

**Micah Berman, JD**  
**Testimony before New York City Council, Health Committee**  
**May 2, 2013**

Madame Chair and Members of the Committee:

Thank you for the opportunity to testify this morning in support of the three measures under consideration.

My name is Micah Berman. I am a professor of public health law and I focus my research on tobacco policy. Over the past decade, I have worked with state and local governments in numerous states, including New York, to design and implement effective tobacco control policies. I have also served as an advisor to the FDA's Center for Tobacco Products. This summer, I will be starting a new position as an Assistant Professor of Health Policy and Law at The Ohio State University, but I am speaking here today in my personal capacity.

My message today is simple: **Tobacco is not like any other product, and the tobacco industry is not like any other industry.** The product itself is deadly and addictive. And the industry has a history of targeting youth in an effort to recruit new, life-long customers. As a result, the measures under consideration today, though they would not be appropriate as applied to any other product, are urgently needed to prevent the tobacco industry from addicting another generation of New Yorkers to tobacco products.

In my testimony today, I will highlight two documents that both support the need for the measures under consideration. My written testimony includes more details and attaches the relevant documents.

**The 2012 U.S. Surgeon General's Report**

First, I encourage you to review the U.S. Surgeon General's landmark 2012 report focusing on youth tobacco use.

In short, the Surgeon General found – after reviewing hundreds and hundreds of scientific studies – that “the industry’s marketing activities have been a key factor in leading young people to take up tobacco.” In other words, **tobacco industry marketing – particularly at the retail stores where tobacco is sold – causes youth smoking.**

This report pulls together and summarizes the broad evidence base that supports the measures under consideration. I won't go into details, but the report discusses tobacco product displays and price discounting strategies as two specific types of industry promotion that encourage youth smoking and increase youth smoking rates. More than 70% of adolescents visit convenience stores at least once a week and see these displays and price promotions that, according to the Surgeon General, cause youth smoking. In short, local stores are being used to recruit the next generation of tobacco users.

## ***U.S. v. Philip Morris Racketeering Decision***

Secondly, I would also like to direct your attention to the 2006 judicial opinion in *United States v. Philip Morris*. In that decision, all of the key players in the tobacco industry were found to be racketeers who had illegally conspired – over a period of more than half a century – to deceive the public.

A section of the ruling focused on marketing to youth. Citing the tobacco industry's internal documents, Judge Gladys Kessler concluded that tobacco companies deliberately target youth as “replacement smokers” to take the place of those killed by cigarette use.

Importantly, Judge Kessler found that the tobacco industry's youth targeting efforts continued – and even increased – *after* the tobacco companies agreed to stop targeting youth in the 1998 Master Settlement Agreement.

The industry often says that it has reformed and no longer targets youth. But as Judge Kessler's decision – and many other legal decisions – make clear, this is an industry with zero credibility, and every such statement in the past has been shown to be false.

## **A Note on Retailers**

Note that my comments have focused on the tobacco *industry*. In my view it is the industry, not the retailers, that is the source of the problem. Retailers who want to do the right thing – by, for example, putting their tobacco products out of sight – have been unable to do so because it would put them at a competitive disadvantage. The proposals being considered today would support those many retailers who want to be a part of the solution, not the problem.

## **Legal Issues**

Finally, I want to briefly address First Amendment concerns with respect to the tobacco product display restriction. To put it briefly, assuming a First Amendment analysis is required, the analysis ultimately boils down to a balancing between the government's interest and the speech being restricted.

In my view, the balance could hardly be more uneven. On one hand is the City's interest in protecting youth from an addictive and deadly product that kills half of its regular users.

On the other hand is the tobacco industry's interest in using product displays – and the powerful impressions conveyed by them – to entice and addict the next generation of tobacco users (and to make it harder for current users to quit smoking).

All that is being restricted is a marketing practice that conveys little if any actual information, operates largely on a subliminal level, and has its primary impact on youth.



In my view, the balance points clearly in the direction of upholding a restriction on tobacco displays.

I do not suggest that the same would be true for restrictions on any other product. But tobacco is a unique product and the tobacco industry is a unique industry. I ask the Committee to act accordingly and approve these three measures.

Thank you.

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My name is Micah Berman. I am a professor of public health law and I focus my research on tobacco policy. Over the past decade, I have worked with state and local governments in numerous states, including New York, to design and implement effective tobacco control policies. I have also served as an advisor to National Institutes of Health and the U.S. Food and Drug Administration's Center for Tobacco Products. This summer, I will be starting a new position as an Assistant Professor of Health Policy and Law at The Ohio State University.

I am speaking here today in my personal capacity and at my own expense.

My message today is simple: **Tobacco is not like any other product, and the tobacco industry is not like any other industry.** As a result, the measures under consideration today, though they would not be appropriate as applied to any other product, are urgently needed to prevent the tobacco industry from addicting another generation of New Yorkers to tobacco products.

Tobacco is unique – and poses unique challenges – for two main reasons.

First, it cannot be emphasized enough that tobacco – and cigarettes in particular – is uniquely addictive and uniquely lethal. It kills far more Americans (and far more New Yorkers) every year than illegal drugs, firearms, alcohol, pollution, and car accidents *combined*. When used exactly as intended, it kills up to one-half of its regular users. The vast majority of people who smoke do so not because they want to, but because they are addicted. Survey after survey has shown that most current smokers would much prefer *not* to smoke and are hoping to quit.

Secondly, despite our past successes in addressing tobacco use, it remains a problem primarily because most people begin to smoke *as kids*. Eighty-eight percent of daily smokers began smoking before the age of 18, most often between the age of 15 and 16. The tobacco industry is well aware of this fact, and knows that its continued viability depends on recruiting new, young tobacco users who – because of the addictiveness of the product – become regular customers. Despite its denials, the industry's promotions, which include price discounts and "powerwall" displays in retail stores, continue to target this key demographic.

Because of these unique factors – the addictiveness and deadliness of tobacco, and the fact that nearly all new users are minors – the measures under consideration are both

necessary and likely to be highly effective. Tobacco companies will still be able to sell their products and communicate with adult smokers over the age of 21. But the proposed measures will help to protect the next generation from being drawn into a deadly addiction.

### **The 2012 U.S. Surgeon General's Report**

Please do not take my word for this. I encourage you to review the U.S. Surgeon General's landmark 2012 report focusing on youth tobacco use.

[[http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/)] The report documents the *immediate* health effects of tobacco on youth and its powerful addictive grip. It then goes on to discuss the fact that nearly all adult smokers began their tobacco use when they were younger than 18. Perhaps most important for today's purposes, the Surgeon General found – after reviewing hundreds and hundreds of scientific studies – that “the industry's marketing activities have been a key factor in leading young people to take up tobacco.” In other words, **tobacco industry marketing – particularly at the retail stores where tobacco is sold – causes youth smoking.**

I want to highlight a few key findings from the Surgeon General's report, and I have attached a summary of the report to my written testimony.

- 1) Internal tobacco industry documents – now made public through litigation -- clearly demonstrate the industry's efforts to target and recruit new youth smokers.
- 2) The economics of the tobacco industry suggest that “for a tobacco company to be profitable . . . it must compete successfully for a share of the youth market.” This is because people who start smoking as youth rarely switch brands, and relatively few people start smoking as adults.
- 3) Although the tobacco companies often claim that their marketing is targeted only towards adult smokers, their actions are *not* consistent with this claim, and in any event, their advertising and promotion unquestionably has the *effect* of increasing youth tobacco use. Moreover, even as the industry has denied targeting youth, it has continued to develop new and innovative methods of doing so. For example, in 2010 R.J. Reynolds targeted the young “hipster” demographic with a cigarette named for Williamsburg, Brooklyn.  
[[http://brooklynpaper.com/assets/photos/33/46/33\\_46\\_camelsmokes\\_z.jpg](http://brooklynpaper.com/assets/photos/33/46/33_46_camelsmokes_z.jpg)]
- 4) Tobacco companies recognize the impact of in-store tobacco displays, and have for decades. In 2008, they spent 84% of their marketing dollars in stores, including on branded product displays and on payments to retailers for prime shelf space (usually directly behind the cash register).
- 5) The industry has used tobacco displays (sometimes called “powerwalls”) to make tobacco products “appear attractive and broadly accessible.” These displays “help to establish brand imagery and social norms at an early age.”

- 6) The cigarette packs themselves are carefully designed to attract targeted demographics and to influence consumer perceptions of risk. Brand imagery on packs is particularly influential for youth.
- 7) Displays and price discounts go hand in hand. Tobacco companies often enter into contractual agreements with retailers in order to have their products displayed in the most highly visible locations. In return for this visibility, the tobacco companies offer volume discounts that make it possible for the retailers to lower their prices.
- 8) Younger smokers are more responsive to changes in price than older smokers, leading tobacco companies to seek ways of discounting their products. The industry's price-reducing promotions have increased the rate of youth tobacco use.

In short, the tobacco industry – despite its denials – has continued, and still continues, to target youth. Two key ways it does so are with strategically designed product displays (“powerwalls”) and price promotions. For years, the tobacco industry has focused on reaching kids in the retail environment – where 70% of adolescents shop at least once a week – while the public and policymakers have been looking elsewhere.

Other countries – including Canada, Australia, and the U.K. – have responded by prohibiting the display of tobacco products and otherwise addressing point-of-sale promotions. Indeed, the guidelines for implementing the Framework Convention on Tobacco Products, an international treaty agreed to by more than 175 countries, calls for every member nation to prohibit the display of tobacco products in retail stores. It is time for the U.S. to catch up to the rest of the world, and New York City can – as it often does – lead the way.

### ***U.S. v. Philip Morris* Racketeering Decision**

As I mentioned, the tobacco industry is unlike any other industry. The key players in the industry – Philip Morris/Altria, R.J. Reynolds/Reynolds American, and Lorillard – are all adjudicated racketeers. In 2006, U.S. District Court Judge Gladys Kessler found that the major tobacco companies had violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring – over a period of more than half a century – to deceive the public about the hazards of smoking, the dangers of secondhand smoke, the addictiveness of cigarettes, and much more. *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd* 566 F.3d 1095 (D.C. Cir. 2010). Judge Kessler's landmark decision was upheld on appeal.

A section of Judge Kessler's ruling focused on marketing to youth. She wrote: “The evidence is clear and convincing – and beyond any reasonable doubt – that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely denying they do so.” *Id.* at 621. Citing the tobacco industry's internal documents,

Judge Kessler concluded that tobacco companies deliberately target youth as “replacement smokers” to take the place of those killed by cigarette use. *Id.* at 692.

Importantly, Judge Kessler found that the tobacco industry’s youth targeting efforts continued – and even increased – *after* the tobacco companies agreed to stop targeting youth in the 1998 Master Settlement Agreement negotiated with state attorneys general. *Id.* at 912 (“Despite the provisions of the MSA, Defendants continue to track youth behavior and preferences and market to youth using imagery which appeals to the needs and desires of adolescents.”) Indeed, the court wrote that “Defendants began to evade and at times even violate the MSA’s prohibitions almost immediately after signing the agreement.” *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1132-33 (D.D.C. 2009). In a later decision, Judge Kessler wrote that there was no reason to believe that the Food and Drug Administration’s newly-granted authority of regulate tobacco products would lead the tobacco industry to start complying with the law. *United States v. Philip Morris USA, Inc.*, 787 F. Supp. 2d 68, 76 (D.D.C. 2011).

Beyond Judge Kessler’s decision, too many decisions to count have catalogued the tobacco industry’s history of lying to the public about their products and marketing to youth. For example, a recent Massachusetts decision chronicled Lorillard’s distribution of free samples of cigarettes to children as young as 9. See, e.g., *Evans v. Lorillard*, 30 Mass. L. Rep. 207 (Mass. Sup. Ct. 2011).

In short, the tobacco industry – as stated earlier – is unique. To keep its business profitable it must continue attracting new, young smokers. And despite its years of denials, it has continued to seek out new and creative ways of doing so. The industry often says that it has reformed and changed and no longer targets youth. But this is an industry with zero credibility, and every such statement in the past has been shown to be false.

Accordingly, this Council should take appropriate measures to protect the youth of New York City from the tobacco industry. These proposed measures do not suggest a creep towards a “nanny state” – they are limited and overdue attempts to protect our kids from the tobacco industry’s predatory marketing of an addictive and deadly product.

### **A Note on Retailers**

Note that my comments have focused on the tobacco industry, not tobacco retailers. It is the industry, through detailed contracts with local retailers, that primarily determines how tobacco products are displayed, advertised, and sold in retail stores. Retailers who want to do the right thing – by, for example, putting their tobacco products out of sight – have been unable to do so because it would put them at a competitive disadvantage.

The proposals being considered today would support those many retailers who want to be a part of the solution, not the problem. It would put all retailers on an even playing field and would make it easier to detect and punish those retailers selling untaxed or under-taxed tobacco products.

Experience from other countries that have implemented display restrictions suggests that the short-term economic impact on retailers is not even detectable. See, e.g., C. Quinn et al., *Economic Evaluation of the Removal of Tobacco Promotional Displays in Ireland*, 20 Tobacco Control 151 (2011). Those who currently use tobacco products will, by and large, continue to do so. But these important measures can help prevent the next generation from starting down the road to addiction, disease, and death.

## **Legal Issues**

Finally, I want to briefly address First Amendment concerns that have been raised with respect to the tobacco product display restriction. To put it briefly, assuming that a First Amendment analysis is required, the analysis ultimately boils down to a series of balancing tests. Is the proposed restriction on speech justified by a sufficiently important government interest? Is the action taken reasonable in relation to governmental interest?

In my view the balance could hardly be more uneven. On one hand is the City's interest in protecting youth from an addictive and deadly product that kills half of its regular users. Smoking is responsible for nearly one of every three deaths from cancer, one of every five deaths from heart disease, and a long list of other harms. For any given individual, long-term smoking reduces average life expectancy by 14 years. Cigarette use is the primary problem, but the Surgeon General has also explained that all other forms of tobacco are also addictive, carcinogenic, and deadly.

On the other hand is the tobacco industry's interest in using product displays – and the powerful impressions conveyed by them – to entice and addict the next generation of tobacco users (and to make it harder for current users to quit smoking). Study after study has shown that “powerwall” displays misleadingly suggest the popularity and acceptability of cigarettes to youth. As discussed above, the tobacco industry has a long history of targeting their advertisements towards youth (for whom tobacco use is illegal), and whatever the intent, tobacco powerwalls help to increase youth tobacco use.

Tobacco companies are not barred from communicating any actual *information* to adult smokers. All that is being restricted is a powerful form of marketing that operates largely on a subliminal level and has its primary impact on youth.

In my view, the balance points clearly in the direction of upholding a restriction on tobacco displays.

I do not suggest that the same would be true for restrictions on any other product. Tobacco is a unique – and uniquely deadly and addictive – product. The tobacco industry is a unique – and uniquely duplicitous – industry. I ask the Committee to act accordingly and approve these three measures.

Thank you.

Findings from the  
2012 Surgeon General's Report on  
Youth and Young Adult Tobacco Use

# Cause and Effect:

Tobacco Marketing Increases Youth Tobacco Use



*Law. Health. Justice.*

This publication was prepared by Micah Berman, J.D. and Kerry Malloy Snyder, J.D. and edited by Julie Ralston Aoki, J.D. Suggested citation:

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## Introduction

The 1964 Surgeon General's Report, which concluded that cigarette smoking causes lung cancer and other diseases, dramatically and permanently reshaped the American public's understanding of the harms caused by smoking. By carefully and objectively reviewing the available scientific evidence, the report established that the link between smoking and disease was clear and irrefutable, despite the industry's continued denials.

In the ensuing decades, numerous Surgeon General's Reports further advanced the public's understanding of the harms caused by tobacco use. In 1986, for example, the Surgeon General's Report concluded that "the judgment can now be made that exposure to environmental tobacco smoke can cause disease, including lung cancer, in nonsmokers." Like the earlier 1964 report, this report demonstrated to the public that the industry's denials (in this case about the effects of secondhand smoke) were simply not credible.

In the tradition of these past reports, the 2012 Surgeon General's Report, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, carefully and meticulously lays out the current evidence about tobacco use by youth and young adults. Like these previous reports, this presentation of the evidence shows that the tobacco companies have once again failed to tell the truth. Although "[t]obacco companies have long argued that their marketing efforts ... have no impact on the initiation of tobacco use among young people," the Surgeon General's review finds that the evidence "consistently and coherently points to the intentional marketing of tobacco products to youth as being a cause of young people's tobacco use." In short, a robust body of scientific evidence establishes that **tobacco industry marketing causes youth tobacco use**.

As demonstrated in the Surgeon General's Report, the vast majority of the tobacco industry's marketing is focused on the point-of-sale — the retail establishments where tobacco is sold. For tobacco companies, these retail locations are the primary place where they can recruit new tobacco users, 90 percent of whom are minors. Because the industry is focused on the point-of-sale, tobacco control advocates need to focus their attention there as well. Therefore, after presenting the highlights of the Surgeon General's Report, we summarize policy options that can help reduce the amount and the impact of tobacco marketing at the point of sale.

The Surgeon General notes that "[w]ith 99% of all first use of tobacco occurring by age 26, if youth and young adults remain tobacco-free, very few people will begin to smoke or use smokeless products." We hope that this presentation of the Surgeon General's findings will be a useful and effective resource for those working to make this vision a reality.

Tobacco Control Legal Consortium  
Center for Public Health and Tobacco Policy

## Guidelines for the Reader

Select excerpts from *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* (and the Report's executive summary) are compiled here for easy reference. The excerpts are presented verbatim, but have been reorganized by subject, using headings that we designed. We have excluded internal citations, and we have included clarifying statements in brackets where necessary. Additionally, we have used ellipses wherever we have omitted a word or words (other than a reference) within a quoted passage. The number in parentheses before each passage indicates the page number on which the quote may be found in the report or the executive summary ("ES").

In general, the Surgeon General's Report uses the terms "adolescents," "children," and "youth" to refer to those between 11 and 17 years old. It uses the term "young adults" to refer to those between 18 and 25 years old.

The full text of the Surgeon General's Report can be downloaded from [www.surgeongeneral.gov](http://www.surgeongeneral.gov).

## Acronyms used in this report

### *Studies*

**MTF:** Monitoring the Future, an anonymous cross-sectional and longitudinal self-administered questionnaire administered to youth in grades 8, 10 and 12, college students, and young adults; sponsored by the National Institute on Drug Abuse (administered by the University of Michigan's Institute for Social Research).

**NSDUH:** National Survey on Drug Use and Health, an annual survey of the population ages 12 and older, conducted through computer-assisted interviewing (with additional face-to-face interviews of a representative sample); sponsored by the Substance Abuse and Mental Health Services Administration and focused primarily on the use of illegal drugs.

**NYTS:** National Youth Tobacco Survey, an anonymous cross-sectional self-administered questionnaire administered to youths in grades 6 through 12; sponsored by the Centers for Disease Control and Prevention.

**YRBS:** National Youth Risk Behavior Survey, an anonymous cross-sectional self-administered questionnaire administered to youth in grades 9 through 12; sponsored by the Centers for Disease Control and Prevention.

### *Other*

**CDC:** Centers for Disease Control and Prevention

**HS SMK:** High School Smoking Rate

**NCI:** National Cancer Institute

**SES:** Socio-economic status. This term is defined differently by researchers, but generally is determined by considering poverty level, educational attainment, and employment status, among other factors.

# Section I. The Problem



## Youth Tobacco Use and Addiction

### Tobacco Use is a “Pediatric Epidemic”

**(ES-1)** Tobacco use is a pediatric epidemic, around the world as well as in the United States.

**(iii)** Each day across the United States over 3,800 youth under 18 years of age start smoking.

**(134)** [M]ore than one-third (36.7%) of adults who had ever smoked cigarettes reported trying their first cigarette by 14 years of age, which is the age when one typically enters high school in the U.S.

**(134)** Virtually *no* initiation of cigarette smoking (<1–2%) and few transitions to daily smoking (<4%) actually occur in adulthood after 26 years of age.

**(164)** Smoking initiation [is] most likely to occur in a young person’s 15th or 16th year, which was also true in 1994.

**(165)** Among adults who become daily smokers, nearly all first use of cigarettes occurs by 18 years of age (88%), with 99% of first use by 26 years of age.

### Youth Tobacco Use Rates: One in Four High School Seniors is a Current Smoker

**(ES-2)** One in four high school seniors, and one in three young adults, are current smokers.

**(135)** Young adults (18–25 years old) have the highest prevalence of current cigarette smoking of all age groups, at 34.2%.

**(164)** Almost one-fifth of high school students are current cigarette smokers, and the prevalence rises with age; one-fourth of high school seniors are current cigarette smokers at present. Young adults have the highest smoking prevalence among all age groups.

### Smokeless Tobacco Use

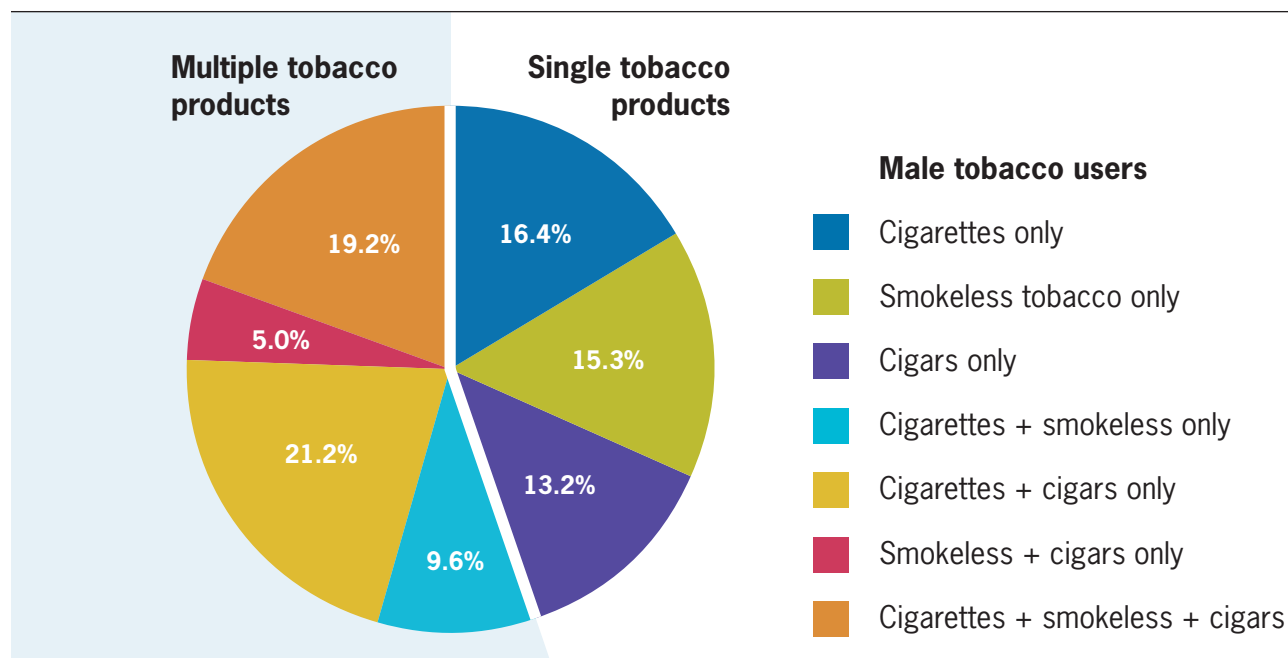
**(142)** According to the 2009 NYTS, about 1 in 10 high school males (11.6%) are current smokeless tobacco users.

**(164)** White male students are far more likely than males in other racial/ethnic subgroups to use smokeless tobacco, with the prevalence of current use among white male high school students at around 20%, based on YRBS data.

**(201)** 10.7% of ever users of smokeless tobacco had done so by the 6th grade, 43.5% by the 9th grade, and 85% by 11th grade.

**(203)** At present, about 1 out of 5 high school males has ever used smokeless tobacco, and about 1 out of 8 currently uses smokeless tobacco.

**(155)** Prevalence of current use of multiple tobacco products among high school males who use tobacco (Figure 3.13; YRBS 2009)



## Cigar Use

**(142)** [A]ccording to the 2009 NYTS–high school, 15.0% of high school males and 6.7% of high school females currently smoke cigars.

**(165)** The prevalence of current use of cigars (including little cigars and cigarillos) is more than 10% for high school students but is more common among White male youth than among other youth subgroups.

**(165)** [A]bout 1 in 5 high school senior males is a current cigar smoker.

**(204)** [T]he prevalence of current cigar use by White male students according to YRBS (21.0%), did not differ appreciably from their prevalence of current cigarette smoking (22.3%). Moreover, in some states, current cigar use among adolescent males actually exceeds the prevalence of current cigarette smoking in this population.

**(206)** Nearly one of three high school seniors has ever tried smoking a cigar.

## Water Pipes (Hookahs)

**(206)** The use of water pipes, also known as hookahs, originated in the Middle East/ancient Persia and is an emerging trend in the twenty-first century. The MTF survey for 12th-grade students first included a question about hookah use in 2010 and found that 17% of high school seniors in the United States had used hookahs in the past year.

**(206)** Other small-scale studies on young adults indicate that the use of a water pipe is more prevalent among university students in the United States, with estimates for past-year use ranging from 22% to 40%.

## Multiple Products

**(155)** Based on data from the YRBS, the majority of high school males who currently use tobacco actually use more than one product concurrently. Concurrent cigarette and cigar smoking is most prevalent among high school male tobacco users (21.2%), followed closely

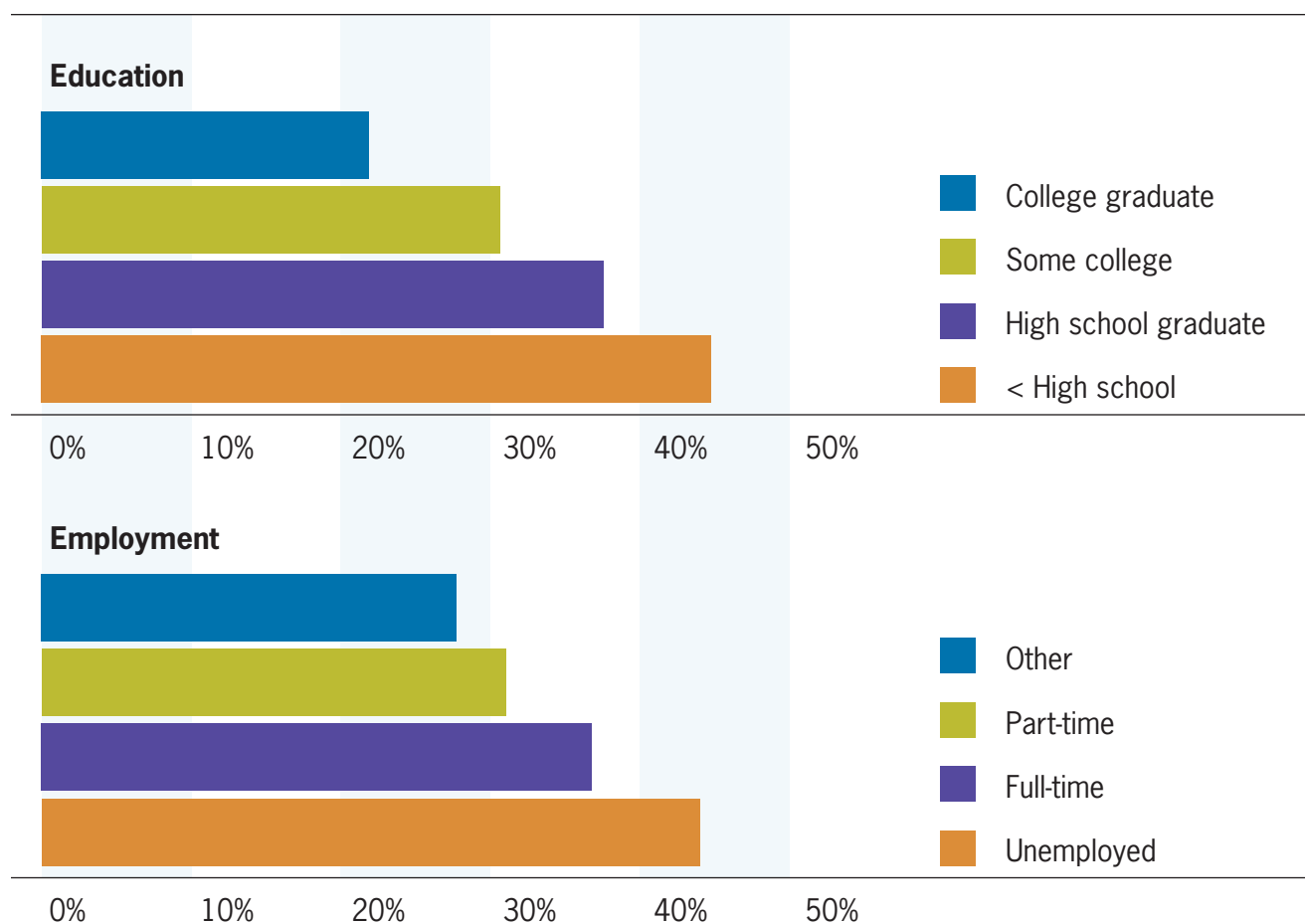
by the concurrent use of cigarettes, cigars, and smokeless tobacco (19.2%). Less than one-half of all high school male tobacco users reported using a single product (i.e., cigarettes, cigars, or use of smokeless tobacco, alone), in the past 30 days, at 44.9%.

**(155)** [T]he concurrent use of multiple tobacco products among adolescents is not inconsequential and is cause for concern, especially for White male and Hispanic male and female high school students. It is noteworthy that the tobacco industry has diversified its portfolio in novel ways in recent years and now offers a variety of flavored (e.g., cigars, cigarillos, snus) and emerging (e.g., dissolvables, orbs) tobacco products that appeal to youth (see Chapter 5 of this report).

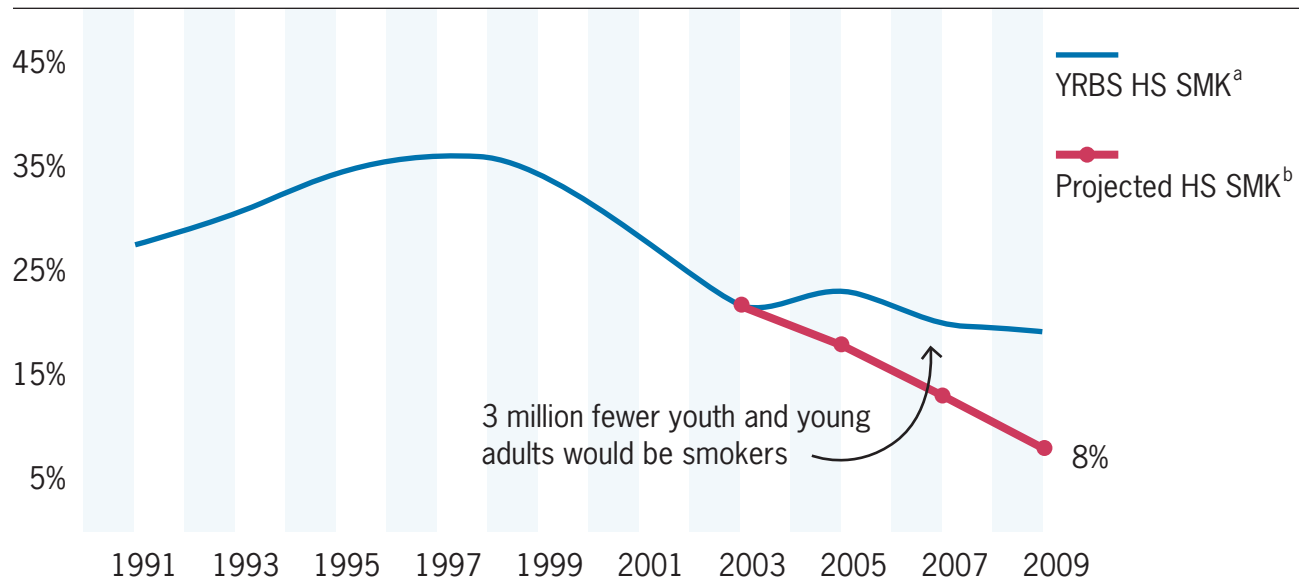
**(165)** Concurrent use of multiple tobacco products is prevalent among youth. Among those who use tobacco, nearly one-third of high school females and more than one-half of high school males report using more than one tobacco product in the last 30 days.

**(850)** More than one-half of White and Hispanic male cigarette smokers in high school also use tobacco products other than cigarettes, as do almost one-half of Hispanic female smokers in high school. This is worrisome as the use of multiple tobacco products may help promote and reinforce addiction, as well as lead to greater health problems.

**(154)** Percentage of current cigarette smoking among young adults (18- to 25-year-olds), by education and employment (as proxies for socioeconomic status) (Figure 3.12; NSDUH 2010)



**(141)** Current high school cigarette smoking and projected rates if decline had continued (Figure 3.4)



**Source:** 1991–2009 YRBS: Centers for Disease Control and Prevention, Division of Adolescent and School Health, Office on Smoking and Health (unpublished data).

**Note:** HS SMK = high school smokers. Based on responses to the question, “During the past 30 days, on how many days did you smoke cigarettes?” Respondents who reported that they had smoked on at least 1 or 2 days were classified as current smokers.

<sup>a</sup> High school students who smoked on 1 or more of the 30 days preceding the survey.

<sup>b</sup> Projected high school students who smoked on 1 or more days of the past 30 days if 1997–2003 decline had been maintained.

## Tobacco Use is Higher Among Low-SES Youth

**(153)** The socioeconomic gradient in current cigarette smoking is clear and consistent ... youth of lower SES [socioeconomic status] have a higher prevalence of current cigarette smoking than youth of a higher SES. The gradient among young adults is especially strong and mirrors other analyses of young adult data that suggest that the prevalence of current cigarette smoking for non-college-educated young adults is twice as high as that for their college-educated counterparts.

**(165)** The prevalence of cigarette smoking is ... highest among lower socioeconomic status youth.

## Youth Tobacco Use Rates are Not Declining

**(8)** After years of steady progress, declines in the use of tobacco by youth and young adults have slowed for cigarette smoking and stalled for smokeless tobacco use.

**(134-135)** Initiation rates for cigarette smoking have been stable over the last 5 years. Comparing 2006 to 2010, the rate of initiation of cigarette smoking among adolescents (12–17 years of age) and young adults (18–25 years of age) did not change overall and for all subgroups (i.e., by gender and race/ethnicity).

**(149)** Like the trends shown for current cigarette smoking, current cigar smoking declined in the late 1990s for high school males overall, then stalled from 2005 forward.



**(164)** Adolescent and young adult initiation rates for cigarette smoking have been stable over the past 5 years. This finding is consistent with the idea that tobacco companies are successfully targeting young people in advertising and promotion efforts to attract new smokers.

**(185)** In the early 1990s, the prevalence of cigarette smoking began increasing until it hit a peak in the late 1990s, at the time of the Master Settlement Agreement (1998), when it began to decline for both adolescents and young adults. Since 2003, however, the decline in the prevalence of cigarette smoking among young people overall has slowed considerably, and may have stopped altogether for some subgroups.

**(202)** Per MTF, progress in reducing [smokeless tobacco] use among male students slowed considerably between 2000 and 2008, and current use increased among 10th- and 12th-grade students overall between 2008 and 2010.

**(856)** If high school students' smoking levels had continued to decline at the rate observed from 1997 to 2003, the prevalence of current smoking among high school students in 2009 would have been only about 8% (vs. 19.5%). This would have resulted in approximately 3 million fewer smokers among youth and young adults by 2009.

## Youth Tobacco Use Causes Immediate and Long-Term Health Consequences

### *Health Consequences of Smoking as an Adolescent*

**(ES-2)** [E]arly use of tobacco has substantial health risks that begin almost immediately in adolescence and young adulthood, including impairment to the respiratory and cardiovascular systems. Many of the long-term diseases associated with smoking, such as lung cancer,

are more likely among those who begin to smoke earlier in life.

**(ES-3)** Research now documents strong causal associations between active cigarette smoking in young people and addiction to nicotine, reduced lung function, reduced lung growth, asthma, and early abdominal aortic atherosclerosis.<sup>1</sup>

**(ES-3)** Smoking is the chief preventable cause of premature death in this country, and the early stages of the diseases associated with adult smoking are already evident among young smokers. For example, young adult smokers under age 30 exhibit signs of and are being diagnosed with early disease of the abdominal aorta, a serious indicator of heart disease.

**(3)** Most young smokers become adult smokers. One-half of adult smokers die prematurely from tobacco-related diseases.

**(22)** For the major chronic diseases caused by smoking, the epidemiologic evidence indicates that risk rises progressively with increasing duration of smoking; indeed, for lung cancer, the risk rises more steeply with duration of smoking than with number of cigarettes smoked per day.

**(28)** Evidence is emerging that smoking is associated with various developmental and mental health disorders that affect adolescents and young adults. The available evidence extends to mental health disorders, such as schizophrenia, anxiety, and depression, and to developmental disorders, such as ADHD and conduct disorder.

**(179)** The initiation of cigarette smoking at a young age increases the risk of later heavy smoking and of subsequent smoking-attributable mortality.

**(856)** Harm from smoking begins immediately, ranging from addiction to serious damage to the heart and lungs.

## *Tobacco Addiction*

**(ES-1)** Because few high school smokers are able to break free from the powerful addicting effects of nicotine, about 80% will smoke into adulthood. Among those who persist in smoking, one-half will die about 13 years earlier than his or her nonsmoking peers.

**(iii)** Cigarette smoking by youth and young adults is proven to cause serious and potentially deadly health effects immediately and into adulthood. One of the most significant health effects is addiction to nicotine that keeps young people smoking longer, causing increased physical damage.

**(iii)** Of every three young smokers, only one will quit, and one of those remaining smokers will die from tobacco-related causes. Most of these young people never considered the long-term health consequences associated with tobacco use when they started smoking; and nicotine, a highly addictive drug, causes many to continue smoking well into adulthood, often with deadly consequences.

**(185)** Compared with adults, adolescents appear to display evidence of nicotine addiction at much lower levels of consumption, making quit attempts potentially more difficult for them. Many young smokers have strong expectations of discontinuing use in the near future, but relatively few are able to do so.

**(457)** [B]iological evidence is accumulating to suggest that the adolescent brain may be particularly susceptible to the addictive properties of nicotine.

**(457)** [E]xposing the developing brain to nicotine has been shown to alter its structure and function in a way that introduces long-lasting vulnerability for addiction to nicotine and other substances of abuse.

**(850-851)** As was noted in the 1979 Surgeon General's report, adolescence through young adulthood remains the period in life when use of tobacco products can be perceived by young

people as being an "acceptable rebellion" or "mild bad behavior" that they can discontinue in the future. If tobacco use were similar to getting a tattoo or dyeing one's hair, for example, which might also be rebellious behaviors, we would not be as concerned. It is the addictiveness of tobacco use and its short- and long-term health and economic consequences that transform this "act of rebellion" into a major public health problem.

## *Lung Disease*

**(80)** [A]ctive cigarette smoking during childhood and adolescence has the potential to slow the rate of lung growth and reduce the level of maximum lung function attained, thus increasing risk for development of chronic obstructive pulmonary disease (COPD) in adulthood.

**(86)** Although quitting smoking at all ages can be beneficial, early quitting may be more valuable than later quitting because of its potential beneficial effect on the still-growing lung.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between active smoking and both reduced lung function and impaired lung growth during childhood and adolescence.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between active smoking and wheezing severe enough to be diagnosed as asthma in susceptible child and adolescent populations.

## *Cardiovascular Disease*

**(94)** Permanent effects of smoking on the cardiovascular system have been found in children, adolescents, and young adults who smoke, and these effects are antecedents of incident cardiovascular disease in later adulthood.

**(108)** [S]tudies have now been conducted around the world in children and young adults showing associations of endothelial



dysfunction<sup>2</sup> with active and passive exposure to tobacco smoke.

**(111)** The evidence is sufficient to conclude that there is a causal relationship between smoking in adolescence and young adulthood and early abdominal aortic atherosclerosis in young adults.

### *Smoking and Other Substance Abuse*

**(28)** Evidence from a number of studies indicates that cigarette smoking is strongly associated with the use of other substances.

**(29)** Among adolescents, early initiation of tobacco use is associated with the use of other substances. In a cohort study of adolescents, reports of “ever” and “daily” smoking were associated with increased risks in the future of using marijuana and other illicit drugs as well as disorders involving the use of multiple drugs. In addition, early-onset smokers were found to be more likely to have substance use disorders than late-onset smokers or nonsmokers.

**(194)** Cigarettes are often considered a “gateway drug,” and smoking cigarettes frequently precedes the use of smokeless tobacco and other types of drugs. Use of cigarettes, at a minimum, often covaries with smokeless tobacco and the use of other drugs. Among high school male cigarette smokers, for example, an estimated 84% also drink alcohol, 53% smoke marijuana, 29% use smokeless tobacco, 8% use cocaine, and 5% use inhalants. These percentages are much higher than the percentages of smokeless tobacco use and other types of drug use among male nonsmokers attending high school. Similar differences are observed among high school girls.

### *Health Effects of Smokeless Tobacco*

**(199)** The use of smokeless tobacco has been linked to both localized oral health consequences at the site of tobacco placement and systemic effects. Smokeless tobacco contains at least 28 carcinogens, and there is strong evidence to show that users have an increased risk of developing leukoplakia, a precancerous lesion on oral soft tissue, as well as oral cancers. Other undesirable oral health outcomes that have been linked to smokeless tobacco use include gingival recession, periodontal disease, and tooth decay.

### *Health Effects of Water Pipe (Hookah) Smoking*

**(207)** In a typical 1-hour hookah smoking session, users may inhale 100–200 times the amount of smoke they would inhale from a single cigarette.

**(207)** Existing studies also indicate that hookah smoking is linked to many of the same adverse health effects as cigarette smoking, including lung, oral, and bladder cancers, low birth weight in offspring, and heart disease.

# Section II. A Major Cause

## Tobacco Marketing at Retail Stores

### Introduction

**(487)** In most developed countries, businesses use a broad variety of marketing techniques to increase their sales, gain market share, attract new users, and retain existing customers. These techniques include product design, packaging, pricing, distribution, product placement, advertising, and a variety of promotional activities. Tobacco companies were among the earliest companies to identify and implement effective, integrated marketing strategies, and cigarettes and other tobacco products have long been among the most heavily marketed consumer products in the United States.

