Total Pages: ___

LRM ID: IMS335

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, May 26, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO:	Legislative Liaison Officer - See Distribution below
FROM:	James J. Jukes/OMB/EOP (for) Assistant Director for Legislative Reference
OMB CONTACT:	Ingrid M. Schroeder PHONE: (202)395-3883 FAX: (202)395-3109
SUBJECT:	**JUSTICE Qs and As on S1415 National Tobacco Policy and Youth Smoking Reduction Act**
DEADLINE:	**Noon Thursday, May 28, 1998**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The attached document responds to questions raised at a February 5th hearing before the House Judiciary Committee on civil liability aspects of the proposed tobacco settlement.

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RESPONSE TO
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TO: **Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109**
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The following is the response of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General Washington, DC 20530

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At your request, we have enclosed responses to questions posed following the appearance of Mr. David W. Ogden, Counselor to the Attorney General, before your Committee on February 5, 1998. The subject of the hearing was civil liability aspects of the proposed tobacco settlement.

Please let us know if we may be of assistance in connection with this or any other matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this response.

Sincerely,

Ann M. Harkins
Acting Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

Answers to Question for David W. Ogden, Esq.
Counselor to the Attorney General
Department of Justice

Congressman Coble

Q. Mr. Ogden, you state in response to a question from Rep. Frank that "there are large advantages to having a resolution in which the tobacco companies are involved. For one thing, one of the key objectives here is changing the way they do business, changing their marketing practices, changing their whole approach. A key element in that is their involvement in the solution. A second important feature of it is that whatever we craft in the way of reform is, as the FDA regulations are, potentially subject to litigation that would tie them up."

1. Please describe in more detail the benefits you see from the enactment of legislation, in which the tobacco companies are involved.

2. Do you agree with those who believe that certain of the proposed settlement's advertising restriction such as the complete ban on outdoor advertising or the ban on the use of human images in any advertising, would be constitutionally suspect under the First Amendment? What further benefits from the tobacco company involvement do you envision?

A1. The benefits of voluntary tobacco company cooperation in the reform of the tobacco industry are many. One of the President's five goals is to change how the tobacco companies do business. The industry's active participation in that effort should be encouraged. Moreover, such participation will advance the principal goal of reducing youth smoking. Increasing the price of a pack of cigarettes and restricting minors' access to tobacco products and tobacco product advertising will reduce youth smoking significantly. Other voluntary efforts by the tobacco industry have the potential to reduce youth smoking even more. Finally, even litigation that is ultimately not meritorious can delay implementation of legislation for years. Because thousands of young people begin the road to addiction and disease every day, it is crucial to avoid such delay if possible.

In addition, we note that some advertising restrictions that go beyond the narrowly tailored FDA regulations present significant additional constitutional concerns. We believe, however, that legislation could be crafted, consistent with the Constitution, in which manufacturers could agree to

comply with restrictions that go beyond the FDA regulation in exchange for certain benefits.

Although a novel question, we do not believe that the "unconstitutional conditions" doctrine requires a contrary conclusion. Pursuant to the "unconstitutional conditions" doctrine, the Supreme Court has struck down certain governmental attempts to condition benefits, such as federal funding, on a recipient's compliance with restrictions on fully protected expressive activities that could not have been imposed directly. See, e.g., F.C.C. v. League of Women Voters, 468 U.S. 364 (1984). However, none of those rulings concerned limitations on commercial speech, and there are strong grounds for distinguishing these rulings in this context. Thus, although a provision that included the additional advertising restrictions as terms in a consensual contract could be subject to First Amendment challenge (perhaps by third parties), a properly structured provision of this type should survive constitutional review. For example, we believe that courts should uphold a federal law that offered manufacturers the option of complying with them in order to receive special protections from liability.

A2. As I testified, the Department believes that the government may restrict the advertising of tobacco products, which may not lawfully be sold to persons under the age of 18, in order to serve its wholly legitimate and compelling interest in curtailing minors' demand for and use of tobacco products. Restrictions that are carefully drawn to reduce minors' exposure to tobacco advertising may be imposed directly by federal law against the tobacco industry, and thus the Department believes that the FDA's current restrictions on tobacco advertising are fully consistent with the First Amendment.

To the extent that the contemplated legislation would include advertising restrictions that go beyond the FDA's regulations in ways that are not narrowly drawn to reduce youth tobacco use, the legislation would raise significant constitutional concerns that are not presented by the FDA regulation. As noted above, however, we believe that legislation could be crafted, consistent with the Constitution, in which manufacturers could agree to comply with restrictions that go beyond the FDA regulation in exchange for certain benefits.

ANSWERS TO QUESTIONS TO DAVID W. OGDEN
COUNSELOR TO THE ATTORNEY GENERAL

Congresswoman Inglis

Q1. Do you believe that the public health objectives outlined by the President can be achieved in the absence of a universal settlement passed by Congress? And in the absence of a universal settlement, will these objectives be achieved for every state? Will states share on an equitable basis in any recovery outside of a universal settlement passed by Congress?

A. The Administration believes that its public health objectives and the President's five goals can be achieved only through passage of comprehensive, federal tobacco legislation. Absent federal legislation, states will be left to the uncertainties of litigation to achieve monetary recoveries from tobacco companies. Such litigations may result in different results from state to state. Such litigation by itself cannot achieve the President's public health objectives.

Q2. Has the administration considered the means by which it would seek to achieve its public health objectives if a universal settlement is not enacted by Congress? Furthermore, what affirmative steps would the administration pursue to protect farmers in South Carolina and elsewhere that would obviously be impacted by any federal regulation of tobacco in the absence of a settlement?

