STATEMENTS BY THE PRESIDENT AND ADMINISTRATION INDICATING LEGISLATIVE PROTECTION FROM LIABILITY IS NOT A TOBACCO DEAL-BREAKER

1. **President's Remarks on Settlement Review, September 17, 1997**
   Q. ...Are you willing to agree to immunity from future liability?

   The President: Well, I don't think they've asked for future liability. I think they've asked for immunity from liability for past suits. And the question there would be, what are they willing to agree to. They need to come and meet with us. We need to discuss it, and we need to see whether we can embody these five principles. These are the things I'm interested in. To me, I'll say again, this is not primarily about money....

2. **Press Briefing by Secretary Shalala and Bruce Reed, September 17, 1997**
   Q. I don't think the President said anything this morning about liability protections for the industry, and so, where do you stand on that? And if you don't intend to support that, do you think you could get a comprehensive bill through Congress without --....

   Reed: Yes. I think what he said was that we were willing to look at caps on liability, but we want to make sure that Congress enacts legislation that fulfills the five principles that we laid out in the plan this morning.

   Shalala: The point the President was making was he put on the table what he wants from legislation, and other parties including the tobacco industry will be putting on the table and presenting to Congress what they want. But the five points that he laid out are the core of what he believes we need to reduce teenage smoking.....

   Q. Concerning the liability protections, the deal provided for banning future class actions and state attorney general suits, caps on annual liability, punitive damage, eliminating that. Which of those, or all of those are you willing to go along with if all the guidelines that the President set down this morning are met?

   Reed: Well, I think, as I said earlier, we would condition accepting any limits on liability on getting the rest of what we're after. We had some concerns about certain aspects of the liability scheme in the settlement. For example, it put a cap on future punitive damages, damages for future misconduct -- which we think is a mistake. But we'd have to look at the whole package.

3. ***The New York Times*, "Aide to Clinton Sees Flexibility on Tobacco", page A16, September 22, 1997**
   "Mr. Reed said on Fox News today that the Administration would not try to change the liability protections in the national tobacco settlement reached on June 20 as long as there were real moves to reduce the number of underage smokers.

'We've always said that some form of caps on liability is not a deal-killer for us, but we would condition that on getting the kind of comprehensive plan to reduce smoking that we're asking for,' Mr. Reed said."

4. **Testimony by Secretary Shalala before Senator Jeffords (R-VT), September 25, 1997** (from FDCH political transcripts)

   Jeffords: One of the areas that the June tobacco settlement that was not discussed in the President's announcement was the civil liability provisions. Should we view the President's silence on this issue [sic] endorsing these provisions?

   Shalala: Actually, Mr. Chairman, when the President was asked that question he said that if the core principles that he has laid out are taken care [of] as part of the legislation, then he would be willing to discuss the civil liability issue but not until he sees legislation that really is comprehensive, that deals with the farmers, that deals with the FDA jurisdiction. We want to make sure that the core of the legislation is focused on reducing smoking by young people.

5. **National Journal's CongressDaily, January 16, 1998**

   McCurry: "The caps on liability, as we have said in the past, are not necessarily a deal breaker."

6. ***Los Angeles Times*, "Proposed Tobacco Settlement Isn't Setting Congress on Fire, p.A5, January 29, 1998**

   Elena Kagan: "Limits on liability are not necessarily a deal-breaker for us."

7. **U.S. Newswire, Press Briefing by Mike McCurry, January 30, 1998**

   McCurry: "Now, the issue is one of caps on liability. We have never said that caps on liability were absolutely central to any legislation; in fact, as you recall, the President did not even address that in the principles that he outlined last August about the legislation that would be required to implement the settlement. We've said it's not a deal-breaker by any means, but it certainly is not one of the fundamental elements that the President believes has to be in there."

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enforcement on bans."