A key point here is that these marketing strategies are designed to “attract new users.” New users of tobacco products, as illustrated in Section I of this report, are overwhelmingly youth who are too young to use the products legally, and too immature to appreciate the dangers of tobacco use and addiction. It seems clear, then, that the tobacco industry’s marketing techniques are intended to — and do — attract youth to tobacco use.

This section highlights those portions of the Surgeon General’s report that find that tobacco companies have invested heavily in marketing strategies that target youth, particularly at the point-of-sale. It should be noted that these

strategies are used to market both cigarettes and other tobacco products. As noted in the report:

**(491, 507)** [T]he traditional division of products, brand identities, and marketing between cigarette and smokeless tobacco companies has all but become nonexistent in recent years as major U.S. cigarette companies, including RJR and Altria, have acquired smokeless tobacco companies and have developed new smokeless tobacco products [that use popular cigarette name brands].

### Despite Industry Assertions to the Contrary, Tobacco Marketing Is Intended to Recruit New Users and Increase Use of Tobacco Products

**(ES-2)** [I]nformation explicitly revealed in tobacco industry documents makes clear the industry’s interest in and efforts to entice young people to use their products.

**(487)** Tobacco companies have long argued that their marketing efforts do not increase the overall demand for tobacco products and have no impact on the initiation of tobacco use among young people; rather, they argue, they are competing with other companies for market share. In contrast, the weight of the evidence from extensive and increasingly sophisticated research conducted over the past few decades

shows that the industry's marketing activities have been a key factor in leading young people to take up tobacco, keeping some users from quitting, and achieving greater consumption among users.

**(508)** In her landmark 2006 ruling that the tobacco industry violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, Judge Gladys Kessler concluded that cigarette marketing recruits youth to smoke and that the major cigarette companies know it.

**(516)** Tobacco companies are very interested in initial brand preference because they know it is highly associated with subsequent brand selection. The tobacco companies know that youth are very brand loyal, and once they have chosen a brand, most will continue with it. For example, a previously confidential Philip Morris document states as its "underlying premise" that "[t]he smokers you have are the smokers you are most likely to keep."

**(517)** Tobacco companies have consistently stated that the purpose of spending billions of dollars on cigarette marketing is to attract and hold current adult smokers to their brands of cigarettes. In addition, the companies deny that marketing campaigns are intended to increase demand for cigarettes among existing smokers or to encourage young people to initiate smoking. The economic value of the amount of brand switching that occurs, however, does not justify the magnitude of marketing expenditures.

**(518)** Despite the industry's arguments about brand loyalty and inducing existing smokers to switch brands, there are times when cigarette company executives themselves have acknowledged that marketing reaches and influences underage adolescents. For example, in 1997, Bennett S. LeBow, CEO of the holding company that owns Liggett, stated: "Liggett acknowledges that the tobacco industry markets to 'youth', which means those under 18 years of age, and not just those 18–24 years of age."

**(541)** Tobacco companies have always claimed that they do not want adolescents to use their products. However, for a tobacco company to be profitable over the long term, it must compete successfully for a share of the youth market. As stated succinctly in one of RJR's marketing research documents, "Young adult smokers have been the critical factor in the growth and decline of every major brand and company over the last 50 years."

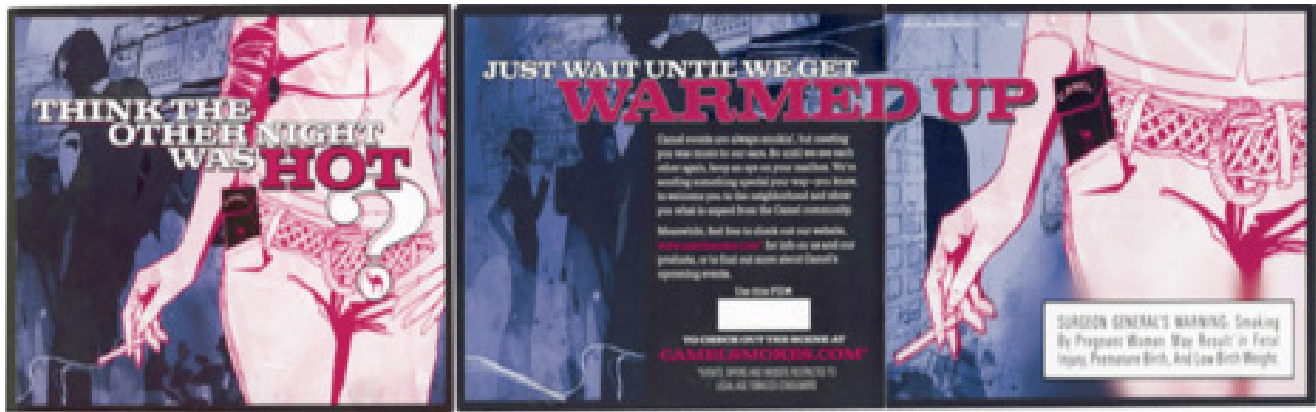
## **Tobacco Companies Invest Billions in Marketing Strategies that Attract Youth**

**(601)** In 2008, tobacco companies spent \$9.94 billion on the marketing of cigarettes and \$547 million on the marketing of smokeless tobacco. Spending on cigarette marketing is 48% higher than in 1998, the year of the Master Settlement Agreement. Expenditures for marketing smokeless tobacco are 277% higher than in 1998.

### *Use of Image Advertising that Appeals to Youth*

**(110)** One reason that some adolescents and young adults start to smoke is that the tobacco industry implies through its marketing that smoking is effective for weight control. This long-used strategy continues to the present, and the belief that smoking is effective for weight control remains prevalent among adolescents and may contribute to the initiation of smoking.

**(519)** As is the case with all advertising, a substantial portion of tobacco advertising consists of imagery that conveys little factual information about the characteristics of the product. In effect, tobacco advertising fulfills many of the aspirations of young people by effectively using themes of independence, liberation, attractiveness, adventurousness, sophistication, glamour, athleticism, social acceptability and inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being "cool."



**(851)** The evidence reviewed in this report indicates that the practices of the tobacco industry are evolving in the areas of promotion and advertising even as it tries to minimize the role played by such activities as major causes of tobacco use among youth and young adults. For example, recent industry campaigns have attempted to reframe the use of tobacco products as an “acceptable rebellion” within a hipster aesthetic.

**(517)** The most plausible justification for advertising expenditures at the levels that have been observed would be to attract new customers to generate a long-term cash flow for the companies. In addition, the nature of the imagery used in the advertisements clearly appeals to the aspirations of adolescents, suggesting that they are a target.

### *Exploitation of Peer Influence*

**(520)** Young people want to be popular, to be seen as individuals by their friends, and to resemble those they most admire. Cigarette advertising exploits these adolescent desires, using imagery to create the impression of popularity, individuality, and kinship. There is substantial evidence that advertising of tobacco affects adolescents’ perceptions of the attractiveness and pervasiveness of smoking ...

**(519-520)** Peer and parental influences are both associated with the decision of an adolescent to begin smoking, but ... it is also important to consider that, to the extent that tobacco industry marketing and promotional activities stimulate peers and parents to smoke, these influences contribute to smoking by adolescents. Therefore, peer and parental

**(517)** The most plausible justification for advertising expenditures at the levels that have been observed would be to attract new customers to generate a long-term cash flow for the companies. In addition, the nature of the imagery used in the advertisements clearly appeals to the aspirations of adolescents, suggesting that they are a target.





influences are acting as mediating variables between advertising and adolescent smoking.

**(520)** From internal industry documents, depositions, and trial testimony, it is clear that the tobacco industry understands the need to be accepted, particularly among youth, and has attempted to exploit this need through its marketing efforts.

**(521)** Plans by Philip Morris to market its Parliament cigarettes to 18- to 24-year-olds in 1987 included the following statement: "This younger age group is more likely to make decisions based on peer pressure. To convey the idea that everyone is smoking Parliament, the brand should have continuous high levels of visibility in as many pack outlets as possible."

**(522)** [F]ar from being a completely independent determinant of youth smoking, peer influence is yet another channel for communication on which the industry can capitalize to promote smoking by youth. It is important to note that the tobacco industry routinely attributes smoking to peer pressure, but it does not acknowledge the relationship between advertising and peer influence or the effects of advertising on normative behavior and perceptions of popularity and peer acceptance.

## **The Tobacco Industry Is Targeting Youth at the Point-of-Sale**

**(540)** Tobacco companies use the retail environment extensively to advertise and stimulate sales of their products.

**(541)** The signing of the Master Settlement Agreement stimulated a dramatic shift of the industry to point-of-sale marketing, one of the few venues not affected by advertising restrictions. However, industry executives have recognized the importance of using displays and advertising at the point of sale for decades. Marketing expenditures reported by cigarette companies to FTC indicate that in 2008 tobacco companies spent approximately 84% of their

marketing dollars in stores, including point-of-sale advertising, price discounts, retail promotional allowances, and retail-value-added items.

**(541-542)** Cigarette companies reach both current and future customers by advertising and promoting their products in stores; consumers, regardless of age, can be exposed to prosmoking messages in stores. Most cigarettes and ads are strategically placed around checkout counters to ensure maximum exposure and stimulate impulse purchases. Like other companies in the retail sector, tobacco companies advertise, offer special sales, and try to motivate retailers to sell their products by offering volume discounts, in-store branded displays, and payments for prime shelf space; these strategies are designed to move products off the shelves quickly. When tobacco products are displayed and featured with a price cut, sales increase by up to 30%.

**(543)** [A]lmost two-thirds of adolescents in the United States report seeing tobacco advertising all or most of the time when they visit convenience stores that do or do not sell gas.

**(543)** About one-third of adolescents shop in convenience stores two or three times a week, and 70% shop in them at least weekly. Convenience stores have more tobacco advertising and promotions than other types of stores, which increases the likelihood of exposing youth to prosmoking messages while they are shopping and which can affect initiation rates among those exposed, particularly if stores are near schools.

**(600)** Although some tobacco advertising and promotion activities are prohibited by the Master Settlement Agreement and the *Family Smoking Prevention and Tobacco Control Act*, consumers, regardless of age, are exposed to prosmoking messages in stores, and tobacco companies have offered retailers price promotions, volume discounts, in-store branded displays, and payment for prime shelf space.

**(851-852)** The evidence continues to show that youth and young adults are more sensitive than adults in general to advertising and promotional campaigns. As greater restrictions have been placed on traditional advertising of tobacco products, the retail environment has become a primary location to bombard youth with brand imagery, which has made tobacco products appear attractive and broadly acceptable.

### *Location of Retail Stores*

#### **Near Schools**

**(543)** Tobacco marketing in stores close to schools is of particular concern because of the increased likelihood of exposure to prosmoking messages as students pass by or shop at these stores. In a study of retail outlets in 163 school catchment areas in the United States, ... [s]tores close to schools were found to have more exterior tobacco advertising than stores further away, and stores where adolescents shop frequently have been found to have more cigarette marketing than other stores in the same community.

**(600)** [M]ore cigarettes are sold in convenience stores than in any other type of store, and 70% of adolescents shop in convenience stores at least weekly. Studies have shown that tobacco advertising is more prevalent in stores located near schools and where adolescents are more likely to shop.

#### **In Minority and Lower Income Neighborhoods**

**(542)** Documents from the tobacco industry reveal that cigarette manufacturers have used advertising to appeal to racial and ethnic minorities and children. Tobacco companies implemented marketing strategies specifically developed for small stores in inner cities and used zip codes to identify and incentivize retailers to reach the target population for

menthol cigarettes — that is, “young, black, relatively low income and education.”

**(543)** In California, the amount of cigarette advertising and the proportion that included a sales promotion rose more rapidly over a 3-year period in stores situated in neighborhoods in which the proportion of African Americans was higher than the statewide average. Similarly, menthol cigarettes were more likely to be marketed in stores near schools with higher proportions of African American students.

**(542-543)** Studies of stores that sell tobacco have confirmed that tobacco industry marketing differentially appeals to people with the lowest income and education through point-of-sale advertising and that there is more in-store tobacco advertising in predominantly racially diverse and low-income neighborhoods. A study of neighborhoods in eastern Massachusetts found that 19.4% of retail environments in a low-income neighborhood sold tobacco products, in contrast to only 3.7% of stores in an affluent neighborhood.

### *Tobacco Product Placement and Packaging*

#### **Product Placement and Retail Contracts**

**(534)** Displays of packages in retail outlets, commonly referred to as “powerwalls,” have high visibility among youth and help to establish brand imagery and social norms at an early age.

**(542)** Industry documents confirm that tobacco companies have sought to make their products easily visible and readily accessible to customers to stimulate impulse purchases. To reach customers, tobacco companies often engage retailers in contractual agreements. These contracts secure the placement of packs and cartons in highly visible locations around the counter where consumers will notice them; in return, the companies provide volume discounts and other financial incentives to retailers so their products can be offered at lower prices than those of their competitors.

**(542)** Cigarette companies exert substantial control over product location, advertising, and pricing in return for the financial incentives they provide to retailers. A Philip Morris contract for its Retail Leaders included several options for retailers to select their level of participation; the options varied by the amount and type of financial incentives offered to the retailer and the amount of control over retail space that the retailer relinquished to the company. Financial incentives include volume discounts, special sales on the companies' current inventory, and multipack discounts. In return, the retailer is required to advertise sales and promotions, accept merchandising fixtures (branded shelving units and displays), follow a detailed marketing plan that includes allocation of shelf space and brand location on shelves, and agree to inspections, reviews of inventory, and audits by the tobacco company.

**(543)** Another common practice is strategically locating tobacco-related marketing materials where young children will be exposed to them. Tobacco industry executives acknowledge that products and advertising should be placed at eye level, but in California, 48% of stores had at least one cigarette marketing item at or below 3 feet from the floor. Furthermore, almost 25% had cigarette displays next to candy.

**(543)** Nationally, a high proportion of tobacco shelving units (85%) and displays (93%) were located in the counter zone. The concentration of these types of merchandizing fixtures around the counter area suggests the important role played by packs and product displays in promoting sales.

**(600)** Research confirms that tobacco companies have sought to make their products easily visible and readily accessible to customers to stimulate impulse purchases and have entered into contractual agreements with retailers to secure placement of their products in highly visible locations around sales counters.

## **Tobacco Product Packaging**

**(488)** The cigarette pack itself is a form of marketing, with companies developing packaging designed to attract attention, appeal to specific consumers, reinforce brand identity, or suggest specific product qualities.

**(530)** Historically, a package's color has also helped to segment brands and establish brand identity. For example, silver and gold colors can be used to convey status and prestige, particularly for "premium" brands. Red packages and logos can convey excitement, strength, wealth, and power, while pastel colors are associated with freshness, innocence, and relaxation and are more common among brands that appeal to females.

**(530)** Research conducted by the tobacco industry consistently demonstrates that the brand imagery portrayed on packages is particularly influential during youth and young adulthood — the period in which smoking behavior and brand preferences develop. In many cases, initial brand preferences are based less on the sensory properties of using the product than on perceptions of the package and brand: "one of every two smokers is not able to distinguish in blind (masked) tests between similar cigarettes."

**(530-531)** Brand descriptors — words that appear on packs and are often incorporated into the brand name — can also promote brand appeal among target groups. For example, "slims" descriptors on packs promote beliefs about smoking and weight control — an important factor in smoking behavior among young women. In Canada, research conducted among young women and published in 2010 demonstrated that "slims" brand descriptors are associated with increased brand appeal and stronger beliefs that smoking is associated with thinness. Other brand names also capitalize on desirable associations with female fashion and sophistication, including names such as *Glamour* and *Vogue*.

**(531)** Tobacco companies have made extensive use of cigarette packages to influence consumer

perceptions about the potential risks of their products.

**(532)** From three recent studies that examined consumers' perceptions of color descriptors in Canada, the United Kingdom, and the United States, it appears that consumers perceive the color descriptors in the same way as the "light" and "mild" descriptors they replaced. For example, in one study more than three-quarters of U.S. adults surveyed indicated that a brand labeled as "silver" would have lower levels of tar and less health risk than a "full flavor" brand.<sup>3</sup>

**(599-600)** In addition to advertising and promotions, the tobacco industry has invested heavily in packaging design to establish brand identity and promote brand appeal. Research conducted by the tobacco industry and cited in this chapter has consistently demonstrated that brand imagery on packages is especially influential during adolescence and young adulthood, when smoking behavior and brand preferences are being developed. Color, words, and images on cigarette packs, as well as container shape and packaging material of smokeless tobacco products, have all been found to suggest specific product characteristics and reduce the perception of risk.

### *Price Promotions that Reduce the Cost of Tobacco Products*

**(ES 2-3)** With young smokers being more price-sensitive than older smokers, tobacco companies have increasingly focused attention on strategies that reduce the price of tobacco products.

**(488)** In 2008, the most recent year reported, expenditures on price discounts accounted for the largest single category [of marketing expenditures by cigarette companies] — nearly three-fourths of total expenditures. When other price-related discounts are included (coupons and free cigarettes from either sampling or retail-value-added promotions), spending on marketing practices that reduced cigarette prices

accounted for about \$6.00 of every \$7.00 (about 84%) spent on cigarette marketing in 2008.

**(491)** As with cigarettes, spending on price discounts accounts for the single largest share of [smokeless tobacco] marketing expenditures, at 59.3% in 2008. When other price-reducing marketing expenditures are added (including coupons, sampling distribution, and retail-value-added bonus products), a little less than \$3.00 of every \$4.00 (72.1%) currently spent on the marketing of smokeless tobacco products goes to reducing their price to consumers

**(527)** When retail prices rise following tax increases, companies engage in a variety of price-related marketing efforts that appear to be aimed at softening the impact of the increased prices. According to [researcher Dr. Frank] Chaloupka and colleagues, from their review of internal industry documents, these efforts have included increased distribution of coupons (through print ads, point-of-sale promotions, and direct mailings) and multipack discounts, often coupled with efforts to encourage smokers to express their opposition to an additional tax increase through mail or telephone campaigns targeting state and federal legislators.

**(527-528)** There is some evidence that the industry uses its pricing promotion strategies to respond to tobacco control efforts other than tax increases.... Specifically, [researchers] found that cigarette prices were lower in states with stronger state and local tobacco control policies, after accounting for differences in taxes, at least in part to offset the impact of these policies on tobacco use.

**(529)** A company that directly changes its prices will have a relatively broad impact, affecting a range of brands, and typically will be matched by other companies (particularly when the price change is made by the industry leader). In contrast, the use of price-reducing promotions can be more targeted, with promotions limited to particular brands, geographic regions, venues, or populations.



# Section III. The Effect



## Tobacco Marketing Increases Youth Tobacco Use

### The Evidence Is Clear that Tobacco Marketing Causes Youth Tobacco Use

**(ES-5)** Since the 1994 Surgeon General's report, considerable evidence has accumulated that supports a causal association between marketing efforts of tobacco companies and the initiation and progression of tobacco use among young people.... This body of evidence consistently and coherently points to the intentional marketing of tobacco products to youth as being a cause of young people's tobacco use.

**(8)** Advertising and promotional activities by tobacco companies have been shown to cause the onset and continuation of smoking among adolescents and young adults.

**(508)** [P]romotion and advertising by the tobacco industry causes tobacco use, including its initiation among youth. This conclusion has been buttressed by a multitude of scientific and governmental reports, and the strength of the evidence for causality continues to grow.

**(508)** A 2003 systematic review of the published longitudinal studies on the impact of advertising concluded "that tobacco advertising and promotion increases the likelihood that adolescents will start to smoke." Both the industry's own internal documents and its testimony in court proceedings, as well as widely accepted principles of advertising and marketing, also support the conclusion that tobacco advertising recruits new users during their youth.

**(508)** There is strong empirical evidence that tobacco companies' advertising and promotions affect awareness of smoking and of particular brands, the recognition and recall of cigarette advertising, attitudes about smoking, intentions to smoke, and actual smoking behavior. In fact, children appear to be even more responsive to advertising appeals than are adults.

**(508)** In addition, industry marketing efforts directed at young adults, which are permitted under the [Master Settlement Agreement], have indirect spillover effects on youth through young adults who are aspirational role models for youth.

**(512)** There is extensive scientific data showing (1) adolescents are regularly exposed to cigarette advertising, (2) they find many of these advertisements appealing, (3) advertisements tend to make smoking appealing, and (4) advertisements serve to increase adolescents' desire to smoke.

**(513)** There is strong and consistent evidence that marketing influences adolescent smoking behavior, including selection of brands, initiation of smoking, and overall consumption of cigarettes.

**(601)** Tobacco company expenditures have become increasingly concentrated on marketing efforts that reduce the prices of targeted tobacco products. Such expenditures accounted for approximately 84% of cigarette marketing and more than 77% of the marketing of smokeless tobacco products in 2008.


**(516)** [Research] findings suggest that after the Master Settlement Agreement, cigarette advertising continues to reach adolescents, that adolescents continue to be responsive to cigarette advertising, and that those who are responsive are more likely to initiate smoking.

**(517)** NCI's tobacco control monograph, *The Role of the Media in Promoting and Reducing Tobacco Use* (NCI 2008), also examined the evidence on how tobacco marketing efforts affect tobacco use among adolescents. Using numerous studies and tobacco industry documents, the report concluded that even brief exposure to tobacco advertising influences attitudes and perceptions about smoking and adolescents' intentions to smoke. In addition, the evidence showed that exposure to cigarette advertising influences nonsmoking adolescents to begin smoking and move toward regular smoking.

**(522)** The continuously accumulating evidence from the studies that have addressed the effect of advertising on smoking is consistent with a dose-dependent causal relationship.<sup>4</sup>

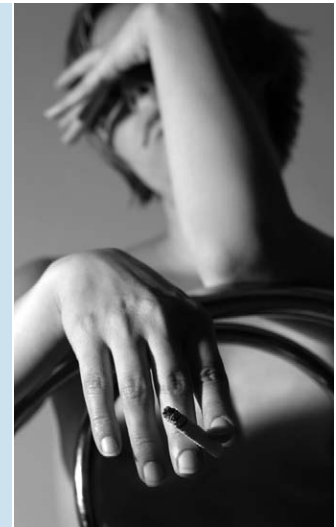
**(522)** Taking together the epidemiology of adolescent tobacco use, internal tobacco company documents describing the importance of new smokers, analysis of the design of marketing campaigns, the actual imagery communicated in the \$10-billion-a-year marketing effort, the conclusions of official government reports, and the weight of the scientific evidence, it is concluded that advertising and promotion has caused youth to start smoking and continue to smoke.

**(598)** [D]espite claims from cigarette manufacturers that marketing and promotion of their products are intended to increase market share and promote brand loyalty among adult



**(513)** There is strong and consistent evidence that marketing influences adolescent smoking behavior, including selection of brands, initiation of smoking, and overall consumption of cigarettes.

**(522) Taking together the epidemiology of adolescent tobacco use, internal tobacco company documents describing the importance of new smokers, analysis of the design of marketing campaigns, the actual imagery communicated in the \$10-billion-a-year marketing effort, the conclusions of official government reports, and the weight of the scientific evidence, it is concluded that advertising and promotion has caused youth to start smoking and continue to smoke.**



consumers, the evidence presented in this chapter is sufficient to conclude that marketing efforts and promotion by tobacco companies show a consistent dose-response relationship in the initiation and progression of tobacco use among young people.

### **Point of Sale Marketing Increases Youth Tobacco Use**

**(544)** [A] longitudinal study of more than 1,600 adolescents aged 11–14 years found that the odds of initiating smoking more than doubled for adolescents reporting that they visited the types of stores that contain the most cigarette advertising (convenience stores, liquor stores, and small grocery stores) two or more times a week.... [The study controlled for] risk factors typically associated with uptake of smoking such as smoking by family and friends.

**(544)** A systematic review of eight cross-sectional studies on the impact of tobacco promotion at the point of sale consistently found significant associations between exposure to point-of-sale tobacco promotions and initiation of smoking or susceptibility to that behavior.

**(545)** In conclusion, tobacco marketing at the point of sale is associated with the use of tobacco by youth. Because point-of-sale marketing is an important channel for the

tobacco companies, with very few restrictions, consumers, including children, are unavoidably exposed to prosmoking messages when they shop or when they are simply passing by stores.

### *Location of Retail Stores*

**(544-545)** Neighborhoods that are more densely populated with stores selling tobacco may promote adolescent smoking not only by increasing access but also by increasing environmental cues to smoke.

**(545)** In Chicago, Illinois, youth in areas with the highest density of retail tobacco outlets were 13% more likely to have smoked in the past month than those living in areas with the lowest density of outlets. In a California study, the prevalence of current smoking was higher in high schools with the highest density of tobacco outlets in their neighborhoods than in high schools in neighborhoods without any outlets; the density of retail cigarette advertising in school neighborhoods was also associated with smoking prevalence.

**(600)** The presence of heavy cigarette advertising in [convenience] stores has been shown to increase the likelihood of exposing youth to prosmoking messages, which can increase initiation rates among those exposed, particularly if stores are near schools.

**(601)** [R]esearch on the location of retail outlets selling cigarettes indicated that experimental smoking among youth was related to the density of tobacco outlets both in high school neighborhoods and in neighborhoods where youth live.

### *Tobacco Product Placement and Packaging*

**(530)** The brand imagery on cigarette packages is effective to the point that large majorities of youth — including nonsmoking youth — demonstrate high levels of recall for leading package designs.

**(543)** Two studies conducted in countries that ban cigarette advertising at the point of sale confirm that exposure of adolescents to pack displays is associated with increased intentions to smoke among youth.

**(544)** [I]n two experimental studies, students who saw photos of stores with tobacco displays and advertising were more likely to overestimate the percentage of adolescents and adults who smoke and to believe that tobacco is easier to buy than were those who saw photos without retail tobacco materials.

**(600)** Recent research suggests that even when terms such as “light” and “mild” are prohibited in tobacco packaging and advertising, a significant proportion of adult and youth smokers continue to report false beliefs about the relative risk of cigarette brands. Studies suggest that the use of lighter colors on cigarette packs to imply lightness, as well as replacement words such as “smooth,” have the same misleading effect as “light” and “mild” labels.

### *Reducing the Cost of Tobacco Products through Price Promotions*

**(523)** [Y]outh respond more than adults to price changes in terms of their use of tobacco.

**(528)** Given the greater price sensitivity of smoking among young people ... the industry’s targeted pricing and price-reducing promotion strategies will have their greatest impact on youth and young adults.

**(528)** [A] growing and increasingly sophisticated body of research has clearly demonstrated that tobacco use among young people is responsive to changes in the prices of tobacco products. Most of these studies have found that usage levels among young people change more in response to price changes than do usage levels among adults. This research includes studies that have looked at the consumption of cigarettes and smokeless tobacco products as well as various stages of cigarette smoking among youth and young adults.

**(530)** In considering the numerous studies demonstrating that tobacco use among young people is responsive to changes in the prices of tobacco products, it can be concluded that the industry’s extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions.



# Section IV.



## Effective Solutions for Ending the Tobacco Epidemic

**(857) The evidence is clear: we can prevent youth and young adults from ever using tobacco products. We can end the tobacco epidemic.**



### Implementing Tobacco Control Policies Can Help End the Tobacco Epidemic

**(ES-1)** [T]here are proven methods to prevent this epidemic from claiming yet another generation, if our nation has the will to implement those methods in every state and community.

**(ES-2)** With 99% of all first use of tobacco occurring by age 26, if youth and young adults

remain tobacco-free, very few people will begin to smoke or use smokeless products.

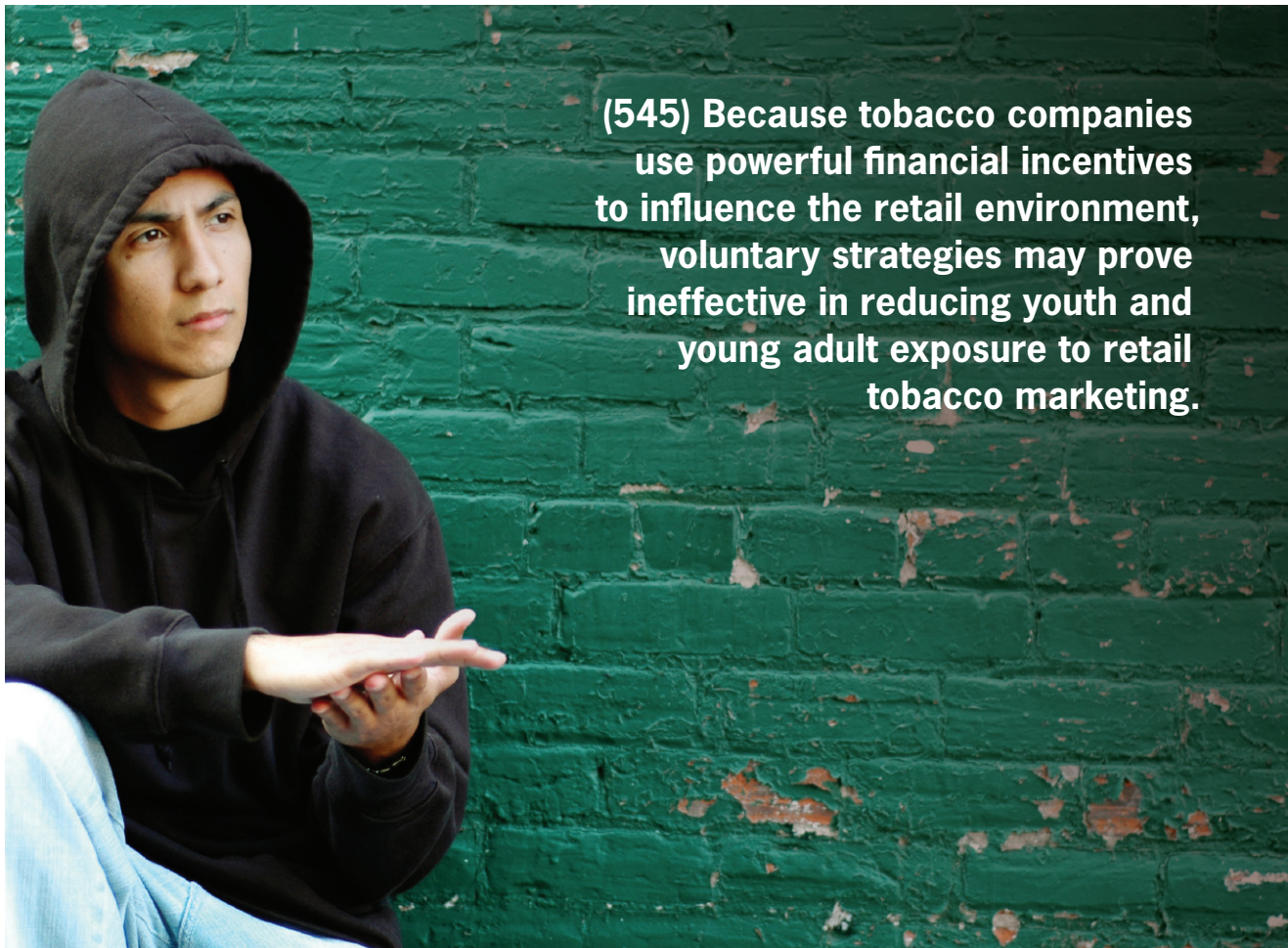
**(ES-7)** Numerous studies over many years have consistently concluded that comprehensive state tobacco control programs that include a range of coordinated and complementary strategies have been effective at not only reducing tobacco use by youth and young adults, but also have resulted in overall reductions in smoking prevalence and concomitant decreases in state spending on tobacco-related health care.

**(ES-7)** Greater consideration of further restrictions on ... promotional activities ... is warranted, given the gravity of the epidemic and the need to protect young people now and in the future.

**(545)** Research supports the policy option of regulatory control over the retail tobacco environment. Studies show that tobacco use is associated with both exposure to retail advertising, and relatively easy access to tobacco products.

**(545)** Policy options include limiting the use of the retail environment by tobacco companies to reach youth, including both potential and current users of its products.

**(854)** [D]ata suggest that rates of smoking among high school students could be reduced by more than 50% over the next decade and thus could be in the single digits by 2020 if all the evidence-based strategies defined in this report were implemented.



**(545) Because tobacco companies use powerful financial incentives to influence the retail environment, voluntary strategies may prove ineffective in reducing youth and young adult exposure to retail tobacco marketing.**

### **Comprehensive State-Level Tobacco Control Programs Work — But Adequate Funding is Required**

**(696)** [R]esults from statewide comprehensive tobacco control programs provide strong evidence that they reduce the prevalence of smoking by youth. To maintain their effectiveness, such programs need to be funded according to CDC recommendations in a sustained manner and include policy change, such as creation of smoke-free environments that reinforce a nonsmoking norm.

**(811)** Numerous studies over many years have consistently concluded that comprehensive state tobacco control programs that include a range of coordinated and complementary strategies have been effective at not only reducing

tobacco use by youth and young adults but also have resulted in overall reductions in smoking prevalence and concomitant decreases in state spending on tobacco-related health care. These comprehensive state tobacco control programs combine the strategies found to be most effective individually; these include mass media campaigns, increasing the price of tobacco products, establishing smokefree policies, and other programmatic and policy interventions that influence social norms, systems, and networks.

**(811)** [T]he evidence indicates that sustained programs combining mass media campaigns; price increases including those that result from tax increases; regulatory initiatives such as those that ban advertising to youth, restrictions on youth access to tobacco, and establishment of smokefree public and workplace environments; and statewide, community-wide,

and school-based programs and policies are effective in reducing the initiation, prevalence, and intensity of smoking among youth and young adults.

**(852)** Unfortunately, our national efforts to counter these influences have not kept pace in recent years, and funding for several of the boldest and most innovative statewide programs, in Florida, Massachusetts, Minnesota, Mississippi, Oregon, New York, and Washington, has been sharply reduced or virtually eliminated. Correspondingly, the overall level of investment in statewide tobacco control programs has declined since 2003. Exposure to counteradvertising, funded by states, is now only 3.5% of recommended levels.

**(853)** [T]he level of [state] investments [in comprehensive tobacco control programs] has since declined to \$643.1 million in 2010, only 17.7% of the investment level recommended by CDC's *Best Practices for Comprehensive Tobacco Control Programs — 2007*. Evidence indicates that states that have made larger investments in comprehensive tobacco control programs have seen the prevalence of smoking among adults and youth decline faster as investments levels increased. And yet, several of the states that were demonstrating the most progress in reducing youth smoking rates (among them California and New York) had their levels of funding severely reduced.

**(857)** Our best strategy for creating large, rapid declines is through coordinated, adequately funded multicomponent interventions rather than a single “silver bullet” program or policy.

# Section V.



## Policy Options for State and Local Governments That Impact Point-of-Sale Tobacco Marketing to Youth

The Surgeon General's Report documents that tobacco marketing at the point-of-sale — including advertisements, product placement strategies, and price discounts — is a major cause of youth tobacco use. It mentions several policy options that state and local governments could use to address tobacco marketing in retail stores. By adopting these measures, state and local governments could enhance the effectiveness of existing tobacco control programs. These policy options, which could be adopted separately or in combination with one another, should be seen as important additions to — and *not* substitutes for — well-funded, comprehensive tobacco control programs.

In considering the options explained below, communities should also assess whether their tobacco control laws need updating to include novel non-cigarette products, like hookahs, snus, and dissolvable products. Additionally, given the importance of a youthful customer base to the tobacco industry, another general option would be to raise the minimum legal sale age for tobacco products. The Tobacco Control Legal Consortium has publications discussing regulation of [non-cigarette tobacco products](#), including a [guide](#) with sample language. The Consortium also has a [policy guide](#) on raising the minimum legal age of sale for tobacco and related products.

### Option 1: Restrict the Number, Type, and Location of Tobacco Retailers

**(545)** The associations found between density of cigarette retail outlets and advertising and adolescent smoking, supported by studies linking the density of retail alcohol outlets and youth's alcohol use, support the recommendation of the Institute of Medicine to restrict the number and location of retail outlets for cigarettes in communities.

The Surgeon General's Report confirms that tobacco retail outlets, and the associated tobacco marketing and promotion found within them, have a significant impact on adolescent tobacco use. Reducing the number and regulating the location of these retailers is key to combating youth tobacco use. Specific regulatory policies might include the use of retail licensing schemes, zoning laws, or direct restrictions on the sale of tobacco.

#### *Retail Licensing*

A license is a mechanism through which a state or local government grants permission to do something such as drive a car or operate a business. Through the implementation of a licensing system for tobacco retailers, a state or local government may restrict the number, location and the type of retailers that are legally permitted to sell tobacco products in the jurisdiction.



**Number:** To address the pervasiveness of tobacco sales and marketing, a community might decide to limit the total number of tobacco retail licenses that will be issued.

**Location:** To protect children from exposure to tobacco marketing, a community could require that tobacco retailers be located a minimum distance from schools, playgrounds, and other youth-oriented facilities. To address the density of tobacco retailers and avoid creating situations where tobacco retailers are concentrated in certain areas, a community could also require minimum distances between tobacco retail locations.

**Type:** A licensing system could prohibit certain types of retail outlets from selling tobacco products. The Surgeon General's Report notes that pharmacies that sell tobacco products face an "incongruity between their primary role in health care and the negative effects of tobacco products on health." Several localities in Massachusetts and California have already prohibited tobacco sales by pharmacies.<sup>5</sup>

**Additional Conditions:** A license may also require tobacco retailers to comply with other laws. For example, a license could be specifically conditioned on compliance with existing laws regarding youth access to tobacco products, or it could be tied to new restrictions on tobacco product marketing, including advertising.<sup>6</sup> A licensing system provides a community with a powerful enforcement tool — retailers who violate the conditions of the license could lose the privilege of selling tobacco products.

Licensing systems can be adopted at the state and local level in most areas.<sup>7</sup> Licenses have been used to regulate many types of businesses; thus, in most communities, it is a familiar regulatory device. Moreover, a fee may be imposed on licensees to cover the costs of administering and enforcing the licensing system, making it economically feasible. In sum, a license may provide a comprehensive and practical way for a community to regulate the number, type and location of tobacco retailers.

The Tobacco Control Legal Consortium has several resources about tobacco licensing policies, available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

## *Zoning Laws*

**(544)** Local zoning laws may be used to limit the total number of tobacco outlets as a way of reducing the availability of cigarettes and the visibility of cigarette ads; these laws may also require that tobacco outlets be located away from areas frequented by children. Studies that have linked the density of alcohol outlets around college campuses to higher rates of drinking and higher levels of adolescent drinking and driving have set a precedent for the use of zoning laws to reduce adolescent smoking.

Zoning laws (also referred to as land use regulations) may also be an effective tool for regulating the number and location of tobacco retailers.

The purpose of zoning laws is to regulate the use of land within a particular jurisdiction, such as a town, city, or county. A jurisdiction is generally organized into particular districts or zones, and the law identifies specific uses that are permitted within each zone. These uses might be permitted "as-of-right" (e.g., a single family home in a residential district) or might be allowed as a conditional use. A landowner must apply for a special permit (a "conditional use permit") before using his or her land for a purpose identified as a conditional use.

A zoning law could identify tobacco sales as a conditional use and require a conditional use permit before a new tobacco retail outlet could be established. The law could also set eligibility

requirements for issuing a permit. For example, a law could require new tobacco retailers to locate a certain distance away from residential zones, schools or other areas frequented by youth, or from other tobacco retailers. A zoning ordinance could also limit the number of conditional use tobacco retailing permits that could be granted. In this manner, a local government might, over time, reduce the number, density, and location of tobacco retailers within its jurisdiction.

Zoning law is generally a prospective policy solution. Because of legal constraints, it may be difficult to retroactively apply zoning restrictions to currently operating tobacco retailers. Over time, however, as new businesses replace the older ones, the zoning ordinance would have increasing impact.

The Consortium has additional resources explaining how zoning can be used to regulate tobacco retailers, available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

### *Direct Regulation*

Under the 2009 Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), state and local governments maintain the authority to regulate the sale and distribution of tobacco products.<sup>8</sup> Thus, a state or local government could directly limit the type of retailers that are allowed to sell tobacco products. For example, a law might specifically prohibit pharmacies or other health care facilities from selling tobacco products. In this manner, governments could address the contradictory messages sent by pharmacies when they offer tobacco products alongside pharmaceutical products meant to address illnesses caused or exacerbated by tobacco use. At the same time, prohibiting tobacco sales by pharmacies can produce an immediate reduction in the number and the density of tobacco retailers.

## **Option 2: Restrict the Placement of Tobacco Products in Retail Stores**

**(545)** Efforts to restrict the exposure of U.S. children to the marketing of tobacco products have been uneven.... Comprehensive bans on tobacco advertising and product displays at the point of sale, such as those in Iceland, Ireland, Thailand, and several Canadian provinces, are notable examples of a stronger approach.

As described in Section III, the retail environment is a key focus — indeed, *the* key focus — of the tobacco industry’s marketing efforts. Specifically, product placement techniques are highly engineered to attract youth and influence youth tobacco use. One way to reduce the effect of point-of-sale marketing is to restrict the placement of tobacco products. Such a measure could require tobacco products to be kept under the counter, in a closed and opaque cabinet, or otherwise out of view until a customer of legal age makes a purchase or asks to inspect a product.

As noted above, product placement restrictions have been implemented in many countries. These countries have seen a reduction in youth smoking rates after the implementation of such restrictions. Moreover, while groups that opposed the implementation of these restrictions predicted dire consequences for tobacco retailers, those predictions have not materialized.<sup>9</sup> In fact, convenience store owners have reported no immediate economic effect on their businesses.<sup>10</sup> Rather, any impact is expected to be gradual as the placement restrictions reduce usage rates over time.

Until the enactment of the Tobacco Control Act, state and local governments were preempted from enacting regulations restricting the advertising and promotion of cigarettes. However, the Tobacco Control Act granted state and local governments the authority to “enact statutes and promulgate

regulations, based on smoking and health ... imposing specific bans or restrictions on the time, place and manner, but not content, of the advertising or promotion of any cigarettes.”<sup>11</sup> To the extent that product placement might be considered “promotion” under the federal law, a restriction on product placement at the point-of-sale would be a regulation of the “place” and/or “manner” of cigarette promotion and, as such, should be permissible.

