

# Tobacco lobby political influence on US state legislatures in the 1990s

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## Abstract

**Background**—Throughout the 1990s the tobacco lobby was a potent political force in US state legislatures advancing its pro-tobacco agenda.

**Objective**—To describe the market and political motivations of the tobacco lobby and the strategies they use to achieve these goals in US state legislatures.

**Design**—This study is a content analysis and summary overview of recently released historical tobacco industry documents; tobacco related government documents; and recent state tobacco control policy reports.

**Results**—In the 1990s, the tobacco lobby engaged in a comprehensive and aggressive political effort in state legislatures to sell tobacco with the least hindrance using lobbying, the media, public relations, front groups, industry allies, and contributions to legislators. These efforts included campaigns to neutralise clean indoor air legislation, minimise tax increases, and preserve the industry's freedom to advertise and sell tobacco. The tobacco lobby succeeded in increasing the number of states that enacted state pre-emption of stricter local tobacco control laws and prevented the passage of many state tobacco control policies. Public health advocates were able to prevent pre-emption and other pro-tobacco policies from being enacted in several states.

**Conclusions**—The tobacco lobby is a powerful presence in state legislatures. Because of the poor public image of the tobacco lobby, it seeks to wield this power quietly and behind the scenes. State and local health advocates, who often have high public credibility, can use this fact against the tobacco lobby by focusing public attention on the tobacco lobby's political influence and policy goals and expose links between the tobacco lobby and its legislative supporters.

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When health advocates pursue tobacco control efforts in state legislatures of the USA, a key consideration in the success of such efforts has been the nature and scope of the power and influence of the tobacco lobby. Before the release, as a result of recent tobacco litigation,<sup>1-3</sup> of more than 32 million pages of previously secret tobacco industry documents, public health advocates were often left to

infer<sup>4 5</sup> internal industry strategies for exercising political influence over state tobacco control policy making. Analysis of tobacco industry documents, combined with detailed case studies of tobacco policy making in several states,<sup>6-20</sup> allows us to integrate and add to the understanding of how the tobacco industry has advanced its broader objective of defending and expanding its market and political interests.

The industry's public policy objective has been to preserve and expand its customer base, sales, and profits through sophisticated lobbying and political efforts in state legislatures. Linked to this primary policy goal have been the ongoing identification and advancement of specific profit and sales enhancing goals such as the defeat of clean indoor air legislation, cigarette excise tax increases, and restrictions on marketing and promotion as well as enactment of tort and product liability reform legislation designed to reduce legal risks and litigation costs. The industry achieves this objective through a bundle of comprehensive insider lobbying approaches coordinated with registered contract tobacco lobbyists in each state through a collaborative and hierarchal relationship with company top management and Tobacco Institute lobbying officials.

The tobacco lobbyists' comprehensive approach to influencing state policy making has included direct campaign contributions, gifts, honoraria, and charitable contributions to legislators' pet programmes, indirect (or soft money) contributions to legislators' political caucuses and parties for non-campaign political education and technical assistance purposes, and providing group entertainment such as hunting trips or sporting events to "bond" with state legislators in order to build mutual political trust and support.<sup>8 21-27</sup> It has also included building political support with and through allied and front groups such as smokers' rights groups,<sup>4 28</sup> restaurant, bar, hotel, and motel associations,<sup>7 16</sup> and funding "special projects" designed to secretly undermine state tobacco control policy, such as legislatively opposing educational anti-tobacco ASSIST (American stop smoking intervention study) programme efforts in Washington.<sup>24 29</sup>

These policy objectives and approaches have led to and are also connected to collective state legislative outputs or governmental actions relating to tobacco control legislation and programmes, including enactment of state laws preempting local clean indoor air and other

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tobacco control ordinances and keeping state tobacco excise taxes low.

### Methods

This research is descriptive and analytical based on a content analysis and summary overview of recently released tobacco industry budgetary, planning, and policy documents; government documents; and recent state tobacco control policy reports. The more than 32 million pages of tobacco industry documents already made public due to the 1998 legal settlement in the case of *State of Minnesota, et al, v Philip Morris, Inc, et al*, No. C1-94-8565, 2nd District, Minnesota, and the subsequent Master Settlement Agreement between 46 other states and the major cigarette manufacturers in the USA. Under the terms of these legal agreements, each tobacco company, tobacco trade association, and tobacco research organisation established a searchable web site. (These sites are accessible through <http://www.tobaccoarchive.com>.) Search terms in which hits occurred included: employment discrimination, tort reform, tobacco marketing, solid waste, packaging, tobacco taxes, clean indoor air, hospitality industry, fire-safe, vending machine, product liability, initiative, referenda, ASSIST, sales restrictions, AD-AMHA, Synar, AAA, accommodation, pre-emption, five year plan, lobbyist evaluation, corporate plan, tobacco issues, state government relations, strategic plan, issues brief, 1990 budget, 1994 budget, 1995 budget, 1996 budget, 1997 budget, 1998 budget, and 1999 budget, as well as names of key individuals identified in relevant documents. Although all relevant tobacco industry web sites were searched, the Philip Morris, Inc and Tobacco Institute sites provided most of the relevant documents. Our primary focus was on the decade of the 1990s, although many of the strategies we found predate that period.

