

Recipe for a Smokefree Society

The Big Picture

The facts are overwhelming. Smoking is the single most preventable cause of disease, disability, and death in the United States. Each year, an estimated 443,000 people die prematurely from smoking or exposure to secondhand smoke. All of the death and disease caused by smoking and other tobacco use in this country places a huge emotional and economic burden on society. Something must be done.

There have been numerous strategies over the years in the effort to reduce tobacco use. Among others, there have been smoking prevention and cessation programs; laws to prevent youth access to tobacco; and increases in the cigarette excise tax. One of the most successful strategies however, was something tobacco control advocates stumbled onto about 30 years ago: encouraging society to view tobacco use as an undesirable and anti-social behavior.

The nonsmokers' rights movement was born in the 1970s when average citizens became increasingly tired of breathing secondhand smoke and started demanding restrictions on where people could smoke at work and in public places. Although there is now overwhelming evidence that secondhand smoke causes serious disease and death in nonsmokers, the nonsmokers' rights movement began simply as an effort to protect nonsmokers from the annoyance of tobacco smoke and to make smoking that harms other people a socially unacceptable activity. The movement quickly tapped a nerve and began to alarm the tobacco industry even before most health groups recognized its potential for reducing tobacco use. A 1978 poll of public attitudes conducted by the Roper Organization for the Tobacco Institute concluded that the nonsmokers' rights movement "is the single greatest threat to the viability of the tobacco industry." The industry, which has always been keenly aware of its own self-interests, knew then that the key ingredient in the recipe for a smokefree society is the social unacceptability of tobacco use.

The nonsmokers' rights movement also soon discovered, the hard way, that the best means of increasing the social unacceptability of tobacco use is through local action. After Minnesota passed a Clean Indoor Air Act in 1975 and several California cities passed clean indoor air ordinances in the mid-70s, nonsmokers' rights activists attempted twice to enact state laws in California through the initiative process. They realized their mistake when the tobacco industry, already alarmed by the prospect of strong smokefree laws, used its economic and political clout to defeat both measures. The industry's victories led the nonsmokers' rights movement to adopt what has become the single most potent formula for protecting nonsmokers and creating a society that rejects tobacco use: the enactment and implementation of local smokefree laws.

A Word about Prohibition

Because of the extraordinary harm caused by tobacco, and the lack of any societal benefit from its existence, some people have suggested that tobacco should be an illegal product. After all, when used as intended, tobacco products kill both users and innocent bystanders. If introduced as a new product on the market today, tobacco would never be approved or allowed. However, attempting to make tobacco an illegal product would be both ineffective and counterproductive. In fact, the tobacco industry would like nothing better than to focus the debate over tobacco on

the idea of making it illegal so that it could attack people in the tobacco control movement as unreasonable prohibitionists, while at the same time distracting the politicians and the media from the real issues involved. Indeed, for many years, the industry and its allies have argued that proponents of smokefree air legislation are really prohibitionists. Tobacco use in the U.S. is a complicated problem, which tobacco control advocates realize would not be solved by simply making tobacco illegal. We won't be truly tobacco free until society itself rejects tobacco use. That requires a huge change in society's attitudes about tobacco use. And, in the last thirty years, thanks to the nonsmokers' rights movement, we have come a long way toward accomplishing that objective.

Local Action vs. State Action

For years, the nonsmokers' rights movement has recognized that, in protecting the health of nonsmokers, enacting local laws is a more viable option than enacting state laws right off the bat. Of the statewide laws that have taken effect over the last decade, many have had a large percentage of their state population covered by strong local laws before they campaigned for state legislation. If you are considering statewide legislation, your fight will be extremely challenging if you have only a few local laws on the books. Sticking to the local-first model is still our best strategy.

