



## MASTER SETTLEMENT AGREEMENT

### The “Vilification Clause” Does Not Restrict State Tobacco Prevention Spending

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There is no language anywhere in the Master Settlement Agreement (MSA) that restricts the states’ use of any of the funds they annually receive from the cigarette companies. Each state is free to spend as much of its direct settlement funds on tobacco prevention as it chooses, and the funded initiatives, including any state anti-smoking ads, may be as aggressive and hard-hitting as the state desires.<sup>1</sup>

Although much has been made of the “vilification clause” in the MSA, it applies only to the \$300 million per year that will go to the National Public Education Fund (administered by the American Legacy Foundation) – and it does not have anything to do with the cigarette companies’ settlement payments to the states of roughly \$8 billion per year.

While the Legacy Foundation plans to provide \$35 million per year to the settling states in counter-marketing and public education grants, a close look at the actual language of the vilification clause shows that it will not significantly restrict how the states may spend these Legacy grants.<sup>2</sup>

The vilification clause states only that the MSA’s National Public Education Fund “*shall not be used for any personal attack on, or vilification of, any person (whether by name or business affiliation), company, or government agency, whether individually or collectively.*” [Sec. VI.(h)]

Looking at standard dictionary definitions, a personal attack is an attack that “pertains to or concerns a specific person,” “directly refers to an individual, especially in a disparaging manner,” or is aimed pointedly at the most intimate aspects of a person, especially in a critical or hostile manner.” Following these definitions, attacks on corporations, as opposed to real people, may not be personal attacks, at all. But even if the cigarette companies were considered individual persons, these definitions suggest that the vilification clause’s personal attack prohibition places no restrictions on using Legacy Foundation funds to support ads that make general attacks on the tobacco industry or the cigarette companies as a group, without naming individual companies or executives. Going further, these definitions also suggest that Legacy-funded ads could even mention or attack individual cigarette companies or specific executives so long as they simply criticized their public (as opposed to private or “intimate”) acts and refrained from name calling.

Similarly, dictionaries define “vilify” as defaming or slandering a person through vicious and abusive statements – and the only way to defame or slander someone is to say or publish false statements about them. Accordingly, the vilification prohibition should not apply to any state ads supported by Legacy grants that simply tell the truth and avoid name calling – no matter how aggressively and directly they accurately point out the connections between smoking and death, describe the cigarette companies’ past or current marketing efforts, or report on the companies’ revenues and profits from cigarette sales to youths.

***Campaign for Tobacco-Free Kids, April 18, 2000***

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<sup>1</sup> Full text of the MSA is available at <http://www.naaq.org/backpages/naaq/tobacco/msa/>. The Foundation will receive roughly \$1.45 billion in total MSA public education funds through 2003, and will receive \$300 million in any year after that when the major U.S. cigarette companies control at least 99.05% of the U.S. cigarette market.

<sup>2</sup> American Legacy Foundation website, <http://www.legacyforhealth.org/>.