

What to Expect from the Tobacco Industry

This document is intended to provide you, the smokefree advocate, with a realistic overview of the strategies, tactics, and messages that are frequently used by the tobacco industry and its allies to oppose smokefree indoor air laws. This should provide you with more questions than answers, as there are more in-depth resources available from ANR and other organizations relating to the various topics covered herein.

By educating yourself and others about what to expect from the tobacco industry, you can more effectively anticipate and counter the misinformation and noise that will surface in your campaign for smokefree air. Inoculating policymakers, media, coalition members, and the public about what to expect will help them take Big Tobacco misinformation with a healthy grain of salt.

If you are new to this policy field, the good news is that the trail has been blazed for you by thousands of other public health advocates around the country who helped to normalize the idea that all people have the right to breathe smokefree air and not be exposed to the serious health hazards associated with secondhand smoke. It is our hope that you too will be an example of someone who stood up to the challenge, fought for health, and succeeded in saving lives and loosening Big Tobacco's grip on public health policy.

“But the tobacco industry isn't here in my town....”

The tobacco industry is everywhere—no town is too small. Big Tobacco is wherever cigarettes are sold, and it has a huge amount of profits at stake, depending on your success or failure. You will not see a person in a black-leather jumpsuit sporting a massive belt buckle that says, “Big Tobacco.” If they do it right, you will never see or hear from the tobacco industry directly – not in council meetings, not in the media. This is because they have little credibility, particularly at the local level. **Tobacco companies have worked hard to develop a system of front groups and allies that allow them to stay in the shadows and have others carry their message publicly, perhaps even unwittingly.** The tobacco companies are the folks behind the scenes helping to keep the trains running on time for the opposition in your town. The information we will cover in this paper will help you to shine the light of day on their plans and activities.

This is also a useful resource to share with the media at the beginning of a smokefree campaign. Educate the media on tobacco industry tactics before they occur so Big Tobacco's actions are portrayed to the public as they truly are: premeditated and organized dirty old tricks.

Why Does the Tobacco Industry Fight Smokefree Laws?

The bottom line is that smokefree laws result in a decline in the consumption of tobacco products, an increase in the cessation rate among smokers, and a decline in the social acceptability of smoking.

This all spells bad news for tobacco industry profits and explains why Big Tobacco is so highly motivated to oppose smokefree laws and to strip away control from local policymakers on this issue. Big Tobacco is fighting a war of attrition to maintain an environment in which its customers can consume its products constantly at any place and at any time.

Now that we have a better idea of why Big Tobacco is so highly motivated to undermine smokefree policies, let's look at some of the strategies Big Tobacco typically uses in the various stages of a smokefree air campaign to stop local activity and to engage allies in its efforts. ***Although you can't prevent the tobacco industry from seeking to undermine a smokefree policy effort, you CAN prepare for and anticipate the strategies and tactics they will use. And you can alert the media and the public to those strategies and tactics.***

WHAT IS THE TOBACCO INDUSTRY UP TO NOW?

The following is an outline of the typical tobacco industry script for undermining a local smokefree air law. What tactic is Big Tobacco trying to employ within your community?

Act I: Preemption

Act II: Propaganda Machine

- **Claim: Junk Science**
- **Claim: Economic Loss**
- **Claim: Smoking is a Fundamental Right**

Act III: Tobacco Industry Outreach and Mobilization

- **Tobacco Retail Distribution Network**
- **Hospitality Industry Allies**
- **Smokers' Rights Groups**
- **Front Groups**

Act IV: Legislation Attempts To Divert Legislation

- **Diversion: Introduce Other Issues**
- **Diversion: Intimidation Tactics**
- **Diversion: Create a Task Force**
- **Diversion: Suggest "Accommodation" Alternatives**
- **Diversion: Propose Ventilation as a Solution**

Act V: Life After Enactment

- **Attempt to Delay or Prevent Implementation**
- **Create a Sense of Controversy**
- **Claim Economic Loss**
- **Initiate Litigation**
- **Propose Ballot Measures To Overturn Law**
- **Attempt To Unseat Supportive Lawmakers**
- **Preemption**

ACT I: PREEMPTION

"Our goal is to see some form of preemption/accommodation legislation passed in all 50 states by the end of next year. The achievement of universal preemption/accommodation is imperative.... The immediate implications for our business are clear: if our consumers have fewer opportunities to enjoy our products, they will use them less frequently and the result will be an adverse impact on our bottom line."

--Tina Walls, Philip Morris (1994)

(Bates No. 2062340066-0100, <http://legacy.library.ucsf.edu/tid/pmn67d00>)

Preemption is a provision in state (or federal) law that eliminates the power of local (or state and local) governments to regulate tobacco. Preemption is the tobacco industry's favorite legislative tactic to prevent local smokefree laws. Even with all its financial resources, Big Tobacco can't effectively fight smokefree battles everywhere at once. Rather than engage in numerous local campaigns around a state, Big Tobacco would much prefer to fight just one battle at the state legislature where its resources, i.e., lobbyists and campaign contributions, give it the best chance of blocking or weakening meaningful smokefree air legislation.