Opponents of laws restricting the placement of tobacco products may claim that such measures violate the First Amendment’s protection of commercial speech. While it is not clear that the First Amendment would even apply to product placement restrictions, communities may want to consider enacting laws that restrict tobacco product placement — which has been shown to contribute to youth tobacco use — but do not otherwise restrict advertising at the point-of-sale. While broad restrictions on advertising likely would be more effective, a restriction that focuses only on product placement more clearly complies with the Supreme Court’s First Amendment case law.

The Consortium has several additional resources about tobacco product placement regulations and about the First Amendment, including a [guide](#) and [synopsis](#) about product placement policies, and a synopsis explaining the role of the First Amendment in tobacco marketing regulation. These and other related publications are available at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

### **Option 3: Pricing Restrictions**

**(699)** [I]ncreases in cigarette prices lead to substantial reductions in cigarette smoking. The consensus estimate from [two recent reviews of the literature on the impact of price on tobacco consumption] is that a 10% increase in cigarette price will result in a 3–5% reduction in overall cigarettes consumed. Second, increases in cigarette prices will decrease not only the prevalence of smoking but also the average number of cigarettes smoked by smokers. Third, a majority of the previous research on cigarette consumption among youth suggests that both youth and young adults are more responsive than adults to changes in cigarette prices, with several studies finding youth and young adults to be two to three times as responsive to changes in price as adults.

Congress and state governments (as well as some local governments) have imposed taxes on tobacco products that benefit public health by reducing tobacco consumption.<sup>12</sup> In response, tobacco companies have crafted innovative price-reducing strategies to retain current users and recruit new ones. These strategies include the use of coupons and multi-pack offers, as well as payments to retailers and wholesalers designed to reduce retail tobacco prices. Local communities could directly regulate these price promotions, or they could amend their minimum price laws to address this issue.

#### *Regulation of Price Promotions*

State and local governments can directly regulate the use of pricing promotions. By doing so, they can keep the price of tobacco products higher, thereby reducing tobacco use. These regulations could come in the form of restrictions on coupon redemption, on the use of multi-pack and cross-promotions (where one tobacco product is included with the purchase of another tobacco product), or on promotional payments to retailers and wholesalers. A combination approach may be the most beneficial so that industry resources are not simply redirected to alternative price reduction strategies.

Under the Tobacco Control Act, state and local governments have the authority to regulate the time, place and manner of cigarette promotions, but not the content of those promotions.<sup>13</sup> Thus, any

restriction on price promotions should be drafted narrowly so that it clearly restricts only the “manner” or type of promotion, and not the content of any advertisement. Similarly, to minimize potential First Amendment concerns, such restrictions should avoid restricting the content of promotional speech and should focus on prohibiting certain types of transactions.<sup>14</sup>

As an initial step or as part of a comprehensive approach to address price promotions, a community also may find it useful to require the reporting of price promotion payments made to or received by tobacco retailers within its borders through what is often called a “sunshine” law. The Consortium has created a [guide](#) with more information about this type of disclosure law. The Consortium also has published a [legal synopsis](#) about state and local tobacco pricing regulations, and an introductory [fact sheet](#) about tobacco price-related promotions.

### *Minimum Prices*

Many states have minimum price laws that prohibit retailers from selling tobacco products for less than a specified minimum price. Existing minimum price laws primarily regulate the price of cigarettes only, however, and many have loopholes that allow discounting mechanisms to reduce actual prices below the minimum set by the law (the statutory minimum). By way of example, New York State’s Cigarette Marketing Standards Act provides a specific formula for calculating the minimum price at which cigarettes may be sold. This law prohibits retailer or wholesaler price discounts that reduce the price of cigarettes below the statutory minimum, but it does not prohibit the use of coupons or other discounting strategies that also cause cigarette prices to fall below the statutory minimum. This kind of law could be strengthened by limiting or prohibiting price discounting mechanisms such as coupons, multipack discounts, and cross-promotions that reduce the price of an individual product below the statutory minimum. The Consortium has a [guide](#) that explains more about minimum price laws.

## **Conclusion**

Tobacco companies spend approximately 90% of their marketing dollars on point-of-sale promotion and price discounts. They invest billions at the point-of-sale because they know that their marketing pays off in the form of new, young customers who, because of the powerful addictive properties of nicotine, are likely to be life-long tobacco users.

The Surgeon General’s report makes it clear that tobacco marketing — and marketing at the point-of-sale in particular — is increasing youth tobacco use rates. But the Report also demonstrates that by adequately funding comprehensive tobacco control programs and by supporting efforts to restrict point-of-sale marketing, state and local governments can deprive the industry of its “replacement” consumers.

The policies described in this section can be used by state and local governments to reduce youth exposure to manipulative tobacco marketing and to improve public health in measurable ways. For more information about these and other tobacco control policies, please visit the Tobacco Control Legal Consortium’s website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) or contact the Consortium directly.

## Endnotes

- <sup>1</sup> Aortic atherosclerosis is the hardening of the aorta, the largest artery in the body, due to plaque formation. Aortic atherosclerosis reduces blood flow to vital organs, including the lungs, and it is also a cause of heart disease and strokes.
- <sup>2</sup> The endothelium is the inner lining of blood vessels. Endothelial dysfunction immediately precedes the development of atherosclerosis, and may itself be a cause of heart disease and strokes.
- <sup>3</sup> For decades tobacco companies marketed “light” and “mild” cigarettes as less harmful alternatives to regular cigarettes, even though they knew that there was no evidence that these cigarettes were in fact safer. *United States v. Philip Morris*, 449 F. Supp. 2d 1, 560 (2006). In 2009, the Family Smoking Prevention and Tobacco Control Act prohibited the use of descriptors such as “light” and “mild” on cigarette packages. In response to this restriction, tobacco companies have switched to using colors as brand identifiers. For example, cigarettes that were formerly “Marlboro Ultra Lights” are now sold as “Marlboro Silver.”
- <sup>4</sup> A dose-dependent relationship means that the impact of tobacco advertising is directly linked to the amount of exposure to such advertising.
- <sup>5</sup> A prohibition on tobacco sales by pharmacies could be enacted through direct regulation as well as through a licensing law.
- <sup>6</sup> Limits on advertising and marketing could raise First Amendment concerns, as discussed below.
- <sup>7</sup> Certain states may restrict the authority of local communities to regulate business, so any municipality exploring this option should be aware of existing laws.
- <sup>8</sup> 21 U.S.C. § 387p (2012).
- <sup>9</sup> Casey Quinn et al., *Economic Evaluation of the Removal of Tobacco Promotional Displays in Ireland*, 20 *TOBACCO CONTROL* 151 (2011) (finding no economic impact on retail stores in Ireland in the year after the implementation of a display restriction).
- <sup>10</sup> See David Rees, *Living in the Dark*, *CONVENIENCE STORE* (U.K.), Jan 18, 2012, available at <http://www.conveniencestore.co.uk/advice/retail-advice/your-business/living-in-the-dark/225208.article>.
- <sup>11</sup> 15 U.S.C. § 1334 (2012).
- <sup>12</sup> The Consortium has a [fact sheet](#) and other publications relating to tobacco tax policy options available on its website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).
- <sup>13</sup> 15 U.S.C. § 1334 (2012).
- <sup>14</sup> The First Amendment of the United States Constitution provides some protection for commercial speech, but the protection is not absolute.



## About the Tobacco Control Legal Consortium

The [Tobacco Control Legal Consortium](#) is a network of legal programs supporting tobacco control policy change throughout the United States. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Our legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support.

## The Hazards of Smoking

- Addiction
- Nicotine Levels
- Light Cigarettes
- Marketing to Youth
- Secondhand Smoke
- Suppression of Information

## The Verdict Is In: Findings from *United States v. Philip Morris*



Tobacco Control  
Legal Consortium



Law. Health. Justice.

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## Introduction

“The debate is over.” That’s what the Surgeon General said upon releasing the landmark 2006 Surgeon General’s Report on the hazards of secondhand smoke. Now another debate is over. The historic legal decision from which this publication is drawn—the Final Opinion in *United States v. Philip Morris*, the government’s massive racketeering case against cigarette manufacturers—lays to rest any lingering doubt about who’s behind the global tobacco epidemic.

After six years of litigation, nine months of trial, hundreds of depositions and thousands of exhibits, the verdict is in. A highly-respected impartial jurist, the Honorable Gladys Kessler of the United States District Court for the District of Columbia, has studied the evidence and rendered the definitive ruling on the tobacco industry’s fifty-year conspiracy to defraud America and the world. Importantly, the ruling strips away the pretense that these companies have reformed their ways. In one area after another, the Court finds, the fraud continues to this day.

Judge Kessler’s monumental Opinion is a masterpiece of legal scholarship: clear, thorough and compelling. Its only shortcoming is its length. With so much deceit to chronicle, the Opinion is longer than a Russian novel—more than 1700 pages, in fact. Its heft alone is enough to deter most readers. That’s why we’ve prepared this publication, a distillation of verbatim excerpts from the decision, to equip policymakers, health advocates and the public with the facts about the tobacco companies and their executives: what they knew, when they knew it, and how they continue to mislead the public and manipulate public policy. We hope that, armed with the evidence, we’ll all have a better chance at undoing the havoc these companies have created.

A handwritten signature in black ink, appearing to read "D. Douglas Blanke", with a stylized flourish at the end.

D. Douglas Blanke  
Executive Director  
Tobacco Control Legal Consortium

## Guidelines for the Reader

**The Verdict Is In: Findings from United States v. Philip Morris** is a compilation of select quotes from 1,259 pages of Findings in a legal document over 1,700 pages long. Our goal in preparing this compilation has been to extract highlights of the Court's Findings that help tell the story in a direct and easily understandable way. The full text of the Court's 1700-page Final Opinion is available at <http://www.tobaccolawcenter.org/dojlitigation.html>.

We have taken great care in quoting verbatim and in chronological order from the Court's Opinion. Occasionally, we have used brackets to insert additional clarifying information in a quote, such as the full name or title of a company or individual. At times, photo cutlines include minor paraphrasing. Throughout this compilation process, we have used the following editorial conventions in quoting material and citing sources.

### Defendants and their Acronyms

The eleven defendants in this case are:

- Philip Morris, Inc., now Philip Morris USA, Inc. ("Philip Morris")
- R. J. Reynolds Tobacco Co., now Reynolds American ("R.J. Reynolds" or "RJR")
- Brown and Williamson Tobacco Co., now part of Reynolds American ("Brown & Williamson" or "B&W")
- Lorillard Tobacco Company ("Lorillard")
- The Liggett Group, Inc. ("Liggett")
- American Tobacco Co., merged with Brown & Williamson, which is now part of Reynolds American ("American Tobacco")
- Philip Morris Cos., now Altria ("Altria")
- B.A.T. Industries p.l.c. ("BAT Ind."), now part of BATCo, British American Tobacco (Investments) Ltd. ("BATCo")
- The Council for Tobacco Research—U.S.A., Inc. ("CTR")
- The Tobacco Institute, Inc. ("TI")

### Numbered Paragraphs

The Court's Findings are in the form of numbered paragraphs. We have retained the original paragraph numbers to assist readers who may wish to find an excerpt in its original context in the full Final Opinion.

### Ellipses

Whenever we have omitted a word or words within a paragraph, we have used ellipses, following the rules of legal citation found in *THE BLUE BOOK* (18<sup>th</sup> ed., 2005) (Rule 5.3). Since we are quoting selectively throughout the document, we do not use ellipses at the beginning of paragraphs if the first sentence we're quoting is not the first sentence in the paragraph.

### Endnotes and Footnotes

In the interest of readability, we have moved internal legal citations to Endnotes at the back of this publication. These Endnotes have numbers unique to this document. The Court's Findings, in their original form, also contain occasional numbered footnotes. In the few instances where we have quoted an excerpt containing one of the Court's footnotes, we have placed the footnote at the bottom of the page, designating it with an asterisk.

# The Hazards of Smoking

## Defendants Have Falsely Denied, Distorted and Minimized the Significant Adverse Health Consequences of Smoking for Decades

### Summary

In this section of the Opinion, Judge Kessler explains that the evidence shows that the Defendants knew for fifty years or more that cigarette smoking caused disease, but repeatedly denied that smoking caused adverse health effects. Judge Kessler describes the Defendants' efforts during this time to attack and discredit the scientific evidence of a link between cigarette smoking and disease.

**509.** Cigarette smoking causes disease, suffering, and death. Despite internal recognition of this fact, Defendants have publicly denied, distorted, and minimized the hazards of smoking for decades. The scientific and medical community's knowledge of the relationship of smoking and disease evolved through the 1950s and achieved consensus in 1964. However, even after 1964, Defendants continued to deny both the existence of such consensus and the overwhelming evidence on which it was based.

### 1. Cigarette Smoking Causes Disease

**510.** Cigarette smoking and exposure to secondhand smoke (also known as environmental tobacco smoke or "ETS") kills nearly 440,000 Americans every year.<sup>1</sup>

### 2. Scientific Research on Lung Cancer up to December 1953

**a. Scientists Investigating the Rise in the Incidence of Lung Cancer Linked Smoking and Disease before 1953**

**538.** Virtually unknown as a cause of death in 1900, by 1935 there were an estimated 4,000 deaths annually attributed to lung cancer.<sup>2</sup>

**539.** The rise in lung cancer had followed the dramatic increase in cigarette consumption which began early in the twentieth century.<sup>3</sup>

**541.** As early as 1928, researchers conducting a large field study associated heavy smoking with cancer.<sup>4</sup>

**547.** From their data from lung cancer patients and a control group in late 1948 and early 1949, it became clear to [Sir Richard] Doll and [Bradford] Hill [of the Medical Research Council, a unit of the National Health Service in the United Kingdom] that cigarettes were the crucial factor in the rise of lung cancer. . . . The findings were impressive: among the 647 lung cancer patients in Doll and Hill's study, all 647 were smokers.<sup>5</sup>

**b. By 1953, Defendants Recognized the Need for Concerted Action to Confront Accumulating Evidence of the Serious Consequences of Smoking**

**558.** The studies connecting smoking and lung

**“The results of 34 different statistical studies show that cigarette smoking increases the risk of developing lung cancer. Many authorities believe the relationship to be one of cause-and-effect.”**

R. J. Reynolds scientist Alan Rodgman in 1962



cancer were receiving attention outside the scientific community by 1953. For example, published reports like a Readers’ Digest article titled “Cancer by the Carton” shared the scientific findings in national media, creating public concern.<sup>6</sup>

**563.** While continuing to insist that there was no indication that cigarettes were unsafe, Defendants moved aggressively to market products which they implied were safer.

### **3. Developments Between 1953 and 1964**

#### **a. Between 1953 and 1964, the Evidence Demonstrating that Smoking Causes Significant Adverse Health Effects Grew Although No Consensus Had Yet Been Reached**

**574.** Given this diversity of views amongst respected and independent scientists, the Court does not find, as the Government has argued, that, as of the mid-1950s, a consensus had yet been reached on whether cigarette smoking “caused” – in the precise scientific meaning of that term – cancer.

**581.** In 1961, the editors of The New England Journal of Medicine stated that . . . :  
. . . most of the evidence is statistical and demonstrates a close association between heavy cigarette smoking and lung cancer. . . . Many conscientious observers believe that there are strong indications in favor of a causal relation in the vast majority

of cases. . . . Others remain unconvinced. . . . Each individual must choose his own course, whether to woo the lady nicotine or abjure the filthy weed, while the search for truth continues.<sup>7</sup>

**593.** In sum, by the early 1960s, the view of the scientific community had reached the conclusion that the evidence supporting a causal relationship between smoking and lung cancer was sufficiently established and recognized – albeit not to a scientific certainty – that it was appropriate to warn the public of the dangers it faced.

#### **b. Before 1964, Defendants Internally Recognized the Growing Evidence Demonstrating that Smoking Causes Significant Adverse Health Effects**

**594.** Internal documents reveal that Defendants’ knowledge of the potential harm caused by smoking was markedly different from their public denials on the same subject. Defendants specifically recognized the validity of the growing body of scientific evidence that existed in the 1950s.

**603.** In 1962, [R. J. Reynolds (RJR) scientist Alan] Rodgman offered his assessment of “the smoking and health problem”:

. . . The results of 34 different statistical studies show that cigarette smoking increases the risk of developing lung cancer. Many authorities believe the relationship to be one of cause-and-effect.<sup>8</sup>

**604.** Despite these writings, in 1995, Dr.

Rodgman stated under oath that, as of 1962, he disagreed that it was “more likely than not that cigarette smoking caused health problems.”<sup>7</sup> This explanation is in direct contradiction to the clear wording of his own documents, set forth above, written 40 years before his 1995 testimony. Moreover, Dr. Rodgman had a financial incentive to offer favorable testimony to RJR when he testified. . . . Dr. Rodgman’s recantation of the extensive analysis and findings of his research of the late 1950s and 1960s is patently not credible.

**c. In the 1950s, Defendants Began Their Joint Campaign to Falsely Deny and Distort the Existence of a Link Between Cigarette Smoking and Disease, Even Though Their Internal Documents Recognized Its Existence**

**625.** Internally, Defendants acknowledged that, as William Kloefer, Vice President of Public Relations for the Tobacco Institute wrote to Earle Clements, President of the Tobacco Institute:

Our basic position in the cigarette controversy is subject to the charge, and may be subject to a finding, that we are making false or misleading statements to promote the sale of cigarettes.<sup>9</sup>

**636.** Defendants recognized – and used – the denial and rationalization used by smokers. In a memo to Joseph F. Cullman of Philip Morris, George Weissman, Executive Vice President Overseas (International), described how, in response to the 1964 Surgeon General’s Report, “we must in the near future provide some answers which will give smokers a psychological crutch and a self-rationale to continue smoking.” Among the “crutches” and “rationales” proposed to be offered to the smokers were questions of medical causation, “that more research is needed,” and that there are “contradictions” and “discrepancies.”<sup>10</sup>

**4. The 1964 Surgeon General’s Report Represented a Scientific Consensus that Smoking Causes Disease**

**5. Post-1964 Research on the Adverse Health Effects of Smoking and Defendants’ Persistent Denials Thereof**

**a. Following Publication of the 1964 Report, the Scientific Community Continued to Document the Link Between Smoking and an Extraordinary Number of Serious Health Consequences**

**b. Defendants’ Internal Documents and Research from the 1960s, 1970s, and Beyond Reveal Their Continued Recognition That Smoking Causes Serious Adverse Health Effects and Their Fear of the Impact of Such Knowledge on Litigation**

**664.** By at least January 1964, with the issuance of the Surgeon General’s 1964 Report, Defendants knew there was a consensus in the scientific community that smoking caused lung cancer and other diseases. Despite that fact, they publicly insisted that there was a scientific controversy and disputed scientific findings linking smoking and disease knowing their assertions were false.

**672.** In the 1960s, RJR established a facility [nicknamed the “Mouse House”] in Winston-Salem, North Carolina, which used mice to research the health effects of smoking.

**673.** Research done in RJR’s science and health group located at the Mouse House was routinely withheld from the scientific community – scientists were forbidden to both discuss and publish their findings.<sup>11</sup>

**674.** As a result of the Mouse House work, RJR was aware that smoking was linked to emphysema. After extended exposure to smoke, the animals suffered weight loss and changes in metabolism of lipids both in surfactant and in lung and liver.<sup>12</sup>

**677.** In 1970, Philip Morris’s President complained to RJR about the work going on in the Mouse House. Despite the progress made there, RJR responded to the complaint by abruptly



closing the Mouse House – disbanding the entire research division in one day, without giving notice to the staff, firing all twenty-six scientists at the Mouse House, and destroying years of smoking and health research.<sup>13</sup>

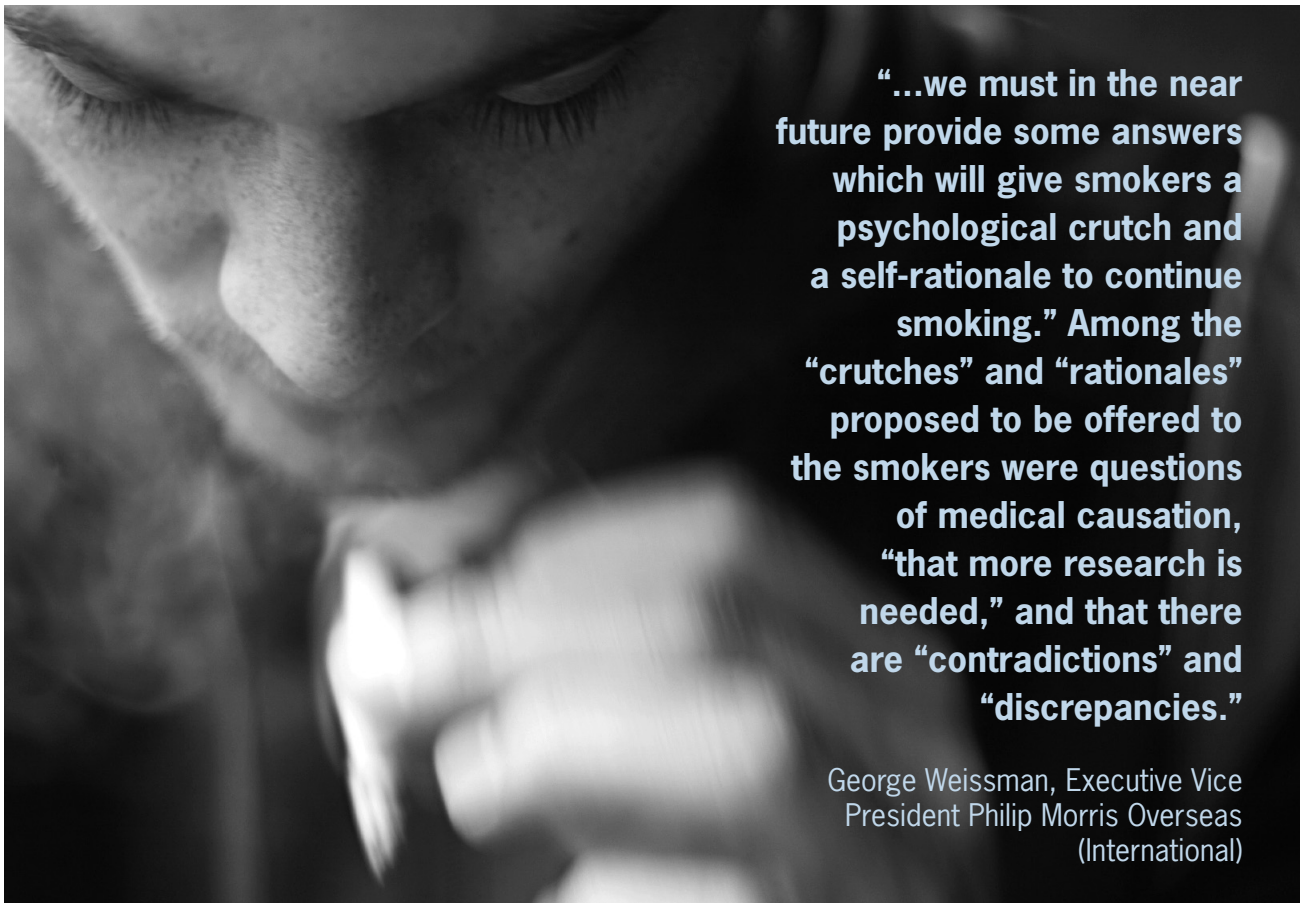
**686.** In 1980, [tobacco-funded Harvard researcher Dr. Gary] Huber sought to continue his smoking and health research on animals at a time when he was making significant progress, but Defendants cut off funding for his research at Harvard and denied his request for funding after he moved later that year to the University of Kentucky. In a 1980 meeting, Defendants' attorneys told Huber that the reason funding for his research had been discontinued was because he was "getting too close to some things."<sup>14</sup>

**688.** When Huber was subpoenaed by the State of Texas to testify in its case against the Defendants in 1997, lawyers for Defendants . . . contacted him and urged him "to keep the faith, to hold the line."<sup>15</sup> The attorneys implied to Huber that he

did not "fully appreciate the full weight of . . ." representatives of the tobacco industry. The calls caused Huber to fear for the safety and financial security of his family.<sup>16</sup> Huber perceived a clear message: Defendants wanted to keep him silent.<sup>17</sup>

**697.** In 1974, David Hardy of [the law firm of] Shook, Hardy & Bacon advised [British American Tobacco (Investments) Ltd. (BATCo)] against admitting to the public what its scientists knew internally – that smoking causes disease. At the time, BATCo was considering placing a warning on cigarette packages sold in England – with no government attribution – that stated that smoking "causes lung cancer, bronchitis, heart disease." In a letter addressed to BATCo, Hardy advised that this admission of fact would impede the defense of smoking and health litigation in the United States.<sup>18</sup>

**699.** In 1980, in a confidential memo analyzing BAT public positions and their impact on [Brown & Williamson's] stance in litigation, BATCo internally



**"...we must in the near future provide some answers which will give smokers a psychological crutch and a self-rationale to continue smoking." Among the "crutches" and "rationales" proposed to be offered to the smokers were questions of medical causation, "that more research is needed," and that there are "contradictions" and "discrepancies."**

George Weissman, Executive Vice President Philip Morris Overseas (International)

admitted: "It is simply incorrect to say, 'There is still no scientific proof that smoking causes ill-health.'" <sup>19</sup>

**c. Despite their Internal Knowledge, Defendants Continued, From 1964 Onward, to Falsely Deny and Distort the Serious Health Effects of Smoking**

**725.** In an August 10, 1967 RJR memorandum from J.S. Dowdell to C.B. Wade, Dowdell acknowledged:

Despite the fact that the industry has very little, if any, positive evidence upon which to base the aggressive campaign necessary at this late date to materially change public opinion, public attitudes can be changed . . . [T]he unfavorable opinion on the hazards of smoking will remain definitely high, and will not shift in a favorable direction, until positive action is taken by the industry to counter the anti-smoking propaganda and publicity. <sup>20</sup>

**736.** During [a] televised interview, [Philip Morris President Joseph] Cullman falsely denied that cigarettes posed a hazard to pregnant women or their infants: "[I]t's true that babies born from women who smoke are smaller, but they are just as healthy as the babies born to women who do not smoke. Some women would prefer to have smaller babies." <sup>21</sup>

**743.** Defendants issued scathing comments about official reports demonstrating the adverse health effects of smoking. For example, a February 26, 1972 Tobacco Institute press release asserted that the 1972 Surgeon General's Report on the Health Consequences of Smoking "insults the scientific community" and that the report was "another example of 'press conference science' -- an absolute masterpiece of bureaucratic obfuscation." <sup>22</sup>

**758.** One year prior to the release of the 1979 Surgeon General's Report on Smoking and Health, Defendants started planning their response to what they expected it to say. That response



**A February 26, 1972 Tobacco Institute press release asserted that the 1972 Surgeon General's Report on the Health Consequences of Smoking "insults the scientific community" and that the report was "another example of 'press conference science' -- an absolute masterpiece of bureaucratic obfuscation."**

included establishing a task force to write and publish a rebuttal paper. Rather than have scientists evaluate the evidence or the Report's findings, once they were issued, the Tobacco Institute assigned a public relations staff member to research, write, and edit the rebuttal paper. <sup>23</sup>

**780.** The Tobacco Institute . . . purported to review the testimony given at the 1982 and 1983 Congressional tobacco labeling hearings and stated:

Thirty nine scientists presented testimony against proposals in the bills. . . . Fifteen witnesses explained why they consider the hypothesis that cigarette smoking causes lung cancer to be unproven. . . . Witnesses also questioned the assertion that cigarette smoking causes emphysema in particular and chronic obstructive lung disease (COPD) in general.

The report failed to disclose that most of these scientific witnesses were tobacco industry consultants who were receiving funding from the lawyers' Special Account No. 4. <sup>24</sup>



**784.** In January 1990, RJR's Public Relations Manager wrote in a letter to the principal of a grade school and one of the school's students: . . . ["Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking."]<sup>25</sup>

## **6. As of 2005, Defendants Still Do Not Admit the Serious Health Effect of Smoking Which They Recognized Internally Decades Ago**

**796.** In April 1994, in the now-famous congressional hearings before the United States House of Representatives' Subcommittee on Health and the Environment, Defendants' executives asserted yet again that the causal relationship of smoking and cancer had not been proven: the CEOs of Defendants [Brown & Williamson (B&W)], Liggett, Lorillard, Philip Morris USA, and RJR publicly denied that smoking caused cancer.<sup>26</sup>

**799.** [Thomas Sandefur, CEO of B&W from 1993-1996] stated that he did not agree with the Surgeon General's conclusion that smoking causes cancer, heart disease, and other diseases because, as he stated, "[t]hey're not dealing with whole smoke. They're dealing with painting of mice and that kind of thing. I don't think that's valid in terms of human practices of smoking whole smoke."<sup>27</sup>

**811.** Although Philip Morris recognized the "overwhelming medical and scientific consensus," regarding the causation of disease by cigarette smoking in 1999, it did not state its agreement with that consensus until October 2000.<sup>28</sup>

**821.** Two years after the effective date of the Master Settlement Agreement, in 2000, B&W told visitors to its website: "We know of no way to verify that smoking is a cause of any particular



**They mounted a coordinated, well-financed, sophisticated public relations campaign to attack and distort the scientific evidence demonstrating the relationship between smoking and disease, claiming that the link between the two was still an "open question."**

person's adverse health or why smoking may have adverse health effects on some people and not others."<sup>29</sup>

## **7. Conclusions**

**824.** From at least 1953 until at least 2000, each and every one of these Defendants repeatedly, consistently, vigorously – and falsely – denied the existence of any adverse health effects from smoking. Moreover, they mounted a coordinated, well-financed, sophisticated public relations campaign to attack and distort the scientific evidence demonstrating the relationship between smoking and disease, claiming that the link between the two was still an "open question." Finally, in doing so, they ignored the massive documentation in their internal corporate files from their own scientists, executives, and public relations people that, as Philip Morris's Vice President of Research and Development, Helmut Wakeham, admitted, there was "little basis for disputing the findings [of the 1964 Surgeon General's Report] at this time."

## Endnotes

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- 2 VXA1601844-2232 at 1986 (US 64057) (1964 Surgeon General Report); Brandt WD, 31:16-32:1.
- 3 VXA1601844-2232 at 1895-1898 (US 64057) (1964 Surgeon General Report); Brandt WD, 32:2-17; Samet TT, 9/29/04, 01031:13-01033:25.
- 4 2060544267-4274 (US 39010) (Lombard, Herbert L. and Carl R. Doering, Cancer Studies in Massachusetts: Habits, Characteristics and Environment of Individuals With and Without Cancer, New England Journal of Medicine, 196.10: 481-487 (1928)); Brandt WD, 33:14-34:13.
- 5 TIMN0145510-5519 (US 62855) (Doll & Hill, Smoking and Carcinoma), supra; Brandt WD, 42:1-44:2.
- 6 03358234-8235 (US 46459); Brandt WD, 48:1-18. . . .
- 7 (no bates) (JD 020447).
- 8 504822847-2852 at 2847-2848, 2850-2852 (US 20735) (emphasis in original); Brandt WD, 96:14-99:4.
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- 10 1005038559-8561 at 8559-8560 (US 20189).
- 11 [Bumgarner PD, Texas v. American Tobacco, 11/11/86, 35:3-38:18.]
- 12 Id. at 63:17-66:15, 68:14-20.
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- 15 Huber PD, Texas v. American Tobacco, 9/20/97, 99:21-100:2, 100:4-8.
- 16 Id. at 101:4-8, 10-21.
- 17 Id. at 102:3-17.
- 18 110318156-8157 at 8156, 8157 (US 34974).
- 19 680050983-1001 at 0998 (US 20981).
- 20 500006192-6194 at 6193 (US 47761) . . . .
- 21 1002605545-5564 at 5561-5562 (US 35622); 1000211305-1305 (US 20080).
- 22 TIMN0120602-0603 at 0602 (US 21322).
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- 24 TI12431636-1650 at 1638, 1642, 1645 (US 62384).
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- 26 TLT0730001-0850 (US 77011); TLT0730851-1975 (US 77012); Brandt WD, 128:14-131:4; (no bates) (US 20468) (Cimons, Marlene, Cigarette Chiefs Steadfastly Deny Smoking Kills, Los Angeles Times, April 15, 1994, at A1.
- 27 [Sandefur PD, Broin v. Philip Morris, 7/13/94, 84:22-86:5.]
- 28 Keane WD, 27:11-28:11.
- 29 (no bates) (JD 012645).

- The Hazards of Smoking

## Addiction

- Nicotine Levels
- Light Cigarettes
- Marketing to Youth
- Secondhand Smoke
- Suppression of Information

# The Verdict Is In:

Findings from *United States v. Philip Morris*



Tobacco Control  
Legal Consortium



Law. Health. Justice.

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# Addiction

## The Addictive Properties of Nicotine

### Summary

In this section of the Opinion, Judge Kessler discusses the evidence that for over forty years, the Defendants' research had shown that the nicotine in tobacco causes cigarette smoking to be addictive. Judge Kessler addresses the evidence that the Defendants not only publicly denied that smoking is addictive but also withheld information about their research from the American public, the government, and the public health community, including the United States Surgeon General. Judge Kessler explains that the evidence shows the Defendants acted this way to maintain profits by keeping people smoking and attracting new consumers, to avoid liability, and to prevent regulation of the industry.

### 1. Introduction

**829.** Since the 1950s, Defendants have researched and recognized, decades before the scientific community did, that nicotine is an addictive drug, that cigarette manufacturers are in the drug business, and that cigarettes are drug delivery devices.

**830.** Notwithstanding the understanding and acceptance of each Defendant that smoking and nicotine are addictive, Defendants have publicly denied and distorted the truth as to the addictive nature of their products for several decades.

### 2. Cigarette Smoking Is Addictive and Nicotine Is the Primary Element of That Addiction

**856.** Dr. Peter Rowell, one of the Defendants' experts, admitted that there are many similarities between the properties that determine tobacco addiction and those that determine heroin and/or cocaine addiction . . . .<sup>1</sup>

**864.** By 1988, almost every major public health organization, including the Surgeon General, the National Institute on Drug Abuse, the World Health Organization, the American Psychiatric Association, the Harvard School of Public Health, and others, had declared that smoking is an addiction driven by the drug nicotine. . . .<sup>2</sup>

**881.** Disputes over terminology . . . should not obscure the reality that Defendants long ago internally recognized the same phenomenon that the scientific and medical community have struggled to understand and describe: the extraordinary hold that nicotine has on the human nervous system and the fact that such hold stems from nicotine's pharmacological properties.

### 3. Defendants Were Well Aware that Smoking and Nicotine Are Addictive

**888.** The evidence . . . demonstrates the extensive knowledge Defendants have had since the 1950s about nicotine's addictive effects on smokers, their use of that knowledge to maintain and increase the sale of cigarettes, and their

decades-long efforts both to deny the truth about the addictive nature of nicotine and to conceal their own internal research which generated that information.

**890.** In a November 15, 1961 presentation, [Philip Morris's Vice President for Research and Development, Helmut] Wakeham addressed the company's ability to control the nicotine content of its cigarettes. He . . . stated that: "Even though nicotine is believed essential to cigarette acceptability, a reduction in level may be desirable for medical reasons."<sup>3</sup>

**901.** Philip Morris . . . [s]cientists [William] Dunn and Frank Ryan described some of the withdrawal effects of nicotine in a 1971 study on cessation in the following graphic terms:

Even after eight months quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off. They were further troubled by constipation and weight gains which averaged about five pounds per quitter. . . . This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping into the air and kicking their heels with joy because they have kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife who is nagging him about his slothful behavior and growing waistline.<sup>4</sup>

**974.** [Scientist Claude] Teague wrote a memorandum dated December 1, 1982 to Research and Development Vice President Robert DiMarco in which he stated that . . . [R.J. Reynolds] needed to contemplate the future scenario where smokers who want to stop can stop; if this happened, he wrote, RJR would "go

**"To lower nicotine too much might end up destroying the nicotine habit in a large number of consumers and prevent it from ever being acquired by new smokers."**

An internal document from British American Tobacco (Investments) Ltd., dated June 1959

out of business." Therefore, RJR "cannot be comfortable marketing a product which most of our consumers would do without if they could."<sup>5</sup>

**988.** Many . . . [British American Tobacco (Investments) Ltd. (BATCo)] documents disclose how BATCo and other Defendants, in particular [Brown & Williamson (B&W)], used BATCo's knowledge of nicotine for commercial gain.

**989.** A June 1959 BATCo internal document . . . cautioned that "[T]o lower nicotine too much might end up destroying the nicotine habit in a large number of consumers and prevent it from ever being acquired by new smokers."<sup>6</sup>

**994.** [In a February 13, 1962 memorandum, Sir Charles Ellis, scientific director to the BAT Board of Directors, stated: "As a result of these various researches we now possess a knowledge of the effects of nicotine far more extensive than exists in published scientific literature."<sup>7</sup>

**1023.** In a June 30, 1971 memorandum . . . BATCo scientist R.R. Johnson reported [that] . . . BATCo director Sir Charles Ellis . . . [stated that BATCo was "in a nicotine rather than a tobacco industry . . . ."]<sup>8</sup>

**1076.** [BATCo's Product Developer, Colin] Greig described tobacco as "a fast, highly pharmacologically effective and cheap 'drug'" contained within a "relatively cheap and efficient delivery system." At the close of his memorandum, Greig observed that because cigarettes leave smokers unsatisfied and always craving more, "all we [BATCo] would want then is a larger bag to carry the money to the bank."<sup>9</sup>

**1104.** An August 24, 1978 B&W memorandum to M. J. McQue from Assistant Brand Manager H. David Steele . . . stated: "Very few consumers are aware of the effects of nicotine, i.e., its addictive



nature and that nicotine is a poison.”<sup>10</sup>

**1129.** Lorillard knew that nicotine shared attributes of opiates, and sought to use this knowledge to its advantage.<sup>11</sup>

## **4. Defendants Publicly Denied that Nicotine Is Addictive and Continue to Do So**

**1149.** Philip Morris Chairman James C. Bowling denied that cigarette smoking was an addiction in a July 18, 1973 “60 Minutes” interview. Instead, Bowling compared the choice to stop smoking to the choice to eat eggs or not.<sup>12</sup>

**1161.** In the May 12, 1997 issue of Time magazine, then President and CEO of Philip Morris, James Morgan, was quoted from his deposition testimony as stating, “If [cigarettes] are behaviorally addictive or habit forming, they are much more like . . . Gummi Bears, and I eat Gummi Bears, and I don’t like it when I don’t eat my Gummi Bears, but I’m certainly not addicted to them.”<sup>13</sup>

**1172.** An article in the August 2, 1994 New York Times reported that RJR scientist John Robinson “contests the consensus view of nicotine as addictive.” Robinson stated that he could not differentiate “crack smoking from coffee drinking, glue sniffing from jogging, heroin from carrots, and cocaine from colas.”<sup>14</sup>

**1183.** In comments published in the Wall Street Journal on October 31, 1996, the CEO of BAT Industries and Director of BATCo, Martin Broughton, denied any concealment of research linking smoking and addiction, saying that, “We have no internal research which proves that . . . smoking is addictive.”<sup>15</sup>

**1189.** In [a June 29, 1994 letter to the editor of The Daily Telegraph, BATCo scientist Dr. Sharon Boyse] wrote that

It has been suggested that smoking must be addictive because it contains nicotine. So do many common vegetables, including tomatoes, aubergines and potato skins.

Are vegetable eaters also drug users – physically dependent on their ratatouille, perhaps, in the same way that heroin addicts are dependent on their heroin?<sup>16</sup>

**1193.** On April 14, 1994, the Chief Executive Officer of American [Tobacco Company], Donald S. Johnston, testified under penalty of perjury . . . before the House Subcommittee on Health and the Environment . . . [and] denied that nicotine is addictive . . . .<sup>17</sup>

**1204.** Dr. Christopher Coggins, Lorillard’s Senior Vice President of Science and Technology [stated] . . . that cigarette smoking is only as addictive as “sugar and salt and Internet access.”<sup>18</sup>

**1206.** On April 14, 1994, the Chairman and Chief Executive Officer of the Liggett Group, Inc., Edward A. Horrigan (formerly of RJR), also testified under penalty of perjury . . . before the House of Representatives Subcommittee on Health and the Environment . . . [and] denied that nicotine is addictive . . . .<sup>19</sup>

**1210.** On March 12, 1982, the Tobacco Institute’s William D. Toohey issued a press release summarizing the tobacco company-funded testimony of [consultant Theodore] Blau before a Congressional Subcommittee. According to the release, Blau criticized the characterization of smoking as addictive, claiming that he placed the “attachment” to smoking in the same category as “tennis, jogging, candy, rock music, Coca-cola, members of the opposite sex and hamburgers.” The press release went on to claim that “removal of these activities, persons or objects can cause sleeplessness, irritation, depression and other uncomfortable symptoms, similar to those felt by some with abstinence from tobacco.”<sup>20</sup>

**1252.** Susan Ivey, former president and CEO of B&W and current CEO of RJR and Reynolds American, stated in 2004 that . . . the company would not agree that nicotine is an addictive drug.<sup>21</sup>

**1253.** Lorillard’s current position, as of 2005, is that smoking is addictive but only in the same way



as “repetitive pleasurable activities that can be difficult to stop.” Lorillard believes that smoking is not addictive in a “pharmacological sense.”<sup>22</sup>

**1255.** [Lorillard President and CEO] Martin Orlowsky . . . was a particularly evasive and unresponsive witness in this litigation. His testimony was not credible.

**1256.** While Philip Morris now appears to have accepted that smoking and nicotine are addictive, that new position was not adopted until 2000, after the filing of this lawsuit.<sup>23</sup>

**1260.** [General counsel for Defendant Philip Morris USA] also admitted that when Philip Morris purchased three Liggett brands in 1999, L&M, Lark, and Chesterfield, it removed the pre-existing package labels stating that smoking is addictive.<sup>24</sup>

**1262.** While Philip Morris told people that it agrees that cigarette smoking is addictive, it has not told the public that it agrees that it is the nicotine delivered in cigarette smoking that is addictive. Ms. Keane, Philip Morris’ general counsel, admitted this was material information that the public should possess.<sup>25</sup>

**1264.** Moreover, no cigarette company Defendant other than Liggett and Philip Morris, has admitted that nicotine in cigarette smoke is addictive. Liggett is the only Defendant to do so publicly.