Another source of data for this content analysis was a review of all tobacco lobby legislative lobbying tactics documented and analysed in recent comprehensive tobacco policy case studies in 12 states (Arizona,<sup>6</sup> California,<sup>10 18-20</sup> Colorado,<sup>11</sup> Florida,<sup>8</sup> Massachusetts,<sup>16</sup> New Jersey,<sup>12</sup> New York,<sup>7</sup> Ohio,<sup>13</sup> Oregon,<sup>9</sup> Pennsylvania,<sup>15</sup> Washington,<sup>17</sup> and Wisconsin<sup>14</sup>) located in all regions of the USA including the northeast, south, midwest, and west.

We used all available data from the fourth quarter 1999 status of state tobacco control legislation from the US Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health (this information was accessed on 17 July 2000 at: <http://www2.cdc.gov/nccdphp/osh/state>) to measure state legislative outputs associated with tobacco control (that is, the number of states with laws pre-empting stricter local clean indoor air ordinances). We also used 1990 Coalition on Smoking or Health pre-emption data.<sup>30</sup>

### Results

#### THE TOBACCO INDUSTRY'S POLICY GOALS

In its state legislative political campaigns and lobbying efforts, the tobacco industry's public position is almost always that its activities grow out of concern over protecting individual freedom of choice or freedom from undue government regulations and taxes.<sup>8 22 31 32</sup> In contrast, in its private corporate communications, the primary impetus for the tobacco industry's political efforts in state legislatures is preserving and bolstering its sales and profits. As a 1991 internal Philip Morris memorandum noted:

"During the next five years, PM-USA [Philip Morris, USA] plans to continue its profit growth, generating operating income increases of 13.5% annually. Domestic cigarettes will contribute a cumulative \$18.0 billion to the corporate cash flow over the plan period. Market share will reach 49.6% in 1995, while volume will grow at a compound annual rate of half a percent.

"PM-USA volume growth will occur despite a 2.9% compound annual decline in industry volume. *Industry volume will be negatively affected by increasing smoking restrictions, the decreasing acceptability of smoking and increasing excise taxes. Corporate affairs will use direct lobbying, the media, and industry allies to minimize state and local tax increases, promote accommodation in public places and preserve the industry's freedom to advertise and promote cigarettes to adult smokers.*"<sup>33</sup> [emphasis added]

This goal of preserving the tobacco market was repeated many times, such as in this 1995 Philip Morris internal document, which stated:

"Our goal is to help shape regulatory environments that enable our businesses to achieve their objectives in all locations where we do business.

"Our overall approach to the issues is to fight aggressively with all available resources, against any attempt, from any quarter, to diminish our ability to manufacture our products efficiently, and market them effectively.

"We are also becoming more and more proactive in launching programs and hope that we can control the regulation which results from a public sense of inaction.

"We also know that in a world where our business interests have enemies—sometimes the best offense is to aim right at the heart of the problem [health consequences of tobacco use] our critics raise.

"By solving the problem, we take away their ammunition to harm us.

"In short, we are very clear about our objective—an unyielding and aggressive defense of our rights to make and sell our products and our consumers' rights to have a free marketplace so that they can choose and use those products."<sup>34</sup>

The tobacco industry's public rhetoric never mentions its primary objective: to ensure a large customer base, stable markets, and higher profits.

Table 1 summarises the major state policy making issues in which the tobacco lobby was involved during the 1990s according to internal tobacco industry national planning and policy documents.<sup>31 33-40</sup> These documents indicated that the industry's objective of maximising profits clashed with public policy goals of protecting the public health,

Table 1 Major tobacco lobby policy issues and tactical approaches for US state legislatures