A. The Administration believes that its public health objectives can be fully achieved only through enactment of comprehensive tobacco legislation. If this cannot be achieved with the agreement of the tobacco industry, the Administration is prepared to seek comprehensive legislation without their agreement. With respect to the protection of tobacco farmers, the President has made clear that he will support comprehensive legislation only if it protects farmers affected by the federal regulation of tobacco.

to Bruce / DOJ

Total Pages: ___

LRM ID: IMS232

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, February 9, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO:	Legislative Liaison Officer - See Distribution below
FROM:	James J. Jukes/OMB/EOP (for) Assistant Director for Legislative Reference (signed: I Schroeder for Jukes)
OMB CONTACT:	Ingrid M. Schroeder PHONE: (202)395-3883 FAX: (202)395-3109
SUBJECT:	**JUSTICE Testimony on Attorneys General and Tobacco Industry Report on Tobacco Settlement Plan**
DEADLINE:	**4:30pm Monday, February 9, 1998**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The attached statement is similar to testimony given by David Ogden before the H. Judiciary Committee on 2/5/98. All new language is marked including an additional section which comments on advertising and the First Amendment (pp. 1-13).

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LRM ID: IMS232 **SUBJECT:** JUSTICE Testimony on Attorneys General and Tobacco Industry Report on Tobacco Settlement Plan

RESPONSE TO
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_____ **No Objection**

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Draft

PREPARED STATEMENT OF DAVID W. OGDEN, COUNSELOR TO THE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman, I am pleased to testify today on behalf of the Department of Justice regarding two subjects. As initially requested, I will be testifying concerning First Amendment issues related to the FDA's advertising regulations and the litigation concerning those restrictions. In addition, the Committee has requested that I address the civil liability provisions of the proposed tobacco settlement.

Section I. is new

I. Advertising Restrictions

A. Background

The Department of Justice is currently involved in litigation in which the FDA's restrictions have been challenged on statutory and constitutional grounds. In such circumstances, it is the longstanding practice of the Department not to elaborate on the legal positions we have taken in litigation; our briefs speak for themselves. Accordingly, I have provided to the Committee copies of our district court brief in the abovementioned case. Nevertheless, because Congress is considering the enactment of comprehensive tobacco legislation that would reaffirm the FDA's authority and impose advertising restrictions similar to those that are being challenged, the Department has determined that it is appropriate for me to appear today to summarize the arguments that we have made in court in defense of the constitutionality of the FDA advertising restrictions. I cannot, however, provide elaboration of our arguments beyond the confines of our briefs.

That limitation does not, however, prevent me from explaining how critically

important it is for the health of our children that the FDA have the authority to regulate the marketing and advertising of tobacco. As the FDA found after one of the most extensive rulemakings in history (including submission of more than 47,000 pages of comments from the tobacco industry), the FDA concluded that death and disease from tobacco products can best be eliminated by reducing the number of children and adolescents who begin to use cigarettes and smokeless tobacco. Every day, 3,000 more young people begin smoking regularly, and at the present rate, 1,000 will die prematurely as a result. As the FDA found, tobacco use is a "pediatric disease" because most adult smokers become addicted during childhood. Over 80% of adult smokers started when they were children or adolescents. 61 Fed. Reg. 44421.

Restrictions on access -- it is illegal to sell cigarettes to minors in all 50 states -- are not enough, however, to stop children and adolescents from beginning to smoke. Young people have access to cigarettes and smokeless tobacco from many sources and, as the FDA concluded, advertising targeted at children and adolescents plays a significant role in young people's decision to use tobacco. Children and adolescents are highly vulnerable to the sophisticated marketing techniques employed by the tobacco industry and do not fully understand the serious health risk. Seventy-five percent of youth smokers are addicted, and it is extraordinarily difficult for them to stop using tobacco products as adults.

The susceptibility of young people to tobacco advertising has not been lost on the tobacco industry. Internal company documents demonstrated the industry's intention to target young smokers and so-called pre-smokers. For example, one

document from R.J. Reynolds stated that "if our Company is to survive and prosper, over the long-term we must get our share of the youth market." Another document recited that "[e]vidence now available . . . indicate[s] that the 14 to 18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained."

The evidence before the FDA of the impact of tobacco advertising on youth smoking was substantial. Numerous studies and surveys showed that "children are exposed to substantial and unavoidable advertising, that exposure to tobacco advertising leads to favorable beliefs about tobacco use, that advertising plays a role in leading young people to overestimate the prevalence of tobacco use, and that these factors are related to young people's tobacco initiation and use." 61 Fed. Reg. 44488. Two recent and comprehensive analyses by the National Academy of Science's Institute of Medicine and the Surgeon General found that tobacco advertising plays a significant role in the decisions of young people to use tobacco products. Moreover, the American Psychological Association concluded that "color and imagery in advertisements" greatly affected young people because "they generally have less information-processing ability than adults," and that tobacco advertising directly exploits this deficit. 61 Fed. Reg. 44468, 44488.

Indeed, advertising campaigns employing appealing imagery have been particularly effective with young people. The "Joe Camel" campaign, featuring a fanciful cartoon figure, had a dramatic effect on Camel's share of the youth market, increasing it from less than 3% in 1988 to more than 13% by 1992. During the same

period, the campaign had no effect on Camel's share of the adult market. Moreover, 30% of three-years olds and more than 90% of six-year-olds were able to identify "Joe Camel" as a symbol for smoking. 61 Fed. Reg. 44476-78; 60 Fed. Reg. 41333.

Faced with this disheartening evidence, the FDA concluded that "cigarette and smokeless tobacco advertising has a powerful appeal to children and adolescents," 61 Fed. Reg. 44471, and that "the pervasiveness and imagery used in industry advertising and promotional programs often obscure adolescents' perceptions of the significance of the associated health risks and the strength of the addictive power of tobacco products." 61 Fed. Reg. 44571. Thus, in addition to regulations designed to sharply curtail the access of young people to tobacco products, the agency concluded that advertising restrictions are necessary to "ensur[e] that the restrictions on access are not undermined by the product appeal that advertising for these products creates for young people." 61 Fed. Reg. 44465. Further, the FDA determined that "[t]o be effective, these restrictions must be comprehensive." 61 Fed. Reg. 44489-90. Indeed, empirical studies in other countries that have restrictions on tobacco advertising have shown that such restrictions, "when given appropriate scope and when fully implemented, will reduce cigarette and smokeless tobacco use among children and adolescents." 61 Fed. Reg. 44493.