## **5. Defendants Concealed and Suppressed Research Data and Other Evidence that Nicotine Is Addictive**

**1268.** Defendants themselves possessed, from their own in-house and external research, information that led them to conclude, long before public health bodies did, that the primary reason people keep smoking cigarettes is to obtain the drug nicotine, which is addictive. Defendants intentionally withheld this data . . . when there were major public efforts to review and synthesize all available information. This occurred with the preparation of both the 1964 and 1985 Surgeon



**“Very few consumers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.”**

A Brown & Williamson memorandum, dated August 24, 1978

General’s Reports and numerous congressional investigations. Defendants also engaged in a decades-long, elaborate, sophisticated, well-funded public relations offensive, denying and attacking the consensus conclusion they had long ago reached internally . . . .<sup>26</sup>

**1269.** A September 9, 1980 Tobacco Institute internal memorandum revealed the recognition by the member companies that a public admission that nicotine was addictive would undermine their litigation defense that a person’s decision to smoke is a “free choice” . . . .<sup>27</sup>

**1270.** A second reason Defendants denied addiction was to avoid regulation by the FDA.<sup>28</sup>

**1276.** [Scientist William] Dunn wrote a “CONFIDENTIAL” memorandum dated October 19, 1977 . . . summarizing his program for Tom Osdene. Dunn made [the following] observations . . . First, the mission of the Philip Morris program was to “study the psychology of the smoker in search of information that can increase corporate profits.” [Also], Dunn stated that . . . without [nicotine,] “the cigarette market would collapse, P.M. would collapse, and we’d all lose our jobs and consulting fees.”<sup>29</sup>

**1278.** [I]n a November 3, 1977 memorandum, Dunn revealed his strategy for concealing any unfavorable nicotine research results. Regarding a proposed study of nicotine withdrawal in rats to be undertaken by Philip Morris scientist Carolyn Levy, Dunn . . . cautioned that, “If . . . the results with nicotine are similar to those gotten with morphine and caffeine, we will want to bury it.”<sup>30</sup>

**1289.** Using [the intravenous self-administration rat model], and the same procedure that NIDA used to demonstrate abuse potential, the Philip Morris [Victor] DeNoble study demonstrated the abuse potential of nicotine.<sup>31</sup>

**1296.** In April 1984, a few months after a top Philip Morris executive and lawyer visited the behavioral pharmacology lab, DeNoble’s laboratory was suddenly, with no warning, preparation, or explanation, shut down and the animals killed.<sup>32</sup> In DeNoble’s own words, “[O]ur laboratory was terminated in one day.”<sup>33</sup>

**1299.** In a September 10, 1986 letter, [Philip Morris’s Assistant General Counsel Eric A.] Taussig again threatened DeNoble and Mele with litigation if they published, or presented, their findings on nicotine self-administration and brain effects . . .<sup>34</sup>

**1303.** None of the results or conclusions from the Philip Morris Nicotine Program or Behavioral Research Program were made public or were included in Philip Morris’s and the industry’s collective submission to the FDA in 1996.<sup>35</sup>

**1305.** Philip Morris’s representatives met with Merrell Dow on several occasions and attempted to shut down the marketing and sale of Nicorette.<sup>36</sup>

**1308.** At a February 16, 1983 meeting of tobacco company directors, attended by Manny Bourlas of Philip Morris, L.C.F. Blackman, a BATCo board member and former head of research, and representatives from several European tobacco companies, the participants . . . agreed that the tobacco industry should not cooperate with the [Independent Scientific Committee on Smoking and Health] and should respond to government requests by falsely stating that it had no relevant expertise.<sup>37</sup>


**1315.** In a letter dated May 6, 1963, to B&W in-house counsel DeBaun Bryant, outside counsel J.M. Johnson recommended that the company respond to the Surgeon General’s Advisory Committee in an intentionally vague and confusing manner: . . . [“The response] must necessarily be so vague and incomplete as to be irksome to the reader.”]<sup>38</sup>

**1336.** In a May 10, 1994 B&W press release, the company made . . . claims that are patently false in light of the company’s pre-1964 acknowledgment that nicotine is addictive and the company’s decision not to disclose to the Surgeon General BATCo’s internal nicotine research showing addiction prior to the 1964 report . . .<sup>39</sup>

**1354.** Long-time tobacco industry-affiliated/funded scientists Francis Roe and Jeffrey Cohen



**Susan Ivey, former president and CEO of B&W and current CEO of RJR and Reynolds American, stated in 2004 that . . . the company would not agree that nicotine is an addictive drug.**



**For approximately  
forty years, Defendants  
publicly, vehemently,  
and repeatedly denied  
the addictiveness of  
smoking and nicotine's  
central role in smoking.**

were asked to prepare a “Nicotine Monograph” [which included a section entitled “Smoking Behaviour: Role of Nicotine in the Smoking Habit”] in 1977 for the member companies of the Tobacco Advisory Council [(TAC)] (including Philip Morris, RJR, and BATCo).<sup>40</sup>

**1358.** [Roe and Cohen’s] observations and conclusions did not survive review by the TAC and its member companies. . . . The TAC and its member companies controlled the “Monograph” scientific review, and made sure that Roe and Cohen’s document was industry-favorable on the issues of nicotine and addiction.<sup>41</sup>

## **6. Conclusions**

**1359.** For approximately forty years, Defendants publicly, vehemently, and repeatedly denied the addictiveness of smoking and nicotine’s central role in smoking. They made these denials out of

fear . . . of . . . governmental (i.e., FDA) regulation, adverse liability judgments from addicted smokers suffering the adverse health effects of smoking, loss of social acceptability of smoking, and the ultimate loss of corporate profits.

**1360.** [T]here is no question that the public health community lacked the substantial and sophisticated understanding of nicotine’s effects and role that Defendants possessed. Put quite simply, if the Surgeon General of the United States possessed the information and data Defendants possessed prior to publication of his 1964 Report, it is simply not possible that he would have ignored it.

**1365.** Time and time again, Defendants falsely denied these facts to smokers and potential smokers, to government regulatory authorities, to the public health community and to the American public.

## Endnotes

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- 2 Benowitz WD, 26:3-36:8.
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- 14 970260581-0581 (US 85337).
- 15 State of Minnesota v. Philip Morris, Inc., et al., C1-94-8565, Exhibit No. 2909, 700428854-8856 at 8854 (US 85342).
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- 17 Regulation of Tobacco Products (Part I) Hearings before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, 103rd Congress April 14, 1994, 2023195738-5892 at 5780-5781 (US 21990).
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- 20 TIMN0120729-0730 (US 65625).
- 21 Ivey TT, 11/16/04, 6194:21-6195:5.
- 22 Orlowsky WD, 116:14-117:18.
- 23 Szymanczyk PD, United States v. Philip Morris, et al., 6/13/02, 249:15-254:8, 267:10-270:3.
- 24 Keane TT, 1/18/05, 10457:5-10460:16.
- 25 Keane TT, 1/18/05, 10533:5-10534:4.
- 26 Henningfield WD, 87:10-103:13, 104:14-110:8, 134:23-136:1, 150:14-159:8, 161:23-167:6. See also 490010042-0044 at 0043 (US 79285) (presenting "Addiction Statement," prepared by Shook, Hardy & Bacon, deciding the company's position must be that smoking is not addictive and that, "Statements in company documents cannot refute this conclusion.").
- 27 TIMN0107822-7823 at 7823 (US 21275).
- 28 25055597781-7998G (US 23028\*).
- 29 1000046538-6546 at 6538-6542 (US 26074); 2021423403-3497 at 3488 (US 36743).
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- 31 DeNoble WD, 17:9-20:2; See also, 2023963269-3341 at 3312-2213 (US 20398) (DeNoble testimony at 1994 Waxman hearings).
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- 37 109840698-0702 at 0699-0700 (US 21733) . . . .
- 38 680249785-9786 (US 85391)) [sic].
- 39 202337394-7394 (US 21965).
- 40 2501160364-0371 at 0369 (US 87173).
- 41 2021585328-5378 at 5365-5368 (US 87175).

- The Hazards of Smoking
- Addiction

## Nicotine Levels

- Light Cigarettes
- Marketing to Youth
- Secondhand Smoke
- Suppression of Information

# The Verdict Is In:

Findings from *United States v. Philip Morris*



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# Nicotine Levels

## Nicotine “Manipulation”: Defendants Have Falsely Denied That They Can and Do Control the Level of Nicotine Delivered In Order to Create and Sustain Addiction

### Summary

In this section of the Opinion, Judge Kessler discusses evidence showing that the Defendants control the nicotine levels in cigarettes to ensure that smokers become addicted and stay addicted. Judge Kessler explains that, while the Defendants deny publicly that they manipulate or control the nicotine levels, the facts prove otherwise.

**1366.** Defendants have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction. At the same time, Defendants have concealed much of their nicotine-related research, and have continuously and vigorously denied their efforts to control nicotine levels and delivery.

**1368.** Every aspect of a cigarette is precisely tailored to ensure that a cigarette smoker can pick up virtually any cigarette on the market and obtain an addictive dose of nicotine.<sup>1</sup>

**1370.** In the early 1970s, the Federal Trade Commission developed a machine to measure tar and nicotine levels. Even though it became the accepted mechanism for taking such measurements, it became widely known in both the public health community and by the cigarette company Defendants that the FTC method did not accurately measure the amounts of nicotine and tar which a smoker actually ingested. Cigarette company Defendants, with the benefit of their much more sophisticated understanding of smoker compensation, as well as their knowledge

of nicotine control, then intentionally developed and marketed cigarettes which, in actuality, delivered higher levels of nicotine than those measured by the FTC method. Those levels of nicotine were sufficient to create and sustain addiction in smokers.

### **1. For Decades, Defendants Have Recognized that Controlling Nicotine Delivery, in Order to Create and Sustain Smokers’ Addiction, Was Necessary to Ensure Commercial Success**

**a. Defendants Recognized the Need to Determine “Minimum” and “Optimum” Nicotine Delivery Levels in Order to Provide Sufficient “Impact” and “Satisfaction” to Cigarette Smokers**

**1373.** Defendants’ internal documents

demonstrate that, based on their knowledge of nicotine's pharmacological properties and addictive nature, they incorporated physical and chemical design techniques into their commercial products that would assure delivery of the precise levels of nicotine necessary to assure taste, impact, and satisfaction, i.e., to maintain addiction.<sup>2</sup>

**1374.** In their research reports, studies, and memoranda, Defendants used different terms to describe or identify the attributes of nicotine which were so desirable to smokers. Those terms include the words "impact," "satisfaction," "hit," "optimum," "optimal," and "minimum." These terms were not used in a uniform or consistent manner, and were often used interchangeably.

**1379.** Defendants have claimed that the terms "impact," "satisfaction," "hit," etc., as used in their internal documents, refer only to the taste characteristics of cigarettes. This claim is rejected because the documents themselves prove otherwise.

**1394.** In a November 26, 1990 document on the subject of "Project XB," one of Reynolds's projects devoted to the study of nicotine control . . . , an employee with the initials GRD identified a series of questions to be answered by Project XB. These questions included:

. . . 6. How good do we feel that legal group will allow us to sell product we visualize – i.e., take out tar vs. add nicotine?<sup>3</sup>

**b. Defendants Have Long Recognized that Controlling the Nicotine to Tar Ratio Would Enable Them to Meet Minimum and Optimum Nicotine Delivery Levels**

**1431.** [A]n August 19, 1976 [R.J. Reynolds] report, titled "New Product/Merchandising Directions A Three Year Action Plan," . . . stated, "[i]t would be more

desirable from our standpoint, i.e. providing satisfaction to the smoker and maintaining his allegiance to smoking if we could reduce 'tar' to whatever target we choose without a proportionate drop in nicotine."<sup>4</sup>

**1442.** A May 3, 1991 report titled "REST Program Review" explained Reynolds's goal for use of [Reestablishment of Solubles in Tobacco (REST)] processing to control nicotine delivery in its products:

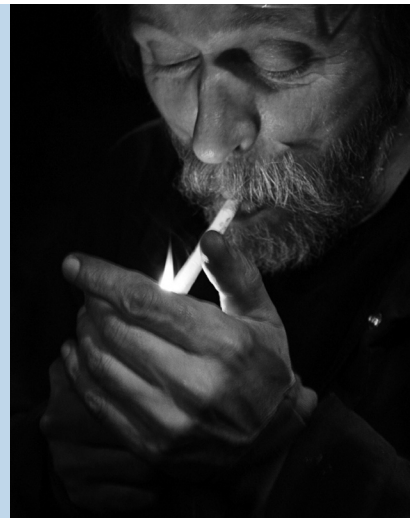
. . . We are basically in the nicotine business. It is in the best long term interest for [R.J. Reynolds (RJR)] to be able to control and effectively utilize every pound of nicotine we purchase. Effective control of nicotine in our products should equate to a significant product performance and cost advantage.<sup>5</sup>

**1454.** Prior to the publication of the 1964 Surgeon General's Report, [Brown & Williamson (B&W)] General Counsel Addison Yeaman evaluated the findings of [two British American Tobacco (Investments) Ltd. (BATCo) nicotine research projects from the early 1960s], and suggested that the best reaction to the Surgeon General's Report was to provide a filter capable of removing certain constituents of smoke considered suspect by public health officials, while still "delivering full flavor – and incidentally – a nice jolt of nicotine."<sup>6</sup>

**1460.** A BATCo document, titled "R&D Views on Potential Marketing Opportunities, marked, "Not

**"[i]t would be more desirable from our standpoint, i.e. providing satisfaction to the smoker and maintaining his allegiance to smoking if we could reduce 'tar' to whatever target we choose without a proportionate drop in nicotine."**

From an R.J. Reynolds report, dated August 19, 1976



for Circulation” and dated September 12, 1984 refers to compensation and lists as a “high priority” development of “alternative designs (that do not invite obvious criticism) which will allow the smoker to obtain significant enhanced deliveries should he so wish.” The author recommends that this action be taken “irrespective of the ethics involved.”<sup>7</sup>

### **c. Defendants Understood the Correlation Between Nicotine Delivery and Cigarette Sales**

**1493.** As the internal documents discussed below reveal, each Defendant also understood that its market position, as well as the financial viability of the tobacco industry as a whole, required the development of cigarettes that provide nicotine in amounts sufficient to ensure that smokers become and remain addicted.

**1503.** [BATCo senior scientist S.J.] Green explained, “Nicotine is an important aspect of ‘satisfaction,’ and if the nicotine delivery is reduced below a threshold ‘satisfaction’ level, then surely smokers will question more readily why they are indulging in an expensive habit.”<sup>8</sup>

## **2. Defendants Researched, Developed, and Utilized Various Designs and Methods of Nicotine Control to Ensure that All Cigarettes Delivered Doses of Nicotine Adequate to Create and Sustain Addiction**

**1509.** Defendants’ control of nicotine has not focused simply on delivering as much nicotine as possible, because delivery of large amounts of nicotine can make cigarettes harsh and unpalatable to the smoker.<sup>9</sup> In addition, an unsmoked cigarette already contains much more nicotine than a smoker will inhale because, as mentioned, . . . not all of the nicotine present in tobacco is transferred to cigarette smoke.<sup>10</sup>



**At an experimental farm in North Carolina during the 1980s, BATCo and B&W developed a tobacco that the companies referred to as “Y-1.” The tobacco was genetically engineered to have a nicotine content approximately twice the nicotine content of conventional tobacco.**

### **a. Defendants Recognized the Need to Design Cigarettes that Would Produce Low Nicotine and Tar Measurements under the FTC Method While Also Delivering the Minimum Nicotine Levels to Create and Sustain Addiction**

### **b. Leaf Blend and Filler: Defendants Controlled the Amount and Form of Nicotine Delivery in Their Commercial Products by Controlling the Physical and Chemical Make-Up of the Tobacco Blend and Filler**

**1549.** At an experimental farm in North Carolina during the 1980s, BATCo and B&W developed a tobacco that the companies referred to as “Y-1.” The tobacco was genetically engineered to have a nicotine content approximately twice the nicotine content of conventional tobacco.<sup>11</sup>

**1552.** B&W found the taste of Y-1 unacceptable to consumers when used alone. Nevertheless, [B&W Chairman and CEO] Tommy Sandefur admitted that B&W incorporated millions of pounds of the Y-1 leaf into its Viceroy and Richland style cigarettes, using Y-1 “as a blending tool.”<sup>12</sup>

### **c. Nicotine to Tar Ratio: Defendants Have Used Physical Design Parameters to Increase the Nicotine to Tar Ratio of Their Cigarettes**

**1580.** Despite numerous public statements that “nicotine follows tar,” i.e., that the amount of nicotine delivered by a cigarette automatically follows the amount of tar in a fixed ratio, and that smokers would therefore get less nicotine as tar levels dropped, Defendants conducted years of research to develop methods of changing the ratio of nicotine to tar in tobacco smoke.

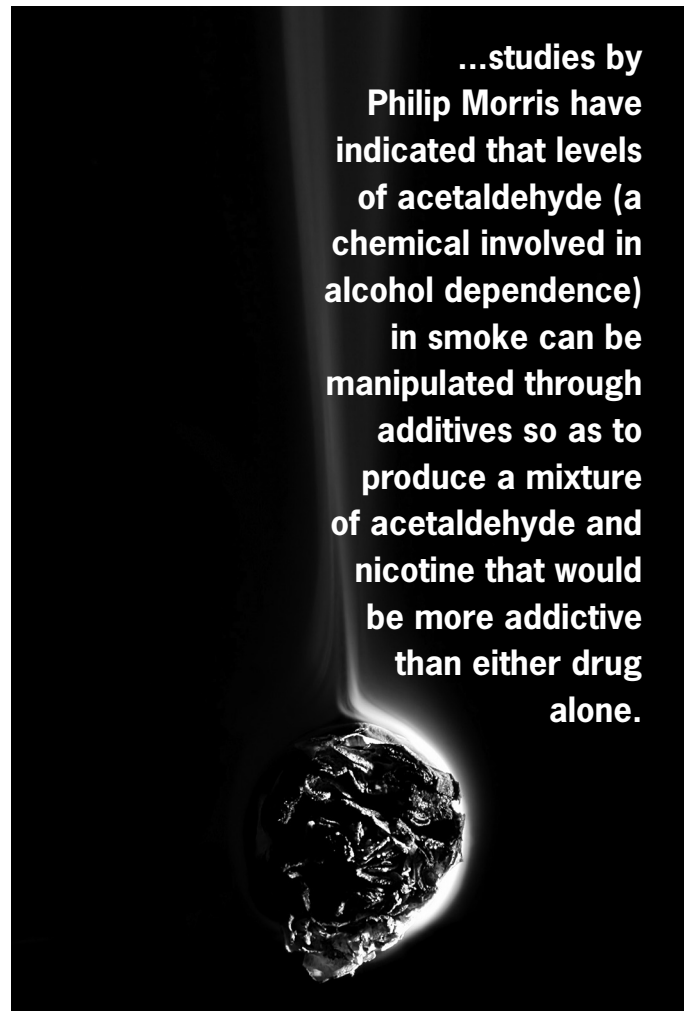
**d. Smoke pH and Ammonia: Defendants Altered the Chemical Form of Nicotine Delivered in Mainstream Cigarette Smoke for the Purpose of Improving Nicotine Transfer Efficiency and Increasing the Speed with Which Nicotine Is Absorbed by Smokers**

**1600.** Molecule for molecule, the pH of tobacco smoke is an important determinant of how much nicotine reaches a person’s bloodstream through cigarette smoking. Creation of more free nicotine by increasing the pH level of cigarette smoke increases “the amount of nicotine that can be readily released from the tobacco rod of a cigarette and, in turn, readily absorbed into the body of the cigarette smoker.”<sup>13</sup>

**1607.** Defendants were well aware of the particular chemical characteristics and effects of free nicotine, and undertook efforts to exploit these features. Internal research at Philip Morris confirmed that cigarette smoke that is more basic increases nicotine’s effects on the central nervous system, and that the “rate of entry [of nicotine into the bloodstream] is pH dependent.”<sup>14</sup> As one Reynolds document explained:

In essence, a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form. . . . As the smoke pH increases above about 6.0, an increasing proportion of the total smoke nicotine occurs in “free” form, which is volatile, rapidly absorbed by the smoker, and believed to be instantly perceived as nicotine “kick.”<sup>15</sup>

**1609.** Defendants have added ammonia compounds in order to enhance consumer use of cigarettes by: (1) increasing the amount of



nicotine that is transferred from the tobacco to the smoke; (2) improving the sensory response to nicotine in the mouth and oral mucosa; and (3) increasing the speed of delivery of nicotine to the bloodstream and possibly to the brain.<sup>16</sup>

**1626.** On August 26, 1986, Philip Morris applied for a patent on a process using ammonia to increase the nicotine delivery of Bright tobacco.<sup>17</sup> Philip Morris acknowledged, “Ammonia treatment of tobacco has been employed in the past, principally as a means to displace and effect release of nicotine.”<sup>18</sup>

**1635.** Reynolds soon developed a cigarette design similar to Philip Morris’s. . . . By 1974, Reynolds had “introduced ammoniated sheet filler in the Camel filter cigarette . . . . Better market performance was indicated in the subsequent years.”<sup>19</sup>



**1673.** The [1991 handbook “Root Technology: A Handbook for Leaf Blenders and Product Developers,” created by B&W] sets forth the purposes for which Defendants used ammonia technology. For example, “[the ammonia in cigarette smoke] can liberate free nicotine from the blend, which is associated with increases in impact and ‘satisfaction’ reported by smokers.”<sup>20</sup>

**1676.** In a March 1, 1991 document to employees in the research department, A.L. Heard informed the employees that the “Tobacco Strategy Review Team has identified a need to add greater confidentiality to our use of ammonia technology throughout the BAT Group. They have asked that for commercial confidentiality, we substitute a code word in place of the expression ‘ammonia technology.’” The memorandum further stated that existing code words for ammonia-related processes such as “ammonia treatment of stems or lamina” would continue to carry code names already in existence. The new code word for ammonia technology was to be transmitted via separate cover.<sup>21</sup>

#### **e. Other Additives: Defendants Researched the Use of Other Additives to Control Nicotine Delivery**

**1696.** Internal documents show that Defendants researched various additives, in addition to ammonia, which facilitate nicotine delivery. . . . For example, studies by Philip Morris have indicated that levels of acetaldehyde (a chemical involved in alcohol dependence) in smoke can be manipulated through additives so as to produce a mixture of acetaldehyde and nicotine that would be more addictive than either drug alone.<sup>22</sup>

**1700.** [Philip Morris scientist Dr. Victor] DeNoble recounted that Philip Morris considered the acetaldehyde work “very sensitive and that [the company] did not want it to be misinterpreted if it got out.”<sup>23</sup>

### **3. Defendants Have Made False and Misleading Public**

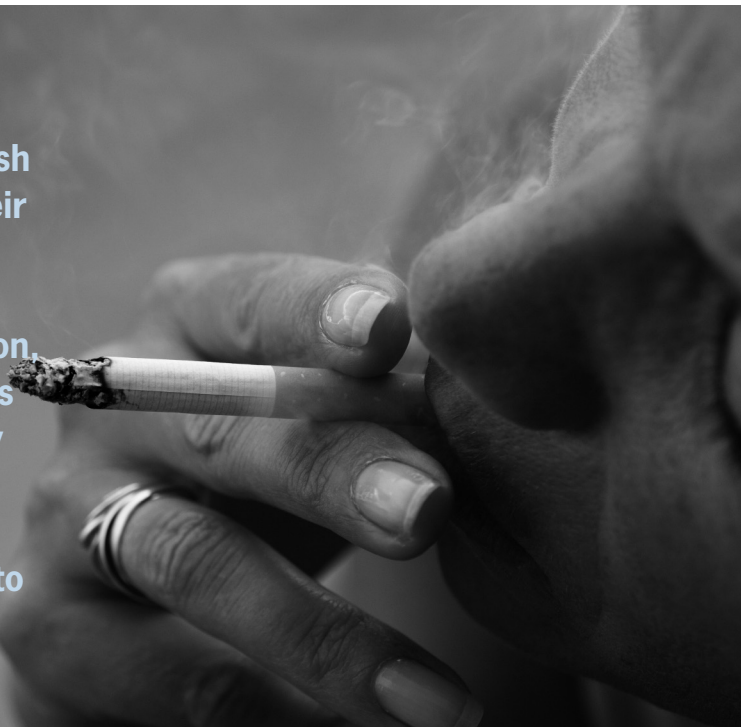
### **Statements Regarding Their Control of the Nicotine Content and Delivery of Their Products**

**1706.** In 1994, the United States Congress held a series of public hearings regarding the addictiveness of cigarettes and the tobacco industry’s design of cigarettes and manipulation of nicotine. These hearings, before the House of Representatives Subcommittee on Health and the Environment, later became known as the “Waxman Hearings,” referring to Subcommittee Chairman Henry Waxman of California. The Chief Executive Officers of six Defendant cigarette manufacturers – Philip Morris, B&W, RJR, Lorillard, Liggett, and American – appeared voluntarily at a Subcommittee hearing on April 14, 1994.

**1723.** On March 25, 1994, Alexander W. Spears, Vice Chairman and Chief Operating Officer of Lorillard, testified at the Waxman Hearings that “[w]e do not set levels of nicotine for particular brands of cigarettes.” Spears further stated that “[n]icotine follows the tar level,” that the correlation between the two “is essentially perfect,” which “shows that there is no manipulation of nicotine.” In a 1981 study, the Chemical and Physical Criteria for Tobacco Leaf of Modern Day Cigarettes, Spears had previously stated explicitly that “low-tar” cigarettes used special blends of tobacco to keep the level of nicotine up while tar is reduced: “[T]he lowest tar segment [of product categories] is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine.” Spears did not inform Congress of his earlier statement.<sup>24</sup>

**1736.** Defendants have also prepared internal “talking points” documents to prepare their spokespersons for public comment on important smoking and health issues. . . . Regarding nicotine, BATCo’s response was that “BAT does not ‘manipulate’ the level of nicotine in its products.” Recipients were also instructed to respond to questions regarding addiction that “BAT does not ‘spike’ its tobaccos with nicotine. Smoking is not an addiction.”<sup>25</sup>

The words of Defendants themselves establish that the goal of their extensive efforts, through research and experimentation, to control the levels of nicotine delivery was to ensure that smokers obtained sufficient nicotine to create and sustain addiction.



## 4. Conclusions

**1758.** The Defendants have repeatedly made vigorous and impassioned public denials – before Congressional committees, in advertisements in the national print media, and on television – that neither smoking nor nicotine is addictive, and that they do not manipulate, alter, or control the amount of nicotine contained in the cigarettes they manufacture. The Findings of Fact . . . provide overwhelming evidence that those statements are false.

**1762.** The words of Defendants themselves establish that the goal of their extensive efforts, through research and experimentation, to control the levels of nicotine delivery was to ensure that smokers obtained sufficient nicotine to create and sustain addiction:

- Philip Morris listed as one of the achievements of its Electrophysiological Studies Research Group a discovery “that there are optimal cigarette nicotine deliveries for producing the most favorable physiological and behavioral responses.”<sup>26</sup>

- RJR’s “top priority [was] to develop and market low ‘tar’ brands . . . that: [m]aximize the physiological satisfaction per puff – the single most important need of smokers.”<sup>27</sup>
- BATCo named as a “high priority” development of “alternative designs (that do not invite obvious criticism) which will allow the smoker to obtain significant enhanced deliveries should he so wish.”<sup>28</sup>
- The “major objective” of Lorillard’s study of filter design was to “increase the physiological impact and/or nicotine to tar ratio in ultra low tar cigarettes.”<sup>29</sup>

**1763.** In sum, the evidence as presented in these Findings of Fact is overwhelming that Defendants have, over the course of many years, time and again – and with great self-righteousness – denied that they manipulated the nicotine in cigarettes so as to increase the addiction and dependence of smokers. Those denials were false.



## Endnotes

- 1 Farone WD, 3:12-22.
- 2 Henningfield WD, 35:16-36:16, 41:18-42:7, 54:7-15, 66:23-67:12.
- 3 511703121-3121 (US 51575). *See also* 511223463-3484 (US 20840).
- 4 500672011-2172 at 2054, 2111-2112 (US 20645) . . .
- 5 509479574-9587 at 9854 (US 20829); Henningfield WD, 102:2-4, 102:11-12.
- 6 2046754905-4909 at 4908-4909 (US 20477).
- 7 109869437-9440 at 9437-9438 (US 21707).
- 8 110069974-9982 at 9975 (US 20268); *see also* 400993160-3215 at 3196 (US 75975\*); 100051935-1948 (US 34587).
- 9 Farone WD, 85:7-16.
- 10 Farone WD, 86:10-12.
- 11 510003880-3882 (US 20831).
- 12 682637648-7650 (US 21027); 500004560-4580 (US 20607).
- 13 Henningfield WD, 68:16-69:12, 69:19-70:2.
- 14 2025986551-6553 at 6552 (US 37312); 2025986931-6935 at 6934 (US 37314); 2056128345-8379 (US 20496).
- 15 511223463-3484 at 3466 (US 20840).
- 16 511223463-3484 (US 20840); Henningfield WD, 69:2-18, 74:21-75:13; 85:12-86:14; “Nicotine in Cigarettes and Smokeless Tobacco Products Is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act: Jurisdictional Determination,” 61 Fed. Reg. 44619 (August 1996) (jurisdictional determination annex) at 44974-44975 (US 61237); *see also* Townsend WD at 169:22-170:5; *Technology: Ammoniation*, at 8864-65 (US 20820).
- 17 2026526349-6353 at 6349 (US 86964).
- 18 2026526349-6353, at 6350 (US 86964); 2026377889-7896 (US 37347); 2024761243-1250 (US 86965).
- 19 509018864-8865A at 8864 (US 20820).
- 20 621800840-0899 at 0845 (US 86908).
- 21 400182372-2372 (US 47487).
- 22 DeNoble WD, 31:5-32:15; 1000413881-3964 (US 20100); 1003060443-0503 (US 87091).
- 23 DeNoble WD, 11:8-10, 32:18-33:1, 33:18-35:4, 36:14-18.
- 24 TLT0730001-0850 at 0148-0149, 0382-0383 (US 77011); 82495618-5628 at 5620 (US 86932).
- 25 800335882-5886 at 5884 (US 31906).
- 26 ¶947, *supra*.
- 27 ¶1431, *supra*.
- 28 ¶1460, *supra*.
- 29 ¶1488, *supra*.

- The Hazards of Smoking
- Addiction
- Nicotine Levels

## Light Cigarettes

- Marketing to Youth
- Secondhand Smoke
- Suppression of Information

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# Light Cigarettes

## Defendants Falsely Marketed and Promoted Low Tar/Light Cigarettes as Less Harmful than Full-Flavor Cigarettes in Order to Keep People Smoking and Sustain Corporate Revenues

### Summary

In this section of the Opinion, Judge Kessler explains that, since the 1970s, Defendants have misled consumers into believing that so-called low tar and light cigarettes are healthier than other cigarettes and an acceptable alternative to quitting. The Defendants do this even though they have known for decades that light cigarettes offer no clear health benefit. Judge Kessler describes how the Defendants dramatically increased their sales by exploiting consumers' belief that light cigarettes are less harmful, while claiming falsely that their marketing is based only on smokers' preference for a lighter taste. Judge Kessler finds that the Defendants are continuing to make these false and misleading claims in order to reassure smokers and dissuade them from quitting.

### 1. Low Tar/Light Cigarettes Offer No Clear Health Benefit over Regular Cigarettes

**2048.** On March 24, 1966, the [Federal Trade Commission (FTC)] notified cigarette manufacturers that they would be permitted to advertise tar and nicotine yields provided they used the Cambridge Filter Method.<sup>1</sup>

**2049.** The FTC Cambridge Filter Method uses a machine to “smoke” the cigarette for a designated puff volume at a designated interval for a designated period of time. As the smoke is drawn into the machine, it passes over a filter known as a Cambridge pad, on which the particulate tar matter is collected . . . to calculate the tar and nicotine yields for the cigarette.<sup>2</sup>

**2066.** Defendants did not, however, disclose their knowledge that smokers would ultimately ingest as much if not more nicotine and tar from low-delivery cigarettes as they would from full-flavor products. . . . Nor did Defendants disclose to the

FTC that “a major reason that the method could yield misleading data was that nicotine addiction would drive smokers to achieve relatively stable nicotine intakes” and that smokers’ “physiological need to obtain nicotine substantially lessens the accuracy of the FTC ratings.”<sup>3</sup>

**2068.** [Smokers] offset the decrease in their cigarettes’ FTC tar and nicotine yields, in whole or in part, by one of two means. First, smokers may . . . [smoke] individual, lower FTC-yield cigarettes more intensively by taking bigger puffs, taking more frequent puffs, smoking the cigarette closer to the butt, blocking ventilation holes placed in the filter that dilute the smoke, or other means. Second, they may simply smoke more cigarettes.<sup>4</sup>

**2072.** Because each smoker smokes to obtain his or her own particular nicotine quota, smokers end up inhaling essentially the same amount of nicotine – and tar – from so-called “low tar and nicotine” cigarettes as they would inhale from regular, “full flavor” cigarettes. . . . Virtually all smokers, over 95%, compensate for nicotine.<sup>5</sup>

## **2. Based on Their Sophisticated Understanding of Compensation, Defendants Internally Recognized that Low Tar/Light Cigarettes Offer No Clear Health Benefit**

**2148.** Dr. Farone[, Director of Applied Research at Philip Morris,] explained that the very Ames mutagenicity testing that Philip Morris has conducted for the past 25 years . . . has indicated that Philip Morris's Marlboro Lights cigarettes are, as designed, more mutagenic [(likely to cause the cellular changes that can lead to cancer)] than Marlboro full-flavor cigarettes . . .<sup>6</sup> Philip Morris has not "changed the design of 'Light' cigarettes in response to its studies and knowledge concerning mutagenicity."<sup>7</sup>

**2156.** James Morgan, former President and CEO of Philip Morris, conceded in 2002 that, in his opinion, lower tar cigarettes are not any safer than higher tar cigarettes.<sup>8</sup>

**2163.** A February 4, 1976 memorandum from Ernest Pepples, [Brown & Williamson (B&W)] Senior Vice President . . . reveals Defendants' knowledge that the low tar and filter cigarettes they were marketing as less harmful were not producing less tar and less nicotine to the smoker and were not likely to actually be less harmful . . .<sup>9</sup>

**2174.** According to Dr. William Farone, . . . during his employment at Philip Morris, the company had "a greater understanding of compensation [of nicotine] than the outside scientific community," and, in his expert opinion, "the same is true for the other tobacco company Defendants."<sup>10</sup>

**2192.** A September 17, 1975 Philip Morris document . . . to Leo F. Meyer, Philip Morris Director of Research, reflecting results of Philip Morris's studies with its Human Smoker Simulator, reported that, due to compensation, smokers got as much tar and nicotine from Marlboro Lights as from full-flavor Marlboros . . .<sup>11</sup>

**2193.** As Dr. Burns [an expert in the science of tobacco and health] explained, "there are three things that are powerfully significant in this document":

(1) It "very clearly demonstrates that, in contrast to what we believed six years later when we wrote the 1981 Surgeon General's Report, smokers who smoked brands of cigarettes on the market in 1975 were not getting different yields when they smoked those products. We [in the public health community] believed they were."

(2) "[T]his is dated 1975, six years prior to the time the [1981] Surgeon General's Report reached its conclusion. And we did not have access to this information or comparable information."

(3) "[T]his study was done on a machine that mimicked actual smoking behaviors, that actually matched the behavior of the individual when the machine smoked the cigarette. In 1981, one of the recommendations that we made . . . was that this type of machine should be developed so that we could develop a better understanding of the relationship between delivery of tar and nicotine of these cigarettes when they were actually smoked. So . . . six years prior to the time we were reviewing that evidence for the Surgeon General, this information was available to Philip Morris."<sup>12</sup>

## **3. Defendants Internally Recognized that Smokers Switch to Low Tar/Light Cigarettes, Rather than Quit Smoking, Because They Believe They Are Less Harmful**

**2234.** Defendants conducted extensive research on quitting to help them identify and understand potential quitters . . . and design marketing that would dissuade them from quitting. Defendants'

internal documents demonstrate their recognition that smokers interested in quitting smoking were instead switching to low tar cigarettes under the mistaken belief that doing so would either help them quit or be better for their health.

**2241.** [Jeanne Bonhomme, Director of Consumer Insights for Philip Morris] added that “Philip Morris’s own marketing research shows that there are consumers who switch to low tar cigarettes even though they do not prefer the taste or flavor, because they believe it is better for them . . . .”<sup>13</sup>

**2243.** Defendants’ own expert, A. Clifton Lilly, Vice President of Technology and Research for Philip Morris, demonstrated that Philip Morris did not intend to market Merit as a “lighter tasting” cigarette, but rather as one that tasted just like a full flavor cigarette, yet with a health benefit.<sup>14</sup>

**2246.** According to [James Morgan, former CEO of Philip Morris], Philip Morris did not intend for the name Marlboro Lights to communicate that it had light or lighter taste:

I have trouble in describing what light taste really means. . . . Light taste, first of all, is not a positive attribute if it does mean anything . . . in my judgment, light taste is really a meaningless and nebulous claim . . . the bigger proposition is the lower tar and nicotine. . . . We are not talking, in my judgment, talking about light . . . as a taste. It’s not a term that means anything in terms of taste, and the name Marlboro Lights as I said before, a word which we feel has appeal in a different sense than suggesting what the cigarette even tastes like.<sup>15</sup>

**2254.** According to Nancy Lund, Senior Vice President of Marketing for Philip Morris, when

light cigarettes were first introduced, their largest drawback was that consumers disliked their taste. . . . She acknowledged that smokers were buying them, nonetheless, because they were perceived to be less harmful.<sup>16</sup>

**2295.** Philip Morris conducted research on former smokers to assist it in marketing purportedly less harmful cigarettes to draw them back into the market and to dissuade potential quitters from actually quitting.