Policy issue	Tobacco lobby position on policy issue	Public health advocacy positions	Tobacco industry's general tactical approaches
Clean indoor air	Oppose or weaken all clean indoor air restrictions	Promote smoke free workplaces and public places to promote public health	Oppose or weaken state clean indoor air laws. Pre-emption of stricter local laws.* Promote voluntary areas of "accommodation" for smokers and non-smokers. Form alliances with and, if necessary, create covert "hospitality" front groups to oppose clean indoor air legislation
Smokers' rights	Make it illegal for employers to take smoking status into account in hiring, firing, and promotion decisions	Prevent enactment of tobacco industry smokers' rights legislation to protect public health	Frame smoking as a civil right. Enlist support of groups like ACLU, women, and minority community groups
Tobacco excise taxes	Oppose all tobacco excise tax increases	Seek increases in excise taxes, sometimes with a portion allocated to tobacco control to promote public health	Oppose all taxation legislation. Pre-empt local authority to tax tobacco. Work with and fund anti-tax groups
ASSIST (a federally funded anti-tobacco educational effort)	Support stringent restrictions on ASSIST to make it more difficult to use the policy making process to promote public health	Support state ASSIST programme efforts to promote public health	Promote legislative attacks on ASSIST for "illegal" lobbying
Product liability reform	Restrict litigation costs and monetary damage awards in product liability cases	Protect status quo or enact legislation that facilitates litigation against the tobacco industry to promote consumer protection and public health	Create and finance product liability reform coalitions, often with medical groups (concerned about malpractice) and other business groups
Tort reform	Restrict litigation costs and monetary damage awards in tort cases	Protect status quo or enact legislation that facilitates litigation against the tobacco industry to promote consumer protection and public health	Create and finance tort reform coalitions, often with medical groups (concerned about malpractice) and other business groups
Tobacco marketing and promotion	Avoid all restrictions on tobacco industry marketing and promotion	Restrict location and nature of tobacco industry marketing and promotion to promote public health	Pre-emption of stricter local laws. Oppose or weaken all state marketing legislation
Sales to minors (including federal Synar Amendment youth access law enforcement efforts)	Oppose meaningful restrictions and penalties on retailers. Support minimum age restrictions on sales to minors, but without meaningful enforcement	Penalties on retailers for sales to minors, licensing retailers, enforcement through "stings" done by children to promote public health	Pre-emption of stricter local laws. Outlaw "stings". Support state legislation that makes it more difficult to meet goals set in Synar Amendment
Sales restrictions on vending machines	Oppose restrictions on vending machines and tobacco sign placement in outlets	Eliminate vending machines or restrict locations to "adults only" venues to promote public health	Pre-emption of stricter local laws. When legislation is inevitable, support ineffective measures such as electronic locks on vending machines
Tobacco packaging and solid waste	Oppose all tobacco solid waste taxes and other restrictions	No active position to promote public health and environmental protection	Oppose or weaken all new state solid waste tax or recycling legislation. Support and bolster current recycling programmes without new legislation
Fire safe cigarettes	Oppose application of fire safe standards to tobacco products	Seek fire safe standards for tobacco products to promote consumer protection	Oppose all fire safe cigarette legislation. Alliances with (and funding of) fire safety organisations. Agree to studies to delay, if meaningful legislation appears imminent
Initiatives and referenda	Eliminate or make it more difficult for citizens to mount initiative and referendum campaigns	No active position to promote public health and greater direct democracy	Sponsor legislation restricting ability to qualify initiatives and referenda on the ballot
Death certificates	Oppose listing tobacco as cause of death on death certificates	Support listing tobacco as a cause of death on death certificates to promote public health	Oppose all legislation that requires tobacco to be listed as cause of death on death certificates

\*Occasionally public health advocates have supported pre-emption in the belief that some progress at the state level was worth accepting pre-emption.<sup>8 15 101</sup> This compromise rarely advanced public health in the long run.

enhancing environmental protection, promoting greater direct democracy, and increasing consumer protection.

This situation, of course, reflects the fact that tobacco companies are foremost large corporations seeking, at all costs, to maintain and expand their markets. Although this is a common feature of capitalist economics, what makes this case particularly unique are the serious health effects associated with the use of tobacco products.<sup>41-43</sup>

This clash of public goals and values, in large part, drives the political and social intensity of these issues in the various state legislative arenas in which the tobacco lobby and health advocates are present. Because of this intense political climate, the tobacco lobby has had to develop politically sophisticated and powerful approaches in state legislatures to support its policy issues and objectives to maintain and protect tobacco as a viable product in state marketplaces.

#### TOBACCO LOBBY EFFORTS TO BUILD POWER AND INFLUENCE IN STATE LEGISLATURES *Lobbyists*

The primary approach by the tobacco industry to advancing these political and market objectives has been the employment of effective and well connected registered contract lobbyists in each state legislature who were skilled at advancing the tobacco industry's interests through quiet, behind the scenes, insider strategies.<sup>22-27 44 45</sup> Table 2 provides a listing of the names and amount of compensation in 1997 that the Tobacco Institute—the tobacco industry's political arm—budgeted for registered lobbyists for each state legislature. (This amount of compensation represents only a very small portion of the total amount that the tobacco industry spent to influence state legislation through the funding of legislators, legislators' political organisations, and allied and front organisations.<sup>6-20 22 24 25 45-48</sup>) In addition, the tobacco producers, manufacturers, and

distributors also spent substantial sums on lobbying directly.<sup>7 8 11 12 14 17-20 22 32 49</sup> Tobacco lobbyists have also cross lobbied for a variety of other industries including primarily: “. . .advertising, insurance, vending machine, alcoholic beverage, restaurant, convenience stores, and banks . . .”<sup>50</sup> In some instances these lobbyists also represented health interests, a fundamental conflict of interest.<sup>50</sup> Because tobacco lobbyists simultaneously represent multiple powerful and wealthy clients besides tobacco, they are able to magnify their influence by brokering votes and support for various legislation, including tobacco legislation.<sup>50</sup>

Coordination of these state lobbying efforts occurred through a hierarchal relationship with higher tobacco company top management and Tobacco Institute lobbying officials who consulted with the state tobacco lobbyists regarding preferred public policy issues and outcomes.<sup>22 51</sup> Provisions in a 1996 internal Tobacco Institute generic contract agreement for all registered state contract lobbyists delineated this relationship:

Table 2 Tobacco Institute funded state lobbyists for 1997\*

State	Lobbyist name	Amount
Alabama	Lester White	\$50000
Alaska	Wes Coyner	\$44000
Arizona	Don Isaacson	\$70000
Arkansas	Stewart Bell	\$30000
California	Phil Dowd	\$155000
Colorado	Frank Hays	\$65000
Connecticut	Bourke Spellacy	\$95000
Delaware	Dave Poffenberger	\$35000
Florida	Guy M Spearman	\$78500
	Arthur Collins	\$35000
Georgia	Boyd Pettit	\$58000
Hawaii	Norman Suzuki	\$62000
Idaho	William Roden	\$38000
Illinois	John O'Connell	\$70000
Indiana	Thomas F Fruechtenicht	\$42000
Iowa	Charles Wasker	\$60000
Kansas	Pat Hubbell	\$42000
Kentucky	Roy Strange	\$37000
Louisiana	Johnny Koch	\$70000
Maine	Severin Beliveau	\$70000
Maryland	Bill Pitcher	\$68000
Massachusetts	John Burke	\$78000
Michigan	Governmental Consultant Services, Inc	\$85000
Minnesota	Tom Kelm	\$120000
Mississippi	Ellis B Bodron	\$34000
Missouri	John Britton	\$57500
Montana	Jerome Anderson	\$46000
Nebraska	Bill Peters	\$30000
Nevada	Jack Jeffrey	\$42000
New Hampshire	Liz Murphy	\$38000
New Jersey	Roger Bodman	\$78000
New Mexico	Bob Baberousse	\$39000
New York	Daniel Adams	\$65000
	Jeff Hill	\$55000
North Carolina	Roger W Bone	\$58000
North Dakota	Tom Smith	\$27500
Ohio	Pete O'Grady	\$50000
Oklahoma	Ken Nance	\$50000
Oregon	Richard Kosesan	\$50000
Pennsylvania	Eugene Knopf	\$82000
Rhode Island	Kelly Sheridan	\$40000
South Carolina	Sterling Smith	\$45000
South Dakota	Jeremiah Murphy	\$42500
Tennessee	Cleve Smith	\$55000
Texas	Jack Roberts	\$90000
Utah	Jim Stewart	\$52500
Vermont	Edward Miller	\$35000
Virginia	Anthony Troy	\$68000
Washington	William Fritz	\$52500
West Virginia	Rodney Berry	\$37000
Wisconsin	Steve Bablitch	\$80000
Wyoming	William Thomson	\$40000
Total		\$2997000

\*Source: Tobacco Institute 1997 budget<sup>25</sup>

“Your responsibilities as consultant to The [Tobacco] Institute will be to represent the Institute before state legislative, regulatory, and administrative bodies on all issues of interest to the tobacco industry; to report to the Institute on all such legislative, regulatory or administrative actions, including bill introductions, hearings and votes and proposed regulations and other administrative actions; in limited instances, at The Institute’s request, to furnish incidental assistance in Federal legislative or administrative matters; to attend national and regional meetings sponsored by The Institute; to register as The Institute’s representative and file reports as required by state law, send copies of such reports to The Institute’s Vice President . . .and to advise The Institute on its reporting responsibilities as a lobbyist employer, and to provide similar services as mutually agreed . . .

“ . . .The Institute’s Vice President for your region, will supervise your activities in connection with the Agreement. You should make oral and written reports to The Institute [Vice-President who] is responsible for coordinating tobacco industry legislative, regulatory, and administrative activities in the State . . .and will assist you in developing plans and other strategies to deal effectively with industry issues.”<sup>52 53</sup>

#### Campaign contributions

Providing substantial campaign contributions to legislators is at the centre of the tobacco industry’s efforts to influence legislative behaviour,<sup>22 24 25 45-47</sup> and it works; contributions to legislators’ re-election campaigns from the tobacco industry are statistically related to more pro-tobacco behaviour.<sup>48 54-56</sup> As a high level internal 1996 Philip Morris corporate policy document explained:

“WHY DO WE GIVE?

To maintain our ability to present PM’s [Philip Morris’] point of view

To support those who support us

To support those who facilitate our giving to others

To contribute at levels comparable to home-state business

WHO DO WE GIVE TO?

Those current and potential elected officials, leadership committees and business PACs [political action committees] that share our point of view

Those who share PM’s point of view but not on all issues

Leaders who should not be ignored”<sup>57</sup>

Philip Morris’ recognition of the importance of supporting legislative leadership, without regard to the leader’s current level of sympathy with the tobacco industry, is particularly important. These campaign contributions have been provided to key legislative officials<sup>7 8 10 23-26</sup> who are in positions of leadership or are chairs or members of key legislative committees, and so are in a position not only to vote on specific bills, but to control the legislative process.<sup>46 48 56</sup>

Depending on the tobacco industry’s needs, this control of the process allows them to send bills to committees that will pass or kill them or simply refuse to hold a hearing, effectively killing a bill without forcing legislators to go on the record as supporting a pro-tobacco position.

### *Contributions to legislators' political caucuses and parties*

In addition to direct contributions to legislators, indirect or soft money contributions for non-campaign political educational and technical purposes have also been made to legislators' individual political caucuses, including specialised political caucuses such as African American or women's political caucuses.<sup>25 45</sup> The tobacco lobby's interest in minority and women's caucuses stems from its historic campaign to build relationships with these groups to build coalitions to counter tobacco excise taxes and promote smokers' rights legislation.<sup>58-60</sup>

Contributions have also been made to legislators' political parties, who often spend this money, along with other special interest group money, to provide technical support and paid political advertising (not aimed at specific political campaigns) to assist and bolster the public image of chosen legislators.<sup>7 8 10 21</sup> The purpose of this type of contribution is to provide electoral support, build goodwill, and gain further access and influence with legislators. It also avoids the stigma that can be attached to a direct campaign contribution from the tobacco industry to a legislator.