For these reasons, pursuant to its authority to regulate "restricted devices," 21 U.S.C. § 360j(e), the FDA promulgated regulations that require a black-and-white, text-only advertising format, except in adult publications and adult-only facilities; ban outdoor advertising of cigarettes and smokeless tobacco within 1,000 feet of schools and public playgrounds; prohibit tobacco companies and distributors from selling or

distributing non-tobacco products, such as hats and t-shirts, bearing a tobacco product brand name or logo; and prohibit the sponsorship of athletic, cultural or other events in a tobacco brand name. See 61 Fed. Reg. 44617-18. These rules would combine with the longstanding statutory prohibition on radio and television advertising of cigarettes and little cigars, 15 U.S.C. § 1335, to dramatically reduce the impact of tobacco advertising on America's young people.

The tobacco manufacturers and others immediately challenged these regulations on statutory and constitutional grounds in the United States District Court for the Middle District of North Carolina. The district court found that the FDA does have the general authority to regulate the manufacture, sale and distribution of tobacco products, but nonetheless ruled that the agency lacks the authority under § 360j(e) to impose advertising restrictions on the sale, distribution, or use of tobacco products. Coyne Beam, Inc. v. FDA, 966 F. Supp. 1374, 1397-1400 (M.D.N.C. 1997). In light of this statutory decision, the court had no occasion to reach the First Amendment issues. Id. at 1400 n.33. The parties in the Coyne Beam case filed cross-appeals to the United States Court of Appeals for the Fourth Circuit. The Court has yet to issue any ruling.

B. First Amendment Analysis

Prior to 1976 the Supreme Court did not view the First Amendment as protecting commercial speech. See Valentine v. Christensen, 316 U.S. 52 (1942). Accordingly, the Court did not even mention the First Amendment when, in 1932, it upheld a statute that prohibited the advertisement of cigarettes on billboards and street-

car placements. Packer Corp. v. Utah, 285 U.S. 105 (1932). In 1965, Congress banned outright the advertising of cigarettes on television and radio. See 15 U.S.C. § 1335. In 1972, the Court summarily affirmed the constitutionality of that statutory ban. Capital Broadcasting Co. v. Acting Attorney General, 405 U.S. 1000 (1972), summarily affirming Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582. (D.D.C. 1971). In 1976, however, the Supreme Court changed course and held that commercial is deserving of some measure of protection under the First Amendment. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Counsel, Inc., 425 U.S. 748 (1976).

In our brief in the Coyne Beam case, we explain why the FDA restrictions are constitutional under the currently controlling framework for First Amendment review of restrictions on advertising, set out by the Supreme Court in Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980). The Central Hudson analysis asks as a threshold question whether the regulated speech is "related to unlawful activity" or is misleading. Id. at 564. If so, the speech can be freely regulated by the Government; if not, the next issues to be considered are: "whether the asserted governmental interest is substantial"; "whether the regulation directly advances the governmental interest asserted"; and "whether [the regulation] is not more extensive than is necessary to serve that interest." Id. at 566. Our brief in the Coyne Beam case explains that the FDA regulations satisfy each of the four parts of the Central Hudson test. What follows is a summary of the arguments that we made.

The Prohibited Advertising Is Related to Unlawful Activity

The Supreme Court has repeatedly said that commercial speech "related to"

unlawful activity is not entitled to First Amendment protection. See, e.g. 44 Liquormart, Inc. v. Rhode Island, 116 S.Ct. 1495, 1505 n.7 (1996); Florida Bar, 515 S.Ct. at ("Under Central Hudson, the government may freely regulate commercial speech that concerns unlawful activity, or is misleading."); Central Hudson, 447 U.S. at 563-64. The FDA regulations are directed at, and tailored to, restricting the flow of commercial speech to minors, a group of persons who may not legally purchase the product being advertised. Recent evidence indicates, however, that tobacco manufacturers have targeted advertisements at an underage audience; and in any event, these advertisements are perceived by minors as offers or inducements to buy and use tobacco products. Thus, such advertising "relates to" and encourages illegal transactions.

We have not argued that this point, by itself, permits the FDA to ban tobacco advertising altogether, because we recognize that such advertising also relates to lawful activity: the purchase of tobacco products by adults. The incidental effect of the restrictions on advertising to adults does require Central Hudson analysis. It is critical to that analysis, however, that the FDA has tailored its regulations in a manner directly related to the "unlawful" aspect of tobacco advertising, and whom the advertisers have no right to reach. The FDA's restrictions are aimed at the Government's wholly legitimate and compelling interest in curbing minors' use of tobacco products, rather than at restricting adults' rights to receive information about their consumer choices.

The Interest in Discouraging Youths from Using Tobacco Products Is

Substantial.

There can be no doubt that the Government has a sufficiently substantial interest in discouraging the use of tobacco products by minors. As the Supreme Court has instructed:

> [i]t is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens. Accordingly, we have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.

New York v. Ferber, 458 U.S. 747, 756-57 (1982).

The Interest Is Directly and Materially Advanced by the Regulations.