Not only is it easier to enact local laws, because of the power of the tobacco industry at the state level, but local laws are also easier to enforce. Furthermore, we now know that local laws are preferable to state laws for another, even more important, reason: societal attitudes are deeply rooted and change occurs best at the community level, not at the state level. This is particularly true when it comes to smoking control. Local laws are preferable to state laws for all the following reasons:

1. **Educational Value of Campaign.** The campaign that is waged before passing a local smokefree law is the best educational tool available for increasing a community's awareness of, and intolerance for, smoking in workplaces and public places. Debate over a proposed smokefree air law commands a great deal of media attention in the form of articles, letters to the editor, blogs and social networking websites, and local television spots. In addition, public hearings and presentations on the issue engage the community in a discussion of the harmful effects of secondhand smoke and usually lead the community to understand and support the necessity of legislation to limit smoking in workplaces and public places.
2. **Ease of Enactment.** As mentioned earlier, the tobacco industry is far more powerful at the state level than at the local level. At the state level, the industry's strategy has been to hijack proposed smokefree air laws, weaken their provisions, and include preemption clauses that prohibit municipalities from enacting and enforcing their own local laws. On the other hand, because of the public's deep distrust of the tobacco industry, its direct involvement in opposing campaigns to enact smokefree legislation at the local level almost always backfires. Thus, although there are many opponents to smokefree air laws, particularly in the hospitality industry, it is easier to pass those laws when there is no effective opposition from the tobacco industry itself.
3. **Greater Compliance.** Compliance with local laws is higher than with state laws, due to greater public knowledge about the law. When a community has gone through the process

of debating and adopting a law customized to meet local concerns, citizens are much more likely to be aware of the law and to comply with it.

4. **Ease of Enforcement.** Because there is a high rate of awareness of and compliance with local laws, they are fairly easy to enforce. Local agencies are more inclined to energetically enforce local laws, because they know that their communities have adopted the laws and have a degree of ownership in them, which doesn't exist with state laws.
5. **Greater Public Support.** One of the key ingredients in the recipe for a smokefree society is to maintain, encourage, and develop public support for every legislative measure adopted. Changing society's attitudes isn't easy. It takes a combined, simultaneous approach of education and legislation. For the most part, local ordinances don't pass unless and until a majority of the community supports them.

The Trend to 100% Protection

In 1984, the first well-publicized studies determining that secondhand smoke causes lung cancer were released. At that time, some people began talking about strengthening laws to completely eliminate exposure to secondhand smoke. Terms like "passive" or "involuntary" smoke began to enter the public vocabulary. In response, the tobacco industry coined the term "environmental tobacco smoke" (ETS), because it thought it sounded less offensive.

The 1986 Surgeon General's Report on Involuntary Smoking, which was a summary of existing studies on the effects of secondhand smoke, concluded that "involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers" and that "the simple separation of smokers and nonsmokers in the same airspace may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke."

With each new discovery that secondhand smoke kills, the level of public awareness and lack of tolerance for public smoking has accelerated. Thus, in 1990, when the draft copy of the Environmental Protection Agency Risk Assessment on ETS concluded that ETS is a Class A carcinogen, many communities began to consider and adopt ordinances completely prohibiting smoking in enclosed workplaces and public places. Since the release of the final EPA study in 1992, many other reputable, peer-reviewed studies have demonstrated that exposure to secondhand smoke is dangerous and deadly. Two exhaustive surveys of research studies in 1997 added further evidence of the dangers, including one published in the *British Medical Journal*, the other by the California Environmental Protection Agency, both in 1997. And in 1999, the National Cancer Institute determined that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually. Despite ongoing tobacco industry attacks against the otherwise undisputed science, cities and counties continued to pass laws to completely eliminate exposure to secondhand smoke in workplaces and public places.

In 2006, the Surgeon General released a stronger Report on Secondhand Smoke, declaring that "there is no safe level of exposure to secondhand smoke." This report sparked stronger laws to pass all across the country. No longer were advocates accepting exemptions that still allowed smoking in workplaces and public places under certain circumstances, recognizing that indoor areas must be entirely smokefree at all times in order to effectively protect health. The new battle cry was 100% smokefree air or nothing.

We've come a long way since the start of the movement. The first local smoking control laws only mandated that workplaces and public places provide nonsmoking areas, without specifying the size of those areas. Soon, however, laws began requiring a specified, albeit small, percentage of areas to be nonsmoking. Eventually, the specified percentage grew until, following release of the EPA report and the findings of the Surgeon General, communities began to realize that only 100% smokefree laws will protect the health of nonsmokers.

Preemption

Preemption is a provision in state (or federal) law that eliminates the power of local (or state and local) governments to regulate tobacco; it is a serious threat to effective tobacco control. The tobacco industry desperately wants preemption, because it is keenly aware that it is at a great disadvantage at the local level, and preemption very effectively prohibits local smokefree laws and the social norm change against tobacco that comes with such laws. As Walker Merryman of the Tobacco Institute said as far back as 1991, when the number of local laws was still relatively small, "It's barely controlled chaos [at the local level]. We can't be everywhere at once."