As part of the tobacco industry's quest to achieve preemption in all states, health advocates can expect to hear statements from hospitality and gambling trade associations calling for "statewide uniformity" and "avoiding a patchwork quilt of local laws." Tobacco industry efforts to strip away the rights of local policymakers remain a potent threat to smokefree air laws and could stop a local campaign before it even begins. Even when not engaged in a local public education or legislation campaign, health advocates must remain vigilant of this tobacco industry dirty trick. Tobacco allies may include preemptive language in state bills that may or may not slightly improve the state smokefree air law at the expense of stopping all future smokefree air legislative activity. Preemption of local tobacco control legislation is NEVER an acceptable compromise and should always be opposed, no matter how attractive the state legislation. **State level tobacco control legislation should always include explicit anti-preemption language protecting the right of local control.**

For more detailed information on preemption, visit ANR's preemption website, Protect Local Control, at www.protectlocalcontrol.org.

ACT II: PROPOGANDA MACHINE

"The economic arguments often used by the industry to scare off smoking ban activity were no longer working, if indeed they ever did. These arguments simply had no credibility with the public, which isn't surprising when you consider that our dire predictions in the past rarely came true."

-- David Laufer, Philip Morris (1994)

(Bates No. 2041183751-3790, <http://legacy.library.ucsf.edu/tid/vnf77e00>)

Remember that you are not working in a vacuum. It is important not to underestimate the tobacco industry or its allies, and to keep in mind how highly motivated they are to derail or delay smokefree air in your community. The good news is that, with good planning, meaningful public education, and a strong, inclusive coalition, you can succeed.

The following are some of the messages that you can typically expect to hear from the opposition during the course of a smokefree air campaign. These messages will be communicated to policymakers, the media, business owners, community groups, and the public in general for the purpose of influencing public opinion and lawmakers about the need for a strong smokefree air law.

Opposition Claim: Junk Science

It comes as no surprise that the tobacco industry continues to dispute the health hazards of secondhand smoke and still funds scientists to say that secondhand smoke is not harmful. To support its campaign of misinformation, the tobacco industry relies on old studies that never intended to look at secondhand smoke, studies by scientists who are deceased and cannot refute the tobacco industry's mischaracterizations, studies funded by the industry itself, studies whose findings are taken out of context or misrepresented entirely, and studies whose conclusions are in a distinct minority. To dispute the risks of secondhand smoke, the tobacco industry and its allies often rely on anecdotal information and research that has not been peer-reviewed, and typically focus on small, individual studies, while ignoring the full body of scientific evidence. Remember that there is no genuine scientific debate about the harmful health effects caused by secondhand smoke. **All major governmental and public health agencies and legitimate researchers have clearly affirmed that secondhand smoke kills.**

The following are some of the scientific reports that opposition groups typically mention as a way to question the science of secondhand smoke. Educating yourself and others about these Big Tobacco red herrings can help you to inoculate others against this misinformation.

- **1993 U.S. Environmental Protection Agency (EPA) Report on Secondhand Smoke:** The landmark 1993 EPA Report on Secondhand Smoke classified secondhand smoke as a Class A carcinogen – a cancer causing substance in humans. Opposition groups will sometimes claim that a federal judge, Judge William Osteen, threw out the report. It is important to note that Judge Osteen, who did invalidate parts of the EPA report, formerly worked for the tobacco industry and that, in any case, a federal appeals court vacated his decision in 2002, leaving the EPA report in full standing. Some of the most frequent and public challengers of the 1993 EPA Report and the science of secondhand smoke include Steven Milloy (a challenger to the science of secondhand smoke) John Luik (a former lobbyist for tobacco companies worldwide), and Richard Lerner (researcher and scientific advisor to Philip Morris).

Since the 1993 EPA report, there have been even larger, more comprehensive studies by government agencies such as the California Environmental Protection Agency and the National Cancer Institute, all of which clearly validate the fact that secondhand smoke kills. In 2004, the U.S. Centers for Disease Control and Prevention issued a warning to the public, stating that persons with any risk of respiratory or heart problems should entirely avoid spaces where they may be exposed to secondhand smoke.

- **Congressional Research Service (CRS) Report:** Opposition representatives may mention the Congressional Research Service report from 1995, claiming that it too refutes the EPA's 1993 report on secondhand smoke. The tobacco industry has argued in the past that the CRS report "proves" that secondhand smoke poses no risk to nonsmokers. In truth, the CRS report does no such thing. The one aspect of the CRS report's findings that suggests secondhand smoke may not be as risky as indicated in the EPA report relies on a "threshold model," a method of analysis that assumes a hypothetical threshold below which exposure to secondhand smoke poses no risk. In fact, scientists and public health officials have never accepted the "threshold model" in regard to secondhand smoke, because there is no evidence that such a "safe" threshold exists. The CRS report **affirms**, rather than refutes, the EPA report's findings. **Most importantly, one of the CRS study's**

authors, C. Stephen Redhead, told a Canadian newspaper that the tobacco industry has misrepresented the CRS report, and that it does not refute the EPA's report.¹