The FDA has shown that the challenged regulations advance the Government's interest "in a direct and material way." Edenfield v. Fane, 507 U.S. 761, 767 (1993). Millions of minors are using tobacco products. Minors not only start using cigarettes and smokeless tobacco as children and adolescents, they become addicted as children and adolescents. This usage has severe and long-term adverse health consequences for these minors when they become adults. And, the FDA has found, based on numerous studies, that tobacco advertising is a significant cause of use by minors. Even if there were not such an extensive record on this point, the Supreme Court has recognized that, as a matter of "common sense" and "reason," promotional advertising and subsequent consumption are linked, and that reducing the former will reduce the latter. See 44 Liquormart, 116 S. Ct. at 1506 ("the Court [in Central Hudson] recognized ...

that there was an immediate connection between advertising and demand") (quoting Central Hudson, 447 U.S. at 569, 100 S. Ct. at 2353). Accord Rubin v. Coors Brewing Co., 515 U.S. _, _ (1995) ("It is assuredly a matter of 'common sense' that a restriction on the advertising of a product characteristic will decrease the extent to which consumers select a product on the basis of that trait. ").

In short, the FDA reasonably concluded that tobacco companies' huge investment advertising of tobacco products helps persuade minors to use these products and that restrictions on advertising will help to reduce demand in that group, and thereby benefit public health.

The Regulations Are Not More Extensive than Necessary.

The final question under Central Hudson is whether the regulation is more extensive than is necessary to serve that interest." 447 U.S. at 566. This inquiry does not amount to a "least restrictive means" test. Instead, the Court's decisions require

> a "'fit' between the [government's] ends and the means chosen to accomplish those ends," a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is "in proportion to the interest served[]"; that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective. Within those bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed.

Board of Trustees of the State Univ. of New York v. Fox, 492 U.S. 469, 480 (1989). Accordingly, a commercial speech restriction will fail the narrow-tailoring requirement only if it "burden[s] substantially more speech than necessary." Edge Broadcasting, 509 U.S. at 430. On the other hand, a restriction is more likely to be narrowly tailored if it

leaves open alternative channels for the communication to appropriate recipients of the valuable information contained in the commercial speech. See Florida Bar, 515 U.S. at

The FDA restrictions satisfy this narrow tailoring test. "The First Amendment's concern for commercial speech is based on the informational function of advertising." Central Hudson, 447 U.S. at 563. At its core, advertising serves to "'disseminat[e] . . . information as to who is producing and selling what product, for what reason, and at what price.'" 44 Liquormart, 116 S. Ct. at 1505 (principal opinion) (quoting Virginia State Board of Pharmacy, 425 U.S. at 765). It is this informational function -- with respect to adult recipients -- that the First Amendment's protection of commercial speech is "designed to safeguard." Edenfield, 507 U.S. at 766. The FDA regulations have been carefully tailored to preserve, rather than impair, this informational function of tobacco advertising. The regulations are not aimed at restricting tobacco manufacturers, distributors, or retailers from conveying information about their products to lawful purchasers. To the contrary, advertisers remain free to provide relevant commercial information to adults -- such as the price of tobacco products, where such products can be obtained, what such products contain, and any other fact consumers would want to know about tobacco products, such as any asserted brand-specific superiority.

In crafting its regulations, the FDA identified aspects of tobacco advertising that may be particularly influential on children, but do not play a significant role in the most critical informational functions of advertising. To the greatest extent practicable, the

regulations are directed to these youth-influencing aspects without intruding on the ability of the tobacco industry to provide adults with relevant factual information about their products. For example, the FDA's regulations restrict the use of images and color in tobacco advertising. But there is no limit on what kinds of information may be provided in this fashion. Moreover, this restriction does not apply to publications whose readership is at least 85% adult and includes less than 2 million children. 21 C.F.R. § 897.32(a)(2)(i)-(ii).

Because the FDA's regulations are not intended to impede the free flow of commercial information to lawful purchasers, but instead are designed to preserve that flow, they differ fundamentally from the sorts of advertising restrictions that have typically been condemned by the Court. In 44 Liquormart, for example, Rhode Island's statutes were specifically designed to prevent liquor advertisers from conveying information about the price of their products. See 116 S. Ct. at 1501. Likewise, in Coors, the Alcohol Administration Act sought to minimize lawful purchasers' knowledge of a basic characteristic of beer--its alcohol content--by excluding content information from beer labels. See 515 U.S. at . And in Central Hudson itself, the regulatory orders at issue prohibited all promotional advertising by electrical utilities. See 447 U.S. at 558-60. In each of these cases, the challenged regulation undertook to keep truthful commercial information out of the hands of legal purchasers. That is not the case with the FDA regulations.

The plaintiffs in the Coyne Beam case have argued that the FDA must exhaust all alternative, non-speech related means to reduce underage smoking before regulating

cigarette advertising. This view is based on a misreading of the First Amendment and the Supreme Court's decision in 44 Liquormart. Unlike the liquor price advertising restrictions invalidated in 44 Liquormart, the FDA's speech-related restrictions are targeted at preventing advertising to a group of people who cannot legally purchase the product in question. That case does not require that we run the risk that more and more children will fall prey to this advertising while we experiment with other measures. Moreover, the regulations are being employed as a complement to non-speech restrictions. The government bans the sale of tobacco products to minors and is moving to improve the effectiveness of the ban. Minors can obtain tobacco products through a variety of means, and point-of-sale restrictions by themselves certainly will not reduce demand. There is every reason to expect that unfettered tobacco advertising will continue to persuade a significant percentage of young people to use tobacco products, thus undermining the effectiveness of the agency's non-speech (access) restrictions. Unlike non-speech restrictions, the advertising restrictions directly discourage demand. For that reason, they will result in less underage smoking now and fewer tobacco-related deaths in the future.

For all of the reasons articulated in our Coyne Beam briefs, we believe that the FDA's advertising restrictions are constitutional and that they will be upheld when they are finally considered by the courts. That the district court held that the FDA does not have statutory authority to regulate tobacco advertising emphasizes the need for confirmation of the FDA's authority in any comprehensive tobacco legislation.