There are two broad categories of preemption. One is explicit (or express) preemption, in which preemptive language is expressly written into the law. The other is implicit preemption, which is implied rather than explicitly stated in the law. Implicit preemption occurs when Congress or a state legislature adopts comprehensive regulations on a subject which are later interpreted by the courts to "occupy the field" being regulated, and therefore preclude inconsistent local (or state) regulation.

Although there is some preemptive activity at the federal level, the most common area in which the tobacco industry seeks preemption is at the state level. Preemption comes in a variety of packages, many times disguised in "good-guy" wrapping. For example, an internal memo from the Smokeless Tobacco Council in 1991 articulated how preemption could be included in a weak tobacco control law that had the appearance of being a good law. The memo summarized the results of a meeting between Philip Morris executives and prominent California state legislators (including the Speaker of the Assembly):

"At that time the Speaker made clear a significantly more proactive tobacco control effort would be needed to secure preemption. Out of these discussions the notion of a Comprehensive Tobacco Control Act (that would provide preemption) evolved. In order to gain preemption, the Speaker wanted a 'Comprehensive Tobacco Control Act' along the lines of the alcohol model. The Speaker believes the trick to doing this would be that such an act would have to have the 'appearance' of a comprehensive scheme."

Many in the tobacco control movement initially did not recognize the devastating effect of preemption on not only tobacco control policies, but also grassroots involvement in tobacco control. On more than one occasion, unsuspecting tobacco control coalition members and pro-health legislators have been deceived into supporting preemptive bills. Once passed, however, the result has been great harm to public health policymaking. Today, the vast majority of the tobacco control movement recognizes preemption as the disaster that it is. The result of preemption is to prevent us from being successful in the local arena, which is exactly where our strength lies.

Each year, the industry works hard to slip preemption back into state laws. In 2009, the industry was successful in inserting preemption for certain places into new state laws in Wisconsin (preemption of local laws covering certain outdoor areas) and Nebraska (preemption of local laws covering cigar bars). For more information on the tobacco industry's preemption strategies and how to combat them, see www.protectlocalcontrol.org.

Tobacco Industry Front Groups and Allies

The tobacco industry is a formidable opponent for many reasons, including its ability to adapt. The preemption strategy described above is indicative of the lessons it has learned at the state level. At the local level, the tobacco industry has responded to the increasing proliferation and effectiveness of smokefree air laws by co-opting third party allies in the hospitality industry and forming front groups with innocuous sounding names. These organizations and groups then act on the tobacco industry's behalf in opposing smoking control laws, while claiming not to be allied with the industry. For example, the Hospitality Coalition on Indoor Air Quality (HCIAQ) was formed by the industry to promote ventilation as an alternative to sound smokefree air laws. At least two such front groups, the California Business and Restaurant Alliance (CBRA) and the National Smokers Alliance (NSA), are now defunct, because they were exposed as being closely associated with Philip Morris. Through these allies, the tobacco industry has cleverly sought to modify the winning tactics of tobacco control advocates in an effort to stop smokefree campaigns dead in their tracks and to overturn existing policies.

Tactics used by the tobacco industry and their front groups "du jour" include: organizing misinformed restaurant and bar owners to lobby elected officials; running aggressive media campaigns; backing referendum campaigns to rescind laws that have already been enacted; and proactively introducing weak policy alternatives to forestall strong local clean indoor air laws. While these front groups present formidable obstacles to smokefree air campaigns, they are not invincible. Front group opposition reinforces the need for tobacco control advocates to go back to the basics of running traditional grassroots policy campaigns that rely heavily on community organizing, public education, and strategic planning.

Conclusion

It is clear that, to date, the enactment of local laws has been the number one most successful tool of the tobacco control movement, both in protecting the public from exposure to secondhand smoke, and in changing society's attitudes regarding tobacco use. It is equally clear that preemption and front group opposition activities are the tobacco industry's weapons of choice to thwart progress on smoking control. But, when tobacco control advocates know how far they can go in regulating smoking in their community, properly line up their support, and anticipate the tobacco industry's tactics, they can beat the industry and protect nonsmokers from the deadly health hazards of secondhand smoke.

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