**“Quitters may be discouraged from quitting, or at least kept in the market longer. . . . A less irritating cigarette is one route. . . .”**

1986 B&W document

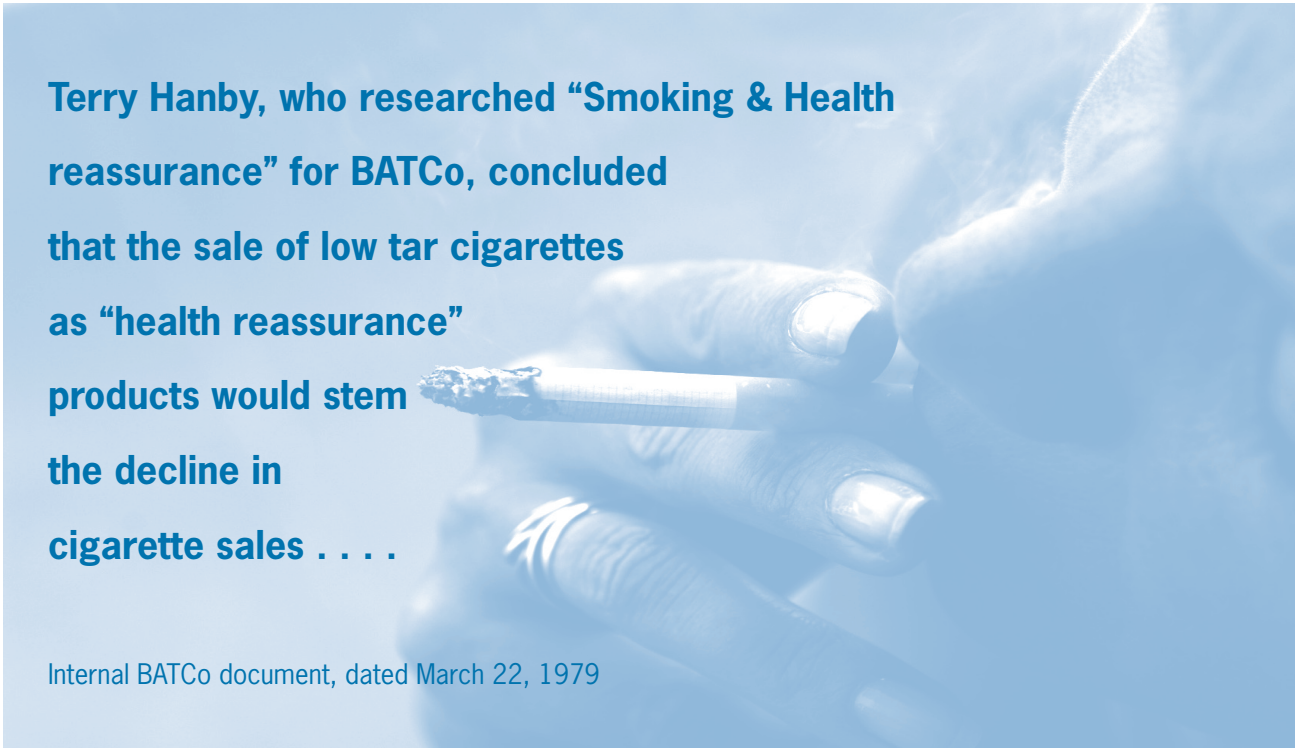
**2313.** A 1969 [R.J. Reynolds (RJR) survey] . . . recognized that “[a]s a group filter cigarette smokers were more conscious of a possible relationship between smoking and health,” and recognized the “willingness of an increasing number of smokers to compromise – to smoke what they considered to be a less harmful cigarette rather than give up smoking entirely.”<sup>17</sup>

**2319.** An August 1981 report prepared for RJR by the Beaumont Organization advised that ultra low tar brands, such as Now, Carlton, Cambridge and Barclay, can cause smokers who seek to eliminate the “danger” of smoking to keep smoking, because these smokers believe the ultra low tar brands “reduce the alleged health risks” of smoking “to an acceptable – minimal – level” . . . .<sup>18</sup>

**2327.** A 1986 B&W document stated: “Quitters may be discouraged from quitting, or at least kept in the market longer. . . . A less irritating cigarette is one route. . . . (Indeed, the practice of switching to lower tar cigarettes and sometimes menthol in the quitting process tacitly recognize this). The safe cigarette would have wide appeal.”<sup>19</sup>

**2330.** A March 22, 1979 internal BATCo document written by Terry Hanby, who researched





**Terry Hanby, who researched “Smoking & Health reassurance” for BATCo, concluded that the sale of low tar cigarettes as “health reassurance” products would stem the decline in cigarette sales . . . .**

Internal BATCo document, dated March 22, 1979

“Smoking & Health reassurance” for BATCo, concluded that the sale of low tar cigarettes as “health reassurance” products would stem the decline in cigarette sales . . . .<sup>20</sup>

#### **4. Despite Their Internal Knowledge, Defendants Publicly Denied that Compensation Is Nearly Complete and that the FTC Method is Flawed**

**2349.** [W]hile the FTC contemplated at the time it adopted its Method that numerous potential variations among individuals in everyday smoking behavior could have some effect on tar and nicotine yields, it did not have a full understanding of smoker compensation . . . . Defendants withheld their long-held knowledge that the primary reason the FTC Method could yield misleading data was that nicotine addiction would drive smokers to obtain relatively stable nicotine intakes through smoker compensation.<sup>21</sup>

**2360.** [I]n September 1997, the FTC solicited public comment on a proposal to replace the

existing FTC test method with a methodology that would “provide information on the tar, nicotine, and carbon monoxide yields obtained under two different smoking conditions” to . . . convey to smokers that “a cigarette’s yield depends on how it is smoked.”<sup>22</sup> In response, Philip Morris, RJR, B&W, and Lorillard submitted joint comments to the agency defending the current FTC Method and opposing the proposed change . . . .<sup>23</sup>

**2361.** The comments further stated that: “Smokers are familiar with the ratings produced by the current test method, and continued use of the current test method assures historical continuity of the data. . . .”<sup>24</sup> The comments referred to compensation as a “hypothesized” and “weakly documented phenomenon” and stated: “The testing protocol should not be modified to reflect ‘compensatory’ smoking,[”] in part because “current knowledge about these behaviors is too sparse to be usable for modeling purposes.”<sup>25</sup>

**2362.** In response to the FTC’s question: “What kinds of consumer education messages should be created to inform smokers of the presence of filter vents and the importance of not blocking them with their fingers or lips?” Defendants’ 1998 comments stated: “The manufacturers are not convinced that vent-blocking is a sufficiently

common or documented phenomenon that smokers should be alerted to the presence of filter vents and instructed not to block the vents.”<sup>26</sup>

**2363.** In response to the FTC’s question: “If the effect of compensatory smoking behavior is not incorporated in the tar and nicotine ratings, should a disclosure warning smokers about compensatory smoking behavior be required in all advertisements?” Defendants’ 1998 comments stated: “The manufacturers are not convinced that compensatory smoking behavior is a sufficiently common or documented phenomenon that consumers should be alerted to its existence . . . .”<sup>27</sup>

**2366.** In his April 14, 1994 written Statement before the House of Representatives Subcommittee on Health and the Environment . . . , William Campbell, President and CEO of Philip Morris USA, stated, contrary to extensive information developed by and known to Philip Morris USA, that “consumers are not misled by the published nicotine deliveries as measured by the FTC method. . . .”<sup>28</sup>

**2371.** In the mid-1990s, Tommy Sandefur, B&W CEO, submitted a written statement to Congress defending the FTC Method: “We also vigorously dispute the suggestion of [David] Kessler and [John] Slade that the ‘tar’ and nicotine ratings produced using the FTC test method are meaningless or misleading.” More than ten years earlier, on March 19, 1984, Ernest Pepples, B&W Senior Vice President and General Counsel, wrote a letter to Howard Liebengood of the Tobacco Institute acknowledging that FTC tar and nicotine ratings “may be misleading to consumers” and bear no relation to actual consumer intake.<sup>29</sup>

**2372.** Susan Ivey, President and CEO of B&W, admitted at trial that B&W “has been aware for many years” that some smokers compensate when smoking low tar cigarettes. B&W takes a different position on its website, which states that “[t]he question of why compensation occurs is still the subject of scientific research, and the relative importance of tar versus nicotine in determining compensation is unclear. . . . [H]ow much smokers alter their behavior when they switch to lower tar products, and for how long, is still unclear. . . . [A]s actually smoked by consumers,

lower tar cigarettes will generally deliver less tar and nicotine than higher tar cigarettes, and cigarette deliveries generally align with the ranges associated with the descriptors: ultra lights, lights, and full flavor.”<sup>30</sup>

**2376.** In 1999, Alexander Spears, CEO of Lorillard, stated publicly that the FTC tar and nicotine numbers did not need to be explained to smokers because it was “very obvious” that they were meaningless due to smoker compensation.<sup>31</sup>

## **5. Despite Their Internal Knowledge, Defendants’ Marketing and Public Statements About Low Tar Cigarettes Continue to Suggest that They Are Less Harmful than Full-Flavor Cigarettes**

**2377.** As detailed below, Defendants made, and continue to make, false and misleading statements regarding low tar cigarettes in order to reassure smokers and dissuade them from quitting. These actions include: assertions that low tar cigarettes

**“[C]onsumers are not misled by the published nicotine deliveries as measured by the FTC method. . . .”**

William Campbell in his April 14, 1994 written Statement before the House of Representatives Subcommittee on Health and the Environment



deliver “low,” “lower,” or “less” tar and nicotine than full-flavor cigarettes; claims that low tar cigarettes are “mild” or deliver “clean” taste; and use of brand names with descriptors such as “light” and “ultra light,” with full knowledge that consumers interpret these claims and descriptors to convey reduced risk of harm.

**2382.** The terms “Light” and “Low Tar,” as they are used by Defendants, are essentially “meaningless” and “arbitrary.” As Dr. Farone explained:

[T]here are lights of certain brands with higher tar levels than regulars of other brands from the same company, and there are also lights and regulars of the same brand that have the same FTC tar rating. So therefore the term “light” is not related to tar or taste. For example, according to the most recent FTC report of tar and nicotine yields, Philip Morris sells versions of Virginia Slims and Virginia Slims Lights that both deliver 15 mg of tar by the FTC method.<sup>32</sup>

**2392.** Defendants continue to disseminate false and misleading public statements regarding their true intent in marketing low tar cigarettes. For example, Defendants Philip Morris, RJR, B&W, and Lorillard jointly stated to the FTC in February 1998: “The manufacturers do not claim that lower-yield cigarettes are ‘safe’ or are ‘safer’ than higher yield cigarettes.”<sup>33</sup>

**2398.** Defendants’ testimony to the FTC fails to make any reference to the vast amounts of consumer research Defendants conducted, and had conducted for them by their numerous advertising and marketing consultants, that expressly found that many consumers strongly disliked the taste of low tar cigarettes, but were smoking them because they believed they were healthier for them.<sup>34</sup>

**2402.** According to [Brand Manager of Marlboro from 1969 to 1972, James] Morgan, Philip Morris made a calculated decision to use the phrase “lower tar and nicotine” even though its own marketing

research indicated that consumers interpreted that phrase as meaning that the cigarettes not only contained comparatively less tar and nicotine, but also that they were a healthier option.<sup>35</sup>

**2403.** Morgan, who later became CEO of Philip Morris, further explained in 2002 that rather than relying on the tar and nicotine numbers from the FTC Method, “the major influence in people’s perceptions in the tar of a cigarette would have come from the marketing positioning of a brand as opposed to people literally reading the FTC [tar and nicotine figures].”<sup>36</sup>

**2426.** In 1979, Philip Morris promoted Cambridge as a low tar brand yielding 0.0 mg tar (less than 0.1 mg tar) on the FTC test. The 0.0 mg tar Cambridge cigarette was removed from the market and replaced by Cambridge light and ultra light brands, all of which had considerably more tar than the original Cambridge cigarette. Dr. Farone made it clear that:

The plan all along was to deceive the public into thinking that the Cambridge Light cigarette was a low tar cigarette, when in fact it was not . . . the trend to increasing tar deliveries in the product is very clear and there is no advertising that says that such increases are being made.<sup>37</sup>



**The trend in the 1970s toward low tar cigarettes was due in large part to consumer perception that they were less hazardous to health than higher tar cigarettes . . . Philip Morris took no additional steps to counter that mistaken perception.**

James Morgan, former CEO of Philip Morris

**2462.** James Morgan, the former CEO of Philip Morris, acknowledged that the trend in the 1970s toward low tar cigarettes was due in large part to consumer perception that they were less hazardous to health than higher tar cigarettes . . . . Although Morgan conceded that “we were aware of that,” he admitted that, despite being armed with this knowledge, Philip Morris took no additional steps to counter that mistaken perception.<sup>38</sup>

**2471.** Jeanne Bonhomme, Director of Consumer Insights for Philip Morris, stated that to her knowledge:

- “Philip Morris has always denied publicly that it markets low tar cigarettes as safe or safer than full-flavor brands;” and
- “Philip Morris has always denied publicly that it uses brand descriptors such as ‘light’ and ‘ultra light’ to communicate they are safe or safer than full-flavor brands.”<sup>39</sup>

**2474.** In May 1996, representatives from Philip Morris, including Philip Morris General Counsel, Denise Keane, RJR, B&W, and Lorillard met with the FTC . . . . The FTC requested that the industry representatives provide the FTC with “any information the companies had concerning the issue of consumer perception of low tar, so-called “light” cigarettes.” Despite the decades of consumer and marketing research conducted or commissioned by Philip Morris concerning consumers’ interpretation of these terms . . . , Keane testified that “Philip Morris did not provide any such information” to the FTC.<sup>40</sup>

**2480.** As recently as 2003 and 2004, the Board of Directors of Altria (formerly known as Philip Morris Companies), publicly made misleading statements to its shareholders and to the U.S. Securities and Exchange Commission . . . . [A] group of Altria shareholders proposed to the Altria Board of Directors that “the Board find appropriate ways of informing our customers about the actual health risks of smoking ‘light and ultra light’ cigarettes to disassociate them from any belief that such products are safer and deliver less tar and nicotine.” . . . The Board of Directors of Altria recommended that shareholders vote against this

proposal . . . .<sup>41</sup>

**2510.** A June 21, 1982 Product Research Report . . . written by RJR’s Marketing Development Department, stated: “Most respondents [ultra low tar smokers] preferred a white filter to a cork filter because they considered white to be more indicative of ULT cigarettes. The white filter generated strong associations with gentleness, purity, cleanliness, modernization, and innovativeness.”<sup>42</sup>

**2512.** According to Gary Burger, RJR Senior President of Research & Development, RJR was aware that consumers smoke low tar cigarettes for the perceived health benefit. . . . He noted that consumers “have that impression that there are higher levels of bad stuff in high tar cigarettes and lower levels of bad stuff in low tar cigarettes.”<sup>43</sup>

**2515.** A March 21, 2003 RJR statement to stockholders presented a proposal “to find appropriate ways of informing our customers about the actual health risks of smoking ‘light and ultra light’ cigarettes to disassociate them from any belief that such products are safer and deliver less tar and nicotine.” . . . The Board of Directors of RJR recommended a vote against this proposal.<sup>44</sup>

**2526.** In March 1999, Nicholas Brookes, B&W Chairman and CEO from 1995 to 2000, became aware of a discrepancy in the tar delivery of Carlton cigarettes. The cigarette, when smoked by human smokers, delivered three milligrams instead of the advertised one milligram of tar. Because B&W had just introduced a new advertising campaign “touting Carlton as the ‘1’ for you,” Brookes attempted to delay the publication of a study that would have alerted the public to the new findings. Brookes did not direct B&W’s marketing department to discontinue the “Carlton is the ‘1’ for you” campaign, even though he acknowledged that it might cause confusion for consumers.<sup>45</sup>

**2556.** Despite the substantial evidence already referred to . . . that B&W was aware that consumers interpreted its low tar brand descriptors to be indicative of a less harmful cigarette, in May 2004, B&W stated on its website



that brand descriptors were intended only to communicate taste . . . .<sup>46</sup>

**2557.** BATCo's research documents establish that the company has long known and intended that its advertisements and marketing for low tar cigarettes, featuring claims of lowered tar and nicotine and "light" and "ultra light" brand descriptors, contributed to and reinforced consumers' mistaken belief that low tar cigarettes are better for their health, and caused consumers to smoke them for this reason.

**2590.** American Tobacco also placed advertisements for Carlton in the 1990s claiming that smokers could smoke ten packs of Carlton and still receive less tar than they would from smoking one pack of Marlboro, Camel, Winston, Kent, or Viceroy.<sup>47</sup>

**2598.** A September 15, 1964 Lorillard memorandum from M. Yellen to Morgan J. Cramer, President and CEO . . . stated that, for several months before the release of the first Surgeon General's Report in January 1964, "LARK [a Liggett cigarette brand] was setting a base for future sales activities through the use of hospitals via rumors or otherwise . . . that medical scientists endorse LARK as the safest cigarette. This marketing technique on the part of LARK proved successful."<sup>48</sup>

**2606.** In 1966, Lorillard introduced True brand cigarettes. Martin Orlowsky, Chairman, President, and Chief Executive Officer of the Lorillard Tobacco Company, admitted that Lorillard's True advertisements were targeted toward smokers who, due to their concerns about health risks, were seeking a low-tar cigarette.<sup>49</sup>

**2624.** On September 5, 2001, Dr. Anthony Albino, Executive Vice President, Strategy, Communication and Consumer Contact at Vector Tobacco, Inc. [(a Liggett Group Inc. subsidiary)], sent an e-mail to a number of recipients, including Bennett LeBow, Chairman of the Board and Chief Executive Officer of Vector Group, Ltd., and VGR Holding Inc., admitting that: "the adoption of 'light' cigarettes over the past 25 years was mainly due to the PERCEPTION of safety."<sup>50</sup>

## 6. Conclusions

**2627.** It is clear, based on their internal research documents, reports, memoranda, and letters, that defendants have known for decades that there is no clear health benefit from smoking low tar/low nicotine cigarettes as opposed to conventional full-flavor cigarettes. It is also clear that while defendants knew that the FTC Method for measuring tar and nicotine accurately compared the nicotine/tar percentages of different cigarettes, they also knew that that Method was totally unreliable for measuring the actual nicotine and tar any real-life smoker would absorb because it did not take into account the phenomenon of smoker compensation. Defendants also knew that many smokers were concerned and anxious about the health effects of smoking, that a significant percentage of those smokers were willing to trade flavor for reassurance that their brands carried lower health risks, and that many smokers who were concerned and anxious about the health risks from smoking would rely on the health claims made for low tar cigarettes as a reason, or excuse, for not quitting smoking.

**2628.** Despite this knowledge, Defendants extensively—and successfully—marketed and promoted their low tar/light cigarettes as less harmful alternatives to full-flavor cigarettes. Moreover, Defendants opposed any changes in the FTC Method which would more accurately reflect the effects of compensation on the actual tar and nicotine received by smokers, denied that they were making any health claims for their low tar/light cigarettes, and claimed that their marketing for these cigarettes was based on smokers' preference for a "lighter," "cleaner" taste.

**2629.** By engaging in this deception, Defendants dramatically increased their sales of low tar/light cigarettes, assuaged the fears of smokers about the health risks of smoking, and sustained corporate revenues in the face of mounting evidence about the health effects of smoking.

## Endnotes

- 1 (no bates) (JD 004538); see also 680236589 (JD 004612); (no bates) (JD 001032 at 4-3).
- 2 Henningfield WD, 47:11-48:2; Henningfield TT, 11/22/04, 6794:8-6796:6.
- 3 Henningfield WD, 48:14-49:7.
- 4 Benowitz TT, 11/1/04, 4512:11-4513:1; Dixon WD, 16:13-21.
- 5 Benowitz WD, 59:6-17; 61:15-62:13; Benowitz TT, 11/2/04, 4769:25-4770:4; (no bates) (US 58700 at 10) (Monograph 13); accord Burns WD, 1:10-15, 12:10-11, 43:19-45:2; Burns TT, 2/15/05, 13311:9-15; Burns TT, 2/16/05, 13537:6-9.
- 6 Farone WD, 119:7-120:15; Farone TT, 10/7/04, 1866:2-17.
- 7 Farone WD, 121:3-9.
- 8 Morgan PD, Price v. Philip Morris, Inc., 6/5/02, 75:3-15.
- 9 170042567-2574 at 2568, 2574 (US 20292); Smith WD, 79:5-22.
- 10 Farone WD, 2:2-8, 2:15-19, 117:15-118:8; Farone TT, 10/12/04, 2169:18-22, 2170:5-11, 2171:25-2172:8, 2182:11-2190:7; Wigand WD, 8:11-17; 120:5-17.
- 11 2021544486-4496 at 4486-4488 (US 20348); see also Whidby WD, 45:11-12 (noting, in the context of this exhibit, that "Marlboro 85's" refers to Marlboro Reds, a full-flavor cigarette brand).
- 12 Burns WD, 52:15-53:12.
- 13 Bonhomme WD, 56:6-12; 60:21-61:1; 63:13-18.
- 14 Lilly PD, Engle v. R.J. Reynolds Tobacco Co., 5/7/98, 34:3-39:2.
- 15 Morgan PD, Philip Morris Inc., 10/15/74, 82:25-83:13; 85:9-15; 85:17-86:4.
- 16 Brennan-Lund PD, Price, 9/20/02, 140:14-144:11, 186:12-189:19; 2040904809-4811 at 4809 (US 85035).
- 17 650340129-0193 at 0180, 0183 (US 20948).
- 18 503972013-2063 at 2038 (US 66448); Orlowsky WD, 86:4-7.
- 19 566628004-8083 at 8015 (US 20940).
- 20 109883112-3117 at 3115, 3117 (US 20264); 105657908-7909 (US 20248).
- 21 Henningfield WD, 48:3-49:7.
- 22 FTC Cigarette Testing; Request for Public Comment, 62 Fed. Reg. 48,158, 48,159 (Sept. 12, 1997) (US 88618).
- 23 Comments of Philip Morris Inc., R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., and Lorillard Tobacco Co. on the Proposal Titled FTC Cigarette Testing Methodology Request for Public Comment (62 Fed. Reg. 48,158) at 2-3, (no bates) (US 88618) ("Joint Comments").
- 24 Id. at 4.
- 25 Id. at 43.
- 26 Id. at 60, 82.
- 27 Id. at 89.
- 28 ATC2746877-6887 at 6877, 6878, 6887 (US 59009); compare with 1000861953-1953 (US 35484) (Wakeham 3/24/61) ("As we know, all too often the smoker who switches to a hi-fi cigarette winds up smoking more units in order to provide himself with the delivery which he had before.").
- 29 Compare 682637627-7629 at 7629 (US 22946) with 521060910-0912 (US 20892).
- 30 Ivey WD, 67:19-21; TLT1040050-0055 at 0052-0054 (US 88620); Ivey WD, 64:1-67:11.
- 31 Spears PD, Minnesota, 9/23/97, 70:2-72:2.
- 32 Farone WD, 116:3-14; 525311179-1223 at 1185, 1207-1208, 1222 (US 52977).
- 33 Comments of Philip Morris Inc., RJR Tobacco Co., Brown & Williamson Tobacco Corp., and Lorillard Tobacco Co. on the Proposal Titled FTC Cigarette Testing Methodology Request for Public Comment (62 Fed. Reg. 48,158) at 3, 94 ("Joint Comments") (US 88618).
- 34 Accord 2041186475-6517 at 6478, 6504 (US 22181\*) (November 29, 1994 submission to the National Cancer Institute on behalf of B&W, American Tobacco, Lorillard, and Liggett contending that smokers use FTC tar and nicotine ratings primarily for information relating to taste considerations, referring to what Defendants called "the well-established significance of the FTC's machine-determined yields for comparing the flavor, richness and satisfaction of different brands of cigarettes," and predicting that if modifications to the FTC Method occurred, "[c]onsumers . . . would be deprived of important information about the flavor, taste and feel of cigarettes - information consumers consider to be highly relevant in distinguishing among" brands).
- 35 Morgan PD, Price v. Philip Morris, Inc., 6/15/02, 45:2-45:25, 45:2-46:25, 47:2-47:25, 48:2-48:25, 49:2-49:25, 50:2-50:25, 51:2-51:5, 52:15-52:20.
- 36 Morgan PD, Philip Morris Inc., 11/25/74, 174:10-175:4; 175:16-175:25.
- 37 Farone WD, 129:18-132:17; 2024983860-3862 at 3860 (US 20015).
- 38 Morgan PD, Price, 6/5/02, 42:16-42:25; 43:2-43:25; 44:2-44:25; 45:2 - 45:25; 63:10-63:25; 64:2-64:25; 65:2-65:21; 1004888470-8484 (US 85009); 502641641-1646 (US 85008).
- 39 Bonhomme WD, 11:18-20; 12:12-15.
- 40 Keane WD, 46:18-48:23; Keane TT, 1/18/05, 10369:20-10370:25; 2048216131-6135 at 6134 (US 38655).
- 41 (no bates) (US 87741).
- 42 503394459-4485 at 4464 (US 85036).
- 43 Burger PD, Arch v. American Tobacco Co., 8/21/97, 226:9-243:18.
- 44 TLT0960025-0029 at 0027-0028 (US 87993); Schindler WD, 66:4-67:16.
- 45 190245079-5080 (US 85018); Brookes PD, United States v. Philip Morris, 3/31/03, 146:18-148:12; 149:3-149:20; 150:14-150:18.
- 46 TLT1040056-0062 at 0061 (US 88628); Ivey WD, 70:5-14.
- 47 (no bates) (US 9182) (1993 advertisement in Sports Illustrated magazine stating: "10 packs of Carlton Menthol have less tar than 1 pack of these brands" ); (no bates) (US 9122) (1992 advertisement noting same); Biglan WD, 281:17-283:22; (no bates) (US 9093) (1992 Carlton advertisement stating same); 970469347-9474 at 9464-9466 (US 85104) (1990s Carlton advertisements stating same); (no bates) (US 9186) (1993 advertisement stating: "A WHOLE CARTON OF CARLTON . . . HAS LESS TAR THAN 1 PACK OF THESE BRANDS. . . . Carlton is lowest in tar and nicotine"); Smith WD, 68:15-21.
- 48 01124257-4265 at 4259, 4257-4258 (US 20033).
- 49 Orlowsky TT, 10/13/04, 2288:24-2289:19.
- 50 VDOJ6743-6744 at 6743 (US 64727) (emphasis in original); LeBow TT, 4/4/05, 17594:24-17596:17.



- The Hazards of Smoking
- Addiction
- Nicotine Levels
- Light Cigarettes

## Marketing to Youth

- Secondhand Smoke
- Suppression of Information

# The Verdict Is In:

Findings from *United States v. Philip Morris*



Tobacco Control  
Legal Consortium



Law. Health. Justice.

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# Marketing to Youth

**From the 1950s to the Present, Different Defendants, at Different Times and Using Different Methods, Have Intentionally Marketed to Young People Under the Age of Twenty-one in Order to Recruit “Replacement Smokers” to Ensure the Economic Future of the Tobacco Industry**

## Summary

In this section of the Opinion, Judge Kessler discusses the evidence showing that the Defendants tracked youth behavior and used the information to create highly sophisticated marketing campaigns to get young people to start smoking and continue smoking. Judge Kessler explains that the Defendants sought to remain profitable by bringing new, young smokers into the market to replace those who die or quit.

## 1. Definition of Youth

## 2. The Defendants Need Youth as Replacement Smokers

**2637.** As Bennett LeBow, President of Vector Holdings Group, stated, “if the tobacco companies really stopped marketing to children, the tobacco companies would be out of business in 25 to 30 years because they will not have enough customers to stay in business.”<sup>1</sup>

## 3. Defendants’ Marketing Is a Substantial Contributing Factor to Youth Smoking Initiation

## 4. Tracking Youth Behavior and Preferences Ensures that Marketing and Promotion Reach Youth

### a. Defendants Track Youth Behavior and Preferences

**2717.** Defendants spent enormous resources tracking the behaviors and preferences of youth under twenty-one . . . to start young people smoking and to keep them smoking. Defendants’ argument that their tracking was not done to determine youth preferences and behaviors so as to market to youth more effectively, is patently not credible.

**2762.** Philip Morris has conducted extensive consumer research to help inform and shape marketing campaigns that appeal to their youngest potential smokers.

**2787.** At a March 27, 1978 Lorillard field sales representatives’ seminar, several marketing ideas for Newport cigarettes were discussed. Discussion subjects included: sponsoring youth sports teams; . . . scholarships for underprivileged youth; . . . and sponsoring Miss Black Teenager contests.<sup>2</sup>

**2789.** An August 30, 1978 Lorillard memorandum from Ted Achey, Lorillard’s Director of Sales in the Midwest, to company President Curtis H. Judge regarding “Product Information,” demonstrates that Lorillard recognized the significance of the

underage market to the company:

The . . . base of our business is the high school student. NEWPORT . . . is the “In” brand to smoke if you want to be one of the group. Our problem is the younger consumer that does not desire a menthol cigarette. . . . I think the time is right to develop a NEWPORT NATURAL (non-menthol) cigarette to attract the young adult consumer desiring a non-menthol product.<sup>3</sup>

**2792.** An August 2, 1982 Lorillard memorandum from Florian Perini, Senior Research Chemist, to M.A. Sudholt, Manager of Analytical Development, . . . contained a proposal that “Video Game Imagery [be] incorporated in pack design (youth appeal).” It detailed:

the widespread video game craze has certain fundamental features which we could be the first to exploit. Names such as PAC MAN, SPACE INVADERS, TRON and their imagery can imaginatively show up on cigarette packs with repeat motifs . . . and patterns, and their bright imagery can have lasting appeal. Can extend concept to SPACE IMAGERY (Galaxy, Cosmos, Universe).<sup>4</sup>

**2855.** In a February 2, 1973 [R.J. Reynolds (RJR)] . . . memorandum, titled “Some Thoughts About New Brands of Cigarettes for the Youth Market,” [Dr. Claude Teague, an RJR Research & Development employee stated, “We are presently, and I believe unfairly, constrained from directly promoting cigarettes to the youth market . . . .”]<sup>5</sup>

## **b. Defendants’ Marketing Employs Themes Which Resonate with Youth**

**2892.** As the following evidence demonstrates, Defendants have utilized the vast amount of research and tracking data they accumulated on youth smoking initiation, tastes and preferences by employing themes which resonate with youth in their marketing campaigns.<sup>6</sup> . . . Above all, Defendants have burnished the image of their youth brands to convey rugged independence, rebelliousness, love of life, adventurousness, confidence, self-assurance, and belonging to the “in” crowd.

**2918.** On August 13, 1970, Philip Gaberman, creative director for Robert Brian Associates, . . . wrote a letter to Professor Charles Seide of Cooper Union, a New York City art college, proposing the use of Seide’s students for creating the Kicks package design. The letter stated:

. . . We have been asked by our client to come up with a package design . . . a design that is attractive to kids . . . (young adults). . . Note: While this cigarette is geared to the youth market, no attempt (obvious) can be made to encourage persons under twenty-one to smoke. The package design should be geared to attract the youthful eye . . . not the ever-watchful eye of the Federal Government.<sup>7</sup>

**2934.** A section of [a May 26, 1975 report prepared for Brown & Williamson (B&W)] titled “How Can We Introduce Starters and Switchers to our Brands,” stated . . . that  
an attempt to reach young smokers,



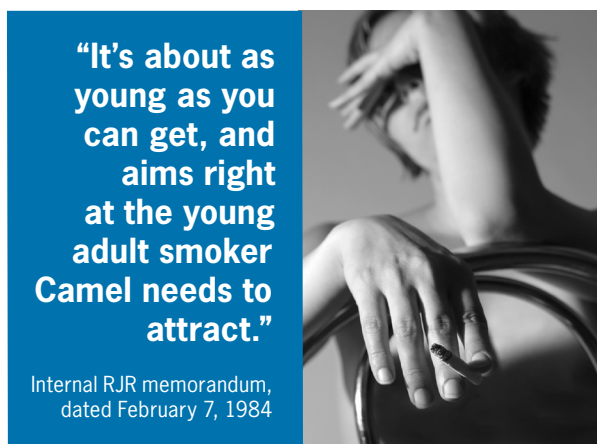
**Above all, Defendants have burnished the image of their youth brands to convey rugged independence, rebelliousness, love of life, adventurousness, confidence, self-assurance, and belonging to the “in” crowd.**

starters should be based . . . on the following parameters: [p]resent the cigarette as one of a few initiations into the adult world. Present the cigarette as part of the illicit pleasure category of products and activities. . . . [T]ouch on the basic symbols of the growing-up, maturity process. To the best of your ability (considering some legal constraints) relate the cigarette to “pot,” wine, beer, sex, etc.<sup>8</sup>

**1955.** A June 29, 1983 report . . . listed “beginning ideas” to be implemented at convenience stores to encourage purchase of RJR’s cigarette brands, including “activity booklet appealing to young people – things to do,” “develop a bike rack for kids with bikes – create ad space,” “hook-up cigarettes with other youth purchases,” “have a video game token given away with purchase,” “create a music channel that is closed-circuited into C.S. [convenience store] that is on-target to youth market,” and “some kind of game or contest . . . via proof of purchase – with a weekly winner. Could be video game – high school sports quiz.”<sup>9</sup>

**1965.** As a February 7, 1984 memorandum from Dana Blackmar to Rick McReynolds stated: “I think the French advertisement for Camel Filters is a smash. It would work equally well, if not better, for Camel Regular. It’s about as young as you can get, and aims right at the young adult smoker Camel needs to attract.”<sup>10</sup>

**1971.** Camel had only 2.4% of the fourteen to seventeen year old market in 1979, according to internal RJR data. . . . By 1993, by virtue of the Joe Camel campaign, Camel had increased its share of the teenage market to an astonishing 13.3% . . .<sup>11</sup>



**1980.** A September 15, 1989 RJR document . . . reported on Camel marketing at . . . a festival that offered “kiddy rides, vendor booths, and live entertainment on both stages.” A similar Dallas event included a midway area with carnival rides for the children: “Camel presence, as a major sponsor, was certainly realized by all those at the event. 25 large banners were hung around the perimeter of the park. The Camel 30-ft. inflatable giant pack was situated next to the main stage.” A Camel basketball game in a “freestanding booth with banners, flags and giant packs” was located in the midway area with children’s carnival rides which achieved “maximum brand impact.” The documents indicated that 2,000, 5,000, and 28,000 free samples of cigarettes were distributed at these three events, respectively.<sup>12</sup>

**1986.** A November 1993 Roper Starch report on an “Advertising Character and Slogan Survey” was conducted with a “national sample of young persons, age 10 to 17 years” to track awareness of the Joe Camel Campaign. The study found that 86% of the ten to seventeen year olds surveyed recognized Joe Camel. Joe Camel was identified correctly as advertising cigarettes by 95% of the ten to seventeen year olds who claimed awareness of the Joe Camel character. This percentage was higher than the percentage of children who knew that Ronald McDonald advertised McDonald’s fast food and within 1% of the number of children who knew that the Keebler elves advertised cookies.<sup>13</sup>

### **c. Defendants Continue Price Promotions for Premium Brands Which Are Most Popular with Teens**

**1991.** Defendants recognize that youth and young adults are more responsive to increases in cigarette and other tobacco prices, and will not try smoking or continue to smoke if cigarette prices rise.<sup>14</sup>

**2997.** Since signing the [Master Settlement Agreement (MSA)], Defendants have increased the list price of their cigarettes. At the same time, they have enormously increased their promotions, thereby, in effect, decreasing the real price of cigarettes to consumers.<sup>15</sup>

**3017.** Since approximately 2000, B&W has spent more on discounting or reducing the price of Kool cigarettes than any of its other brands, according to Paul Wessel, the Current Divisional Vice President at B&W in charge of value for money premium niche brand and new product development.<sup>16</sup>

**3018.** Wessel claimed that he was unaware of whether youths were price sensitive and whether B&W had ever taken a position on the price sensitivity of youth.<sup>17</sup> That statement is not credible in light of his corporate responsibilities and B&W's oft-claimed sensitivity to avoiding the marketing of its products to youth.

## **5. Defendants' Marketing Successfully Reaches Youth**

### **a. Defendants' Spending on Marketing and Promotion Has Continually Increased**

**3026.** After signing the MSA, Cigarette Company Defendants reported to the FTC significant increases in spending for newspapers (up 73%), magazines (up 34.2%), and direct mail (up 63.8%). Distribution of free cigarettes rose by 133.5%.<sup>18</sup>

**3032.** Much of Ms. Beasley's testimony on cross-examination was flatly not believable. Two examples will suffice. First, even though she was President and Chief Operating Officer at RJR, and a long-time employee of the company, she denied knowing that RJR's leading cigarette brand, Camel, is the third most commonly smoked brand among twelve to seventeen year olds.<sup>19</sup> Second, she stated that in March 2001, RJR removed Rolling Stone and other magazines from its list of magazines approved for youth readership; she was then shown four different 2005 Rolling Stone magazine editions that contained RJR cigarette

brand ads for Camel, in direct contradiction of her testimony.<sup>20</sup> Therefore, the Court rejects her testimony that Reynolds's marketing, particularly in magazines, is not directed at youth.

### **b. Defendants Advertise in Youth-Oriented Publications**

**3054.** Philip Morris's Director of Media [Richard Camisa] claimed that . . . he was not aware of the number of teens who were being reached by Philip Morris's advertisements in publications. That testimony is rejected as not being credible, particularly in light of his acknowledgment that the Media Department created binders of "cheat sheets," similar to "Cliff's Notes," for the Philip Morris Brand Groups that contained synopses of each magazine in which Philip Morris cigarette advertisements could be published. Those synopses included basic readership demographic data, including information on a magazine's age of readers, theme, and target audience.<sup>21</sup>

**3083.** Andrew Schindler, CEO of RJR, . . . stated – with a straight face – that, when RJR advertised in the 2003 swimsuit issue of Sports Illustrated, it did not occur to him that "the Swimsuit issue, might garner a very high absolute number of adolescent boys looking at it, even if the 25% threshold was not breached" or that "even if actual sales figures for this issues [sic] were not astronomically higher for adolescents, this is the one issue that has a huge potential for one tenth grade boy who did buy it to take it to school and share around with all of his pals."<sup>22</sup> This statement is not credible.

### **c. Defendants Market to Youth Through Direct Mail**

**3089.** Defendants have made extensive use of direct mail marketing to many millions of individuals to send them coupons, t-shirts, sporting goods, mugs, and magazines, all promoting their brand of cigarettes. These mailings were sent to millions of young people for whom Defendants had nothing more than an unverified representation that s/he was over the age of twenty-one.



**3101.** Lorillard, through its CEO Martin Orlowsky, admitted that “at times” it has sent mailings to individuals for whom it has no government-issued identification, and that it does not have third-party verification for every person to whom it mails.<sup>23</sup>



**“If we don’t do something fast to project that sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time.”**

**1995 Philip Morris Document**

**3102.** In 2000, Lorillard sent 4,181,593 mailings that included coupons for cigarettes to 2.6 million individuals for whom Lorillard has no third-party age verification and no government-issued identification on file.<sup>24</sup>

**3108.** In 2004, B&W also sent cigarettes through the mail to individuals whose age had not been verified through government-issued identification or third-party verification.<sup>25</sup>

#### **d. Defendants Market to Youth Through an Array of Retail Promotions**

#### **e. Defendants’ Promotional Items, Events and Sponsorships Attract Youth**

**3135.** David Desandre, a Lorillard marketing employee, and Beth Crehan, an employee of a marketing promotion firm, were able to attend a Lucky Strike “Band to Band” event . . . without being asked for any identification. Inside the Concert Hall were “pole banners with the Lucky Strike Band to Band tag-line” . . . Desandre described how, while he was filling out a form to receive a free CD, a Lucky Strike staff member “threw me a pack of Lucky Strike cigarettes . . . she did not ask me if I was 21 or a smoker. She also did not ask for my id. Beth Crehan was also not asked if she was 21 or a smoker. Beth was also not asked for id.”<sup>26</sup>

**3136.** Defendants sponsor televised racing events which have great appeal with youth. As a result, millions of youth watching these events are exposed to Defendants’ cigarette marketing imagery.

**3141.** Defendants falsely deny that the television exposure their cigarette brands garner does not motivate their continued sponsorship of racing events. For example, RJR asserted . . . that “radio and television exposure is not a motivating consideration for Reynolds in deciding whether to sponsor an event or a vehicle participating in an event.”<sup>27</sup> However, Susan Ivey, President and CEO of Reynolds American, acknowledged that one of the benefits of brand sponsorship of televised sporting events is exposure of the brand name on television.<sup>28</sup>

**3154.** A 1992 Gallup survey revealed that almost half of adolescent smokers and one quarter of nonsmoking adolescents had received promotional items from tobacco companies.<sup>29</sup>

## **6. Defendants’ Youth Smoking Prevention Programs Are Not Designed to Effectively Prevent Youth Smoking**

**3184.** Internal documents suggest that Defendants designed their [youth smoking prevention] programs for public relations rather than efficacy in youth smoking prevention.<sup>30</sup>

**3185.** A 1995 Philip Morris document . . . stated: [I]f we don’t do something fast to project that sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time. Those

restrictions will pave the way for equally severe legislation or regulation on where adults are allowed to smoke.<sup>31</sup>

## **7. Despite the Overwhelming Evidence to the Contrary, Defendants' Public Statements and Official Corporate Policies Deny that Their Marketing Targets Youth or Affects Youth Smoking Incidence**

### **a. Defendants Claim They Restrict Their Marketing to People Twenty-one and Older**

### **b. Defendants Deny Their Marketing Influences Youth Smoking Initiation; Defendants' Explanation for Their Marketing Practices Is Not Credible**

**3219.** On the nationally televised ABC program 20/20, broadcast on October 20, 1983, Ann Browder, a Tobacco Institute spokesperson, . . . stated that

[c]igarette manufacturers are not interested in obtaining new business from teenagers. . . . We've been in business very well, thank you, for sometime now without attempting to hook kids. We do everything possible to discourage teenage smoking.<sup>32</sup>

**3230.** On May 24, 1990, the Tobacco Institute issued a press release . . . [that] quoted [the Tobacco Institute's Charles O.] Whitley as testifying: "I know of no other industry in America that has taken such direct, voluntary action to steer its products away from young people."<sup>33</sup>

**3233.** On December 12, 1990, [Brennan Dawson, Vice President of Public Relations for the Tobacco Institute,] told news reporters: "If a child never picks up another cigarette it would be fine with the tobacco industry."<sup>34</sup>

**3264.** Steven C. Watson, Lorillard Vice President, External Affairs, was responsible for issuing a press release in 2001, stating "Lorillard Tobacco Company has never marketed or sold its products to youth."<sup>35</sup>

**3286.** On September 18, 1990, Joan F. Cockerham of RJR's Public Relations Department, . . . stated:

Our intention with this campaign, as with all of our advertising, is to appeal only to adult smokers. We would not have launched the current Camel campaign if we thought its appeal was to anyone other than this group. . . . [O]ur advertising is directed to adult smokers and not younger people.<sup>36</sup>

## **8. Conclusions**

**3296.** The evidence is clear and convincing – and beyond any reasonable doubt – that Defendants have marketed to young people twenty-one and under while consistently, publicly, and falsely, denying they do so.<sup>37</sup>

**3297.** In response to the mountain of evidence to the contrary, Defendants claim that all the billions of dollars they have spent on cigarette marketing serves the primary purpose of retaining loyal customers ("brand loyalty"), and the secondary purpose of encouraging smokers to switch brands.<sup>38</sup>

**3298.** Defendants' marketing activities are intended to bring new, young, and hopefully long-lived smokers into the market in order to replace those who die (largely from tobacco-caused illnesses) or quit. . . . Defendants used their knowledge of young people to create highly sophisticated and appealing marketing campaigns targeted to lure them into starting smoking and later becoming nicotine addicts.<sup>39</sup>

**3301.** Defendants spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive. Defendants' expenditures on cigarette advertising and promotion have increased dramatically over the past decades, and in particular since the signing of the MSA.<sup>40</sup>

**3302.** In the face of this evidence, Defendants have denied, over and over, with great self-righteousness, that they have marketed to youth.

## Endnotes

- 1 LeBow WD, 63:16-64:1.
- 2 85530255-0264 at 0262-0263 (US 31998) . . . .
- 3 03537131-32 (US 22357).
- 4 96509517-9519 at 9519 (US 56890).
- 5 502987407-502987418 at 7408 (US 20708).
- 6 Krugman, WD, 85:11-92:18.
- 7 92352889-2890 (US 21725).
- 8 680092632- 2668 at 2664-2665 (US 21693); 170043558-3593 at 3581-3582 (US 20293); 679018003-8278 (US 87928).
- 9 500863242-3272 (US 20654).
- 10 502303940-3940 (US 22067); Horrigan PD, United States v. Philip Morris, 10/25/01, 25:1-27:8.
- 11 Eriksen WD, 1/17/05, 49:7-53:5; VXA1900036-0049 (US 63946).
- 12 507525019-5023 at 5020, 5022 (US 20778).
- 13 517145060-5108 at 5064, 5082, 5085 (US 20877).
- 14 Chaloupka WD, 94:23-124:4.
- 15 Chaloupka WD, 124:7-136:20.
- 16 Wessel PD, United States v. Philip Morris, 3/19/03, 28:17-29:1.
- 17 Id. at 36:23-37:12.
- 18 [Dolan WD, 61:15-16.]
- 19 Beasley TT, 3/31/05, 17358:1-17359:16.
- 20 Id. at 17364:11-17369:23.
- 21 Camisa PD, United States v. Philip Morris, 6/28/02, 85:20-87:2, 92:2-93:15.
- 22 Schindler WD, 214:13-215:8.
- 23 Orlowsky TT, 10/13/04, 2277:25-2278:25.
- 24 94945731-94945736 at 5734 (US 90002).
- 25 Ivey TT, 11/17/04, 6241:1-6243:11; 469100116-0136 (US 89166) (Confidential).
- 26 98600272-0273 (US 22212).
- 27 509321275-1290 (US 21993).
- 28 Ivey WD, 48:6- 49:4.
- 29 Krugman WD, 107:18-20.
- 30 TIMN0164421-4424 at 4423 (US 34445\*) . . . .
- 31 2044046017-6022 at 6021-6022 (US 66716).
- 32 680286673-6686 at 6675-6676 (US 20999); 690149518-9531 at 9520-9521 (US 21046).
- 33 MNAT00600156-0157 (US 22349).
- 34 TIMN0131524-1525 (US 85153).
- 35 Watson PD, United States v. Philip Morris, 4/2/02, 190:5-191:6.
- 36 507706384-6384 (US 20782).
- 37 Dolan WD, 24:3-16; Krugman WD, 17:2-19:1; Chaloupka WD, 30:8-32:20; Biglan WD, 100-379.
- 38 Dolan WD, 61:6-16.
- 39 Dolan WD, 24:3-16; Krugman WD, 84:1-99:23; Chaloupka WD, 30:8-32:20; Biglan WD, 100-379.
- 40 Krugman WD, 23:10-24:4.