C. A Few Words on the Proposed Settlement

The proposed tobacco settlement parallels the FDA's regulations in many respects, but also contemplates additional restrictions, most significantly: (i) a ban on all use of human images and cartoon characters (ii) a ban on all tobacco advertising outdoors; and (iii) a ban on all tobacco advertising on the Internet. If legislatively enacted, these more extensive prohibitions would raise more serious constitutional questions. The Department of Justice is continuing to analyze these additional restrictions. Regardless, the Administration believes that Congress should enact comprehensive tobacco legislation that, at a minimum, codifies the advertising restrictions embodied in the FDA's regulations.

II. The Civil Liability Provisions of the Tobacco Settlement

A. Background

On September 17th of last year, and again in his State of the Union speech, the President made clear his strong desire to work with this Congress in a bipartisan fashion to enact national tobacco legislation. For our part, the Justice Department is eager to work closely with this Committee and the Congress to ensure that sound, comprehensive legislation is enacted. Smoking and the use of smokeless tobacco have had a devastating impact on our society in terms of death and human suffering. This cycle of disease and death is renewed each day, as 3,000 children and teenagers begin smoking regularly. The President and this Congress are faced with an historic opportunity -- and profound responsibility -- to address one of this country's greatest

single health problems. We praise the hard work and leadership of the President, the states' attorneys general and other public health advocates, whose unwavering efforts have been instrumental in creating this opportunity. We offer the following remarks in the hope of facilitating the development and passage of comprehensive national legislation regarding tobacco products.

B. Events Leading up to the Present Consideration of the Proposed Tobacco Settlement

Working closely over the last several years, State and Federal officials have dramatically altered the legal landscape faced by the tobacco industry. For decades, individuals harmed by the use of tobacco had little recourse -- those that sued the tobacco companies always lost and regulatory agencies took no action to regulate tobacco to prevent future harm. This situation began to change in 1994, when the Administration, prompted by an epidemic of tobacco use by teenagers, supported the Food and Drug Administration's (FDA) initiative to conduct an extensive investigation to determine whether nicotine-containing tobacco products are subject to FDA regulation. Based on that investigation, the FDA promulgated regulations aimed at reducing youth tobacco use. In April 1997, a federal district court in North Carolina affirmed the FDA's authority to regulate tobacco products, but denied FDA's statutory authority to regulate tobacco advertising. (This decision is currently on appeal.) new

During the same period, the tobacco industry has been sued in many fora. Since 1994, forty-two states have sued the major tobacco companies in an effort to recover smoking-related health care costs. In addition, many private lawsuits have been filed by

those who claim to have been injured by smoking. On June 20, 1997, the states and the companies reached a tentative settlement to most of these actions, contingent upon enactment of appropriate federal legislation. This agreement is embodied in the proposed settlement. The industry has already settled lawsuits in three states where trial was imminent (Mississippi, Florida, and Texas). Trial in the Minnesota case brought by Attorney General Hubert Humphrey, III, began on January 20, 1998, in St. Paul.

After reviewing the settlement, the President on September 17, 1997 called for comprehensive tobacco legislation with a goal of reducing teen smoking by 50 percent within seven years. The President stressed five key elements that must be at the heart of any national tobacco legislation:

1. a comprehensive plan to reduce teen smoking, including a combination of penalties and price increases that raise cigarette prices by up to $1.50 per pack over the next 10 years as necessary to meet youth smoking targets;
2. express reaffirmation that the FDA has full authority to regulate tobacco products;
3. changes in the way the tobacco industry does business, especially in the area of advertising directed at children;
4. progress toward other critical public health goals, such as the expansion of smoking cessation and prevention programs and the reduction of secondhand smoke; and

5. protection for tobacco farmers and their communities.

During his State of the Union address last week, the President again forcefully emphasized that his top priority is the reduction of underage smoking. Of the three thousand young people who begin smoking each day in America, one thousand will die prematurely from tobacco-related diseases. Reducing teen smoking is the most important step that Congress and the Administration can take now towards protecting the Nation's health in the next century and minimizing future health care costs.

C. The Civil Liability Provisions

1. A Summary of the Provisions

The civil liability provisions of the settlement contemplate federal legislation that would work major changes in the current tort liability regime. Broadly speaking, such federal legislation would provide an annual cap on the industry's potential liability in civil actions, eliminate punitive damages for past industry misconduct, and impose various procedural restrictions on parties who would sue tobacco companies for smoking-related injuries. I will address the specific provisions individually in a moment, but first I want to identify general principles we believe should govern their consideration.

2. Guiding Principles When Analyzing the Civil Liability Provisions

Our civil justice system exists to provide means of redress for individuals who are harmed by the conduct of others and to deter such harmful conduct in the future. These are very important goals, and their achievement is fundamental to any just society. Although the existing tort system is certainly not perfect or the only way to

achieve these goals, it has as a general matter served them well. For that reason, the structure of the tort system should not be modified except for important reasons. Nor should tobacco companies become special favorites of the law.

Nonetheless, the tort system has not been an effective means of compensating injured smokers to date. Although some states have recently achieved large settlements with the tobacco companies, the victims of tobacco-related diseases, to date, have received virtually nothing in the form of compensation through the tort system. Nor has that system until now deterred industry misconduct, such as marketing cigarettes to minors. Certainly, recent revelations about the industry's conduct could change the situation. Litigation alone, however, is unlikely to reduce youth smoking; only comprehensive legislation addressing price, access, marketing, and other industry practices will be enough to achieve this objective.