- **Oak Ridge National Laboratory (ORNL):** Local and state hospitality associations often mention studies conducted by the official sounding Oak Ridge National Laboratory that question the science of secondhand smoke. What they don't tell you is that these studies 1) are bought and paid for by the tobacco industry and 2) do not in any way reflect U.S. Government opinion. Oak Ridge National Laboratory is a Department of Energy lab that works on nuclear energy issues in its official capacity, but does private contracting work on the side. In the post-Cold War era of government downsizing, the U.S. government approved a plan to allow the National Laboratories to do private contracting work in order to help them cover costs. Big Tobacco took advantage of this opportunity to whitewash industry-funded science through an official sounding lab. **Roger Jenkins**, the lead tobacco industry-funded researcher at Oak Ridge, was even barred by a judge from testifying as an expert witness in a lawsuit in Florida, because he was considered not to be impartial because he had taken so much money from tobacco companies. Don't let policymakers and the media be fooled. Oak Ridge = Big Tobacco.
- **World Health Organization (WHO):** In 1998, the WHO released a report linking lung cancer to secondhand smoke exposure. However, local allies of Big Tobacco sometimes claim that this report concluded that secondhand smoke is not harmful. Nothing is further from the truth. Internal tobacco industry documents reveal plans to manipulate the findings of the WHO report out of fear that the report could have a significant impact on public opinion and smokefree policy efforts. The WHO issued a press release in 1998 informing the public that tobacco industry misinformation about the WHO's position on secondhand smoke should not be believed. Additionally, the International Agency on Cancer (IARC), the research division of WHO, issued an even more comprehensive report in 2002, which reaffirmed what we already know: secondhand smoke causes cancer in humans.
- **Enstrom and Kabat Study:** In May 2003, the *British Medical Journal* published a study by James Enstrom and Geoffrey Kabat that claims to find only a weak association between secondhand smoke exposure and heart disease and lung cancer. The study was funded by the now-defunct Center for Indoor Air Research, which was created by several tobacco companies for the stated purpose of perpetuating the idea that there is a controversy about the dangers of secondhand smoke. The American Cancer Society, whose data was used in the study, immediately spoke out against the study, reporting that their data had been misused and that the researchers used flawed methodology. The study looked at mortality from heart disease or lung cancer in nonsmokers who were married to smokers and covered a time period from 1959 to 1998. Some of the critical flaws that resulted in the false conclusion include not measuring for secondhand smoke exposure from any source other than the spouse; including the workplace (where smoking was extremely prevalent at the time); not taking into account either spouse's smoking status after 1972, though the study continued for 26 more years; and classifying the nonsmoking spouse as still exposed to secondhand smoke in that 26 year period, during which time the "smoking spouse" could have quit smoking or died, not to mention that they could have divorced or separated.

Opposition Claim: Economic Loss

Opposition groups will predict economic doom if a smokefree law is passed in your community. This myth originated with the tobacco industry and its public relations firms. As of April 2006, more than 6,500 municipalities are covered by a 100% smokefree provision for workplaces, and/or restaurants, and/or bars, in either a state or local law, representing more than 43% of the U.S. population, and it is only tobacco industry-funded studies that have shown any economic loss. All credible, reputable studies, based on the impartial data of sales tax receipts, clearly show that there is no adverse impact on business. In 1987 in California, political operatives of the tobacco industry created, out of thin air, the myth that restaurants would lose 30% of their revenue as a result of smokefree air ordinances. Today, the percentage has inflated to claims of 40% to 50% in economic losses for business. Despite the fact that these declines have never come to pass in any community in the country, the tobacco industry allies have not stopped trying to use this myth to divert attention away from the health-basis of smokefree air laws. It is a staple tobacco industry tactic to simply make up figures like these on the assumption that they will not be challenged.

The bottom line is that no credible facts support the doom and gloom claims of economic loss. The truth, according to the impartial hard data of sales tax receipts, is that smokefree laws either have no economic impact or have a positive impact on business. In fact, a study published in the October 2004 edition of *Contemporary Economic Policy* found that smokefree laws add value to establishments. Restaurants in smokefree cities have a higher market value at resale (an average of 16% higher) than comparable restaurants located in smoke-filled cities.² Additionally, a Society of Actuaries report has determined that secondhand smoke is costing American businesses \$10 billion dollars a year: \$5 billion in medical expenses due to secondhand smoke exposure and \$4.6 billion in lost productivity. This study reaffirms the fact that going smokefree is the best decision a business owner can make.³

Since the tobacco industry and its allies do not have any valid, scientific facts to show that smokefree air laws result in loss of revenue, they typically emphasize anecdotal stories about how some restaurant owner allegedly lost money after implementation of such a law. These anecdotal stories are neither supported by documented facts nor do they take other factors into consideration, such as seasonal fluctuations or the fact that individual restaurants may have bad food, are no longer trendy, have poor customer service, etc. Businesses turn over all the time, in ways not related to smoking regulations. The hard data shows us that smokefree air laws do not impact revenues. It is important to educate yourself about what to look for in an economic impact study. By educating yourself and others about some of the tobacco industry-funded studies that could appear in your campaign, you can inoculate people to this tobacco industry trick.

Opposition Claim: Smoking is a Fundamental Right

Opponents of smokefree air laws will usually seek to frame the issue as an argument about “business owners’ rights” or “smokers’ rights.” The language used is often incendiary and is intended to create a climate of controversy and to give the impression that the community is divided on this issue by promoting an “us” vs. “them” mentality (i.e., “smoker” vs. “nonsmoker”). The following are excerpts of print ads opposing smokefree air laws in the communities of Pueblo, CO and Dallas, TX:

- “Oppression. We Have the Right to Choose. Using worker health as a reason is just plain dishonest. There are thousands of nonsmoking places to work in Pueblo and hundreds of those are bars and restaurants.”
- “Thinkers, Beware! Some members of the Dallas City Council think that they should make our personal choices for us.” “The Dallas City Council is considering legislation that would TOTALLY BAN smoking in ALL restaurants, and perhaps even ALL BARS and on OUTDOOR PATIOS because they think they know better than us.”