- The Hazards of Smoking
- Addiction
- Nicotine Levels
- Light Cigarettes
- Marketing to Youth

## Secondhand Smoke

- Suppression of Information

# The Verdict Is In:

Findings from *United States v. Philip Morris*



Tobacco Control  
Legal Consortium



Law. Health. Justice.

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# Secondhand Smoke

## Defendants Have Publicly Denied What They Internally Acknowledged: that ETS Is Hazardous to Nonsmokers

### Summary

In this section of the Opinion, Judge Kessler explains that the evidence shows that the Defendants have long known that secondhand smoke, or environmental tobacco smoke (ETS), is hazardous to non-smokers and that Defendants have understood how this information could affect the tobacco industry's profitability. Judge Kessler describes the steps the Defendants took, after promising to support objective research on the issue, to undermine independent research efforts, to fund industry-friendly research, and to suppress and trivialize unfavorable research results. Judge Kessler emphasizes that the evidence shows that the Defendants continue to deny the extent to which secondhand smoke is hazardous to non-smokers.

### 1. Introduction

**3303.** During the 1970s, scientific evidence suggesting that exposure to cigarette smoke was hazardous to nonsmokers began to grow, and public health authorities began to warn of a potential health risk to both adults and children. Fearing government regulation to restrict smoking in public places and sensing a decrease in the social acceptability of smoking, Defendants were faced with a major threat to their profits.

**3304.** In 1974, Tobacco Institute chairman Horace Kornegay warned that smoking restrictions not only impacted sales but also “could lead to the virtual elimination of cigarette smoking.”<sup>1</sup> Reynolds CEO Ed Horrigan wrote Lorillard executives in 1982: “We all know that probably the biggest threat to our industry is the issue of passive smoking.”<sup>2</sup> A 1986 [British American Tobacco (Investments) Ltd. (BATCo)] document stated: “The world tobacco industry sees the ETS issue as the most serious threat to our whole business.”<sup>3</sup> Philip Morris Companies Vice Chairman Bill Murray was advised . . . in 1987: “The situation can’t get any worse. Sales are down, can’t be attributed to taxes or price increases. ETS is the link between

smokers and non-smokers and is, thus, the anti’s [anti-smoking activists] silver bullet.”<sup>4</sup>

**3305.** In response, Defendants crafted and implemented a broad strategy to undermine and distort the evidence indicting passive smoke as a health hazard. Defendants’ initiatives and public statements with respect to passive smoking attempted to deceive the public, distort the scientific record, avoid adverse findings by government agencies, and forestall indoor air restrictions. Defendants’ conduct with respect to passive smoking continues to this day, when currently no Defendant publicly admits that passive exposure to cigarette smoke causes disease or other adverse health effects.

### 2. The Consensus of the Public Health Community is that ETS Causes Disease in Nonsmokers

### 3. Internally, Defendants Recognized That ETS is Hazardous to Nonsmokers





**Defendants recognized that secondhand smoke contained high concentrations of carcinogens and other harmful agents.**

**3362.** Defendants recognized that secondhand smoke contained high concentrations of carcinogens and other harmful agents. Defendants also recognized that the research from the public health community showing that ETS caused disease was persuasive evidence of the harmful effects of secondhand smoke and could be adverse to their position. Most importantly, research funded by Defendants themselves provided evidence confirming the public health authorities' warnings that nonsmokers exposure to cigarette smoke was a health hazard.

#### **4. Internally, Defendants Expressed Concern that the Mounting Evidence on ETS Posed a Grave Threat to Their Industry**

**3413.** On January 31, 1974, at the 1974 Tobacco Institute's annual meeting in New York, Tobacco Institute president Horace Kornegay described the gradual acceleration of indoor air restrictions, stating that these restrictions not only impacted sales but also "could lead to the virtual elimination of cigarette smoking."<sup>5</sup>

**3415.** BATCo understood that the passive smoking issue not only risked an increasing number of smoking restrictions, but even threatened to reduce the number of starting smokers. Without such starting smokers, the industry could not survive. Papers from

Australia, the United States, Canada, and Germany presented at the 1976 Hot Springs conference emphasized that the threat of "social unacceptability" emanating from the health risks to nonsmokers "threatens to undermine smokers' confidence and to dissuade people not to take up the habit."<sup>6</sup>

**3421.** In 1987, a Philip Morris strategic planning memorandum on "social acceptability" stated that "the effects of ETS on others is now the most powerful anti-smoking weapon being employed against the industry."<sup>7</sup>

**3423.** In June 1987, Philip Morris Companies held its conference called "Operation Downunder" [a 1987 meeting between a small a group of executives on Hilton Head Island, South Carolina] . . . to formulate a worldwide strategy on passive smoking. [Philip Morris legal counsel] Covington & Burling's John Rupp told the group that the industry was "in deep shit" as a result of the 1986 reports\* and the industry's "serious credibility problem."<sup>8</sup>

**3427.** The actual impact of smoking restrictions on cigarette sales was so substantial that by January 1992, Philip Morris was measuring past impacts on sales and modeling the future sales impact of the possible workplace smoking restrictions resulting from public concerns about the significant health impacts of secondhand smoke on non-smokers.<sup>9</sup>

#### **5. Defendants Made Public Promises to Support Independent Research on the Link Between ETS and Disease**

\* Tobacco Control Legal Consortium note: The "1986 reports" referred to above are three scientific reports recognizing the adverse health consequences of secondhand smoke exposure in humans: (1) the Surgeon General's 1986 Report; (2) the National Research Council of the National Academy of Sciences 1986 report entitled "Environmental Tobacco Smoke, Measuring Exposures and Assessing Health Effects"; and (3) the World Health Organization's International Agency for Research on Cancer (IARC) 1986 report entitled "Tobacco Smoking," one in a series of "Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans." These reports are discussed on pages 1223 - 1225 of the decision.

**3434.** These public promises were intended to deceive the American public into believing that there was no risk associated with passive smoking and that Defendants would fund objective research to find definitive answers. Instead, over the decades that followed, Defendants took steps to undermine independent research, to fund research designed and controlled to generate industry-favorable results, and to suppress adverse research results.

## 6. Defendants Undertook Joint Efforts to Undermine and Discredit the Scientific Consensus That ETS Causes Disease

**3435.**

[D]efendants recognized from the mid-1970s forward that the health effects of passive smoking posed a profound threat to industry viability and cigarette profits,

through (1) increasing numbers of smoking restrictions; (2) making smoking “socially unacceptable”; and (3) reducing the number of starter smokers. This recognition resulted in concerted, international action by Defendants and other members of the industry to meet the passive smoking threat head on.

**3493.** At a February 3, 1988 meeting of the Tobacco Institute’s Communications Committee, Sam Chilcote [then President of the Tobacco Institute] told the Executive Committee that they were now tasked to “move forward with an expanded comprehensive effort” to deal with the ETS threat. The “two basic objectives” in implementing Downunder were “to defeat or lessen all smoking restrictions” and “to slow the decline of the social acceptability of smoking.” These goals were to be achieved through, inter alia, funding the Center for Indoor Air Research

[(CIAR)], “media tours,” and “more experts.”<sup>10</sup>

**3523.** From 1988 until its dissolution as required by the [Master Settlement Agreement (MSA)] in 1999, CIAR funded over 150 projects at over 75 institutions that resulted in roughly 250 peer-reviewed publications.<sup>11</sup> Total research funding provided through CIAR was in excess of \$60,000,000.<sup>12</sup>

**3539.** [I]t is clear that although CIAR was publicly billed as an independent scientific entity organized to support research projects addressing indoor-air issues, its funding was controlled by the tobacco industry, and projects were sought for the purpose of establishing industry-favorable science and potential expert witnesses.



**The “two basic objectives” in implementing Downunder were “to defeat or lessen all smoking restrictions” and “to slow the decline of the social acceptability of smoking.”**

Sam Chilcote, at a February 3, 1988 meeting of the Tobacco Institute’s Communications Committee

**3565.** The MSA . . . required that Defendants shut down and disband CIAR within 45 days of “Final Approval.” Although the MSA was signed by the parties in November 1998, “Final Approval” by the settling States did not take place until approximately one year later.<sup>13</sup>

**3567.** Between the MSA signing in November 1998 and CIAR dissolution in December 1999, Defendants continued to fund millions of dollars of new and continuing research. In February 1999 alone the CIAR Board of Directors voted to fund over \$3.5 million in new research.<sup>14</sup>

**3568.** As one example of CIAR’s continued activities, in 2000, the second edition of the CIAR text by ETS consultant Roger Jenkins was published, with Max Eisenberg [former Executive Director of CIAR] listed as editor. The publication,



**One objective  
... was simply  
to “keep the  
controversy alive”  
by attacking  
the scientific  
consensus that  
ETS was a health  
hazard.**

titled “The Chemistry of Environmental Tobacco Smoke: Composition and Measurement,” continues to dispute the known health effects of passive smoking and trivializing its role as an indoor air pollutant. According to Jenkins’s introduction to his book: (1) “The degree to which ETS exposure represents a health hazard remains a point of contention”; and (2) “The contribution of ETS to the concentration of indoor air contaminants in commonly encountered environments is much less than is implied by the extreme values included in many tabulations of ranges observed.”<sup>15</sup>

**3601.** The ETS Consultancy Program was a worldwide network of consultants and organizations recruited to speak on behalf of the industry to influence public opinion, government officials, and scientists. . . . [D]efendants created the ETS Consultancy Program to attack and discredit the scientific consensus and underlying evidence that passive smoking was a health hazard.

**3602.** One objective in creating and implementing the ETS Consultancy Program was simply to “keep the controversy alive” by attacking the scientific consensus that ETS was a health hazard.<sup>16</sup>

**3635.** Through their recruiting and training of consultants around the world, Defendants created a cadre of seemingly independent consultants to support the industry’s position on secondhand smoke and to create the impression that a legitimate controversy existed among independent scientists. The global effort to create and manage this program required intense coordination among the companies and their counsel.

**3642.** Through the consultancy program, the tobacco industry was successful in reaching “public, scientific and governmental audiences.”<sup>17</sup> In the words of [Brown & Williamson (B&W)] counsel Kendrick Wells: “The consultants groups’ operation is essentially a public relations program, not a scientific operation.”<sup>18</sup>

## **7. Defendants Made False and Misleading Public Statements Denying that ETS Is Hazardous to Nonsmokers**

## **8. Defendants Continue to Obscure the Fact that ETS is Hazardous to Non Smokers**

**3829.** In this litigation, Defendants have denied that ETS causes disease in nonsmokers.<sup>19</sup>

**3830.** Reynolds continues to publicly and directly deny that secondhand smoke causes diseases and other adverse health effects in nonsmokers. Reynolds’s position on its website is that it believes “that there are still legitimate scientific questions concerning the reported risks of secondhand smoke.” Reynolds’s website further states:

Considering all of the evidence, in our opinion, it seems unlikely that secondhand smoke presents any significant harm to otherwise healthy nonsmoking adults at the very low concentrations commonly encountered in their homes, offices and other places where smoking is allowed. We recognize that exposure to high concentrations of secondhand smoke may cause temporary irritation, such as teary eyes, and even coughs and wheezing in some adults. In addition, there is evidence that secondhand smoke, like other airborne irritants, or allergens such as pollen and dust may trigger attacks in asthmatics.<sup>20</sup>

Mary Ward, an in-house attorney for Reynolds until 2004, testified that the Reynolds position

on passive smoking has not changed since she joined the company in 1985, with the exception of admitting that ETS “may trigger attacks in asthmatics.”<sup>21</sup>

**3834.** B&W also continues to publicly deny that secondhand smoke causes diseases and other adverse health effects in nonsmokers. The company’s 2003 website stated: “It is, therefore, our view that the scientific evidence is not sufficient to establish that environmental tobacco smoke is a cause of lung cancer, heart disease, or other chronic diseases.”<sup>22</sup>

**3835.** BATCo continues to publicly dispute that secondhand smoke causes diseases and other

**“Considering all of the evidence, in our opinion, it seems unlikely that secondhand smoke presents any significant harm to otherwise healthy nonsmoking adults at the very low concentrations commonly encountered in their homes, offices and other places where smoking is allowed.”**

R.J. Reynolds’s website

adverse health effects in nonsmokers. BATCo also denies that passive smoke is a health hazard to adults or children. On its website, BATCo states that ETS can be “annoying,” but denies that it presents any risk:

We believe, however, the claim that ETS exposure has been shown to be a cause of chronic disease is not supported by the science that has developed over the last 20 years or so. In our view, it has not been

established that ETS exposure genuinely increases the risk of nonsmokers developing lung cancer, heart disease, or chronic obstructive pulmonary disease.<sup>23</sup>

**3838.** In 2002, BATCo published a document titled “British American Tobacco Social Report 2001/2002.” In this report, BATCo asserted:

There is also a debate about Environmental Tobacco Smoke (ETS), also known as passive smoking. Some say it poses health risks, and others, including ourselves, say there is no convincing evidence that ETS is a cause of chronic diseases such as lung cancer.<sup>24</sup>

**3847.** Philip Morris has created a new organization called the Philip Morris External Research Program, or PMERP, to continue the scientific research carried out by CIAR.

**3848.** The MSA, signed by representatives of certain Defendants on November 23, 1998, required that Defendants shut down and disband CIAR.<sup>25</sup> CIAR’s executive director Eisenberg formally dissolved the organization on December 6, 1999.<sup>26</sup>

**3851.** Philip Morris established the PMERP in early 2000, using the same offices in Linthicum, Maryland, that formerly housed CIAR, employing many of the same individuals who were employed by CIAR, and even using the same phone numbers as CIAR had used. The program is administered by an entity called Research Management Group (RMG), set up in 2000 solely to manage the PMERP. RMG has never managed any other program.<sup>27</sup> RMG is headed by Max Eisenberg, the former executive director of CIAR.<sup>28</sup>

**3852.** [A]ll told, 44 out of the 105 peer-reviewers listed by PMERP in its 2000 Request for Applications were drawn from the peer reviewer list in the 1998 CIAR Request for Applications.<sup>29</sup> Moreover, 53 of the peer reviewers were former recipients of CIAR funding.<sup>30</sup> Many researchers funded through CIAR have continued to receive funding through the PMERP.<sup>31</sup>



## 9. Conclusions

**3859.** Scientists have been concerned about the health effects of environmental tobacco smoke since at least the late 1960s, after the issuance of the Surgeon General's Report on Smoking and Health. However, no scientific consensus about the hazards of ETS to non-smokers (particularly to babies and young children), as well as to smokers who also inhale the sidestream smoke which is a component of ETS, was reached until 1986.

**3860.** Significantly, Defendants were well aware of, and worried about, this issue as early as 1961 when a Philip Morris scientist presented a paper showing that 84% of cigarette smoke was composed of sidestream smoke, and that sidestream smoke contained carcinogens. In addition to understanding, early on, that there was a strong possibility that ETS posed a serious health danger to smokers, Defendants also

understood the financial ramifications of such a conclusion. In 1974, the Tobacco Institute's president Horace Kornegay acknowledged that indoor air restrictions designed to defuse the passive smoking issue "could lead to the virtual elimination of cigarette smoking." In 1980, the CEO of R.J. Reynolds, Ed Horrigan, stated that "We all know that probably the biggest threat to our industry is the issue of passive smoking." In the 1990s, a Philip Morris report identified "the social acceptability of smoking practices [as] the most critical issue that our industry is facing today . . . Attacks on acceptability are almost exclusively based on claims that ETS can cause diseases in the exposed population."

**3861.** Despite the fact that Defendants' own scientists were increasingly persuaded of the strength of the research showing the dangers of ETS to nonsmokers, Defendants mounted a comprehensive, coordinated, international effort to undermine and discredit this research. Defendants poured money and resources into establishing a network of interlocking organizations. They identified, trained, and subsidized "friendly" scientists through their Global Consultancy Program, and sponsored symposia all over the world from Vienna to Tokyo to Bermuda to Canada featuring those "friendly" scientists, without revealing their substantial financial ties to Defendants. They conducted a mammoth national and international public relations campaign to criticize and trivialize scientific reports demonstrating the health hazards of ETS to nonsmokers and smokers.

**3862.** Defendants still continue to deny the full extent to which ETS can harm nonsmokers and smokers. Some Defendants, such as BATCo, R. J. Reynolds, and Lorillard, flatly deny that secondhand smoke causes disease and other adverse health effects; some, such as Brown & Williamson, claim it's still "an open question"; and others, such as Philip Morris, say that they don't take a position and that the public should follow the recommendations of the public health authorities. To this day, no Defendant fully acknowledges that the danger exists.

**"We all know that probably the biggest threat to our industry is the issue of passive smoking."**

Ed Horrigan, CEO of R.J. Reynolds



## Endnotes

- 1 TIMN0067732-7755 at 7734 (US 22047).
- 2 93443843-3843 (US 32289).
- 3 100993158-3165 at 3158 (US 89556).
- 4 2021502671- 2678 at 2678 (US 22950).
- 5 TIMN0067732-7755 at 7734 (US 22047).
- 6 2025025457-5460 at 5457 (US 75152).
- 7 2021553739-3926 at 3901-3905 (US 36767).
- 8 2021502102- 2134 at 2105-2106 (US 20346).
- 9 2023914279-4284 at 4280 (US 88584).
- 10 TIDN0008865-8890 (US 65559).
- 11 (JD 002923 at 8360029); (JD 054352).
- 12 See US 25643[.]
- 13 (no bates at 32-33) (JD 045158).
- 14 2063908736-8736 (US 20514); 83205163-83205165 (US 23493).
- 15 BR2000545-0785 at 0553 (JD 065024).
- 16 321140944-0949 at 0944 (US 20586); 2021181803-1812 at 1803 (US 22155); 2047720166 0173 at 0169; (US 23966); 321091680-1729 at 1685 (US 28271).
- 17 2500048956-8969 at 8967 (US 27901).
- 18 401033325-3328 (US 24099).
- 19 USX6390001-0400 at 0045-0046 (US 89555) (BATCo); USX6390001-0400 at 00780079 (US 89555) (B&W); USX6390001-0400 at 0147-0148 (US 89555) (Lorillard); USX6390001-0400 at 0194-0195 (US 89555) (PM); USX6390001-0400 at 0272, 0274-0275 (US 89555) (RJR).
- 20 (US 92012).
- 21 Ward TT, 11/4/04, 5076:9-5077:22.
- 22 TLT0390003-0003 (US 7676).
- 23 ARG0412302-2303 (US 86747); see also ARU6220813-0814 (US 86743).
- 24 TLT0231830-TLT0231910 at 1844 (US 76316).
- 25 (no bates at 32-33) (JD 045158).
- 26 86205205-5206 (US 21091).
- 27 Eisenberg TT, 11/9/04, 5631:9-24.
- 28 Eisenberg WD, 52:6-10, 53:10-16; Eisenberg TT, 11/15/04, 5852:10-5853:7.
- 29 2085317779-7809 at 7802 (US 22200); 86616778-6810 (JD 042662); Eisenberg TT, 11/15/04, 5663:14-18.
- 30 Eisenberg TT, 11/15/04, 5864:3-11.
- 31 Eisenberg WD, 54:14-17.



- The Hazards of Smoking
- Addiction
- Nicotine Levels
- Light Cigarettes
- Marketing to Youth
- Secondhand Smoke

## Suppression of Information

# The Verdict Is In:

Findings from *United States v. Philip Morris*



Tobacco Control  
Legal Consortium



Law. Health. Justice.

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# Suppression of Information

## At Various Times, Defendants Attempted to and Did Suppress and Conceal Scientific Research and Destroy Documents Relevant to Their Public and Litigation Positions

### Summary

In this section of the Opinion, Judge Kessler discusses the evidence that for over fifty years, the Defendants tried to protect themselves from litigation and regulation by (1) suppressing and concealing scientific research, (2) destroying documents, and (3) shielding other documents from public view by asserting that they were “privileged” and protected by law. Judge Kessler explains that the Defendants’ destruction of documents makes it impossible to know what materials once existed.

**3863.** Defendants attempted to and, at times, did prevent/stop ongoing research, hide existing research, and destroy sensitive documents in order to protect their public positions on smoking and health, avoid or limit liability for smoking and health related claims in litigation, and prevent regulatory limitations on the cigarette industry.

**3864.** The evidence of Defendants’ suppression of research and destruction of documents consists of events which often seem to be unrelated and to lack a unifying thread. Defendants claim these facts, most of which are undisputed, amount to no more than a string of isolated instances which prove nothing. This explanation misses the point. The evidence is clear that on a significant number of occasions, Defendants did in fact suppress research and destroy documents to protect themselves and the industry. The fact that much additional evidence may be lacking because Defendants were successful in their efforts to suppress, conceal, and destroy materials that would have reflected adversely on their corporate interests is hardly a justification for ignoring the evidence that does exist. Moreover, in those instances where Defendants did successfully

suppress, conceal, and destroy materials, it is most unlikely that there would be any evidence to reflect that since it would no longer exist. By destroying evidence, Defendants make it virtually impossible to know what materials existed prior to their destruction.

### 1. Suppression and Concealment of Scientific Research

**3866.** In 1978, Sheldon Sommers, Chairman of the [Council for Tobacco Research (CTR)] Scientific Advisory Board..., complained to William Gardner, the Scientific Director of CTR, that he (Sommers) was concerned that the CTR lawyers were controlling tobacco research by CTR based upon legal considerations. Sommers stated: “I think CTR should be renamed Council for Legally Permitted Tobacco Research, CLIPT for short.” Indeed, the lawyer control of CTR had become so pervasive that Sommers concluded that “[m]y considered opinion is that the time for me to sever connections with CTR is near.”<sup>1</sup>



**“...the current lack of clarity about the relationship between R&D and Legal Dept. has raised questions which for me are ethically disturbing...”**

Richard Binns, former Manager of BATCo's Group Research & Development Centre

**3887.** After the Vancouver conference, there was concern amongst the [British American Tobacco (BAT)] Group executives that scientists' statements would contradict the public statements and legal positions being taken by the company. As a result, Patrick Sheehy, then Chairman and CEO of BAT Industries, ordered BAT Group lawyers to bring the scientists together for a meeting to “solidify a method by which records related to scientific meetings and scientific research would be handled in the future.”<sup>2</sup>

**3891.** As suggested at the meeting, BAT thereafter held a series of mandatory training sessions about writing and document creation for company scientists. “The sessions were called ‘caution in writing’ seminars and at Brown & Williamson they were presented by lawyers, predominantly from Shook, Hardy & Bacon.”<sup>3</sup> At the seminars, scientists were instructed by lawyers “on how to sanitize the documents they created.”<sup>4</sup> The scientists were told “how to avoid writing documents with contentious words and topics.” The contentious words included words like “safer,” “addictive,” “disease,” and “cancer.”<sup>5</sup>

**3897.** Brown & Williamson [(B&W)] . . . suppressed certain scientific research particularly through lawyer oversight and vetting. In an August 1980 memorandum, Kendrick Wells, at that time corporate counsel to B&W, listed numerous edits that would be required before BAT scientist, Dr. Lionel Blackman could publish “Change of Stance on Public Smoking and Health,” which Blackman had drafted. In justifying the edits, Wells wrote:

The successful defense of product liability litigation and opposition to adverse legislation in the United States depends upon two essential arguments: (1) The scientific evidence does not prove a causal relationship between smoking and health and (2) the smoker voluntarily encounters the known risks of smoking.

A concession by a cigarette manufacturer to the charge that cigarettes cause human disease or a statement which contradicts the concept of voluntary choice of smoking by the consumer could cripple or destroy B&W's defense to smoking and health lawsuits and opposition to legislative attacks. This would be true even though the statements were made by BAT.<sup>6</sup>

“Change of Stance on Smoking and Health” as originally drafted by Blackman was never released to the public.<sup>7</sup>

**3905.** Richard Binns, the former Manager of BATCo's Group Research & Development Centre at Southampton, complained of the expansive role of lawyers in BATCo's science, writing that:

I am being asked to make significant and sometimes swingeing [sic] changes in documents produced recently by R&D staff. It is suggested that this must be done by finding a “managerial explanation” for the changes, without reference to the involvement of Legal Department. I will find this impossible to do. Senior R&D staff will not be so easily deceived. Personally, I am not prepared to lie to staff for very doubtful reasons. Therefore, the current lack of clarity about the relationship between R&D and Legal Dept. has raised questions which for me are ethically disturbing, particularly if extended beyond the present localized situation.<sup>8</sup>

**3907.** Defendant Philip Morris suppressed and concealed many scientific research documents, even going so far as to send them to a foreign

affiliate in order to prevent the disclosure of documents in litigation and in federal regulatory proceedings.

**3909.** Philip Morris did in fact purchase INBIFO [its foreign affiliate] to conduct its smoking and health research.

**3913.** As recently as 1993, Philip Morris maintained a system whereby research documents were “sent to Richmond for a review and [ ] then returned to INBIFO” with all “[s]upporting data and documents . . . kept at INBIFO.”<sup>9</sup>

**3917.** When Victor DeNoble, former Associate Senior Scientist at Philip Morris, and his fellow researcher, Paul Mele, performed research on rats demonstrating that nicotine caused self-administration and induced tolerance, they initially received Philip Morris’s approval to publish their research results. However, following DeNoble’s presentation of those results to Philip Morris senior management in New York City, the approval to publish was withdrawn.<sup>10</sup> DeNoble explained that it was clear from a comment made to him at the presentation that Philip Morris senior management would not allow the research results to be disclosed. Ross Millhiser, a Philip Morris executive stated: “Why should I risk a billion-dollar industry on rats pressing a lever to get nicotine?”<sup>11</sup>

## 2. Document Destruction Policies

**3929.** At various times, different Defendants attempted to and did destroy documents which were adverse to their public and litigation positions on smoking and health. While these efforts were often part of larger, legitimate institutional document retention policies, at other times – as with the BAT Group – they were clearly intended to render unavailable written materials which could prove damaging to or inconsistent with Defendants’ litigation position and public relations stance.

**3950.** [Fred Gulson, in-house counsel for Wills, an operating company owned by BAT Industries,] explained that Wills’s 1985 Document Retention Policy was comprised of two components, the

**“Why should I risk a billion-dollar industry on rats pressing a lever to get nicotine?”**

Philip Morris executive,  
Ross Millhiser



written policy and the un-written purpose and application of the policy which were not reduced to paper for fear of discovery. Regarding the two distinct components of the document management policy, Gulson testified:

The written document’s primary purpose was to provide cover for the actual document destruction enterprise, to ascribe an innocent housekeeping justification for the widespread destruction of sensitive documents. The Document Retention Policy wasn’t simply the written policy itself, but the corporate knowledge of how the Policy was to be applied apart from the written language. My recollection of the Document Retention Policy comes not from the written document, but how it was explained to me by Nick Cannar, Andrew Foyle [a solicitor at Lovell, White & King, BATCo’s outside counsel], Brian Wilson, a partner at Clayton Utz, and others, rather than from the document itself, since the written document was incomplete in terms of describing the actual workings and purpose of the Document Retention Policy.<sup>12</sup>

When he received the Foyle Memorandum, Gulson sent it, at Foyle’s direction, to Brian Wilson, a lawyer at the Australian law firm of Clayton Utz, for answers to the questions Foyle raised regarding the use and implementation of the Document Retention Policy.<sup>13</sup> Foyle wanted Gulson to direct these questions to Wilson because:

There were serious concerns at BATCo that Wills’ Document Retention Policy



might leave the BAT Group vulnerable. Foyle was trying to strike the proper balance between destroying more documents, thereby risking an adverse inference against the companies; and not destroying more documents, thereby risking their discovery and use against companies in litigation.<sup>14</sup>

Foyle also wrote:

For purposes of this exercise it can be assumed that, over the years, Wills has received copies of most of the sensitive documents generated by BATCo but that most of these (with the exception of the research reports) will have been destroyed as a result of the [1985] retention policy. It should also be assumed that a number of Wills employees have a detailed knowledge of the subjects to which many of the sensitive documents referred.<sup>15</sup>

**3981.** As part of its efforts to conceal information and reduce its litigation exposure, BATCo sought to reduce the amount of documents its employees generated. As described in its “Records Management: Creation Retention” manual, BATCo repeatedly preached to its employees to use the “mental copy” rule. The “mental copy” rule asks employees to “imagine that the memo, note or letter you are about to write will be seen by the person that you would least like to read it.” The employee is then to “send a ‘mental copy’ of your document to a newspaper, one of your competitors, a government agency, or potential plaintiff. Now: would you still write the memo? If so – would you still write it the same way?”<sup>16</sup> That same document asked employees to “Think *before* you write,” and to question “does it *really* need to be in writing to do the job?”<sup>17</sup>

**3984.** On June 29, 1992, Sharon (Blackie) Boyse, a BATCo scientist, sent a facsimile to Jorge Basso Dastugue, a manager at BATCo’s Argentine company Nobleza-Piccardo. The facsimile included a price quote from Healthy Buildings International (“HBI”) to prepare information and materials for a public relations

“Please also note, more importantly, that this [is]\* an extremely sensitive document! HBI are [sic] currently under a considerable amount of investigation in the US about their connections with the industry. All references to companies in the quote has [sic] therefore been removed. **Please do not copy or circulate this in any way and please destroy this fax cover sheet after reading!** I know this sounds a little like James Bond, but this is an extremely serious issue for HBI.”

Internal correspondence from British American Tobacco (Investments) Ltd., dated June 1992

program on Indoor Air Quality in Buenos Aires. In the facsimile cover sheet, Boyse instructed Dastugue to keep HBI’s involvement in the project quiet:

Please also note, more importantly, that this [is]\* an extremely sensitive document! HBI are [sic] currently under a considerable amount of investigation in the US about their connections with the industry. All references to companies in the quote has [sic] therefore been removed. **Please do not copy or circulate this in any way and please destroy this fax cover sheet after reading!** I know this sounds a little like James Bond, but this is an extremely serious issue for HBI.<sup>18</sup>

**3997.** [M]embers of the BAT Group, in furtherance of the Policy’s purposes, destroyed documents, routed them from one country or BAT facility to another, erased a useful litigation database as well as the fact that the documents it contained had ever existed as soon as the pre-existing judicial hold was lifted, and constantly exhorted their many employees to avoid putting anything in writing. All these activities were taken for one overriding purpose – to prevent disclosure of

\* Tobacco Control Legal Consortium addition.



evidence in litigation.\*

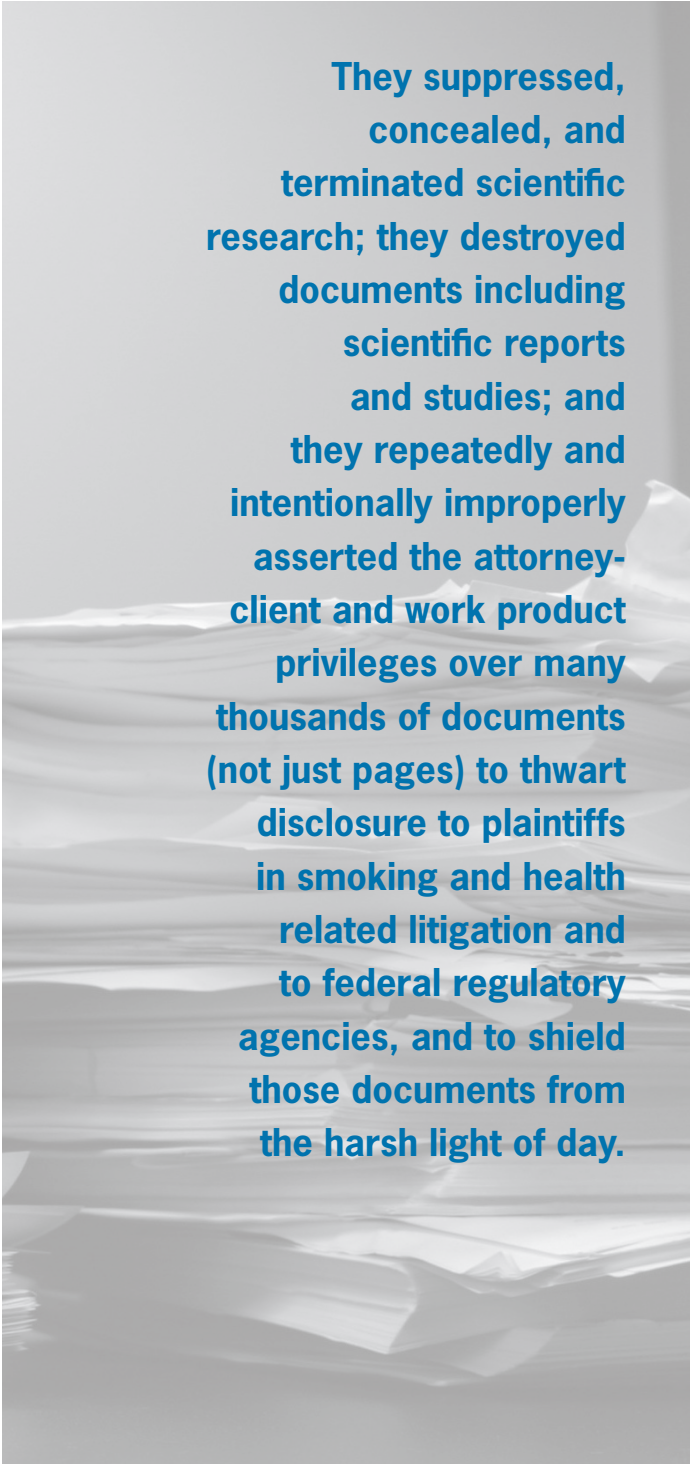
### 3. Improper use of Attorney-Client and Work Product Privileges

**4001.** At various times during which litigation and federal regulatory activities were pending, Defendants improperly sought to conceal research material behind the attorney-client privilege and the work product doctrine in order to avoid discovery. To accomplish that purpose, Defendants' lawyers exercised extensive control over joint industry and individual company scientific research and often vetted scientific documents.

**4003.** Beginning in at least 1965, B&W and BATCo began their efforts to keep scientific research from disclosure. These efforts included sending smoking and health documents outside the United States to foreign affiliates to prevent their disclosure in U.S. litigation and in regulatory proceedings.<sup>19</sup> B&W and BATCo also attempted to create improper attorney-client privilege or work product protection over documents through various means, including routing them through lawyers, maintaining scientific materials in lawyers' files, and indiscriminately marking them as "privileged and confidential" or with other similar designations.

**4014.** In a handwritten letter attributed to Richard Binns, the former Manager of BATCo's Group Research & Development Centre at Southampton,

he discusses BATCo's practice of routing scientific research to B&W through attorney Robert Maddox: "Report – stopped sending direct to B&W in Jan. Maddox farce. B&W withdrawn from circulation lists (but get 2 copies)."<sup>20</sup> Another document – from a Research & Development file used by Binns at the Southampton facility – addresses document circulation relating to B&W, and states that:



**They suppressed, concealed, and terminated scientific research; they destroyed documents including scientific reports and studies; and they repeatedly and intentionally improperly asserted the attorney-client and work product privileges over many thousands of documents (not just pages) to thwart disclosure to plaintiffs in smoking and health related litigation and to federal regulatory agencies, and to shield those documents from the harsh light of day.**

\* The Court would note that on April 14, 2004, more than a year before this case went to trial, Special Master Levie found that the Government had established a prima facie showing that the crime fraud exception applied, and therefore overcame BATCo's claims of attorney-client privilege and/or work product protection for the Foyle Memorandum. He recommended that the Court order BATCo to produce a copy of the Foyle Memorandum to the Government within two days. R&R #155.

While the subsequent history of R&R #155 is fairly tangled, and involved several trips to the Court of Appeals, this Court did not reach the central substantive issue – whether the Government had established the crime fraud exception. With the benefit of hindsight, and on the strength of fully cross-examined, in-person testimony from several key witnesses for the Government (a luxury which the Special Master did not have), the Court concludes that the Special Master's ruling in this regard was eminently correct.

Generally, during the Barclay investigation some years ago we sent all correspondence to E. Pepples marked 'Attorney privileged'" Today, we seem to have a "mail drop" which is only slightly less obvious than Russians leaving microdots in matchboxes on Hampstead Heath. Why not continue the "Attorney privileged" route.<sup>21</sup>

No evidence was presented as to whether B&W ever claimed attorney-client or work product privilege over those documents routed through Maddox.

**4020.** During the 1990s, Liggett scientists were directed to label their work as privileged and confidential in order to prevent its discovery in civil litigation. As stated by Liggett's Manager of Science Issues,

we had become sensitized to labeling a lot of documents privileged and confidence [sic] without thinking[,] it was kind of just a matter of fact thing to do. . . . [M]ost of the documents that we put out, I think, are always subject to discovery. And not knowing exactly where – where this was gonna go, it was just considered almost standard practice to do that.<sup>22</sup>

## 4. Conclusions

**4034.** The foregoing Findings of Fact demonstrate that, over the course of approximately fifty years, different Defendants, at different times, took the following actions in order to maintain their public positions on smoking and disease-related issues, nicotine addiction, nicotine manipulation, and low tar cigarettes, in order to protect themselves from smoking and health related claims in litigation, and in order to avoid regulation which they viewed as harmful: they suppressed, concealed, and terminated scientific research; they destroyed documents including scientific reports and studies; and they repeatedly and intentionally improperly asserted the attorney-client and work product privileges over many thousands of documents (not just pages) to thwart disclosure to plaintiffs in smoking and health related litigation and to federal regulatory agencies, and to shield those documents from the harsh light of day.

**4035.** While it is true that some of these efforts were unsuccessful and some of the elaborate document "retention" policies were either not fully implemented or not implemented at all, the fact remains that many were fully complied with. Consequently, we can never know the full extent of the evidence destroyed and lost to public view.



## Endnotes

- 1 11319256-9256 (US 20281).
- 2 Wigand WD, 54:2-55:16; 202347085-7086 (US 22032).
- 3 Wigand WD, 59:13-23.
- 4 Id. at 60:1-6.
- 5 Id. at 64:15-23.
- 6 680050985-1001 at 0986 (JD 053700).
- 7 Wells WD, 21:6-8.
- 8 109878083-8089 at 8089 (US 21767); Read PD, United States v. Philip Morris, 07/25/03, 157:20-159:3.
- 9 2043725390-5391 (US 20449).
- 10 Farone TT, 10/7/04, 1947:19-1950:20; Farone WD, 156:3-15; Rowell TT, 3/23/05, 16645:15-16646:1, 16654:12-16655:15.
- 11 DeNoble WD, 13:20-15:7, 22:6-25:12; Mele WD, 14:2-14:14, 20:3-22:12.
- 12 Gulson WD, 16:21-17:7, 17:24-18:6. 3951.
- 13 Gulson WD, 32:18- 33:9; McCabe at ¶ 22.
- 14 Gulson WD, 29:20-30:5.
- 15 McCabe at ¶ 98.
- 16 325274431-4448 at 4434 (US 87012).
- 17 325274431-4448 at 4434 (US 87012) (emphasis in original); see also 321667716-7716 (US 88345); 325274431-4448 at 4433 (US 87012) ("Memos and notes can be barriers to effective communications and often need additional verbal explanation. Talking to someone face-to-face or on the phone is often the better way."); 325274431-4448 at 4435 (US 87012) ("Remember that verbal communication is best if you are dealing with a sensitive subject."); see also 503119213-9241 at 9230 (US 29646\*) ("In order to help your [sic] decided how to write something, having decided it really needs to be a writing, we suggest that you use what we call the 'mental copy rule.' Imagine that what you are about to write will be seen by the person you would least like to see it. Send a mental copy (not to the real one of course!) of your record to the newspaper, to Philip Morris, to the Government or to a potential opponent in a court case.").
- 18 304058260-8263 at 8260 (US 85632) (emphasis in original).
- 19 107443680-3689 at 3682 (US 34839).
- 20 109878083-8089 (US 21767); Read PD, United States v. Philip Morris, 07/25/03, 181:22-184:11, 186:8-189:21; Read WD, 57:3-11; Read TT, 03/22/05, 16442:22-16443:17, 16445:13-16447:2, 16448:11-16453:1.
- 21 102880241-0259 at 0253, 0255-0259 (US 26242).
- 22 Dietz PD, United States v. Philip Morris, 07/01/02, 150:3-155:12; see, e.g., LWDOJ9290576-0582 at 0576 (US 21217); see also Dietz PD, United States v. Philip Morris, 05/29/03, 96:24-107:16.



## **About the Tobacco Control Legal Consortium**

The Tobacco Control Legal Consortium is a network of legal programs supporting tobacco control policy change throughout the United States. Drawing on the expertise of its collaborating legal centers, the Consortium works to assist communities with urgent legal needs and to increase the legal resources available to the tobacco control movement. The Consortium's coordinating office, located at William Mitchell College of Law in St. Paul, Minnesota, fields requests for legal technical assistance and coordinates the delivery of services by the collaborating legal resource centers. Our legal technical assistance includes help with legislative drafting; legal research, analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support.



SORT

SORT THE SITE HOW YOU WANT

VIEW

CHOOSE YOUR VIEW

TAGS PRODUCTS DATE POPULARITY SEARCH

GRID

LIST

SOCIAL

MY CAMEL



64654 VIEWS

1003 COMMENTS

2341 LIKES

BOOKMARKED

PREV

**10 WEEKS.  
LOCATIONS.** **THOUSANDS  
OF PRIZES.**

LOOK FOR THIS PACK COMING SOON!

## WILLIAMSBURG BROOKLYN ★ NY

Cheers. You guessed right.

In addition to your entry in the Break Free Adventure—you've earned some serious street cred. Not to be confused with that colonial town of the same name in the South, Camel met up with some modern-day pioneers here in this borough brimming with light-hearted angst, and rebellion with break free spirit.