New

For this reason, the Administration believes that comprehensive legislation that advances the President's five goals is essential to the public health and the future of our children. With respect to changes in the civil liability system in such comprehensive legislation, the Administration wants to make sure that its position is very clear:

1) The Administration would prefer comprehensive tobacco legislation that achieves the President's goals without any limits on liability. We believe that tobacco companies should not have special protections, and that the June 20 settlement struck the wrong balance;

2) Nevertheless, as the Administration has consistently stated, if there is

New

agreement on a comprehensive bill that advances the public health by fulfilling the President's five principles -- reducing youth smoking by substantially raising the price of cigarettes and imposing tough penalties on the industry; expressly confirming the full authority of the FDA; changing the way the industry does business; achieving other public health goals; and protecting tobacco farmers -- then reasonable provisions modifying the civil liability of the tobacco industry would not be a dealbreaker.

New

3) Any provisions that Congress wishes to enact should make more achievable the recovery of appropriate compensation for deserving injured parties than historically has been the case and reinforce the legislation's other, comprehensive safeguards against industry misconduct.

4) Any final settlement should create powerful incentives for tobacco manufacturers to fully and publicly disclose all appropriate documents. For example, Congress should consider limiting any changes to the civil liability system to information that was fully disclosed by the tobacco industry to the Congress and the public.

New

5) Any changes to the civil justice system must be constitutionally sound.

With these principles in mind, let me now turn to the provisions of the proposed settlement.

3. <u>A Description of the Civil Liability Provisions and Some Questions Raised</u>

The proposed settlement leaves open many questions. No definite terms establish who or what will be paid or for how long. The settlement is more of a template for constructing a legislative solution than a traditional out-of-court settlement of the state lawsuits and the numerous individual and class action lawsuits. Nonetheless, some initial observations are possible.

There are four broad areas in which the proposed settlement would affect the civil liability system.

a. Resolution of Pending Litigation

The settlement contemplates that much of the pending litigation would be settled, including the present states attorneys general actions. It appears that the settlement also contemplates that future litigation of those kinds would be prohibited by federal law. Pending addiction/dependence claims by injured smokers also apparently would be settled.

b. Limits on Annual Liability

The settlement contemplates federal legislation that would impose limits on the annual aggregate and individual damage payments for which the participating tobacco manufacturers could be liable. An "annual aggregate cap" for the payment of judgments and settlements would begin at $2 billion in the first year and increase to $5 billion in the ninth year and thereafter. If total judgments and settlements for a given year exceeded the annual aggregate cap, the excess would be rolled over for payment in future years. Payments would be limited to $1 million per judgment per year unless every other judgment and settlement could first be satisfied in that year without

exceeding the annual cap. Unpaid individual judgments in excess of the individual cap would be rolled forward, without interest, for payment in future years.

If Congress wishes to consider annual caps, a variety of approaches could be discussed. Limits could be established on the amount paid to each claimant or could be imposed only on future claims, or only on past ones. Within the context of the settlement as a whole, we should explore whether liability caps can be part of a creative scheme that also furthers the goals discussed earlier.

One critical issue, of course, is whether annual caps or other mechanisms would afford sufficient funds to meet the needs of victims or whether they should be raised. It may be valuable for Congress to ask that the tobacco manufacturers share their calculations and research concerning the likely dollar requirements of those injured by tobacco products.

c. Limits on Punitive Damages

Under the settlement, all punitive damages claims would be extinguished with respect to conduct taking place prior to the effective date of the bill enacting the settlement. Punitive damages could be awarded with respect to conduct taking place after passage of the legislation.

The purpose of punitive damages is to deter and punish. Congress is being asked to remove this tool with respect to the tobacco manufacturers' past conduct. At the same time, however, Congress is considering legislative provisions that will serve similar purposes. In considering punitive damages provisions, Congress should consider the overall legislative package and the framework it establishes for deterring future

wrongdoing and serving the public interest. Congress could consider whether separate punitive damages limitations are needed if annual caps govern manufacturers' total liability. Moreover, if Congress wishes to consider provisions on punitive damages, it could consider alternatives such as capping punitive damages or -- perhaps most interestingly -- retaining punitive damages with respect to claims based on facts not disclosed by the tobacco manufacturers to Congress and the public. Finally, with respect to any of these proposals, Congress will have to look carefully at the constitutionality of the proposed legislation.

d. Procedural Restrictions

The settlement apparently contemplates federal legislation that would abolish class actions and other forms of multi-case tobacco litigation without the defendants' consent. Litigation brought by third party plaintiffs, such as pension funds and health insurers, would be prohibited entirely unless the litigation was based on the subrogation of a single individual's personal injury claim. Third-party payor claims that were pending on June 9, 1997, would be allowed under a grandfather clause.

It has been difficult to bring class actions for tobacco-related injuries in federal courts, and many state courts have denied class certification. Some state courts have granted class certification to claimants against the tobacco manufacturers, however, and other joinder mechanisms that would be affected by the proposal can significantly reduce individual litigants' costs of suit. Restrictions on such joinder mechanisms could make it more difficult for some plaintiffs to pursue their claims in court. As with punitive damages, Congress should consider whether there is a rationale for special

procedural restrictions if it enacts annual caps on industry liability. Moreover, such restrictions raise novel federalism issues. Thus, we believe that Congress should consider carefully the legal and practical consequences of such provisions with an eye toward ensuring that injured tobacco users have access to justice.

D. Conclusion

The Department of Justice strongly supports comprehensive tobacco legislation. Crafting legislation that significantly reduces teenage tobacco use and meets the other goals the President has announced is an enormous, yet vitally important, challenge. We would be happy to join with this Committee in a dialogue to find the best possible solution.

Thank you for giving me this opportunity to furnish the views of the Department of Justice regarding this legislation. I will be pleased to answer any questions you may have.

Total Pages: ___

LRM ID: AMB271

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, February 10, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Ronald K. Peterson (for) Assistant Director for Legislative Reference

OMB CONTACT: Anna M. Briatico
PHONE: (202)395-7301 FAX: (202)395-5691

SUBJECT: **JUSTICE Testimony on Attorney General and Tobacco Industry Report on Tobacco Settlement Plan**

DEADLINE: **10 a.m. Wednesday, February 11, 1998**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The draft testimony is for a February 12th hearing before the Senate Committee on Indian Affairs. Thomas LeClaire is the Justice Department witness.