Smokefree air laws do not make smoking illegal; they simply establish areas free of secondhand smoke to protect the public from the death and disease caused by secondhand smoke exposure. Smokers may continue to smoke, but not in ways that harm others. Smokefree air laws are very similar to drunk driving laws, which do not prohibit drinking, but do regulate a certain behavior when it presents a danger to others. There are many examples of common sense health and safety measures that regulate the use of legal products when certain uses could harm workers and the general public.

For additional “Propaganda Machine” resources, contact ANR at (510) 841-3032 or visit www.no-smoke.org, and search for:

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| • Oak Ridge National Laboratory (ORNL) | • Richard Lerner and the MSI |
| • Steven J. Milloy, The Junkman | • Business Costs in Smoke-Filled Environments |
| • The Cato Institute | • Tobacco Industry Soundbites and Reponses |
| • John Luik | • Economic Impact of Smokefree Ordinances |

ACT III: TOBACCO INDUSTRY OUTREACH AND MOBILIZATION

“The Accommodation Program serves as a link between PM and the hospitality industry. Our ability to interact effectively with the hospitality industry is critical to our ultimate objective, which is to maintain the ability for our consumers to enjoy our products in public venues such as restaurants, hotels, bowling centers, and shopping malls. This relationship becomes even more important as legislative threats continue to mount at local, state, and federal levels.”

–Philip Morris (1995)

Because tobacco industry representatives have very little direct credibility with local lawmakers and the public, they have worked hard to establish networks of allies and front groups who can oppose smokefree air laws on their behalf. The following are some of the “usual suspects” that the tobacco industry seeks to round up.

Tobacco Retail Distribution Networks

Tobacco retailers serve as the eyes and ears of the tobacco industry to warn against possible public policy that may impact tobacco use and sales. The advantage for the tobacco industry is that it already has organized, efficient channels of communication with these retailers as a result of tobacco sales transactions. Once secret internal tobacco industry documents indicate that tobacco retailers (and their employees) have often been mobilized by the industry to oppose smokefree air proposals.

Hospitality Industry Allies

Since the 1980s, tobacco companies have trumpeted “accommodation” as a viable alternative to 100% smokefree environments. Accommodation is the tobacco industry’s policy goal of fostering ways for smokers and nonsmokers to coexist, particularly in hospitality settings such as bars, restaurants, and casinos. This goal seeks to maintain an environment of social acceptability of smoking indoors. The industry needs smokers to be able to light up anytime and anywhere in order to consume as many tobacco products as possible and build Big Tobacco’s profits. “Accommodation” has morphed over the years into a number of different forms. For example, in 1985, “accommodation” was pioneered as the Tobacco Institute’s “New Directions,” which advocated for smoking and nonsmoking sections, asserting that a partition or plant barrier could prevent smoke drift; and in 1999, Philip Morris created the Hospitality Coalition on Indoor Air Quality (HCIAQ), which asserted that ventilation and air filtration solves the problem of secondhand smoke. Both programs have since dissolved, but the tobacco companies are constantly reinventing their “accommodation” programs in order to more effectively bring the hospitality industry into its fight to maintain a social climate supportive of smoking and to defeat smokefree air standards and laws.

Through financial contributions and careful networking, Philip Morris built formal partnerships with the National Restaurant Association, National Licensed Beverage Association, American Gaming Association, other national hospitality trade associations, the state chapters of these groups, and the Heating, Ventilation, and Air Conditioning (HVAC) industry trade associations.

Philip Morris’ now-defunct “Options,” a ventilation consultation program, was used to recruit hospitality establishments and associations to serve as local front groups for Big Tobacco in opposition to smokefree air laws. One goal of these programs is to convince restaurant and bar owners to install expensive (and ineffective) ventilation systems in order to build a constituency that is financially invested in maintaining the status quo of allowing smoking indoors. **Bottom line: ventilation does not work and cannot protect workers from the death and disease of secondhand smoke exposure. There is no safe level of exposure to secondhand smoke.**

By effectively utilizing the databases of national, state, and local hospitality trade associations, Big Tobacco can have the appearance of a grassroots presence. Local restaurant and bar owners who testify against a smokefree air law may not even realize that their talking points were actually created for them by the tobacco industry and passed along through their state trade associations. It’s important to familiarize yourself with some of the organizations that have signed on in partnership with Big Tobacco. Shining the light on these relationships can help to alert others to the misinformation and rhetoric coming from these organizations.

The good news, according to Philip Morris internal documents, is that these hospitality industry allies are starting to get tired of the fight. We hope that the members of these trade groups will soon see that it is not in their interest to protect the tobacco industry. There is no advantage to the trade groups in scaring restaurant and bar owners into spending tens of thousands of dollars on ineffective ventilation equipment and sticking them with the potential for legal liability for illnesses that occur when workers and patrons are not protected from secondhand smoke.

