobacco prevention and control. Sustained and comprehensive programs, including community and school interventions, are needed to reduce tobacco use and address this serious public health problem. Efforts in states such as Oregon, Massachusetts, and Florida show that these programs work.

- Enforce the Synar regulation, which requires states, as a condition of receiving certain SAMHSA block grant funds, to enforce state laws that reduce the availability of tobacco products to minors.

- Work with public health officials, health policymakers, community leaders, and others nationwide to reach the Healthy People 2010 objective of reducing the percentage of minors buying tobacco products to five percent or less by 2010. Fund basic state tobacco control and prevention programs through CDC and provide technical assistance to all the states and territories with state-funded programs.

- Pursue a vigorous research agenda at the NIH to improve our ability to detect and treat lung cancer and other smoking-related diseases, and to develop effective community-based tobacco control and prevention strategies.

- Pursue the suit filed against the tobacco industry by the Justice Department to recover the federal costs of smoking-related illnesses.

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Q: Where does FDA currently have contracts and what are these contracts for?

A: When the tobacco companies filed suit after the final rule was published in August 1996, the federal district court ordered the FDA not to put in place the rule's restrictions on tobacco advertising and other marketing aimed at children, but did allow the FDA to go

forward with certain important rules restricting youth access to tobacco products. These access restrictions set 18 as the minimum age for purchasing tobacco products and require retailers to check photo ID of anyone younger than age 27. FDA, through an appropriation with Congress, enforced these restrictions through inspections, conducted primarily through contracts with the states and territories. FDA had arranged for enforcement of the rule in all 50 states plus D.C., the Virgin Islands and American Samoa.

Q: Does this decision have any effect on the Synar amendment requirements on states?

A: No. Under the Synar amendment, states must have laws forbidding tobacco sales to children under age 18, must enforce these laws, and must meet increasing performance standards regarding the percentage of retailers that sell to underage youth, or lose a portion of their federal Substance Abuse Block Grant. These rules, in statute before the 1996 FDA rule was promulgated, will continue. However, these rules do not hold retailers who sell to underage youth accountable through fines and other action, as the FDA rule does, nor does it ensure retailers seek photo ID from young people up to age 27 to ensure underage youth who appear older do not purchase tobacco products. Instead, the Synar amendment holds states accountable for monitoring enforcement of their laws. While this decision does not effect Synar requirements on states, it will disrupt the major vehicle by which states test and enforce compliance with those requirements. Currently, states and SAMHSA rely on the FDA's youth access enforcement contracts to implement Synar. The Court's ruling will force FDA to discontinue those contracts. SAMHSA will be working with states to ensure that there is no disruption in the enforcement of Synar requirements.

Q: How exactly would the FDA rule have regulated tobacco?

A: These provisions would have helped stop young people from smoking before they start by eliminating advertising aimed at children and curbing minors' access to tobacco products. Provisions include:

- Restricting Advertising Aimed at Children – including banning outdoor advertising within a 1000 feet of schools and public playgrounds and limiting advertising ion publications with significant youth readership to black-and-white text.

- Discouraging Tobacco Sales to Minors – including requiring age verification by photo ID for anyone appearing age 26 or younger and banning vending machines except in adult-only facilities.

Another critical component of the effective tobacco regulation was ensuring that the FDA has sufficient authority to impose additional restrictions as future circumstances warrant.

Q: Are the FDA advertising restrictions really needed, now that the tobacco companies agreed to certain restrictions – such as eliminating billboards – as part of last year's settlement with the states?

A: Yes, the FDA's restrictions were needed to halt tobacco advertising and marketing aimed at children. The FDA's rules were far more comprehensive than those the tobacco companies agreed to in the settlement and will do much more to prevent youth smoking. For example the FDA rule would have limited tobacco ads in newspapers and magazines with significant youth readership to black and white text, while last year's settlement did not limit print advertising at all. Moreover, the FDA rule would have banned all tobacco advertising within 1,000 feet of a school, and limited all outdoor advertising to black and white text, while the state settlement allows retailer and other non-billboard ads near schools and with color images that appeal to children.

Q: What is the Administration planning to do next on tobacco?

A: The President will continue to fight to protect this nation's children from the death and diseases caused by tobacco. We should not let the tobacco industry recruit 3,000 young people a day as "replacement" smokers and sentence 1,000 of those to early deaths from lung cancer and other diseases.

The President and Vice President call upon the leadership of Congress to take up the bipartisan Frist-McCain legislation and act now to protect our children from tobacco. In 1998, 57 Senators supported a bill containing provisions, negotiated by Senators Bill Frist and John McCain, like those included in the FDA regulation, and these measures were in the bill agreed to by the Senate Commerce Committee by a 19-1 vote. It's our hope that we can work together across party lines to protect our children and save lives.

The Administration will continue to fight to reduce youth smoking with proposals that hold the tobacco industry accountable by charging the tobacco industry an assessment for every underage smoker, increasing the price of cigarettes by 25 cents a pack, protecting tobacco farmers and their communities and putting in place an important initiative to ensure Medicaid beneficiaries have access to drug treatments to help them quit smoking. The Justice Department is also working to recover from the tobacco companies the billions of dollars in direct health costs incurred by the federal government as a result of smoking.

Q: How does the Supreme Court case relate to the case brought by the Justice Department against the tobacco industry?

A: These cases are completely separate and different. The Justice Department should comment on the specifics of either case but the suit filed against the tobacco industry by the Justice Department last September is about recovering the federal costs of smoking-related illnesses. Smoking has cost taxpayers billions of dollars through Medicare, veterans' health and other federal health care programs. Today's Supreme Court ruling was on a challenge by the tobacco industry to the Food and Drug Administration's regulation protecting children from tobacco.

Q: What else is the Administration doing in the meantime to reduce youth tobacco use?

A: We will not stand still and let new generations of our citizens become victims of nicotine addiction. Eighty percent of those who use tobacco begin before age 18. We will continue to:

- Fight to reduce youth smoking with budget proposals that hold the tobacco industry accountable by charging the tobacco industry an assessment for every underage smoker and increasing the price of cigarettes by 25 cents a pack.

- Advocate that states use the money from the master tobacco settlement for tobacco prevention and control. Sustained and comprehensive programs, including community and school interventions, are needed to reduce tobacco use and address this serious public health problem. Efforts in states such as Oregon, Massachusetts, and Florida show that these programs work.

- Enforce the Synar regulation, which requires states, as a condition of receiving certain SAMHSA block grant funds, to enforce state laws that reduce the availability of tobacco products to minors.

- Work with public health officials, health policymakers, community leaders, and others nationwide to reach the Healthy People 2010 objective of reducing the percentage of minors buying tobacco products to five percent or less by 2010. Fund basic state tobacco control and prevention programs through CDC and provide technical assistance to all the states and territories with state-funded programs.

- Pursue a vigorous research agenda at the NIH to improve our ability to detect and treat lung cancer and other smoking-related diseases, and to develop effective community-based tobacco control and prevention strategies.

- Pursue the suit filed against the tobacco industry by the Justice Department to recover the federal costs of smoking-related illnesses.