If we do not hear from you by the deadline, we will assume that you have no comments.

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LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

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TESTIMONY ON THE TRIBAL GOVERNMENT PROVISIONS OF PROPOSED TOBACCO LEGISLATION
Before the Senate Indian Affairs Committee
February 12, 1998

Chairman Nighthorse Campbell, Vice Chairman Inouye, and Members of the Committee, good morning and thank you for inviting the Department of Justice to testify today. I am Thomas LeClaire, Director of the Office of Tribal Justice, Department of Justice.

At the outset, I should emphasize that I am here today to briefly discuss our preliminary views on Federal Indian law and policy as it relates to various legislative proposals concerning the marketing, sale, and regulation of tobacco. The views that I express today are limited to Federal Indian law and policy issues, and are not intended to set forth a general Administration policy position on the proposed tobacco legislation.

THE FEDERAL TRUST RESPONSIBILITY AND GOVERNMENT-TO-GOVERNMENT RELATIONS WITH INDIAN NATIONS

When working with Indian nations it is important to bear in mind the fundamental principles that guide the Federal Government's relations with Indian tribes and nations.

The United States has a unique legal relationship with Indian tribes as set forth in the Constitution, treaties, statutes, court decisions, executive orders, and administrative action. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. E.g., Treaty with the Delaware Nation, 1778, 7 Stat. 13; Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). In

hundreds of treaties and agreements, our Nation guaranteed the right of Indian tribes to the "highest and best" form of government -- self-government. Ex Parte Crow Dog, 109 U.S. 556, 568-69 (1883).

Congress has acknowledged that "the United States has a trust responsibility to [Indian tribes] that includes the protection of the sovereignty of each tribal government." See e.g., 25 U.S.C. § 3601(2); see also 25 U.S.C. §§ 450, 1451, 1601, 2501-2502, 3701, and 4101. Under our Federal trust responsibility to protect Indian nations, the United States should exercise the highest standard of care concerning tribal government authority.

The Administration and the Attorney General respect and honor the commitments of the United States to Indian nations. Thus, both Congress and the Executive Branch have recognized the importance of working with Indian nations on issues concerning tribal government, trust resources, and Indian treaty rights within the framework of government-to-government relations. We respectfully submit that any legislation in this area relating to tribal governments should be consistent with Federal government-to-government relations with Indian nations and the status of Indian tribes as domestic nations under the protection of the United States.

DEFINITIONS

In any legislative proposals, we believe that the term "Indian tribe" should be defined either by reference to the

definition set forth in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450b, or the Federally Recognized Indian Tribe List Act, 25 U.S.C. § 479a. Reporting on the Federally Recognized Indian Tribe List Act, the House Committee on Resources emphasized the importance of federal recognition to Indian tribes:

> [Federal recognition is a] formal political act[;] it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependent nation," and imposes on the government a fiduciary trust relationship to the tribe, and its members.

H.R. Rep. 103-781, 103rd Cong., 2nd Sess. (1994) at 2; 1994 U.S.C.C.A.N. 3768, 3769.

If the terms "American Indian" and "Alaska Native" are used, we recommend that those terms be defined by reference to the term "Indian" under 25 U.S.C. § 450(d), which is based on tribal membership in a federally recognized Indian tribe. Morton v. Mancari, 417 U.S. 535 (1974) (tribal membership is a "political status" related to the status of Indian tribes as governments).

TRIBAL REGULATORY AUTHORITY

As domestic dependent nations, Indian tribes are distinct, self-governing political communities that possess governmental authority over their members and their territory. Merrion v. Jicarilla Apache Tribe, 450 U.S. 130, 141 (1982). Indian tribes have plenary authority over Indians, See 25 U.S.C. § 1302 (Indian tribes possess criminal jurisdiction over all Indians within tribal territory), and possess civil authority over the conduct of non-Indians, who enter tribal lands or engage in commercial

relations with the tribe or its members. Kerr McGee v. Navajo Nation, 471 U.S. 195 (1985); Montana v. United States, 450 U.S. 544 (1981).[1]

Accordingly, if tobacco legislation is enacted to establish minimum federal law requirements for the manufacture, marketing, distribution, and sale of cigarettes, Indian tribes should have the opportunity to establish tribal law requirements for Indian country consistent with the federal minimum standards. 18 U.S.C. § 1151 (Indian country defined). Tribal legislative authority should not be limited by state law requirements, and state law requirements should not be incorporated by reference in Indian country because Indian peoples have "the right to make their own laws and be ruled by then." Williams v. Lee, 358 U.S. 217 (1959).

Consistent with the Federal Indian Self-Determination Policy, legislation should provide tribal government institutions with the opportunity to enforce federal and tribal law requirements relating to tobacco within Indian country. Some of the smaller tribes may not have the regulatory infrastructure in place to enforce tobacco regulatory laws at this time, so tobacco legislation might include some type of federal certification process by the Secretary of the Interior (or Agriculture) to determine whether an Indian tribe has the governmental

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[1] An Indian tribe may also retain civil authority over the activities of non-Indians on non-Indian lands within its reservation, if the activities threaten the tribe's political integrity, economic security, or health and welfare. Montana v. United States, supra.

infrastructure necessary to enforce the laws.[2] If the Secretary makes the requisite certification, then the Indian tribe should be recognized as the frontline authority for tobacco regulation in Indian country.

If the Secretary does not make the necessary certification, the Food and Drug Administration (or other federal agency) should be authorized to enforce federal tobacco laws in the applicant tribe's Indian country. An Indian tribe should have an opportunity to reapply for the necessary federal certification, so that it may perform tobacco regulatory functions when its tribal government institutions become capable of doing so.