In April 2003, the Council of Independent Restaurants of America announced its support of smokefree air laws. Some state affiliates of the National Restaurant Association, including the New York State Restaurant Association, have also dropped their opposition to smokefree air laws. We hope that other state restaurant associations will also determine that ventilation

programs leave them holding the bag on legal liability, and that working to protect Big Tobacco simply isn't in the best interest of their membership. Additionally, numerous Chambers of Commerce, including the Greater Seattle (WA), Beaumont (TX), and Louisville (KY) Chambers of Commerce, have come out in support of smokefree businesses, encouraging their members to go smokefree.

Smokers' Rights Groups

Tobacco companies seeking the appearance of local grassroots support will try to identify and mobilize smokers in opposition to smokefree air proposals. One common tactic is to build databases of smokers by compiling names at tobacco promotion events in convenience stores, gas stations, restaurants, bars, and clubs. Free cigarettes and lighters are typically given away at these promotion events in exchange for "proof of age," which entails scanning a driver's license. The mailing address from the driver's license is cross-referenced with other databases, such as lists of registered voters, to find out information useful to the tobacco companies, including the individual's legislative district. After getting individuals into its database, tobacco companies send emails and newsletters "educating" the recipients about secondhand smoke and then they mobilize them, when the time comes, to oppose smokefree air proposals.

Keep your eyes and ears open for the following groups in your community. If you are concerned about other groups, contact ANR for assistance in uncovering any potential tobacco industry ties.

- **My Smokers' Rights**, <http://mysmokersrights.rjrt.com/SGRHome.jsp>, is an R.J. Reynolds smoker recruitment program that sends out action alerts to mobilize opposition to smokefree air laws. These action alerts encourage smokers to write letters to the editor of their local newspaper and attend public hearings to create the appearance that there is vast opposition to going smokefree within a community.
- **FORCES International**, www.forces.org, often sends action alerts to generate noise in opposition to smokefree laws. They typically cite tobacco industry-funded research or messages. Although there is no direct evidence showing that FORCES is supported financially by the tobacco industry, it frequently parrots industry arguments and material.
- **National Smokers Alliance (NSA)** is a defunct front group originally created and funded by Philip Morris.⁴

It is important to note that legitimate, healthy public debate about the issue of secondhand smoke is a vital part of the public education process. Smokefree opponents in a community often have legitimate concerns about the impact of a smokefree law on their lives, and most of them are not affiliated with the tobacco industry. Not all smokers will support a smokefree law, but many will after becoming more educated about the health basis for such a law. After implementation, most smokefree opponents agree that the sky didn't fall and that stepping outside for a smoke wasn't the end of the world. Indeed, polls consistently show that smokers support smokefree laws and that their support increases the longer the laws are in effect. According to a 2004 survey of Maine residents, 54% of smokers polled supported the state's smokefree law, which includes bars and pool halls. This marked a 14-point increase in smoker

support from before the smokefree law went into effect.⁵ **Remember: We are not against smokers, just against smoking in ways that harm other people.**

Front Groups

Front groups are generally business coalitions or associations funded by the tobacco industry, which appear in opposition shortly after a proposed law becomes public knowledge. These groups approach the local business community, predicting dire consequences from enactment of the law, such as by citing undocumented figures of loss of business in cities that have already passed laws.

The groups often hold meetings with local businesses, encouraging them to organize against the proposed law and providing assistance, such as posting flyers, circulating petitions, and sponsoring mail-in postcard campaigns. Representatives may testify at public hearings, but more often will attend without speaking, avoiding lawmakers' questions about their local membership, length of existence, and funding sources.

These groups have names like "Committee to Preserve Property Rights" (in Montrose, CO); "Valley Business Owners Inc." (in Mesa, AZ); and "Citizens Against Government Interference" (in Texas). Search the ANR Foundation's Tobacco Industry Tracking Database[®] at www.tidatabase.org for possible relationships between the tobacco industry and a new front group in your community.

Advocates should carefully study local campaign laws and seek to shine the light on the funding of these groups and their connections to the tobacco industry. However, we don't always have a "smoking gun" linking the tobacco industry to these groups, either due to lax local campaign finance laws, or money getting funneled through third parties. In any case, showing that the suspicious groups are pulling out all the familiar tricks will encourage people to take the Big Tobacco message delivered by these groups with a grain of salt.

For additional "Tobacco Industry Outreach and Mobilization" resources, contact ANR at (510) 841-3032 or visit www.no-smoke.org, and search for:

- National Smokers Alliance Exposed: A Report on the Activities of Philip Morris' #1 Front Group
- Practical Steps to Take When Presented with Opposition Communication
- Big Tobacco Serves the "Butt End" to the National Restaurant Association
- Big Tobacco Gambles the American Gaming Association's Credibility
- Big Tobacco Buys a Round for the National Licensed Beverage Association
- Empire State Restaurant and Tavern Association
- Patron Surveys and Consumer Behavior
- Hospitality Coalition on Indoor Air Quality

ACT IV: ATTEMPTS TO DIVERT LEGISLATION

"Create a model indoor air quality bill to be added to suggested state legislation book published annually. Model bill would focus on ventilation, filters, inspections, etc. Smoking would not be dealt with directly."

—Philip Morris (1985)

(Bates No. 2025858759, <http://legacy.library.ucsf.edu/tid/vrr85e00>)

Once your smokefree campaign has achieved some momentum, opposition groups will seek to distort the issue and divert the energy of the smokefree air coalition and lawmakers into policy debates which avoid the main point of creating smokefree enclosed public places and workplaces. These policy diversions are smoke screens that, at best, would merely give the appearance that something has been done to address the problem of secondhand smoke without actually doing so. Middle of the road lawmakers sometimes find these flawed alternatives appealing as a way for them to take some public credit for addressing the issue without requiring them to go against the will of the tobacco and hospitality industries.