**Professor Geoffrey T. Fong, Ph.D.**  
**Written Testimony on New York City's Proposed Regulation: "Protecting Youth From Tobacco: Keeping Product Displays Out of Sight."**

**New York City Council**

**May 2, 2013**

**Background**

I am a Professor in the Department of Psychology and in the School of Public Health and Health Systems at the University of Waterloo, located in Waterloo, Ontario, Canada. I am also Senior Investigator at the Ontario Institute for Cancer Research and Visiting Scientist at the Healis-Sekhsaria Institute of Public Health in Mumbai, India. I am submitting these comments in support of the proposal entitled "Protecting Youth From Tobacco: Keeping Displays Out of Sight."

My research background is in social psychology, decision and judgment-making, and health behavior. In 2002, I started an international research program to evaluate tobacco control policies. Over the past decade, this research program—the International Tobacco Control Policy Evaluation Project (the ITC Project)—has become the world's largest international research project on tobacco use. The ITC Project now involves over 100 researchers across 22 countries inhabited by over 50% of the world's population, 60% of the world's tobacco smokers, and 70% of the world's tobacco users. These countries include high income countries—United States, Canada, United Kingdom, Australia, Ireland, France, Germany, The Netherlands, New Zealand, South Korea; middle-income countries—Mexico, Brazil, Uruguay, China, India, Thailand, Malaysia, Bhutan, Mauritius, Zambia; and low-income countries—Bangladesh, Kenya.

In each of these countries, the ITC Project has conducted or is currently conducting large-scale longitudinal cohort surveys in each country to evaluate the impact of tobacco control policies of the WHO Framework Convention on Tobacco Control (FCTC), such as pictorial health warnings, smoke-free laws, increases in tobacco taxes, and marketing bans. The survey methodology, conceptual framework, and survey questions of the ITC Project were used in the design of the new large-scale cohort study of tobacco use in the United States, the Population Assessment of Tobacco on Health (the PATH study), supported by the U.S. National Institute of Drug Abuse (NIDA) to provide scientific evidence relevant to the Food and Drug Administration's regulatory authority of tobacco arising from the 2009 Family Smoking Prevention and Tobacco Control Act. I serve as a member of the PATH study's Scientific Leadership Team.

The ITC Project is far and away the most productive research program in tobacco control. Over 200 scientific publications have arisen from the ITC Project, and over 500 papers or posters have been presented at scientific meetings. The ITC Project investigators include some of the most experienced and distinguished tobacco control researchers in the field.



I have published over 180 articles in peer-reviewed scientific journals and have contributed to major reports. I was a co-author on a chapter on warning labels and packaging for the 2007 U.S. Institute of Medicine report, *Ending the Tobacco Problem: A Blueprint for the Nation*. I was a contributing author for the 2012 U.S. Surgeon General's Report, *Preventing Tobacco Use Among Youth and Young Adults*, in the section on product labeling and the impact of health warnings on youth. I was a contributing author for the International Agency for Research on Cancer (IARC)'s Cancer Prevention Handbook, *Methods for Evaluating Tobacco Control Policies*, which stands as a compendium of best practices for the evaluation of tobacco control policies and programs.

I have provided consultations to nongovernmental organizations, policymakers, and other stakeholders in health across many countries and at the state/provincial level.

I have received several awards and honors for my research in tobacco control. These include a Senior Investigator Award (2007–17) from the Ontario Institute for Cancer Research, a 2009 “Top Canadian Achievement in Health Research Award” from the Canadian Institutes for Health Research and *Canadian Medical Association Journal*, and a Prevention Scientist Award (2011–16) from the Canadian Cancer Society. In 2011, I received the Canada-wide CIHR Knowledge Translation Award. And in 2012, I and my Waterloo colleagues Mary E. Thompson and David Hammond received the Lise Manchester Award from the Statistical Society of Canada for “the unique and historic research effort of the ITC Project.”

In this statement, I describe the findings of the ITC Project that demonstrate the effectiveness of display bans at point-of-sale, focusing on jurisdictions and countries outside of the U.S. These findings, as well as the findings of other studies, lead me to the conclusion that the proposed legislation to ban point-of-sale displays in New York City will: (1) lead to significant declines in awareness and salience of tobacco advertising and positive messages about tobacco products, (2) continuing strong support among the public and even among smokers, and (3) significant decreases in impulse purchases of cigarettes. These findings also indicate that the proposed ban will support the efforts of a significant proportion of smokers who are considering quitting or in the active process of quitting.

## Description of the ITC Project's Findings on POS Display Bans

### A. Context: The importance of POS display bans

In recent years there have been an increasing number of research studies showing that tobacco advertising and promotion have a significant impact on increasing tobacco use in general (NCI, 2008<sup>1</sup>) and among youth (U.S. Surgeon General, 2012<sup>2</sup>).

The specific methods and communication channels through which the tobacco industry has advertised and promoted their products, however, has changed and evolved. In large measure, these changes have arisen because of increasing restrictions on tobacco advertising and promotion. For example, the WHO Framework Convention on Tobacco Control (FCTC), the world's first health treaty, calls upon countries to ban tobacco advertising, promotion, and sponsorship (TAPS), or to restrict such practices in ways that would be allowable under constitutional principles.

With no restrictions on such advertising in the United States, active marketing of cigarettes and other tobacco products to adults and to young people appeared on television and radio. But those days are gone. Memorable television ads such as those featuring Fred Flintstone and Barney Rubble touting the virtues of Winston cigarettes are no longer a part of the media landscape, as they were in the 1960s and before.

However, with the introduction of restrictions on tobacco marketing, the tobacco industry shifted their marketing efforts to channels that were left unregulated<sup>3</sup> This shifting of marketing efforts from regulated to unregulated channels, in fact, is the major reason for the recommendation of researchers and health stakeholders that restrictions on tobacco advertising and promotion should be *comprehensive*. This call for comprehensive bans is incorporated into Article 13 of the FCTC.

Point of sale (POS) marketing includes displays of tobacco products on, behind, above, and in front of the service counter. Such displays increase exposure to tobacco products and have been shown to normalize tobacco use—to make cigarettes and other tobacco products a part of everyday life. This has been shown to be true in particular for young people.<sup>3,4,5</sup> POS displays provide powerful cues to smoke<sup>6,7</sup>, and they have been shown to stimulate impulse purchases among adult smokers, recent quitters, and those intending to quit.<sup>8,9,10,11</sup> The fact that attractive displays of tempting (and highly addictive) products have such effects in the area of tobacco products confirm lay intuitions and the experience of most people, including myself, who have attempted to lose weight when in the presence of tempting foods on the kitchen counter. Returning to the commercial marketplace, the importance of displaying certain products in a store in highly visible locations, especially at point-of-sale, is well known to increase sales—this is true for tobacco products as it is for candy. Moreover, the proximity of tobacco products to candy also serves as a further strategy for normalizing tobacco products.

Given this evidence on the impact of POS displays on increasing cues to smoke among smokers, including those who intend to quit and recent quitters, and its impact on young

people with respect to normalizing this dangerous product, it is very reasonable to predict that removing such POS displays would have a beneficial impact on *reducing* cues to smoke, *reducing* impulse purchases, and *reducing* normalization of tobacco use and of tobacco products. Ultimately, these effects should eventuate in reductions in tobacco prevalence. It should be noted, however, that any overt changes in prevalence from banning POS displays may well be an effect seen over time, rather than one having immediate impact.<sup>12</sup>

Even though the impact of banning POS displays may be extended over time, recent research and reports addressing the impact of POS bans, including Hammond's report of the impact of POS bans to the UK Government<sup>13</sup>, has shown favorable impact of such bans on prevalence in Canada and of initiation among youth.

## B. ITC Project Findings on Point of Sale Bans

There are two peer-reviewed journal articles that are most relevant to POS display bans.

**1. Brown, A., Boudreau, C., Moodie, C., Fong, G.T., Li, G.Y., McNeill, A., Thompson, M.E., Hassan, L.M., Hyland, A., Thrasher, J.F., Yong, H.H., Borland, R., Hastings, G., & Hammond, D. (2012). Support for removal of point-of-purchase tobacco advertising and displays: Findings from the International Tobacco Control (ITC) Canada Survey. *Tobacco Control*, 21, 555-559.**

Since 2002, the ITC Canada Survey has been conducted approximately annually. This is a longitudinal cohort study of a nationally representative sample of 1,500-2,000 smokers from across the 10 Canadian provinces. The longitudinal design allows us to examine in finer detail the impact of tobacco control policies. And beginning at Wave 5 of the survey we included questions about awareness of POS displays and on support for POS display bans.

This article analyzed longitudinal data from waves 5 (October 2006 to February 2007), Wave 6 (September 2007 to February 2008), and wave 7 (October 2008 to June 2009). During this three-year period, the 10 provinces were at various stages of implementation of a POS display ban. Some surveys were conducted before, during, and in a couple of cases, after the implementation of display bans. The relation between the survey waves and the stage of implementation for each province is presented to the right. Note the categorization of the provinces into "zones" depending on the implementation

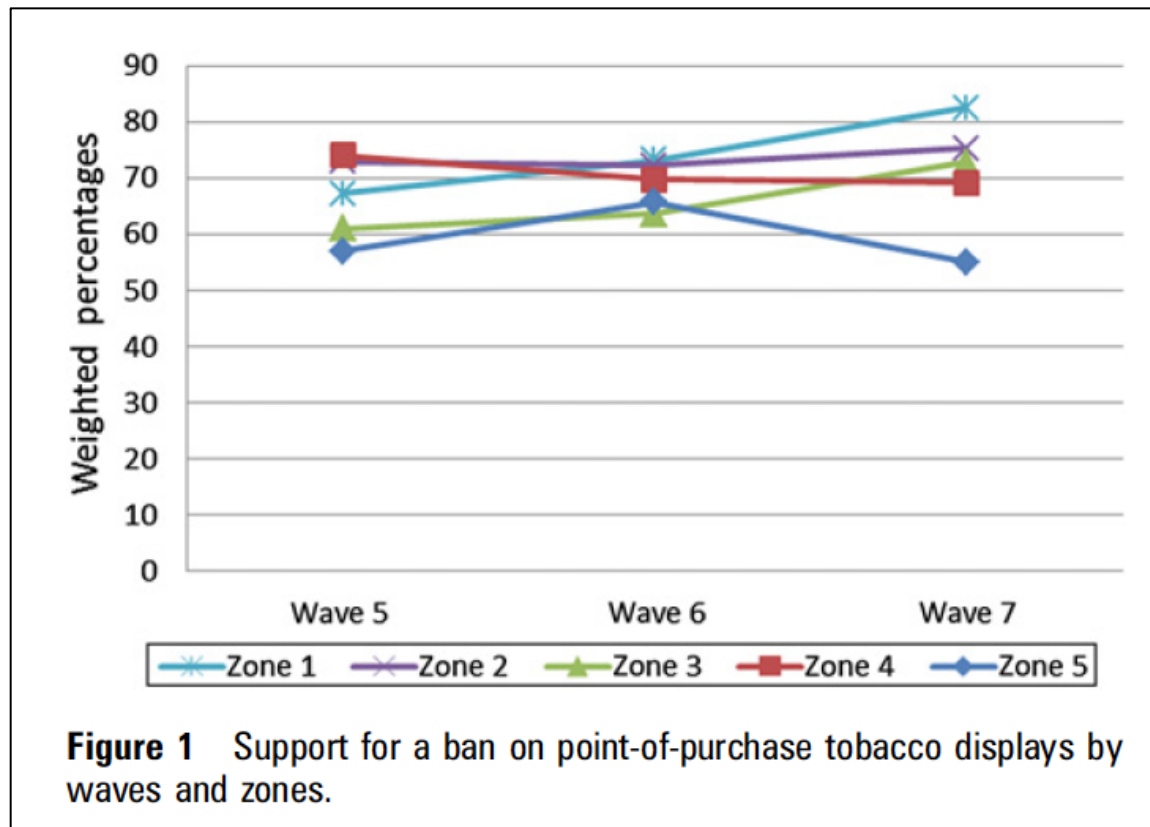
**Table 1** Implementation dates of bans on the display of tobacco at point-of-purchase in Canadian Provinces and Territories

Jurisdiction	Date of implementation	Zone	Period
Manitoba	1 January 2004	1	Pre
Nunavut	1 February 2004	1	Pre
Saskatchewan	1 January 2005*	1	Pre
Prince Edward Island	1 June 2006	1	Pre
Wave 5	2006/2007		
Northwest Territories	21 January 2007	2	Mid
Nova Scotia	31 March 2007	2	Mid
Wave 6	2007/2008		
British Columbia	31 March 2008	3	Mid
Ontario	31 May 2008	3	Mid
Quebec	31 May 2008	3	Mid
Alberta	1 July 2008	3	Mid
New Brunswick	1 January 2009	4	Mid
Yukon	15 May 2009	4	Mid
Wave 7	2008/2009		
Newfoundland and Labrador	1 January 2010	5	Post

NB: Three Canadian territories (Nunavut, Yukon, and Northwest Territories) were excluded in the analysis because of small population size.

\*Saskatchewan legislation banned retail displays of tobacco in 2002, but this was declared invalid because of a challenge by the tobacco industry. However, the Supreme Court of Canada unanimously upheld the constitutionality of the legislation in January 2005.

stage they were when surveyed.



The figure presents the level of support across Canadian provinces as a function of the “zone.” First, it should be noted that a significant majority of adult smokers, who would be considered to be least favorable to a POS display ban, are in fact supportive of such a ban. Second, for those provinces who were initially surveyed prior to the ban and then during the three-year period then implemented the ban (Zone 1, shown in light blue), support among adult smokers increased significantly—from 67% at Wave 5 to 73% at Wave 6 to 82% at Wave 7. Third, it should be noted that although there are some fluctuations across time<sup>1</sup>, the time trends are either unchanging or positive (Zone 4’s slight decline is not significant, and the sample size—New Brunswick and Yukon territory—is very low). Zone 3’s provinces, including Ontario, Quebec, British Columbia, and Alberta—together comprising 86% of the population of Canada—increased significantly from 61% to 73% over the three years of the survey.

Third, analyses were conducted on the relationship between intention to smoke and support for a POS display ban. We found that smokers in Canada who intended to quit smoking were 2.3 times more likely to support a display ban over time. This supports the

<sup>1</sup> Note in particular the fluctuation of Zone 5—but the only province in Zone 5 is Newfoundland and Labrador, and the sample size is very small because only 1.5% of the population of Canada lives in that province.

value of POS display bans for those who are contemplating quitting, indicating also that smokers themselves recognize that not having tobacco products visible are helpful in the quit process.

In summary, the Brown et al. article demonstrates that support among adult smokers for POS display bans are high and increases significantly as such bans are implemented. It also demonstrates that smokers who are trying to quit are even more supportive, demonstrating their recognition that keeping tobacco products out of sight at POS would be beneficial to the success of their desire to quit.

**Li, L., Borland, R., Fong, G.T., Thrasher, J.F., Hammond, D., & Cummings, K.M. (in press; accepted February 15, 2013). Impact of point-of-sale display bans: Findings from the International Tobacco Control (ITC) Four Country Survey. *Health Education Research*.**

This article examined cross-country differences in noticing POS tobacco displays, reported exposure to POS tobacco advertising, and reported unplanned purchases of cigarettes over a four-year period of ITC surveys (four waves) in Canada, Australia, United Kingdom, and United States.

During this period (2006 to 2010), Australia and Canada had restrictions or bans on POS tobacco marketing, and the UK and the US did not have such restrictions. The longitudinal and cross-country design allowed us then to determine whether there were favorable changes in Australia and Canada in reported exposure and of unplanned purchases (impulse purchases) relative to the UK and the US. The table on the next page presents the status of POS display bans in each of the four countries over the four survey waves.



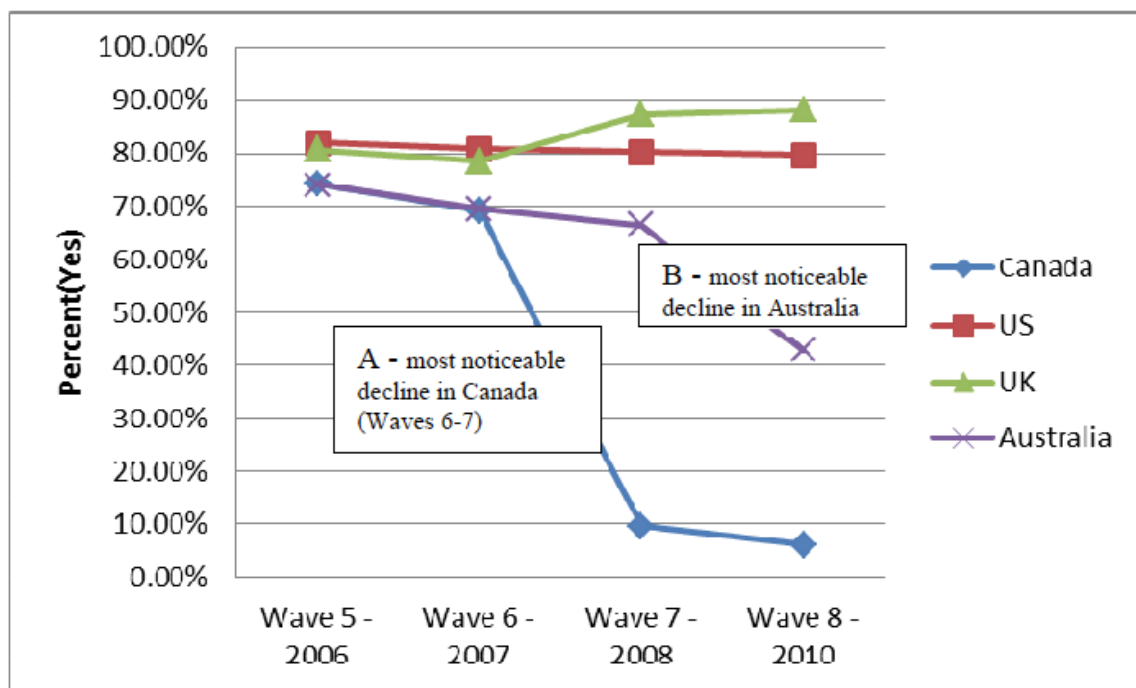
**Table I. Point-of-sale tobacco display ban implementation date and data collection date**

Country/Jurisdiction		Implementation date	Notes
	Canadian provinces/territories		
	Manitoba	1 January 2004	Pre W5 <sup>A</sup>
	Nunavut #	1 February 2004	Pre W5
	Saskatchewan	1 January 2005*	Pre W5
	Prince Edward Island	1 June 2006	Pre W5
<b>Wave 5 data collection: October 2006–February 2007</b>			
	Northwest Territories	21 January 2007	During W5
	Nova Scotia	31 March 2007	Between W5 & W6
<b>Wave 6 data collection: September 2007–February 2008</b>			
	British Columbia	31 March 2008	Between W6 & W7
	Ontario	31 May 2008	Between W6 & W7
	Quebec	31 May 2008	Between W6 & W7
	Alberta	1 July 2008	Between W6 & W7
<b>Wave 7 data collection: October 2008–July 2009</b>			
	New Brunswick	1 January 2009	During W7
	Yukon	15 May 2009	During W7
	Newfoundland and Labrador	1 January 2010	Between W7 & W8
<b>Australian states/territories</b>			
	Australian Capital Territory	31 December 2009	Between W7 & W8
	New South Wales	1 July 2010	Between W7 & W8
<b>Wave 8 data collection: 13 July 2010–May 2011</b>			
	Western Australia	22 September 2010	During W8
	Victoria	1 January 2011	During W8
	Northern Territory	2 January 2011	During W8
	Tasmania	1 February 2011	During W8
	Queensland	18 November 2011	Post W8
	South Australia	1 January 2012	Post W8

NB.<sup>A</sup> “W” means “Wave” of the ITC-4 Survey. #Nunavut and other two Canadian territories (Yukon and Northwest Territories) were excluded in the analysis (excluded from the sampling frame because of small population size). \*The Canadian province of Saskatchewan banned retail display of tobacco in 2002, but this law was challenged by the tobacco industry and was struck down. However, the Supreme Court of Canada unanimously upheld the constitutionality of the legislation in January 2005.

We did indeed find the predicted results. From 2006 to 2010 in Canada, the percentage of adult smokers who noticed POS tobacco displays decreased from 74.1% to 6.1%; and reported exposure to POS tobacco advertising decreased from 40.3% to 14.1%. In Australia, the percentage of adult smokers who noticed POS tobacco displays decreased from 73.9% to 42.9%. In contrast, noticing displays and reported exposure to POS tobacco advertising stayed high in the UK.

The trends over time for each of the four countries is presented in the figure below. Of particular interest is the fact that the strongest decline in noticing in Canada and in Australia is the wave following each country's most significant (in terms of population) implementation of POS display bans. Australia's POS display bans were later than Canada's, and thus the observed decline occurs later.



**Fig 1. Noticing point-of-sale tobacco displays over time**

We also examined whether implementation of a POS display ban affected impulse purchasing. Overall we found that, across all countries, those smokers living in jurisdictions with a display ban were about 2.5 times less likely to report having purchased cigarettes that they had not planned to buy because of the display (2.5% vs. 6.1%). This initial finding is consistent with the notion that banning POS displays will lead to reductions in impulse purchasing.

## Summary and Conclusions

The proposed POS display bans on tobacco products in New York City is consistent with international standards for strong tobacco control—as embodied in the WHO Framework Convention on Tobacco Control—which calls for a *comprehensive* ban on tobacco advertising, promotion, and sponsorship. POS displays have been an important part of the marketing strategy of the tobacco industry and therefore should be subject to the same restrictions as other forms of marketing that have already been banned.

Implementing a POS display ban would eliminate an effective and important marketing tool by the tobacco industry for keeping their hazardous products in the public view, where such placements help normalize tobacco products for both adults and youth and make them salient for smokers and non-smokers alike.

The ITC Project has conducted research on the impact of POS display bans and the findings are fully consistent with theory and with the existing, and growing, body of evidence on this subject. We find that: (1) POS display bans lead to significant declines in awareness and salience of tobacco advertising and positive messages about tobacco products, (2) POS display bans are supported by the public, and that even among smokers, support for such bans is very high and remains high after their introduction, and (3) POS display bans are associated with a significant decrease in impulse purchases of cigarettes (by a factor of 2.5).

These results from the ITC Project, as well as the body of evidence more generally, strongly support the proposed legislation to ban POS displays in New York City.

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# Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey

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## ABSTRACT

**Background** Although most countries now have at least some restrictions on tobacco marketing, the tobacco industry meet these restrictions by re-allocating expenditure to unregulated channels, such as at point-of-purchase.

**Methods** Longitudinal data from 10 Canadian provinces in the International Tobacco Control Survey was analysed to examine adult smokers' support for a ban on tobacco advertising and displays in stores and whether this support is associated with noticing either advertising or displays in stores, and quit intentions, over time. In total, there were 4580 respondents in wave 5 (October 2006 to February 2007), wave 6 (September 2007 to February 2008) and wave 7 (October 2008 to June 2009). The surveys were conducted before, during and in some cases after the implementation of display bans in most Canadian provinces and territories.

**Results** Smokers in all provinces showed strong support for a ban on tobacco displays over the study period. Levels of support for an advertising and display ban were comparable between Canadian provinces over time, irrespective of whether they had been banned or not. Noticing tobacco displays and signs in-store was demonstrably less likely to predict support for displays (OR=0.73, p=0.005) and advertising (OR=0.78, p=0.02) ban, respectively. Smokers intending to quit were more likely to support advertising and display bans over time.

**Conclusion** This study serves as a timely reminder that the implementation of tobacco control measures, such as the removal of tobacco displays, appear to sustain support among smokers, those most likely to oppose such measures.

## INTRODUCTION

For decades, tobacco marketing has been used to portray tobacco use in a favourable light, normalise smoking, underplay the associated health risks and ultimately undermine tobacco control efforts.<sup>1 2</sup> The Framework Convention on Tobacco Control,<sup>3</sup> currently with 172 signatories covering almost 90% of the global population, obligates member parties to introduce comprehensive bans on tobacco marketing. The need for bans to be comprehensive is based on evidence that the tobacco industry adeptly exploits unregulated channels, such as at

point-of-purchase (POP), to maintain and even increase consumption.<sup>4 5</sup>

POP marketing includes advertising as well as displays of tobacco products on, behind and above the service counter. Displays in particular increase exposure to tobacco products and normalise tobacco use, especially for young people.<sup>4 6 7</sup> They also provide powerful cues to smoke<sup>8 9</sup> and stimulate impulse purchases among adult smokers, recent quitters and those intending to quit.<sup>8 10–13</sup> The effectiveness of displays at POP helps explain why the tobacco industry have increased marketing expenditure within the retail environment, especially when other marketing channels have been closed off to them.<sup>5 14</sup>

The tobacco industry vehemently opposes the removal of POP advertising and particularly product displays, presumably as they are aware of their importance as marketing tools.<sup>8 13</sup> As displays remain one of the few viable means for promoting tobacco products, understanding the level of support for their removal among smokers, the group most likely to be opposed to such restrictions, and whether support is associated with quit intentions can help inform tobacco control policy. To date, however, research assessing smokers' support for the removal of tobacco advertising and displays within shops, and intention to quit, remains scarce, whether in countries that have banned displays or are yet to do so.<sup>13–15</sup>

In Canada, although the Tobacco Act 1997 banned various forms of tobacco marketing, in-store advertising such as portrayals of signs that indicate the availability of tobacco products and their prices were permitted.<sup>16</sup> In accordance with the regulations, tobacco products or accessories that display a tobacco-related brand may be allowed at retail outlets. Nonetheless, since 2002, several provinces and territories have passed laws requiring the removal of tobacco displays and associated advertising, despite strong opposition from the tobacco and retail industries predicting that the move to 'out of sight' tobacco sales would drive retailers out of business, a finding not substantiated by the evidence.<sup>17</sup>

Research in Ireland showed that at a population level, support for a display ban increased over a 9-month period before and after implementing the policy.<sup>14</sup> This study, and other research, indicates smokers to be supportive of display bans

## Research paper

because these displays are considered to have promotional appeal<sup>18</sup> that may provide visual cues to would-be starters and recent quitters.<sup>5 18</sup> A recent cross-sectional study found that four times as many smokers were supportive of a ban on displays than were unsupportive (49% vs 12%).<sup>5</sup> No research, however, has empirically examined, over a longer time period, whether the introduction of a display ban is associated with an increase in support or whether support is associated with quitting behaviour, as we have seen for smoke-free policies. We extend existing research by examining whether adult smokers' support for the removal of tobacco advertising and displays in stores has increased between 2006 and 2009 in 10 Canadian provinces, where they have been removed before, during and after the study period.

This paper addresses three research questions: (1) What was the impact of the ban on tobacco displays in several Canadian provinces on smokers' support for such a ban over time? (2) Did noticing tobacco displays and signs in stores predict support for a ban on advertising and displays over time? and (3) What are the associations between intentions to quit and support for a ban on advertising and displays at POP?

## METHODS

### Data and analytic sample

The International Tobacco Control Four Country Survey is a quasi-experimental longitudinal telephone survey conducted annually with nationally representative samples of adult smokers aged 18 years or older in Canada, the USA, the UK and Australia. The survey is designed to evaluate the psychosocial and behavioural impact of key national-level tobacco policies in these four countries over time.

Participants are recruited by geographically stratified probability sampling, with telephone numbers selected at random in each country. Eligible households are identified by asking a household informant the number of adult smokers within the household, with smokers defined as having smoked >100 cigarettes in their life and at least once in the past 30 days. Where there was more than one eligible respondent, the next birthday method was used to select the target respondent in that household.<sup>20</sup> In order to maintain a sample size of at least 2000 within each country, replenishment is used each year to replace those lost to attrition, using random sampling from the same sampling frame. A full description of the methodology and sampling procedure can be found elsewhere.<sup>19 21</sup>

This study presents data from wave 5 (October 2006 to February 2007), wave 6 (September 2007 to February 2008) and wave 7 (October 2008 to June 2009). We used all available respondents that participated at one or more of the three waves. A total of 4580 respondents comprising only smokers from 10 Canadian provinces were used for this study. We focus exclusively on Canada and do not include Australia, the UK or the USA, given that only in Canada had some provinces and territories actually banned the display of tobacco products during the study period. All Australian states and territories have now passed legislation to move tobacco out of sight in general retail stores by January 2012, and the Scottish and English governments plan to do likewise in large shops and supermarkets by April 2012.

The implementation of the ban on tobacco displays in the 10 Canadian provinces occurred before, during and after the study period. Consequently, the 10 provinces were categorised into five zones to reflect provinces that had fully implemented a display ban prior to (zone 1), during (zones 2, 3 and 4) and after (zone 5) the study period (table 1). This permitted comparisons of provinces that had banned in-store displays and advertising before and

**Table 1** Implementation dates of bans on the display of tobacco at point-of-purchase in Canadian Provinces and Territories

Jurisdiction	Date of implementation	Zone	Period
Manitoba	1 January 2004	1	Pre
Nunavut	1 February 2004	1	Pre
Saskatchewan	1 January 2005*	1	Pre
Prince Edward Island	1 June 2006	1	Pre
Wave 5	2006/2007		
Northwest Territories	21 January 2007	2	Mid
Nova Scotia	31 March 2007	2	Mid
Wave 6	2007/2008		
British Columbia	31 March 2008	3	Mid
Ontario	31 May 2008	3	Mid
Quebec	31 May 2008	3	Mid
Alberta	1 July 2008	3	Mid
New Brunswick	1 January 2009	4	Mid
Yukon	15 May 2009	4	Mid
Wave 7	2008/2009		
Newfoundland and Labrador	1 January 2010	5	Post

NB: Three Canadian territories (Nunavut, Yukon, and Northwest Territories) were excluded in the analysis because of small population size.

\*Saskatchewan legislation banned retail displays of tobacco in 2002, but this was declared invalid because of a challenge by the tobacco industry. However, the Supreme Court of Canada unanimously upheld the constitutionality of the legislation in January 2005.

during the study period (classified as the treatment groups), with provinces that had not banned the display of tobacco at POP (classified as the control groups). Three Canadian territories (Yukon, Nunavut and Northwest Territories) were not included in the analysis because they have an average of 35 000 people (each territory has 0.1% of the total population of Canada).

The study was approved by the Institutional Review Board or Research Ethics Board at the University of Stirling (Scotland), the Open University (UK), University of Waterloo (Canada), Roswell Park Cancer Institute (USA), University of Illinois, Chicago (USA), and The Cancer Council Victoria (Australia).

## MEASURES

### Outcome measures: support for bans on POP advertising and displays

Two items were employed to measure support for a ban on POP advertising and displays: "Do you support complete bans on tobacco advertisements inside shops and stores?" and "Do you support complete bans on displays of cigarettes inside shops and stores?" Both were measured on a 3-point scale with the response options 'A lot', 'Somewhat' and 'Not at all'. For the Generalised Estimating Equations (GEE) analyses, this 3-point scale was dichotomised to give: *support for complete bans* (A lot, Somewhat) vs *does not support complete bans* (Not at all).

### Intention to quit

A 4-point scale that measured readiness to quit<sup>22 23</sup> was dichotomised to compare smokers with any intention to quit and those without.

### Covariates

Covariates included were: zones (between Canadian zones comparisons), wave (5\* vs 6 vs 7), gender (male\* vs female), ethnicity (Caucasian vs other\*), age (18–24 vs 25–39 vs 40–54 vs 55+\*), income (low vs moderate vs high\*) and education (low vs moderate vs high\*), where \* indicates the baseline or reference level. Consistent with Borland *et al*'s<sup>24</sup> study, a heaviness of smoking index combined responses about cigarettes per day and time to first cigarette (range 0–6). In addition, two interactions of main interest being zone × wave and education × income were considered.



Respondents were also asked two specific questions about their awareness of tobacco displays and signs in stores or shops: "In the last month, have you seen cigarette packages being displayed, including on shelves or on the counter?" and "In the last month, have you seen any signs or pictures or other things like clocks with cigarette brands or logos inside shops or stores?" Response to both was dichotomised as 'yes' (coded as 1) or 'no' (coded as 0).

## SURVEY WEIGHTS

Cross-sectional survey weights were computed for respondents using reciprocals of inclusion probabilities. Departures from proportional allocation to geographic strata over time were adjusted for and calibrated to sum to numbers of smokers in age–sex groups. Hence, respondents are weighted to be representative of the adult smoker population in each province. Respondents that completed the follow-up surveys (ie, waves 6 and 7) had their baseline weights (wave 5) adjusted for attrition.<sup>21</sup> All analyses described in this paper are weighted.

## DATA ANALYSIS

Analyses were conducted using SAS 9.2, a statistical software. GEE<sup>25–27</sup> were used to examine whether smokers' support for removal of advertising and displays at POP changed over time (waves 5, 6 and 7). GEE models were assessed via binomial variations and the logit link to determine whether the observed changes in policy support over time were greater in Canadian provinces with display bans than they were in those without bans. This approach accounted for the correlated nature of data within subjects across waves and permitted the assessment of the population averaged over the study period without requiring individuals to be present at each wave. All GEE models were specified via the exchangeable within-group correlation structure.

The observed changes in policy support were evaluated by testing the zone × wave interaction effect in the various GEE models. Coefficients of covariates of interest (predictor variables) such as noticing tobacco displays and signs in stores and key demographics in the models were exponentiated to estimate the OR of policy support. For each coefficient, the p values and associated 95% CIs for the ORs are estimated via SEs.

## RESULTS

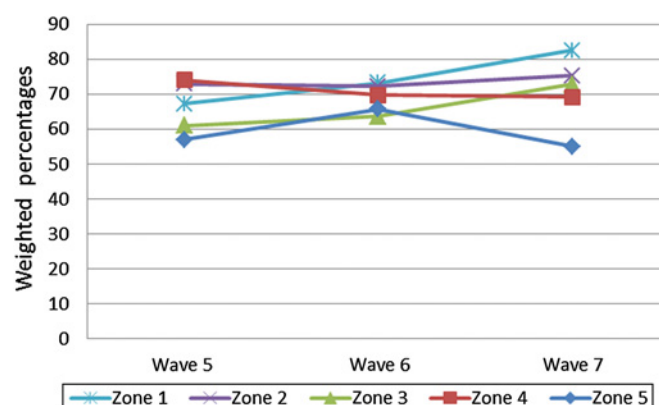
### Support for a ban on POP advertising and displays in the five Canadian zones

Policy support was greatest in zones 1 and 2 where there was early adoption of the display bans across the three waves, and lowest in zone 5 which was a late adopter, with just over half of smokers expressing support at each wave. Level of support for a display ban was fairly consistent between zones at wave 5, but relatively dispersed by wave 7 (see figure 1).

Similarly, support for a complete advertising ban was higher in zone 2 across the three waves and comparable in the remaining four zones as shown in table 2. Over two-thirds of smokers from zones 1 to 3 reported support for a ban on advertising at each wave. Additionally, level of support for a ban on advertising at POP was relatively consistent at wave 5 between zones but quite dispersed by wave 7 (figure 2).

### Support for bans on advertising and displays in the five Canadian zones and their associations with intention to quit over time

Table 3 presents weighted GEE models for smokers who support advertising and display bans over time and the relationship this support has with quit intentions. Drawing from these results, the



**Figure 1** Support for a ban on point-of-purchase tobacco displays by waves and zones.

overall zone × wave interaction effect (not shown in table 3) indicated that support for a ban on displays was comparable across five Canadian zones over time ( $p>0.05$ ). Similarly, between-zone comparisons showed that support among smokers in Canada was comparable over the last three waves ( $p>0.05$ ). However, smokers in Canada who intend to quit smoking were 2.32 times more likely to support a display ban over time ( $p<0.0001$ ). Smokers who noticed tobacco displays in stores were less supportive of a display ban over time ( $OR=0.73$ ,  $p=0.005$ ).

Comparisons also showed that the overall zone × wave interaction across the five Canadian zones showed no overall difference among these jurisdictions in the levels of support for tobacco advertising ban over the three waves. Likewise, between-zone comparisons showed that support for a ban on advertising was comparable over the study period ( $p>0.05$ ). Comparisons with quit intentions revealed that smokers intending to quit smoking in Canada were 2.11 times more supportive of a ban on advertising than those who did not intend to quit. Smokers who noticed tobacco advertising in stores were less likely to support a ban on advertising ( $OR=0.78$ ,  $p=0.02$ ).

## DISCUSSION

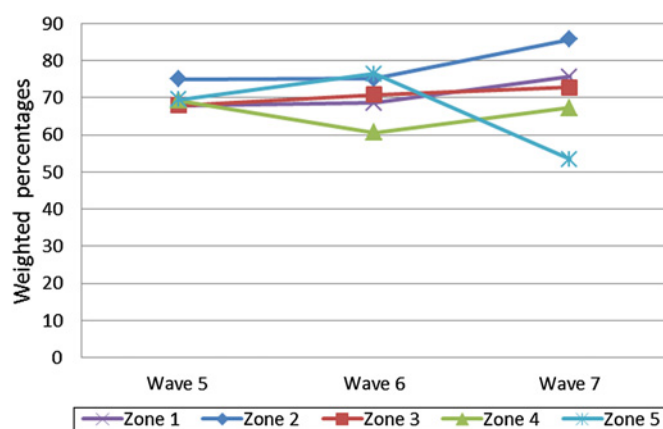
Although denied the use of traditional marketing channels, the tobacco industry continues to use the retail environment to

**Table 2** Support for a ban on point-of-purchase display and advertising (weighted frequencies by waves and zones)

	Wave 5 (%)	Wave 6 (%)	Wave 7 (%)
<b>Zone 1</b>			
Support display ban	99 (67.2)	121 (73.2)	96 (82.5)
Support ad ban	99 (68.0)	114 (68.6)	91 (75.7)
<b>Zone 2</b>			
Support display ban	46 (72.9)	58 (72.2)	57 (75.3)
Support ad ban	49 (75.0)	58 (75.1)	64 (85.7)
<b>Zone 3</b>			
Support display ban	881 (61.0)	858 (63.6)	836 (72.8)
Support ad ban	986 (68.0)	945 (70.8)	848 (72.8)
<b>Zone 4</b>			
Support display ban	34 (74.0)	25 (69.7)	23 (69.1)
Support ad ban	32 (69.3)	25 (60.7)	24 (67.3)
<b>Zone 5</b>			
Support display ban	23 (56.9)	35 (65.7)	22 (55.0)
Support ad ban	27 (69.5)	38 (76.4)	22 (53.5)

Zone 1, Saskatchewan, Manitoba and Prince Edward Island; zone 2, Nova Scotia; zone 3, Quebec, Ontario, Alberta and British Columbia; zone 4, New Brunswick; zone 5, Newfoundland and Labrador.

## Research paper



**Figure 2** Support for a ban on point-of-purchase tobacco advertising by waves and zones.

market their goods.<sup>5–8</sup> We investigated adult smokers' support for a complete ban on tobacco advertising and displays at POP across 10 Canadian provinces and how this relates to their intention to quit over time.

It was found that smokers in Canada had high levels of support for the removal of displays over the study period. This support, among those most likely to oppose such measures, has been found in respect to support for other tobacco control policies such as tobacco advertising and promotion bans,<sup>28–29</sup> pictorial warning labels<sup>30</sup> and smoke-free public places.<sup>31</sup> The findings demonstrate the need for comprehensive bans on tobacco marketing, as included in Article 13 of the Framework Convention on Tobacco Control.<sup>32</sup>

Support was found to be greatest among smokers in Canadian provinces who were exposed to the policy at baseline, for example, at second follow-up, more than three-quarters of smokers in Saskatchewan, Manitoba and Prince Edward Island were supportive of a display ban compared with just over half of smokers in Newfoundland and Labrador, the only province not to ban displays until after the study period. There was, however, no significant difference in levels of support for a display ban across the 10 provinces and over the study period. It is possible that the comparable levels of support is indicative of the diffusion effect<sup>33–36</sup> of the display ban (as a consequence of public campaign, lawsuit and debate surrounding its removal) from provinces such as Saskatchewan, Manitoba and Prince Edwards

Island, to those which had either a partial ban or no ban. Further research would be needed to confirm this, but past research has found diffusion of policy support for smoke-free legislation across geographically dispersed smokers.<sup>33–34–36</sup> We found no significant difference in reported levels of support for a ban on advertising at POP across the 10 provinces either.

Smokers in Canadian provinces who noticed tobacco displays and signs in stores were less likely to support a ban on advertising and displays. That smokers exposed to in-store tobacco promotion were less supportive of the ban suggests that the, perhaps reassuring, presence of these visual cues weakens support. Smokers who had intentions to quit smoking were supportive of a ban on tobacco advertising and displays. This support may, in part, be a consequence of not having to be exposed to attractive visual cues to smoke within the retail environment, with displays found to stimulate impulse purchase among those trying to quit.<sup>8</sup>

Despite the use of a longitudinal design, our study is not without limitations. Respondents are lost to attrition at follow-up, which can potentially skew findings. As the analyses were performed via weighted GEE,<sup>25–26</sup> which allows these models to use all observations across the three waves, the potential effects of respondents lost to follow-up are minimised. There is also the possibility of differential bias between zones, as a result of the demand characteristics of the survey, which may have prompted socially desirable responding or may be influenced by personal experience or media coverage of policy implementation. Another potential limitation is the possibility of experiment-wise error as a result of the number of between-zone comparisons, that is, the likelihood of falsely rejecting the null hypothesis as a result of multiple comparisons. Finally, the no in-zone change in level of policy support over time may be due to lack of earlier data as well as the short study period.