Many of the items listed by McCurry would, under the deal, be performed and funded by the tobacco industry, which in exchange is seeking immunity from certain types of civil liability. "Some people believe the deal would lead to immunity from criminal action. No one has suggested that in the course of discussions that I'm aware of," McCurry said. "The caps on liability, as we have said in the past, are not necessarily a deal breaker." The White House is reportedly planning to tie a host of new spending initiatives to funds collected from the industry under the settlement. McCurry's comments cap a week in which Rep. Henry Waxman, D-Calif., released explosive documents on industry efforts to target youth smokers, and the industry entered into a $14 billion settlement with the state of Texas, the largest settlement yet with a state suing tobacco companies.

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Q Does the administration consider the Butler mission to Baghdad essentially the last straw for diplomacy in this standoff?

MR. MCCURRY: Well, there will be ...

... continue our effort in space research.

Q Mike, can you clarify something you said in the gaggle this morning about tobacco? You said that the administration believes caps on liability is not necessarily a deal-breaker. Could you explain whether you think the absence of limitations on liability in tobacco legislation would be a deal-breaker?

MR. MCCURRY: I think that the parties themselves have addressed that question with some sufficiency. I think the point that we've always made is that caps on liability relate to the other aspects of legislation and how they relate to what public health objectives can be achieved in the legislation is the key thing.

...

But the tobacco industry says a deal without legal protections is no deal at all. "It is an unprecedented annual ...

... for an industry that has not paid a dime in punitive damages," Williams said. "Therefore it must have the civil liability protections it is seeking."

Clinton aides are being careful not to allow the immunity issue to scuttle an agreement. "Limits on liability are not necessarily a deal-breaker for us," Kagan said.

Teen smoking: Public health experts criticize the deal for not going far ...

... an immediate rise in cigarette prices--$ 1.50 a pack or more--combined with unfettered FDA authority to regulate tobacco as a drug.

The settlement involving the attorneys general anticipated an increase of only 62 cents a pack over five years, according to an analysis by the Federal Trade Commission.

FDA regulation: The extent of FDA authority over tobacco is a highly complex issue that raises the specter that the agency could even go so far as eventually banning tobacco. Although no one has suggested that Republicans members of the House Republican leadership have said that the tobacco deal is dead for this year. Does the White House agree with that, and do you have to do something different at this point?

MR. MCCURRY: Well, we certainly hope that does not reflect any change of thinking on their part; that this is not a serious public health matter that needs to be addressed. I think it is now clear that the American people would like to see action taken to protect young people in this country from tobacco addiction. I think they know the figures that the President used the other night about the number of lives that will be shortened by kids who are taking up smoking each and every day. And I think that the American people expect some urgent action by Congress. So we would hope that some of these comments by people on the Hill does not reflect any lack of urgency in the degree they want to address this.

Now, the issue is one of caps on liability. We have never said that caps on liability were absolutely central to any legislation; in fact, as you recall, the President did not even address that in the principles that he outlined last August about the legislation that would be required to implement the settlement. We've said it's not a deal-breaker by any means, but it certainly is not one of the fundamental elements that the President believes has to be in there.

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The important thing is for Congress to sit with us to work with the administration to craft this legislation to get on with passing something that will protect children in this country from tobacco addiction.

And that's the urgent public health matter that we think has to be addressed.

Yes.

QUESTION: Mike, are you saying you agree with Henry Waxman in that this could be passed without the cooperation of the tobacco companies at all?

MCCURRY: Well, that's hard to imagine. They could certainly be passed without caps on liability. We have never said otherwise, but it -- you know

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Q Are you saying you agree with Henry Waxman that this could be passed without the cooperation of the tobacco companies at all?

MR. MCCURRY: That's hard to imagine. It could certainly be passed without caps on liability, and we have never said otherwise. But it is probably going to pass with stronger and broader support in Congress if all those who participated in the settlement process are encouraging passage.

Q Well, Mike, this seems to be a change from your earlier view where you said that it would really - you know, without immunity in there, you couldn't get the cooperation of the companies and you really need them to do certain things. It sounds like you're looking at a different approach to this.

MR. MCCURRY: The problem has been that, without their cooperation, the likelihood that there would be protracted litigation on anything even passed