Below are some of the highlights to anticipate. By educating others about these diversions ahead of time, you can take some of the surprise out of them. They are not new ideas and they are not community-specific ideas. They are tobacco industry fabrications for the purpose of undermining smokefree laws. You should educate others about these diversions, because the opposition will be actively promoting them.

Diversion Tactic: Introduce Other Issues

The opposition will often introduce other issues in a smokefree air campaign to imply that the real problem is something other than secondhand smoke, and/or that the creation of smokefree air is a “slippery slope” of government regulation. Smokefree opponents will often exclaim, “What’s next? Cheeseburgers?” Cheeseburgers do not cause disease and death in non-cheeseburger eaters. The issue isn’t about cheeseburgers, or even about smoking, per se. It’s about smoking in ways that harm other people. It’s about protecting innocent people who are being exposed to a leading cause of preventable death and disease. All relevant public health authorities have already clearly established the scientific basis for the need to protect nonsmokers from secondhand smoke, and the solution to that problem is already identified – smokefree air laws.

Diversion Tactic: Intimidation

The tobacco industry may try to intimidate public health departments from taking action by making false accusations of illegal lobbying and misuse of public funds. The tobacco companies seek to create the appearance of controversy in order to take the focus away from the real issue, which is the health impact of secondhand smoke. Once-secret tobacco industry documents outline this strategy of intimidation as a way to deter health departments from educating the community about the health hazards of secondhand smoke, because their effective public education programs create the desire to enact smokefree indoor air laws. In one document, tobacco industry officials planned to “Advocate the elimination or cutting of ASSIST funds by exposing the wasteful and inefficient use of ASSIST funds.”⁶ Several states, including California, Washington, and Minnesota, were subjected to endless requests from individuals and organizations aligned with Big Tobacco. These allegations are always proven false, but succeed in interfering with program efforts and sometimes prevent health departments from carrying out their mandate to protect public health regarding the hazards of secondhand smoke.

Individuals connected with the tobacco industry may also attempt to use Freedom of Information Act (FOIA) requests to access public documents, including a health department’s budget or policy plans. Health department staff and smokefree coalitions need to be familiar with local, state, and federal laws regarding document disclosure. Make sure all requests are in writing and get the inquirer’s contact information. Contact your state program staff and ANR if you suspect an industry connection.

Diversion Tactic: Create a Task Force

Tobacco industry allies have in recent years sought to market the tobacco industry's ventilation agenda by encouraging the creation of study committees or task forces to review potential "mechanical barriers" and ventilation technology as a part of the consideration of smokefree air laws. Traditional tobacco industry allies in the hospitality industry use the public relations opportunities created by these task forces to divert attention away from the health issues relating to smokefree air laws and to focus attention instead on bogus ventilation technology. Even though ventilation, as a method of protecting people from the health risks attributable to secondhand smoke, has been rejected by every major, reputable scientific authority, the publicity stemming from these ventilation task forces creates the perception that there is a continuing controversy relating to the issue, when, in fact, no controversy really exists.

Health advocates should be vocal and unified on this subject: there is no reason to create a politically appointed body to investigate issues that have been answered already by science. Local governing bodies and state legislatures would be naïve to believe they could assemble a more qualified and better informed body of experts to review the issue than the U.S. Surgeon General, Centers of Disease Control and Prevention, EPA, National Institute for Occupational Safety and Health (NIOSH), American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) and the other scientific and technical bodies that have analyzed the issues and reached the same conclusion.

Diversion Tactic: Suggest "Accommodation" Alternatives

Accommodation is the tobacco industry's policy goal of allowing people to smoke when nonsmokers are in the same place, ideally (from their perspective) at the same time, particularly in social settings such as bars, restaurants, and casinos. This goal serves to maintain an environment of social acceptability of smoking and to enable product consumption. The industry goal is for smokers to be able to light up anytime, anywhere to consume tobacco products and build Big Tobacco profits. Contact ANR for more information or assistance if any of the following provisions arise within your community:

- **Red Light-Green Light:** A "Red Light-Green Light" law merely requires the posting of signs that say whether or not smoking is allowed in an establishment. It does nothing to create smokefree indoor areas and it ties into the idea that workers and nonsmokers give their "informed consent" to be in a place where smoking is allowed. If a "Red Light-Green Light" law is proposed in your town, you should point out that it is merely a diversion away from effective policy. The program was pilot-tested as the once secret "Pittsburgh Project," created by Philip Morris and its public relations firm Burson-Marsteller. The name is "Red Light-Green Light" because the sign for smokefree air is red and phrased in the negative, e.g., "Smoking Banned," whereas the sign for establishments that permit smoking is green, giving a subtle cue that allowing smoking is the more acceptable alternative.
- **Minors Only/Hours Provisions:** Advocates can expect to hear calls for a "reasonable compromise," and proposals for regulating smoking only when children are present or during certain hours. The problem is that these types of laws do not protect people's health. Everyone is harmed by secondhand smoke, not just children. Also, these provisions do not take into account that smoke lingers in a room for as long as two

weeks. Just because active smoking is not occurring in an enclosed area at a given moment does not mean that people in the room are not being exposed to secondhand smoke. A portion of smoke is absorbed by the surfaces within a room and is later off-gassed, or released back into the air, as toxic chemical compounds, many of which are odorless. Additionally, these types of laws are practically impossible to enforce, which is exactly why the tobacco industry likes them as alternatives to meaningful smokefree air laws.