Finally, even where Indian tribes are certified as capable of enforcing federal and tribal tobacco regulatory laws, the Federal Government should retain concurrent authority to enforce federal law. (States should not be delegated federal regulatory authority in Indian country in the absence of tribal consent because that would infringe on tribal self-government. *Cf.* 25 U.S.C. § 1326 (Indian people must, by referendum, approve any extension of state authority in Indian country under Public Law 280); Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980) (tribal governments are not

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[2] This certification process should focus on tribal governmental infrastructure, and not a comparison to state and local governments, because Indian tribes have distinct tribal government institutions based on their own unique histories.

dependent on, or subordinate to, the States).[3])

RESERVATION GENERATED VALUE

Based on the United States' recognition of tribal rights to self-government, Indian tribes and reservation Indians generally are exempt from state regulation and taxation in Indian country. See e.g., California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) (regulation); Moe v. Salish & Kootenai, 425 U.S. 463 (1974) (taxation). In addition, when Indian tribes and Indians generate value on their reservations, federal law may also preempt state taxation of non-Indians engaged in Indian commerce. See White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980) (non-Indian engaged in reservation timber production with Indian tribe was exempt from state motor fuel taxation).

In New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983), for example, the Supreme Court held that non-Indian hunters using a tribal hunting enterprise on reservation lands were exempt from state hunting regulations. The Court explained the basis for its decision as follows:

> The Tribe has engaged in a concerted and sustained undertaking to develop and manage the reservation's wildlife and land resources specifically for the benefit of its members. The project generates funds for essential tribal services and provides employment for members who reside on the reservation. . . . The Tribal enterprise in this case clearly involves "value generated on the reservations by activities involving the Tribe."

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[3] Indeed, the States have often been hostile to tribal self-governance. United States v. Kagama, 118 U.S. 375 (1886); see also Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

Id. at 340. Accordingly, the State had no authority to impose license requirements and fees on non-Indians utilizing the valuable hunting resources generated by the Tribe on its reservation.[4]

It is possible that some Indian tribes may raise tobacco, or engage in manufacture of Native American tobacco products. If so, tribal sales may be considered to be based on reservation value, and reservation sales of products based on such value to non-Indians would then be exempt from state taxation. Any legislation in this area should, consistent with the regulatory objectives of the statute, preserve that avenue of development for Indian tribes under the Indian self-determination policy.

PROTECTION OF AMERICAN INDIAN RELIGIOUS USES OF TOBACCO

For centuries, tobacco has been considered essential to the practice of American Indian religions as well as to the preservation of Native American culture and tribal identity. In order to protect this religious exercise from government interference, religious use of tobacco by members of federally recognized tribes should be exempted from any comprehensive tobacco legislation.

The Supreme Court "has long recognized that the government may (and sometimes must) accommodate religious practices and that

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[4] In contrast, where Indian tribes market prepackaged goods, without adding reservation value, non-Indian consumers may be required to pay non-discriminatory state sales taxes. Washington v. Colville, 447 U.S. 134 (1980) (prepackaged cigarettes).

it may do so without violating the Establishment Clause."[5] The accommodation doctrine permits the government to single out religion for special treatment under certain circumstances in order to lift a generally applicable regulation, such as tobacco regulation, that might burden the exercise of religion.

Further, the special government-to-government relationship between the federal government and federally recognized tribes permits Congress to enact legislation that recognizes and protects the unique aspects of Indian tribes.[6] Traditional tribal religious practices provide one such unique aspect of tribes. In light of this, the federal government may ensure that its actions serve to preserve rather than to destroy Indian religion and culture.

The special relationship between the United States and Indian tribes provides the underpinning of elements of a number of federal statutes, such as the American Indian Religious Freedom Act Amendments, 42 U.S.C. 1996a, National Historic

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[5] Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 334 (1987) (quoting Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136, 144-45 (1987)).

[6] Morton v. Mancari, 417 U.S. 535 (1974) (preferences for federally recognized Indian tribes are subject to less exacting scrutiny under the Equal Protection Clause than racial or ethnic preferences because of the historical and political relationship between tribes and the federal government). Two Courts of Appeals have extended Morton's logic to the Establishment Clause context. In Rupert v. Director, U.S. Fish and Wildlife Service, 957 F.2d 32 (1st Cir. 1992) (per curiam), the First Circuit upheld an exemption for federally recognized Indian tribes from the federal criminal prohibition on the possession of eagle feathers. The Fifth Circuit, in Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210 (5th Cir. 1991), similarly upheld exemptions for the Native American Church from federal and state laws prohibiting peyote possession.

Preservation Act, 16 U.S.C. 470, and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001. These statutes, and others, recognize the singular characteristics of Native American culture and, therefore, contain provisions tailored to protect Native American cultural artifacts. A legislative exemption for the religious use of tobacco similarly recognizes some of the differentiating characteristics of Indian religion. The Department believes therefore that -- in addition to the accommodation doctrine -- the special relationship empowers Congress to protect the religious use of tobacco by members of federally recognized tribes.

Finally, the history of attempts by the United States to curtail Indian religious exercise provide an important justification for protecting Indian religious exercise from further incursion. The mandate to protect religious liberty is deeply rooted in this Nation's constitutional heritage. American Indian religions, regrettably, have not always benefitted from the First Amendment's protection of the exercise of religion. For example, from 1894 through the 1930's, the federal government banned "[t]he 'sun-dance' . . . and all other so-called feasts assimilating thereto," as well as "[t]he usual practices of so-called 'medicine men.'" Regulations of the Indian Office 106 (1894). Against this background, it is important to incorporate protections for American Indian religious uses of tobacco in order to prevent unintended infringement on American Indian freedom of religion.

Mr. Chairman, that concludes our preliminary views on the Indian provisions of the proposed tobacco settlement. At this time, I would be happy to respond to any questions that you may have.

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