### *Gifts and honoraria*

The provision of gifts, honoraria, entertainment events, and charitable contributions to legislators has been another important means of influencing state legislative policy making.<sup>22 61 62</sup> Gifts such as free meals and industry Christmas baskets, honoraria such as payment for the provision of public speeches and workshops, and free entertainment events such as fishing trips, hunting trips, golf events, and sports tickets have all been provided to state legislators<sup>22 61 62</sup> with the primary purpose of building goodwill. The tobacco lobby has also provided contributions to key legislators' favourite charities, not for corporate responsibility, but “ . . . where there is a political benefit”.<sup>22 61</sup> In the case of entertainment events, they have a further purpose of facilitating “bonding” with legislators in order to build mutual political trust, support, and acceptance and understanding of various policy positions.

### *Alliances with other interest groups*

Because of the tobacco lobby's poor public reputation, it has often at times preferred to build mutual support and lobby quietly behind the scenes<sup>63 64</sup> for state tobacco policy issues in alliance with other organisations. Such alliances have been characterised by covert or overt working political relationships in which the organisations are not substantially controlled or funded by the tobacco lobby.<sup>7 8 32</sup> As was noted in a 1990 Tobacco Institute budget and planning document, this was to be accomplished by:

“ . . . activities to improve relations with groups and individuals that fall into three general categories: (1) the tobacco family, (2) coalitions with which we have existing relations among some but not all groups and/or on some but not all issues, and (3) coalitions with which we had no relationship yet.

“We also propose activities to respond to increased activity by the anti-smoking movement, particularly as this activity affects our relationships with our allies.

“The success of many of these activities will depend upon the involvement and cooperation of staff from other divisions within the Tobacco Institute, and from member companies and other tobacco-related organizations.”<sup>65</sup>

The plan also indicated that:

“Our allies' greatest strength—independence—remains a limit on effectiveness of those coalitions on our issues. Allies may not agree or even have an interest in all industry issues, and may not be willing or able to assist in all ways requested.

“Although a great deal of progress has been made in establishing and involving coalitions in our issue programs, a great deal of additional work remains, particularly in the areas of tobacco family and farm issues, minority and women's issues, and veterans' issues.

“In order to attract allies and maintain their interest in our issues, The Institute must become more involved in responding to requests for assistance on non-tobacco concerns, and in identifying and offering assistance on some issues before we are asked.”<sup>65</sup>

Another indirect approach to state legislators that the tobacco lobby used was through national organisations of state legislators including the American Legislative Exchange Council, American Society of Legislative Clerks and Secretaries, Council of State Governments, National Conference of State Legislatures, Southern Legislative Conference, State Government Foundation, and State Legislative Leaders Foundation.<sup>23-25</sup> Working through these organisations created opportunities for the tobacco industry to influence educational and policy positions presented to legislators while remaining in the background. The primary reason for the tobacco lobby working with these organisations is that its constituent members (often legislators) can be lobbied regarding organisational policy recommendations on state legislation. As Ellen Merlo, senior vice president for corporate affairs at Philip Morris in 1996 stated:

“And, as our final objective, we are committed to Enhancing our Local, State and Federal Networks.

“ . . . We will also improve our coverage of state and local issues by increasing contacts with state and local officials and their staff to present our point of view on the issues.

“We will also improve our coverage and outreach with key [state legislative] organizations such as NCSL [National Conference of State Legislatures], CSG [Council of State Governments], ALEC [American Legislative Exchange Council] . . .”<sup>66</sup>

The tobacco lobby has also contributed funds to national groups not directly related to tobacco that make policy recommendations, which can effect state legislation<sup>24 25 45</sup> while allowing the tobacco lobby to remain behind the scenes. In the 1990s, funding of these groups by the Tobacco Institute included Women Involved in Farm Economics (WIFE), National Licensed Beverage Association (NLBA), National Retail Federation (NRF), and National Taxpayers Conference (NTC).<sup>24 25 45</sup> Specific political

efforts that these groups assisted the tobacco lobby with included the NTC and WIFE lobbying to fight tobacco excise tax increases,<sup>67 68</sup> and the NLBA and NRF assisting in symbolic and weak industry sponsored youth access educational campaigns.<sup>69 70</sup>

#### *Front groups*

In addition to working in political alliances, the tobacco lobby has on some occasions covertly worked to influence state legislation through front groups such as phoney restaurant and hotel and motel associations that are substantially funded and closely controlled by the tobacco lobby.<sup>7 8 32 71-76</sup> These efforts have occurred while attempting to obscure the fact that these organisations are acting as surrogates for the tobacco lobby.<sup>4 5 7 8 32 71 77-79</sup>

These front groups have been used on an ad hoc basis in various state political campaigns by the tobacco lobby.<sup>7 8 32 71</sup>

Besides supporting various front groups on an occasional basis,<sup>4 5 7 8 28 32 71</sup> one significant approach in the 1990s that the tobacco lobby has undertaken to influence state legislation<sup>8 10 32 80</sup> (as well as local legislation) has been the establishment of a permanent national front group known as the National Smokers' Alliance (NSA). (The NSA, for instance, was instrumental in supporting California's proposition 188 in 1994, which was sponsored by the tobacco lobby and would have created new state legislation that would have preempted stricter local clean indoor air ordinances.<sup>32 80 81</sup> The initiative measure was later soundly defeated.<sup>32</sup> The NSA has also actively opposed clean indoor air laws and regulations around the USA and financed litigation against health authorities who attempted to regulate smoking.) The NSA was created by Phillip Morris (with some later financial assistance from other companies) in 1993 with the assistance of the international public relations firm Burson-Marsteller.<sup>80 82-84</sup> In a general corporate document published in 1993, Phillip Morris said that the primary purpose of the NSA was:

"When it comes to individual officeholders and policy makers, the current political environment is one sided. Up to now the politicians and the anti-smoking activists have had a free shot at their political goals. The media's cooperation in this effort is a side issue to the root cause. The lawsuits, studies, public education, etc, are even further removed from the basic touch point as to the reason for the anti-smoking crowd's string of successes. The reason politicians have joined or rolled over on this issue:

"They have felt no political pain.

"To date there has been no down side to sticking it to smokers. Politicians who engage in anti-smoking activity have been given the pleasant choice between getting favorable media coverage . . . or getting more favorable media coverage. They have felt they have nothing to fear from bashing smokers, because smokers have not given them any reason to respect their viewpoint or their numbers.

"Only when politicians recognize there is political risk associated with joining an effort, will they be less likely to become active in that effort. For those who have already joined the other side,

there is opportunity in demonstrating that taking a stand should always carry a price."<sup>85</sup>

In order to accomplish this political objective, the 1993 NSA political plan also called for the following general messages to be promoted:

"1. Basic messages about smokers' rights, accommodation [clean indoor air], fairness, etc. These are the messages of the membership. They will be directed at the media, the policy makers, the politicians, and the pundits.

"2. Political messages about taxes, voter anger, independent expenditure campaigns, key influencers, etc. These are the messages of the NSA political organization. They will be directed solely at the politicians."<sup>85</sup>

In order to implement this political campaign and these messages, the NSA (which claimed to have more than three million members, but in fact, this "membership" consisted largely of tobacco company employees and persons from other industry data bases, not dues paying members<sup>84 86</sup>) has used various standard public relations tactics.<sup>82 87</sup> This has included "grassroots" (or "Astro Turf" organising as it is commonly referred to in the public relations industry<sup>87</sup>) third party advocacy not "linked" to the industry, advocacy advertising, junk science claims, litigation, and sponsoring other front groups.<sup>71 79 82 87 88</sup> All of these efforts have been designed to create orchestrated "simulations of enthusiasm"<sup>87</sup> to place greater political pressure on legislators.

Depending on the time and circumstance, organisations that the tobacco lobby has worked with in state policy making either in an alliance or as a front group has included local government associations, tobacco wholesaler organisations, recreational organisations, unions, police chief associations, state convenience stores, hotel and motel associations, restaurant associations, retailer groups, manufacturer associations, property rights groups, and licenced beverage associations. It has also included working with and through general business organisations, vending machine operators, candy and tobacco distributor associations, chambers of commerce, agribusiness groups, statewide tort and product liability "reform" groups, medical associations, and state anti-taxpayer coalitions.<sup>7 24 25 27 32 45 89</sup>

#### LEGISLATIVE TACTICS

Two common techniques that the tobacco lobby has used is killing legislation in hostile legislative committees or subcommittees through adverse votes or by delays in votes until a legislative session ends.<sup>6-20</sup> Table 3 provides an overview of other political tactics used by tobacco lobbyists in the 1990s<sup>6-20</sup> to kill or weaken legislation in 12 states located in representative regions of the USA. As table 3 indicates, the tobacco lobby has had mixed success in employing these tactics with health advocates often being able to effectively counter the tobacco lobby's manoeuvres.<sup>6-20</sup>

Many of these tobacco lobby tactics have also been used to attempt to weaken or kill tobacco control legislation after it is enacted. This is indicative of the political reality that the political process is ongoing and that tobacco lobbyists' recognise that a temporary legislative

Table 3 Tobacco lobby political tactics and outcomes in 12 state legislatures in the 1990s\*

State	Political tactic	Year	Industry success
Florida	Offer "crippling" amendments causing withdrawal of effective tobacco control legislation including clean indoor air legislation in Florida and tobacco tax increase in Oregon	1990	No
Oregon		1997	No
Florida	File lawsuits to overturn legislation that made it easier to sue tobacco industry for Medicaid (federal health care for the poor) funded illnesses due to tobacco use	1994	No
California	Pass legislation to overturn previously enacted tobacco control legislation including tobacco related Medicaid legislation in Florida and smoke free bar legislation in California	1998-99	No
Florida		1995-97	No
Florida	Pass legislation to nullify tobacco related Medicaid lawsuit filed by state	1996-97	No
Arizona	Pass weak state legislation that also pre-empts stricter local tobacco control laws including pre-empting local tobacco sales restrictions and marketing laws in Arizona; local clean indoor air laws in New York; and local excise taxes in Oregon.	1995	No
New York		1995-96	No
Oregon		1997	No
Arizona	Pass legislation weakening the implementation of effective and ongoing state tobacco control education programmes	1996-97	Yes
Oregon		1997	No
Ohio	Sponsor pro-tobacco legislation, which diverts time and energy of public health forces towards defeating such legislation and not promoting tobacco control legislation	1991-98	No
California	Pass legislation that diverts funding from initiative-created tobacco control educational efforts to other programmes	1991-95	Yes
Oregon		1997	No
Massachusetts		1993-95	Yes
Arizona	Pass legislation capping funding for state anti-tobacco education programme below amounts approved by state initiative	1995-97	Yes
California	Pass legislation delaying previously passed tobacco control legislation related to smoke free bars	1996-98	Yes (1996) No (1997-98)
Washington	Request that legislative committee determine that administrative agency written rule regulating clean indoor air quality in public places not be adopted	1994	Yes
Pennsylvania	Attach weak tobacco industry youth access bill to unrelated bill late in legislative session to pass it without drawing public attention	1994	No

\*The representative states are: Arizona, California, Colorado, Florida, Massachusetts, New Jersey, New York, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin.<sup>6-20</sup>

victory by tobacco control advocates can attempt to be overturned in a future political context.