Diversion Tactic: Propose Ventilation as a Solution

The bottom line is that ventilation does not work. There is no safe level of exposure to secondhand smoke, and ventilation systems address only odor, not the health risks caused by secondhand smoke exposure. Despite this fact, tobacco companies and their allies have an organized effort to promote ventilation systems as an alternative to smokefree air laws.

For the tobacco industry, there are several significant benefits to promoting ventilation: 1) ventilation reduces the odor of smoke and can reduce the public demand for smokefree air (out of sight, out of mind); 2) smokers and nonsmokers are kept in close proximity, which helps to maintain the social acceptability of smoking; and 3) once installed, these systems effectively institutionalize smoking sections and create a significant financial barrier to enacting a more comprehensive smokefree air law in the future because business owners are invested in maintaining that status quo and protecting their investment in an expensive ventilation system.

Compromises in laws that allow smoking in “fully enclosed, separately ventilated smoking rooms” are problematic. Even if a room is separate from the rest of an establishment, ventilation does not eliminate the health hazards of secondhand smoke. Smoking rooms present a particular risk to the people inside the smoking rooms and the workers who have to serve in and clean the rooms. Numerous air filtration companies (including The Sharper Image and Brookstone) have publicly stated that no ventilation system can protect people from the death and disease caused by secondhand smoke exposure, and many such companies now post health disclaimers on their product packaging. See *The Sharper Image’s secondhand smoke disclaimer* at <http://www.no-smoke.org/images/ionicbreezead.jpg>.

In June 2005, the ASHRAE Board of Directors unanimously adopted a position document on secondhand smoke that reaffirms that there is no safe level of exposure to secondhand smoke; that ventilation and other air cleaning systems cannot eliminate all the health risks caused by secondhand smoke exposure; and that secondhand smoke does not belong indoors. Additionally, its ventilation standard for “acceptable indoor air quality” specifies ventilation rates and procedures for 100% smokefree environments only.

Health advocates should inform the public, lawmakers, and the media that ventilation systems and smoking rooms do not protect people from secondhand smoke; otherwise they may not understand why it is not an acceptable policy compromise.

For additional resources on “Attempts to Divert Legislation”, contact ANR at (510) 841-3032 or visit www.no-smoke.org, and search for:

- Ventilation and Air Filtration: The Science
- Don’t Buy the Ventilation Lie
- Ventilation and Air Filtration: What Air Filtration Companies and the Tobacco Industry Are Saying
- Common Mistakes in Drafting Smokefree Indoor Air Ordinances
- Determining Your Dealbreakers

ACT V: LIFE AFTER ENACTMENT

“Instead of facing a few local smoking restriction proposals per month... we were facing scores of smoking bans – and youth-related restrictions and bans – weekly. It became physically impossible to attend all the hearings held on certain days, let alone mount successful opposition campaigns. More troubling still, the industry did not have in place a mechanism to make it aware of the introduction of some local ordinances while opposition was still feasible. Therefore, the industry was, on occasion, forced to address local concerns at the ballot box, an extremely expensive undertaking. It was a necessary approach early on, however, because the industry was not prepared in some instances to deal effectively with local challenges in city councils or county commissions.”

--Kurt L. Malmgren, *Tobacco Institute* (1992)

(Bates No. 513331953-1965, <http://legacy.library.ucsf.edu/tid/nta23d00>)

Just because local lawmakers enact a smokefree law does not mean that the work is over. The tobacco industry will continue to seek ways to undermine a smokefree law as long as the opportunity exists. The opposition's tricks for post-enactment are usually planned well in advance and health advocates must be prepared to anticipate these after-school antics.

Attempt to Delay or Prevent Implementation

The tobacco industry knows that once smokefree air laws have been in effect for a few months, the public quickly adapts and does not want to revert to the smoke-filled days of the past. Bottom line: Smokefree environments are popular. The industry's number one goal is to keep the law from going into effect and opposition groups will seek to convince lawmakers to repeal the law before it goes into effect.

Although some time is needed after enactment to prepare for implementation, a delay of more than 30 days can increase the probability of dirty tricks. These include the threat of lawsuits and petitions to repeal the law. The industry's emphasis is on creating a feeling of uncertainty within the enacting body, so it will reconsider its own decision.

Create a Sense of Controversy

After implementation of a smokefree air law, tobacco industry allies often pursue an earned media campaign that seeks to create the impression that the new law is highly controversial and is dividing the community. The truth is that such laws are typically popular, and it's the tobacco industry, not the new law, that is stirring up a sense of division. Smokefree advocates and health department staff can expect to see the media focus on isolated cases of noncompliance. If the opposition plans to collect signatures and seeks to overturn the new law via the ballot, the negative media generated by the opposition can set the stage for a campaign to defeat the measure on the ballot by reducing support among likely voters or reducing voter turnout. This is why it is important to plan an organized campaign after the law is in effect to generate favorable media and maintain strong public support for the law.

Claim Economic Loss

About 30-60 days after a law is in effect, advocates can expect to hear unsubstantiated, dire claims of economic loss, usually by restaurant and bar owners. Because it takes a full business cycle (at least one year) to assess the economic impact of a law, after which it will be shown that there were no adverse consequences, the opposition's goal is to create a sense of "emergency," urging lawmakers to repeal the law immediately before every business owner in town is out of business. These tobacco industry-fueled claims can also "poison the well" in neighboring communities that may be considering similar smokefree air legislation.

Negative media is often the result of an organized and coordinated effort by the tobacco industry through its public relations firms and campaign consultants and is a major campaign step that should be anticipated by health advocates. Coalitions must plan for a sustained campaign to remind the public that the law is popular, compliance is high, and the majority of hospitality establishment owners are pleased with the new smokefree environment. This will help remind people to take any negative claims with a healthy grain of salt.

Initiate Litigation

The tobacco industry has access to hundreds of lawyers and litigation is frequently used to challenge smokefree air laws. Usually, the industry seeks an injunction to prevent implementation of the law during the course of a lawsuit, which could last for months or even years. Communities almost always win these legal challenges, but there are issues that coalitions should plan for well in advance, including identifying funding for an amicus brief and providing information to the city attorney's office about the likely types of challenges and the results of litigation elsewhere.

Propose Ballot Measures

Depending on your local and state law, opposition groups and the tobacco industry may have the option of seeking to repeal the law via the ballot. Referendum challenges usually accompany the first strong smokefree air law in a state, but more and more, smokefree air measures are appearing on the ballot. For the tobacco industry, it is worth doing everything possible to keep a strong smokefree law from going into effect, because of the domino effect that one law will eventually have on other communities in the state. If lawmakers are considering sending a proposed law to the ballot, send a steadfast message to them that they are abdicating their responsibilities to the public. Lawmakers are elected to and swear to protect the public health and well-being, so they must follow through with that responsibility.

Such challenges rarely succeed, but they can set a negative example for other communities in a state or even in other states and make them more reluctant to tackle the issue. Before enactment of a smokefree air law, advocates should clearly think through how a ballot challenge would work: What are the local election laws? How much time would the opposition have to gather signatures? Who determines the wording of ballot questions? When would the vote occur—at a special election or the next regularly scheduled one? What financial and other resources are available to support the law?

If polling shows weak support for a smokefree air law, or if the tobacco industry perceives that a coalition does not have strong grassroots capacity among voters, the balance of power can shift to the opposition because it has unlimited access to unrestricted money.

In Central Point, Oregon and in Pueblo, Colorado, opponents sought not only to repeal smokefree air laws, but also to recall the elected officials who voted for the laws. Before enactment of a smokefree air law, it is important for the coalition to assess the level of public support and the organized grassroots capacity for defending both the law and the supportive officials on the ballot. The greatest strength of a smokefree air coalition is high public support and the ability to mobilize its people power.

Attempt To Unseat Supportive Lawmakers

If you do not like the way an elected official votes, try to vote him or her out of office in the next election. This happens in any policy advocacy area and forms the basis of officeholder accountability to voters. If the tobacco industry and its allies do not like the way certain lawmakers voted on smokefree air legislation, they may seek to run a slate of candidates against them in the next election. It is important for a coalition to have the ability to uphold lawmakers who support smokefree air and to hold others accountable. This is how democracy works.

Seek Preemption

Yes...they will try it again. Back to the top!

For additional “Life After Enactment” resources, contact ANR at (510) 841-3032 or visit www.no-smoke.org, and search for:

- Economic Impact of Smokefree Ordinances
- Business Costs in Smoke-Filled Environments
- Creating Political Action Committees
- What to Look For in an Economic Impact
- Legal Challenges to Smokefree Indoor Air Ordinances Study
- Ballot Measures
- Legal Requirements to Protect Nonsmokers
- Economic Impact Studies Circulated by the Tobacco Industry

CLOSING THOUGHTS

“Despite the tobacco industry’s superior financial resources, enactment of a specific local ordinance depends not on the tobacco industry but on how seriously the health advocates mobilize in support of the legislation. When the health community makes a serious commitment of time and resources, it wins, but when the health community fails to make such a commitment, the tobacco industry prevails, more by default than because it has superior financial resources.”

– *Samuels and Glantz (1991)*

(“*The Politics of Local Tobacco Control*,” *Journal of the American Medical Association*, October 16, 1991)

It is important to develop a healthy skepticism toward information and its sources, and to ask for documentation of any claims. Always consider the source of the information. Who is more credible on health information – an industry protecting its profits or the medical community? Are the anecdotal claims of informal surveys more compelling than the scientific analysis of Board of Equalizations tax receipt data? Look carefully at any opposition activity. Who is local and who is new to the scene? Ask groups about their local membership and funding sources.

Make good use of local media to expose tobacco industry activity in your community. Often, a local reporter will be interested in doing an investigative journalism piece on an out-of-state corporation's attempts to subvert local efforts to enact a smokefree air law. Letters to the editor, editorials, human-interest stories, and investigative pieces are all very effective tools to engage the public in the local debate and campaign.

The tobacco industry will be sure to learn all that they can about your community and campaign plans, and it is very important that you do the same. Although the tobacco industry will put up

strong opposition, a local smokefree air law has an excellent chance of succeeding if the coalition is informed, organized, strategic, and diligent in its efforts to engage the community in the fight to protect the public health.

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