In addition to quietly funding and building political and policy support with various legislators,<sup>24 26 45</sup> the tobacco lobby has also engaged in funding covert "special projects" designed to secretly influence some aspect of state legislative policy making and administrative oversight. For example, this has included secret efforts and campaigns to legislatively oppose and undermine ASSIST projects in Washington<sup>24-26 29</sup> and countering California's Proposition 99.<sup>44</sup>

#### POLICY OUTCOMES IN STATE LEGISLATURES IN THE 1990S

The combined political efforts of the tobacco lobbyists (versus public health advocates) in the state legislatures in the 1990s can be analysed in terms of whether legislative outputs or governmental actions have favoured the tobacco lobby's political efforts in the states (including the District of Columbia).

Table 4 Clean indoor air restrictions in the states and District of Columbia for the last quarter of 1999\*

Sites with clean indoor air restrictions	No smoking allowed	Designated smoking areas with separate ventilation	Designated smoking areas required or allowed	No restrictions	Total number of states without effective smoking restrictions (including permitting smoking without separate ventilation)
State government work sites	12	2	29	8	37
Private work sites	0	1	20	30	50
Restaurants	2	1	28	20	48
Day care centres†	-	-	7	22	29

\*Source: CDC STATE: tobacco map reports.<sup>90</sup>

†The Centres for Disease Control and Prevention combined the categories of "no smoking allowed" and "designated smoking areas with separate ventilation". The number of states in this combined category is 22.

Pre-emption of authority of communities to enact local tobacco control ordinances is the tobacco industry's top priority in state legislation. By the end of 1999, 17 states pre-empted local clean indoor air ordinances with weak and ineffective state clean indoor air laws, compared to only seven in 1990.<sup>88</sup> In those majority of states where no local pre-emption occurred, local governments are free, of course, to adopt stricter ordinances. At the same time, few states had implemented effective state clean indoor air legislation (table 4). At the same time, 22 states had pre-empted local laws restricting youth access to tobacco with weak state youth access laws, compared to only one in 1990.

Twenty states also had low rates of tobacco excise taxation of less than 25 cents per cigarette pack, while 12 states had taxation rates of 25 cents to 49 cents per pack, and 19 states had taxation rates of greater than 50 cents per pack.<sup>90</sup> The policy implication of this low tax rate is more people consuming more tobacco and higher industry sales and profits.<sup>91-97</sup>

Thirty six states had enacted total bans or severe restrictions on vending machine access by minors, while 15 states had limited or no restrictions on vending machine access by minors.<sup>90</sup> This trend has meant that one means for youth to easily obtain tobacco products in a large majority of the states has been substantially closed.

Finally, licensing of tobacco sellers, which provides governments and others with the ability to statistically track tobacco sales and revoke licences for violations, is now required in 30 states with respect to over-the-counter

and vending machine licensing. In addition, three states now require only over-the-counter licensing, three states require only vending machine licensing, and 15 states require no licensing.<sup>90</sup>

Many of these trends, particularly pre-emption and low tobacco excise taxation, support the tobacco industry's goal of reducing government regulations and taxes so that it may maintain a favourable market. Lack of local pre-emption, on the other hand, is a trend that favours tobacco control supporters who are free to advocate and enact stricter local clean indoor air and other tobacco control ordinances.

### Discussion

The internal industry documents indicate that the tobacco lobby employs a comprehensive bundle of approaches to influence state legislation, including providing campaign contributions to legislators accompanied by various overt and covert legislative lobbying and public relations tactics and strategies to protect tobacco market profits, sales, and customer bases and advance its political interests. As an internal 1994 document by Ellen Merlo, Philip Morris Vice president for corporate affairs, noted, the primary reason for this was to:

“ . . . encourage and safeguard a social and regulatory environment where we can sell our cigarettes and where our consumers can purchase and use them with the least amount of hassle . . . [because] . . . the social battle over smoking has escalated into an all-out war. Companies that market cigarettes are under constant attack at all levels of government.”<sup>98</sup>

Clashing with this primary market goal of the tobacco lobby is the severe health effects associated with tobacco use. This clash of values and interests has created a uniquely intense climate of political conflict in the state legislatures, with the tobacco lobby waging an ongoing and sophisticated political effort to protect and enhance its profits by a variety of powerful insider political approaches.

In support of this political effort, the industry documents also indicate and confirm that the tobacco lobby maintains a virtually invisible and far flung political presence, which is deeply entrenched in all states, monitoring every state government with respect to anything that impacts tobacco use and the tobacco industry.<sup>72</sup> While the tobacco lobby attempts to shift the emphasis of the debate from public health concerns regarding tobacco use to such issues as freedom of choice and oppressive government regulation,<sup>22</sup> the internal tobacco documents also confirm that this political rhetoric is really designed to advance the policy goal of allowing the industry to promote and its customers to use and purchase tobacco with little or no impediments.

The tobacco lobby has gained its political power in the states, according to the internal documents, because of its sophisticated system of policy issue development and lobbying influence funded by its substantial financial resources. In all state legislatures, the power of the tobacco lobby is the epitome of the insider

legislative and interest group segment of political power based on an “iron triangle” or “issues network” relationship.<sup>99</sup> In the legislative and interest group segment of the iron triangle, powerful interest groups such as the tobacco lobby with direct access to and influence over key legislators and legislative committees provide legislators with crucial policy information, electoral support, and campaign contributions. In return for this support, legislators provide favourable legislation for the interest groups. In an issues network, which is slightly looser than an iron triangle, the political arrangements between interest groups and legislators are the same as the iron triangle, but issues networks also incorporate outside policy specialists because of the complexity of modern policy problems.<sup>99</sup> This iron triangle and issues network system of policy making by the tobacco lobby, which has operated almost invisibly in state legislatures throughout the 1990s, represents a permanent fixture of domination and influence on state government, state legislators, and tobacco control policy making.

This insider political power has also meant that the tobacco lobby prefers to lobby at the state level, rather than the local level where it loses many political battles. Local venues are often better for public health, because it is much harder for the tobacco lobby to mobilise and defeat a myriad of geographically diverse local anti-smoking campaigns.<sup>72</sup> It is much easier for the tobacco lobby to pre-empt such efforts at the state level<sup>49 72</sup> by overriding stricter local ordinances with weaker and ineffective state legislation<sup>100</sup> for a variety of policy issues including: clean indoor air ordinances, the Synar programme, marketing, sales, and promotion restrictions and local tobacco excise taxes.

The entrenched system of insider political power in the states also represents a permanent imbalance in the equilibrium of insider power in state legislatures with respect to health groups when they attempt to use the same insider political tactics. Health advocates can never match the resources and public policy organising structure of the tobacco lobby. They must use other tactics to successfully enact strong tobacco control legislation. Fortunately it is easier to stop state legislation than enact it. So, the most productive approach for public health is probably to continue to engage in vigorous anti-tobacco campaigns at the local level while primarily fighting pre-emption (and even sometimes winning effective tobacco control legislation) at the state level. Health advocates at the state level can also utilise insider lobbying strategies in conjunction with grassroots outsider tactics to advance other tobacco control legislation and hold politicians publicly accountable for their pro-tobacco and anti-public health actions through low cost newspaper advertisements, community forums with legislators, face-to-face sessions between health advocates and legislators, contacting opinion leaders, rallies, public demonstrations, and free media interviews.<sup>32 99</sup>



An important part of this process is to educate politicians about the documented efficacy of tobacco control social and educational interventions. Health advocates should also press their accountability efforts at the crucial period before elections by supporting pro-tobacco control politicians, while defeating pro-tobacco legislators at the polls. Public health advocates can also turn to the initiative process (where a law is enacted by popular vote) to enact tobacco control in the states.<sup>6 9 16 32 101</sup>

The tobacco lobby is a powerful presence in state legislatures. Because of the poor public image of the tobacco industry, it seeks to wield this power quietly and behind the scenes. At the same time, the tobacco industry has also recently engaged in intensive public relations efforts, as well, to promote themselves as changed and reformed. Nowhere has the industry declared that they are prepared to abandon the practices documented in these internal tobacco industry documents.

State and local health advocates, who often have high public credibility, can use these facts against the tobacco lobby by focusing public attention on the tobacco lobby's political influence and policy goals and expose links between the tobacco lobby and its legislative supporters. Advocates can also use this record to respond to the industry's claim of new found virtue and innocence. One means to counter the tobacco lobby's political influence is by exposing tobacco industry front groups to public scrutiny and attention at crucial junctures in the legislative process. Health advocates should also use themes like industry manipulation of smokers, secondhand smoke dangers, and the toll of illness and death caused by tobacco use as a further means to illustrate and expose industry goals and claims and to build political support for effective tobacco control programmes.

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### What this paper adds

Before the release of more than 32 million pages of previously secret tobacco industry documents as a result of recent tobacco litigation in the USA, public health advocates were left to infer behind the scenes industry strategies for exercising political influence over state tobacco control policy making. These industry documents, combined with detailed case studies of tobacco policy making in several states, provide insights into the industry's hidden strategies to defend and expand its market and political interests in US state legislatures in the 1990s.

The industry's public position contrasts sharply with its behind the scenes behaviour and rhetoric. In public discussions, the industry seeks a low profile and talks about protecting freedom of individuals and the economic interests of other business sectors, particularly the hospitality industry. It never discusses the impact of proposed tobacco control policies on tobacco sales. Privately, the industry focuses on protecting its freedom to market and use its products in order to protect sales and profits. Other groups, such as hospitality organisations, are viewed as vehicles to promote tobacco industry interests while allowing the industry to remain out of the public eye. Campaign contributions and other donations made to or on behalf of legislators are viewed as devices to influence policy outcomes, not provide general civic support.

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