In many countries, tobacco marketing at POP is one of the few remaining avenues for the tobacco industry to promote their products. Tobacco displays act as a potent marketing tool,<sup>5–12–13</sup> which normalise smoking and allow the tobacco industry to communicate with non-smokers, ex-smokers and established smokers.<sup>12–37–38</sup> That most smokers are supportive of banning the visible display of tobacco products in the retail environment, as they are with other tobacco control policies, should help persuade policy makers in other jurisdictions about the need to remove POP displays. Future research should assess the longer term impact of a display ban on smokers' support and

**Table 3** GEE models\* for support for a ban on POP display and advertising across the three waves and association with quit intentions and noticing tobacco displays and signs in stores

	POP display ban		POP advertising ban	
	OR (95% CI)	p Value	OR (95% CI)	p Value
Gender				
Female versus male	1.07 (0.09 to 1.27)	0.44	1.17 (0.98 to 1.39)	0.08
Age, years				
18–25 vs 55+	0.86 (0.61 to 1.21)	0.39	0.93 (0.65 to 1.33)	0.69
25–39 vs 55+	0.95 (0.75 to 1.20)	0.66	0.94 (0.73 to 1.22)	0.63
40–54 vs 55+	1.06 (0.85 to 1.30)	0.62	0.95 (0.77 to 1.87)	0.68
Quit intentions	2.32 (1.94 to 2.77)	<0.0001	2.11 (1.76 to 2.54)	<0.0001
Noticed display/signs	0.73† (0.59 to 0.91)	0.005	0.78‡ (0.64 to 0.95)	0.015

The overall wave (time) and zone effect and their interaction and also between-zone comparisons for POP display and advertising ban (all not shown in table) were not significant ( $p > 0.05$ ). Design variable for wave (time) was coded: wave 5 (0, 0), wave 6 (1, 0) and wave 7 (0, 1).

\*Each model is adjusted for age, sex, quit intentions, awareness of cigarette displays and signs in stores and shops as well as income, education, heaviness of smoking index and ethnicity, but these are not shown as they were not significant.

†Noticing tobacco signs in stores.

‡Noticing tobacco displays in stores.

POP, point-of-purchase.

## What this paper adds

- The tobacco industry is known to respond to restrictions on marketing by exploiting unregulated channels, such as at point-of-purchase.
- This paper shows that levels of support for a display ban at point-of-purchase were high and comparable across all 10 provinces in Canada, irrespective of whether tobacco displays within shops had been banned in each of these provinces.
- Support was lowest, however, in Newfoundland and Labrador, the only province not to introduce a ban on displays during the study period. Smokers intending to quit were more likely to support advertising and display bans over time.

if this support is linked to intention to quit, especially as a decline in exposure to displays at retail environment is anticipated to impact upon smoking cues and behaviour.

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**Competing interests** None.

**Ethics approval** The study was approved by the Institutional Review Board or Research Ethics Board at the University of Stirling (Scotland), the Open University (UK), University of Waterloo (Canada), Roswell Park Cancer Institute (US), University of Illinois, Chicago (US), and The Cancer Council Victoria (Australia).

**Contributors** All authors included on this paper have fulfilled the criteria of authorship, ie, have contributed to the conception and design, acquisition of data analysis or interpretation of data as well as drafting or revising this article. Moreover, there is no one else who fulfils these criteria who has not been included as an author.

**Provenance and peer review** Not commissioned; externally peer reviewed.

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## Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey

Abraham Brown, Christian Boudreau, Crawford Moodie, et al.

*Tob Control* published online October 15, 2011  
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# **Impact of point-of-sale tobacco display bans: Findings from the International Tobacco Control (ITC) Four Country Survey**

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Manuscript Type:	Original Article
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**Impact of point-of-sale tobacco display bans:  
Findings from the International Tobacco Control (ITC) Four Country Survey**

Running title: Impact of tobacco display bans in four western countries

Keywords: tobacco regulations, point of sale, longitudinal research, survey

Type of manuscript: Original Article

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## Abstract

This study examined the impact of point-of-sale (POS) tobacco marketing restrictions in Australia and Canada, in relation to the UK and the US where there were no such restrictions during the study period (2006-2010). The data came from the International Tobacco Control Four Country Survey, a prospective multi-country cohort survey of adult smokers. In jurisdictions where POS display bans were implemented, smokers' reported exposure to tobacco marketing declined markedly. From 2006 to 2010, in Canada, the percentages noticing POS tobacco displays declined from 74.1% to 6.1% (adjusted odds ratio=0.26,  $p<0.001$ ); and reported exposure to POS tobacco advertising decreased from 40.3% to 14.1% (adjusted OR=0.61,  $p<0.001$ ). Similarly, in Australia, noticing of POS displays decreased from 73.9% to 42.9%. By contrast, exposure to POS marketing in the US and UK remained high during this period. In parallel, there were declines in reported exposures to other forms of advertising/promotion in Canada and Australia, but again, not in the US or UK. Impulse purchasing of cigarettes was lower in places that enacted POS display bans. These findings indicate that implementing POS tobacco display bans does result in lower exposure to tobacco marketing and less frequent impulse purchasing of cigarettes.

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**INTRODUCTION**

In the new era of tobacco control, advertising and promotion of tobacco products has been prohibited in many countries in traditional media outlets such as broadcast (i.e., television and radio), print, and outdoor billboards. As a result of these restrictions, the tobacco industry has increasingly turned to retail point-of-sale (POS) displays as a means of marketing their products to consumers [1-3]. POS tobacco displays have always been an important way for tobacco marketers to reach consumers since such displays often advertise price promotions (e.g., 2 for 1) and promote impulse purchases [1, 4-8]. Indeed, the mere presence of advertising for brands helps to normalize tobacco products in the eyes of the public (especially among young people) [2-4, 9-10]. A recent review on tobacco marketing restrictions found that POS displays are the least regulated marketing channel and highlighted a need to address the immediate and long-term consequences of such marketing [11].

Some jurisdictions have strengthened tobacco marketing restrictions to include prohibiting the display of tobacco products at the POS. Iceland was the first country to implement a tobacco display ban in 2001. Since then, a number of jurisdictions have adopted POS marketing restrictions for tobacco products, including Thailand (in September 2005), Ireland (July 2009), Norway (January 2010), Finland (January 2012), Canada and Australia (both with a gradual implementation) [12-15].

The public supports limiting or banning POS display of tobacco products [14-16]. For example, Brown et al. found that the levels of support for a ban on POS displays were high (ranged between 55% and 82%) among adult smokers, and support was

comparable across 10 Canadian provinces, irrespective of whether tobacco displays within shops had been banned in each of the studied provinces [15].

In Canada and Iceland where POS display bans implemented as part of comprehensive tobacco control measures, there has been a decrease in youth and/or adult smoking prevalence [17-19], and the bans may have contributed to these reductions, but there was no evaluation of their independent effect.

As falls in smoking prevalence resulting from POS tobacco display bans (and other tobacco control measures) are likely to be gradual rather than immediate [13, 20-21], it is important to monitor the changes of exposure to tobacco displays and overall tobacco marketing over time and across different jurisdictions. However, little has been documented about the differences in adult smokers' exposure to tobacco advertising and promotional activities between countries with strong POS display restrictions and those that have weak (or no) policies. In addition, there is very little published research longitudinally assessing the impact of POS display bans on adult smokers' cigarette purchasing behaviors in countries with varying restrictions.

This study examines the variability in POS marketing restrictions in Australia, Canada, the United Kingdom (UK), and the United States (US) and the effect of these varying restrictions on adult smokers' exposure to tobacco product marketing and their cigarette purchasing behaviors. By early 2011 all Canadian provinces/territories had adopted POS tobacco display bans; some Australian states/territories also started to do so since late 2009; whereas in the UK and US there were no systematic bans implemented by early 2011. (Note: In its *Healthy Lives, Healthy People: A Tobacco*

*Control Plan for England*, published in March 2011, the UK Government included a commitment to implement POS legislation in England in large shops from April 2012 and in smaller shops from April 2015 [22]).

Table I summarizes the POS display ban implementation dates for Canadian and Australian jurisdictions (along with data collection dates for our studied waves of the International Tobacco Control (ITC) Four Country Survey).

**METHODS**

**Data source and participants**

The data for this study came from Wave 5 to Wave 8 of the ITC Four Country Survey (the ITC-4 Survey), which has been running annually since 2002 in Australia, Canada, the UK, and the US. A detailed description of the conceptual framework and methods of the ITC-4 Survey has been reported by Fong et al. (2006) and Thompson et al. (2006) [23, 24], and more detail is available at <http://www.itcproject.org>. Briefly, the ITC-4 Survey employs a prospective multi-country cohort design and involves telephone surveys of representative cohorts of adult smokers in each country using random-digit dialling. The sample size per country was initially around 2,000 at each wave, with replenishment sampling from the same sampling frame used to maintain sample size across waves (with a slightly reduced sample from Wave 7, mainly due to budget). At the time of initial recruitment, participants were aged 18+ years, had smoked at least 100 cigarettes lifetime, and had smoked at least once in the past 30 days. Wave 5 survey data (total n=8242 for four countries) were collected between October 2006 and February 2007; Wave 6 (n=8193) in late 2007; Wave 7 (n=7206) in late 2008; and Wave 8 (n=5939) from July 2010. In this study only those participants

who were current smokers at the time of the survey were included in data analyses. Each country's analytic sample size at each selected wave (Waves 5 to 8) and their characteristics are summarised in Table II.

### Measures

The ITC-4 Survey was standardized across countries with respondents being asked essentially the same questions, with only minor variations in colloquial speech or usual reference.

#### *Demographics and smoking-related variables*

Demographics variables included sex (male, female), age at recruitment (18-24, 25-39, 40-54, 55 and older), and identified majority/minority group, which was based on the primary means of identifying minorities in each country (i.e., racial/ethnic group in the UK, Canada, and the US; and English language spoken at home in Australia). Due to the differences in economic development and educational systems across the four countries, only relative levels of education and income were used. 'Low' level of education referred to those who completed high school or less in Canada, the US, and Australia, or secondary/vocational or less in the UK; 'moderate' meant community college/trade/technical school/some university (no degree) in Canada and the US, college/university (no degree) in the UK, or technical/trade/some university (no degree) in Australia; and 'high' referred to those who completed university or postgraduate studies in all countries. Household income was also grouped into 'low' (less than US\$ 30,000 (or £ 30,000 in the UK) per year), 'moderate' (between US\$ 30,000 and US\$ 59,999 (or £ 30,000 and £ 44,999 in the UK)), and 'high' categories (equal to or greater than US\$ 60,000 (or £ 45,000 in the UK)). Cigarettes per day (CPD) was asked at each wave and recoded to: '1-10 CPD', '11-20 CPD', '21-30 CPD' and '30+CPD'.

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***Measures of exposure to tobacco advertising and promotion***

Across the studied waves, participants were asked about the overall salience of pro-smoking cues (unprompted recall) via the following question: “In the last 6 months, how often have you noticed things that promote smoking?” The participants were then prompted to recall if they had noticed advertisements in specific channels (with posters/billboards asked for all four countries), and if they had noticed any types of promotion (gifts/discounts on other products, clothing with cigarettes brand name, and competitions linked to cigarettes, for all countries).

Participants were also asked the following specific questions regarding POS tobacco displays and advertising: “In the last month, have you seen cigarette packages being displayed, including on shelves or on the counter?” (question asked from Wave 5 onward); and “In the last 6 months, have you noticed cigarettes or tobacco products being advertised on store windows or inside stores where tobacco is sold?”(question asked at all waves.) Response options were ‘yes’, ‘no’, and ‘don’t know’. Those who answered ‘yes’ were regarded as having been exposed to POS tobacco displays/advertising.

***Cigarettes brands and their purchasing***

The participants were asked if they had a regular brand and variety of cigarettes, and if they bought their regular brand at the last purchase. They were also asked (from Wave 6) if in the last 6 months they had ever bought a brand other than their usual brand because they noticed a POS promotion (a tobacco advertisement or a display) for a brand. In addition, from Wave 8 smokers were asked if tobacco displays made them buy unplanned cigarettes.



## Data Analysis

Country/group differences in the same year (wave) were assessed using logistic regression modeling. Taking into consideration the correlated nature of the data within participants across survey waves, we used the Generalized Estimating Equations (GEE) approach to compute parameter estimates and assess changes over time (over waves). The GEE modeling included a specification for an unstructured within-subject correlation structure, and parameter estimates were computed using robust variance. All models were controlled for age, sex, education, income and cigarettes per day. To facilitate the comparison of prompted recall of tobacco advertising and promotion in various channels, an overall index (“noticing tobacco advertisements/promotion in any other specific channels”) was computed, in which participants who answered “yes noticed” in any of the following four channels (other than POS) were coded as “1”, otherwise coded as “0”: posters/billboards, gifts/discounts on other products, clothing with cigarettes brand name, and competitions linked to cigarettes. Based on the “implementation date” information in Table I, a “display ban status” variable was computed for all individuals for all the studied waves. A participant’s “display ban status” was coded as “1” (“yes, with a display ban”) if his/her province/state started to implement a POS tobacco display ban policy before (or on) the date the participant was interviewed, otherwise coded as “0” (“no display ban”). The differences of tobacco marketing exposure between those with and without a display ban were then compared. All analyses were conducted using Stata Version 12.1.

## Ethics approval

The study protocol was approved by the institutional review boards or research ethics boards of the University of Waterloo (Canada), Roswell Park Cancer Institute (the

US), University of Strathclyde (the UK), University of Stirling (UK), The Open University (UK), and The Cancer Council Victoria (Australia).

**RESULTS**

**Exposure to tobacco advertising and promotional activities**

As shown in Table III and Figure 1, banning POS displays in Canada markedly decreased reported exposure to tobacco marketing at the POS. For example, noticing of POS tobacco displays significantly decreased from 74.1% in Wave 5 to 6.1% in Wave 8 (adjusted odds ratio (AOR) = 0.26, 95% CI 0.24~0.28,  $p<0.001$ , GEE modeling results (see the bottom of Table III), including all four waves' data). The most noticeable decline occurred between 2007 (Wave 6) and 2008 (Wave 7) (As indicated in Figure 1 with note "A") when the most populous Canadian provinces introduced POS display bans. A similar trend was found for POS tobacco advertising exposure (decreased from 40.3% in Wave 5 to 14.1% in Wave 8, AOR=0.61,  $p<0.001$ ).

Similarly, in Australia, we can see a significant decline in reported exposure to tobacco displays (especially between 2008 and 2010 (Waves 7 and 8) when some Australian states started to implement a POS display ban, as indicated in Figure 1 with note "B"). The percentages of noticing POS displays decreased from 73.9% in Wave 5 to 42.9% in Wave 8 (AOR=0.67,  $p<0.001$ ).

By contrast, exposure to POS marketing in the US and UK remained constantly high (or even with some increase) over studied waves (e.g., for over-wave comparison of exposure to POS tobacco displays in the US, AOR=0.96,  $p=0.11$ ; and in the UK an

overall increase in reported exposure to POS displays was observed: AOR=1.24,  $p<0.001$ , Table III).

We further explored whether POS display bans translated into an overall decrease in exposure to tobacco promotional activities (beyond the POS). As can be seen from Table III, in all the waves, comparatively higher proportions of US smokers reported having noticed things that encourage smoking (overall salience); over waves, there is a decrease in overall salience of tobacco promotional activities in Canada (declined from 20.9% in Wave 5 to 14.6% in Wave 8, AOR=0.87,  $p<0.001$ ). There are also some decreases in the other countries, but they are not as consistent/considerable as in Canada. When exposures to any other (other than POS) specific advertising/promotional sources (e.g., posters/billboards, gifts/discounts on other products) were assessed, significant over-wave declines were found only in Canada (AOR=0.58,  $p<0.001$ ) and Australia (AOR=0.85,  $p<0.001$ ) (Table III).

### **Cigarette purchasing behaviours**

As shown in Table IV, across all four countries for all studied waves the vast majority of smokers reported that they had a regular brand of cigarettes and bought their regular brands in last purchase. Compared to the other three countries, Canada had few smokers reporting having had a regular brand and bought it last time.

The proportions of buying non-usual brand cigarettes because of noticing tobacco displays/advertising were generally low (less than 11%) in Australia, Canada and the UK between Waves 6 and 8 (this question was only asked from Wave 6), and a trend of significant decline can be seen in Canada (AOR=0.58,  $p<0.001$ ) and Australia

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(AOR=0.71,  $p<0.05$ ), but no significant change was found in the UK (AOR=0.89,  $p=0.24$ ). The US had the highest levels of buying non-usual brands because of noticing tobacco advertising/displays. Although there is a trend of decline (from 23.9% in Wave 6 to 16.4% in Wave 7), the reported level was still as high as 17.4% in Wave 8.

Participants were asked in Wave 8 if cigarettes display led them to buy unplanned cigarettes. The results show that compared to smokers in Canada, smokers in the US (AOR=3.26,  $p<0.001$ ) and UK (AOR=2.49,  $p<0.001$ ) were more likely to buy unplanned cigarettes because of exposure to cigarette displays (Table IV).

**Differences in exposure between smokers with and without a point-of-sale tobacco display ban**

Based on the “display ban status” of participants (regardless which country they were from), we conducted GEE modeling to compare tobacco marketing exposure levels of those with and without a POS tobacco display ban (for Waves 7 and 8 only, because the sample size of the group “with a display ban” is too small in earlier waves) . As can be seen in Table V, in both Waves 7 and 8, those smokers who were covered by a POS display ban were less likely to be exposed to POS tobacco displays or advertising/promotional activities in the other specific channels, had a lower level of overall salience of tobacco marketing, and were less likely to purchase non-usual brand of cigarettes (or buy unplanned cigarettes in Wave 8) because of exposure to tobacco displays/advertising.

## DISCUSSION

In jurisdictions where POS display bans were implemented such as in Canada and some states of Australia, reported exposure to tobacco marketing by adult smokers declined markedly. By contrast, in the US and UK where there were no such restrictions during the study period, reported exposure to POS tobacco displays and other forms of marketing remained high and relatively stable (especially in the US). Our data also suggest that impulse purchasing of cigarettes was lower in places that enacted POS display bans.

The reported reduction in exposure to tobacco marketing associated with the POS display bans were detected soon after the bans were implemented. For example, in Canada some of the most populous provinces (i.e., Alberta, British Columbia, Ontario and Quebec, together accounting for more than 80% of the population of the country) introduced and started implementing display bans between Waves 6 and 7 (between 2007 and 2008), and a marked decline of reported exposure to POS tobacco displays/advertising was detectable in Wave 7. Similarly, in Australia, some states/territories started to implement display bans before/during Wave 8 (2010/2011) and their effects on reported display exposure began to show when the smokers were surveyed in Wave 8, although Australia showed a weaker downward trend when compared to Canada. This may be because a lower proportion of the Australian population (about a third) was exposed to the ban at the time of the survey. Whereas in the other two countries (the US and UK), no such display bans had been implemented during the study period, and no significant changes in reported exposure to POS tobacco displays were detected (and this applied to exposures to promotional activities in other specific channels).

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Our results clearly show that on top of POS tobacco display bans reducing reported exposure to tobacco marketing among smokers, they show that these bans were associated with lowered reports of impulse purchasing (both buying non-usual brands and unplanned cigarettes as a result of seeing the POS cigarette display). This is an important finding as it complements research showing that POS tobacco marketing stimulates impulse cigarette purchases, encourages tobacco use and undermines the efforts of those trying to quit [1, 4-10]. It is clear that advertising acts as a cue to use tobacco, and removing cues leads to a reduction in use-associated activities. These findings provide evidence of the effectiveness of prohibiting POS displays as an effective tobacco control strategy, and make it plausible that the bans contributed to the declines in smoking found in Canada [17, 19] and Iceland [18] following their implementation.

This study has limitations. In some jurisdictions, such as New South Wales and Australian Capital Territory, POS display bans were only introduced/implemented very recently (around Wave 8), so only the initial impact could be examined. The medium/long term impact of the POS display bans in these jurisdictions (especially on smokers' quitting behaviors) needs to be evaluated in subsequent waves of the ITC-4 Survey.

In addition, there are features of the POS measures employed that led to lower reliability. For example, the use of self-report measures over a recall period of 6 months. It should be noted, however, that these measures did change over time as predicted, despite the lower reliability. The same can be said of other challenges to measurement and to statistical power, such as the smaller sample sizes at Waves 7 and



8, especially for the UK (in Wave 8 no replenishment smokers were recruited there). So the measurement challenges did not interfere with our ability to detect the impact of POS display bans. Exposure to POS tobacco advertising is a relevant measure in this study, but this question was not asked in Australia or in the UK for Waves 7 and 8, and this to some extent limited our ability to conduct more systematic and longer-term cross-country comparisons for this variable. Finally, we think it unlikely the key findings are affected by levels of other forms of tobacco advertising, as these levels are low in the UK, although by far the highest in the US, and neither country showed the effects we attribute to POS bans.

In spite of its limitations, this study (with its prospective multi-country cohort design), allowed for changes in tobacco marketing exposure and cigarette purchasing behaviors over time to be assessed, and cross-country variations in different jurisdictions with various levels of POS regulations to be compared.

The findings of this study indicate that implementing POS tobacco display bans (as has been done in Canada and Australia) reduces exposure to tobacco marketing, and lowers reported impulse purchasing of cigarettes.

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Table I. Point-of-sale tobacco display ban implementation date and data collection date

Country/Jurisdiction		Implementation date	Notes
	Canadian provinces/territories		
	Manitoba	1 January 2004	Pre W5^
	Nunavut #	1 February 2004	Pre W5
	Saskatchewan	1 January 2005*	Pre W5
	Prince Edward Island	1 June 2006	Pre W5
Wave 5 data collection: October 2006–February 2007			
	Northwest Territories	21 January 2007	During W5
	Nova Scotia	31 March 2007	Between W5 & W6
Wave 6 data collection: September 2007–February 2008			
	British Columbia	31 March 2008	Between W6 & W7
	Ontario	31 May 2008	Between W6 & W7
	Quebec	31 May 2008	Between W6 & W7
	Alberta	1 July 2008	Between W6 & W7
Wave 7 data collection: October 2008–July 2009			
	New Brunswick	1 January 2009	During W7
	Yukon	15 May 2009	During W7
	Newfoundland and Labrador	1 January 2010	Between W7 & W8
Australian states/territories			
Australian Capital Territory		31 December 2009	Between W7 & W8
New South Wales		1 July 2010	Between W7 & W8
Wave 8 data collection: 13 July 2010–May 2011			
Western Australia		22 September 2010	During W8
Victoria		1 January 2011	During W8
Northern Territory		2 January 2011	During W8
Tasmania		1 February 2011	During W8
Queensland		18 November 2011	Post W8
South Australia		1 January 2012	Post W8

NB.^ “W” means “Wave” of the ITC-4 Survey. #Nunavut and other two Canadian territories (Yukon and Northwest Territories) were excluded in the analysis (excluded from the sampling frame because of small population size). \*The Canadian province of Saskatchewan banned retail display of tobacco in 2002, but this law was challenged by the tobacco industry and was struck down. However, the Supreme Court of Canada unanimously upheld the constitutionality of the legislation in January 2005.



**Table II. Sample characteristics, by country**

	Canada	US	UK	Australia	Total
<b>No. of current smokers at each selected wave<sup>^</sup></b>					
Wave 5 (in late 2006)	1741	1789	1706	1801	7037
Wave 6 (2007)	1708	1743	1643	1791	6885
Wave 7 (2008)	1510	1518	1487	1372	5887
Wave 8 (2010)	1243	1262	977	1111	4593
<b>Gender (% female)</b>	53.4	54.5	55.8	53.0	54.2
<b>Identified minority group (%)</b>	11.1	20.9	4.9	12.3	12.8
<b>Age at recruitment (%)#</b>					
18-24	12.5	11.2	8.5	13.8	11.5
25-39	30.1	25.6	31.3	35.1	30.2
40-54	36.6	36.5	33.8	34.2	35.4
55+	20.9	26.6	26.4	16.9	22.9
<b>Education at recruitment (%)##</b>					
Low	48.5	45.6	60.6	63.5	53.8
Moderate	36.4	38.2	25.1	22.2	31.1
High	14.8	16.1	13.5	14.1	14.7
<b>Income at recruitment (%)###</b>					
Low	28.1	37.0	31.1	26.7	31.1
Moderate	34.2	32.9	31.5	32.5	32.8
High	29.4	23.5	27.6	34.3	28.3
No information	8.4	6.9	9.8	6.5	7.8
<b>Cigarettes per day at recruitment (%)</b>					
1-10	31.4	31.3	29.8	29.6	30.6
11-20	42.6	45.8	53.4	40.2	45.6
21-30	21.0	12.9	11.7	22.8	16.8
31+	4.5	9.3	4.8	7.0	6.6

NB. Percentages were based on unweighted data. For some variables the numbers of cases were fewer than the total, due to some “don’t know” and “missing” cases. <sup>^</sup>For the numbers of new recruits in each wave please refer to Li et al. 2012 paper [25]. <sup>#</sup>For all participants recruited from Wave 1 to Wave 8; and this applies to the other variables in the table. <sup>###</sup>For the definition of each category please see the Measures section.

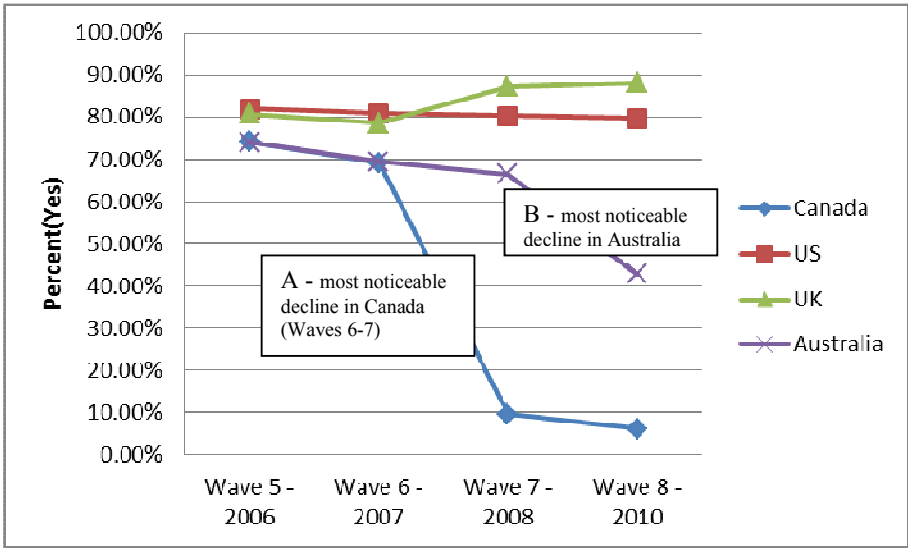


Fig 1. Noticing point-of-sale tobacco displays over time

**Table III. Reported exposure to tobacco advertising and promotional activities over time, by country**

	Canada	US	UK	Australia
<b>2006 (Wave 5)</b>				
Exposed to POS tobacco displays (% yes, n#)	74.10 (n=1741)	81.99 (n=1788)	80.77 (n=1706)	73.94 (n=1801)
Adjusted OR (95% CI, cross-country comparison in same wave!)	Reference	1.59(1.36~1.88)***	1.51(1.29~1.78)***	.99(.86~1.16)
Exposed to POS tobacco advertising (% yes)	40.26	82.61	35.17	31.76
Adjusted OR (95% CI, cross-country comparison)	Reference	7.69(6.57~9.02)***	.82(.71~.95)**	.67(.58~.77)***
Overall salience: noticed things that encourage smoking (% yes†)	20.91	33.72	17.64	18.71
Adjusted OR (95% CI, cross-country comparison)	Reference	1.99(1.71~2.32)***	.81(.69~.96)*	.84(.71~.99)*
Noticed tobacco advertisements/promotion in any other specific channels^ (% yes)	46.64	82.06	39.57	33.43
Adjusted OR (95% CI, cross-country comparison)	Reference	5.54(4.75~6.47)***	.77(.67~.89)***	.55(.49~.63)***
<b>2007 (Wave 6)</b>				
Exposed to POS tobacco displays (% yes, n)	69.20 (n=1708)	80.88 (n=1742)	78.56 (n=1642)	69.40 (n=1791)
Adjusted OR (95% CI, cross-country comparison)	Reference	1.92(1.64~2.25)***	1.67(1.43~1.96)***	1.02(.87~1.18)
Exposed to POS tobacco advertising (% yes)	34.45(1707)	85.31	27.81	25.57
Adjusted OR (95% CI, cross-country comparison)	Reference	12.51(10.5~14.84)***	.74(.63~.85)***	.62(.54~.72)***
Overall salience (% yes)	19.37	35.28	16.14	19.54
Adjusted OR (95% CI, cross-country comparison)	Reference	2.29(1.95~2.67)***	.76(.64~.92)**	.95(.81~1.13)
Noticed advertisements/promotion in any other channels (%)	39.87	80.34	31.22	30.93
Adjusted OR (95% CI, cross-country comparison)	Reference	6.61(5.67~7.72)***	.69(.59~.79)***	.65(.56~.75)***
<b>2008 (Wave 7)</b>				
Exposed to POS tobacco displays (% yes, n)	9.56 (n=1506)	80.36 (n=1517)	87.27 (n=1485)	66.42 (n=1370)
Adjusted OR (95% CI, cross-country comparison)	Reference	40.09(32.3~49.75)***	69.46(55.1~87.71)***	20.25(16.42~24.98)***
Exposed to POS tobacco advertising (% yes)	17.65	75.68	-	-
Adjusted OR (95% CI, cross-country comparison)	Reference	15.98(13.2~19.22)***	-	-
Overall salience (% yes)	17.12	30.78	14.74	13.49
Adjusted OR (95% CI, cross-country comparison)	Reference	2.21(1.86~2.63)***	.82(.67~1.01)	.74(.60~.91)**
Noticed advertisements/promotion in any other channels (%)	30.13	82.02	37.19	26.02
Adjusted OR (95% CI, cross-country comparison)	Reference	11.70(9.83~13.94)***	1.43(1.22~1.66)***	.81(.68~.95)*

2010 (Wave 8)				
Exposed to POS tobacco displays (% yes, n)	6.14 (n=1237)	79.70 (n=1256)	88.10 (n=975)	42.86 (n=1106)
Adjusted OR (95% CI, cross-country comparison)	Reference	61.69(46.9~80.99)***	117.6(86.8~159.6)***	11.59(8.91~15.07)***
Exposed to POS tobacco advertising (% yes)	14.14(1238)	71.24(1255)	-	-
Adjusted OR (95% CI, cross-country comparison)	Reference	16.16(13.1~19.91)***	-	-
Overall salience (% yes)	14.63	29.86	14.05	12.30
Adjusted OR (95% CI, cross-country comparison)	Reference	2.49(2.04~3.05)***	.95(.74~1.20)	.82(.63~1.04)
Noticed advertisements/promotion in any other channels (%)	30.41	77.26	37.15	24.12
Adjusted OR (95% CI, cross-country comparison)	Reference	8.38(6.98~10.06)***	1.40(1.17~1.68)***	.71(.59~.85)***
Over-wave comparison – GEE modelling results (Adjusted OR, 95% CI ! ) (Wave 5 exposure as reference)				
Exposed to POS tobacco displays	.26(.24~.28)***	.96(.90~1.02)	1.24(1.16~1.32)***	.67(.64~.71)***
Exposed to POS tobacco advertising	.61(.57~.64)***	.78(.74~.82)***	.70(.62~.80)***	.74(.65~.84)***
Overall salience	.87(.82~.92)***	.92(.87~.97)**	.91(.85~.97)**	.83(.78~.89)**
Noticed advertisements/promotion in any other channels	.58(.46~.73)***	.95(.90~1.01)	.97(.92~1.02)	.85(.82~.90)***

NB. #The number of valid cases (n) for this measure are slightly fewer than the total number of current smokers at the specific wave in a particular country (eg, in the U.S.), and this applies to other specific measures, waves and countries. !OR, odds ratio; all odds ratios for cross-country comparison are generated using logistic regression modelling, whereas odds ratios for over-wave comparison are generated with GEE modeling, and adjusted for age, sex, education, income and cigarettes per day. CI, confidence interval. †At least once in a while. ^These specific channels are posters/billboards, gifts/discounts on other products, clothing with cigarettes brand name, and competitions linked to cigarettes. “-“The question was not asked in the UK and Australia at Waves 7 and 8. \* Significant at p<0.05; \*\* p<0.01; \*\*\* p<0.001.

**Table IV. Reported cigarette purchasing behaviours over time, by country**

	Canada	US	UK	Australia
<b>2006 (Wave 5)</b>				
Had a regular brand and bought it last time (% yes, n#)	83.50 (n=1739)	88.27 (n=1782)	88.15 (n=1705)	88.15 (n=1797)
Adjusted OR (95% CI, cross-country comparison in same wave!)	Reference	1.46(1.21~1.77)***	1.45(1.19~1.76)***	1.49(1.23~1.81)***
<b>2007 (Wave 6)</b>				
Had a regular brand and bought it last time (% yes, n)	79.95 (n=1616)	84.64 (n=1680)	89.89 (n=1592)	87.76 (n=1708)
Adjusted OR (95% CI, cross-country comparison)	Reference	1.37(1.14~1.64)**	2.24(1.82~2.74)***	1.84(1.52~2.22)***
Bought non-usual brand because of displays/advertising(% yes,n^)	11.0 (n=818)	23.9 (n=792)	8.59 (n=908)	5.28 (n=834)
Adjusted OR (95% CI, cross-country comparison)	Reference	2.64(2.00~3.49)***	.77(.56~1.06)	.43(.29~.63)***
<b>2008 (Wave 7)</b>				
Had a regular brand and bought it last time (% yes, n)	82.67 (n=1496)	87.30 (n=1512)	87.01 (n=1478)	91.08 (n=1368)
Adjusted OR (95% CI, cross-country comparison)	Reference	1.43(1.17~1.76)**	1.40(1.14~1.72)**	2.17(1.72~2.74)***
Bought non-usual brand because of displays/advertising (% yes, n)	4.84 (n=888)	16.40 (n=756)	7.35 (n=898)	2.82 (n=673)
Adjusted OR (95% CI, cross-country comparison)	Reference	4.05(2.82~5.84)***	1.59(1.07~2.37)*	.55(.32~.95)*
<b>2010 (Wave 8)</b>				
Had a regular brand and bought it last time (% yes, n)	84.52 (n=1227)	85.77 (n=1251)	87.45 (n=972)	89.37 (n=1101)
Adjusted OR (95% CI, cross-country comparison)	Reference	1.11(.89~1.38)	1.27(.99~1.62)	1.54(1.20~1.97)**
Bought non-usual brand because of displays/advertising (% yes, n)	4.26 (n=657)	17.44 (n=579)	6.96 (n=546)	3.26 (n=552)
Adjusted OR (95% CI, cross-country comparison)	Reference	4.99(3.22~7.49)***	1.72(1.04~2.86)*	.75(.41~1.37)
Bought unplanned cigarettes due to display (% yes, n)	2.43 (n=1237)	7.09 (n=1256)	5.85 (n=975)	3.98 (n=1105)
Adjusted OR (95% CI, cross-country comparison)	Reference	3.26(2.13~4.99)***	2.49(1.58~3.91)***	1.54(.96~2.49)
<b>Over-wave comparison – GEE modelling results (Adjusted OR, 95% CI !)</b>				
Had a regular brand and bought it last time (Wave 5 as reference)	1.04(.98~1.11)	.98(.91~1.04)	.95(.88~1.02)	1.09(1.01~1.17)*

Bought non-usual brand because of displays/advertising (Wave 6 as reference)	.58(.46~.73)***	.79(.68~.90)**	.89(.73~1.08)	.71(.53~.95)*
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NB. #The number of valid cases (n) for this measure is smaller than the total number of current smokers at this wave in Canada, and this applies to the other measure, waves and countries. Out of the valid cases, we reported the percentage of respondents who had a regular brand and bought it last time. !OR, odds ratio; all odds ratios for cross-country comparison are generated using logistic regression modelling, whereas odds ratios for over-wave comparison are generated with GEE modeling, and adjusted for age, sex, education, income and cigarettes per day. CI, confidence interval. ^This question was only asked from Wave 6. \* Significant at p<0.05; \*\* p<0.01; \*\*\* p<0.001.

Table V. Differences in exposure between smokers with a point-of-sale tobacco display ban and those without a ban (all four countries)

	2008 (Wave 7) (n=5887#)			2010 (Wave 8) (n=4593)		
	No display ban	With a display ban	Adjusted OR (95% CI)	No display ban	With a display ban	Adjusted OR (95% CI)
% exposed to POS tobacco displays	77.21	6.83	.02(.01~.03)***	77.81	9.09	.03(.02~.04)***
% noticed things that encourage smoking † (overall salience)	19.79	17.27	.85(.72~.99)*	20.19	14.53	.68(.57~.79)***
% noticed tobacco advertisements/promotion in any other specific channels^	48.76	29.91	.43(.38~.49)***	51.84	28.21	.35(.31~.40)***
% bought non-usual brand because of displays/advertising##	8.91	4.67	.49(.34~.70)***	10.30	3.99	.35(.24~.52)***
% bought unplanned cigarettes due to display	-	-	-	6.13	2.52	.39(.27~.54)***

NB. #The number of valid cases (n) for different measures are slightly different and smaller than the total number of current smokers at the wave due to some ‘don’t know’ and ‘missing’ cases, and this applies to Wave 8. OR, odds ratio, ‘no display ban’ group as reference; all odds ratios are generated using logistic regression, and adjusted for age, sex, education, income and cigarettes per day. CI, confidence interval. †At least once in a while. ^These specific channels are posters/billboards, gifts/discounts on other products, clothing with cigarettes brand name, and competitions linked to cigarettes. ##This measure only includes those who were asked of this question (n=3215 at Wave 7; n=2334 at Wave 8). --“The question was not asked in the UK and Australia at Waves 7. \* Significant at p<0.05; \*\* p<0.01; \*\*\* p<0.001.



Written Statement  
of  
Annice E. Kim, PhD, MPH

Social Scientist, Public Health Policy Research Program  
RTI International

before the  
New York City Council Committee on Health

regarding

“Int 1020-2013 - Display of cigarettes and tobacco products by retail  
dealers of cigarettes and age restrictions on entry to retail tobacco stores”

May 2, 2013

New York City Council Hearing Room  
250 Broadway, 16<sup>th</sup> floor  
New York, NY 10007



This written statement is being submitted to the New York City Council in support of proposed legislation Int 1020-2013, prohibiting the display of cigarettes and tobacco products by retail dealers of cigarettes.

My name is Annice Kim, and I am a social scientist in the Public Health Policy Research Program at RTI International in Research Triangle Park, North Carolina. RTI International is an independent, non-profit institute that provides research, development, and technical services to government and commercial clients worldwide. I have been conducting studies on tobacco marketing for over 10 years and I have a PhD in health behavior from School of Public Health at the University of North Carolina Chapel Hill. I want to share with you, the results of a study we conducted using virtual stores to examine the potential impact that banning tobacco product displays may have on youth.

### **Why is the retail environment important?**

The tobacco industry aggressively markets its products to consumers with nearly 90% of its \$8 billion advertising expenditure spent on programs to reduce the price of cigarettes to consumers, promotional allowances to retailers, and advertising and promotions at the point of sale (POS), making retail stores the most important advertising channel for the industry.<sup>1</sup> The amount of retail cigarette advertising and promotions has increased over time,<sup>2,3</sup> and cigarette products are prominently placed on shelves behind checkout counters, exposing all store customers to tobacco products, including youth and adults who do not smoke or have recently quit.

Youth visit stores regularly. In New York City, approximately 32% of youth report stopping at a store either before or after school every day, while 53.6% do so at least once a week or few days a week.<sup>4</sup>

Studies show that because tobacco marketing is so pervasive in stores, they may give kids the false perception that smoking cigarettes is more common than it really is<sup>5</sup> and that cigarette products are easy to purchase.<sup>6</sup> Research also indicates that youth exposure to tobacco retail marketing is associated with susceptibility to smoking, experimenting with smoking, and current smoking.<sup>7-16</sup> Studies also show that tobacco ads and displays may act as cues to smoke,<sup>11-13</sup> stimulate purchases among those not intending to buy cigarettes,<sup>14, 15</sup> and potentially influence relapse among adult recent quitters by stimulating cravings for cigarettes.<sup>16</sup>

These studies would suggest that banning tobacco product marketing in retail stores would have a positive impact on youth and also on adult smoking behavior. However, because no jurisdiction in the U.S. has passed a policy to regulate retail tobacco advertising or displays, we have not been able to study the potential impact of banning tobacco displays.

### **Potential impact of banning tobacco displays: Results from virtual convenience store study**

#### *Description of the Study*

In January 2013, the Journal of Pediatrics published a study in which my colleagues and I used a virtual convenience store to test the impact that enclosing tobacco product displays behind cabinets and banning tobacco ads in store may have on youth perceptions and purchasing behavior.<sup>17</sup> We created different versions of the virtual store; some stores had the tobacco products visibly displayed as they are currently in retail stores, while in other versions, the tobacco products were enclosed behind a cabinet. Similarly, some virtual stores had tobacco advertising displayed throughout the store while in other versions, the tobacco ads were banned.

Approximately 1,200 youth between the ages of 13 and 17 participated in our study, some who were smokers and some who were not. Each youth was randomly assigned to one of the six different virtual convenience store scenarios. The youth were not told anything about the tobacco display or ads in the store. The youth were told to complete a shopping task in the virtual store and were given up to 10 minutes to purchase 4 items of their choice with the only constraint being that they had to select one drink, one snack, and two items at the check-out counter area. When youth clicked on an item in the store, it was placed into their virtual shopping basket. If they selected an item by mistake, they could take it out of their shopping basket and select another. After youth completed the shopping task in the virtual store, they completed a survey that asked about their shopping experience as well as their perceptions about smoking and smoking behavior.

#### *Key Outcomes Examined*

The primary outcome we examined was whether youth would click to purchase tobacco products and if this behavior would differ depending on whether youth shopped in stores where the tobacco product display was visible versus hidden/enclosed. We believe that youth attempting to click and purchase tobacco products in the virtual store is an immediate response to being exposed to the store conditions. We also wanted to see if shopping in the different virtual store conditions influenced youth's perceptions about how easy it would be to purchase tobacco products from a convenience store like the virtual store though this outcome may not be as immediate a response as clicking to purchase. We also examined whether shopping in stores where tobacco advertising was banned influenced these outcomes.

### *Main Findings*

We found that enclosing the tobacco product display significantly lowers the likelihood that youth will try to purchase tobacco products; 24% of youth tried to buy tobacco in the virtual store when the tobacco display was open, compared to 9% when the display was enclosed. Nearly 85% of youth said they were aware that tobacco products were available for sale when the tobacco display was open, compared to 32% of those who shopped in the enclosed display version of the virtual store. We found limited evidence that enclosing the display would make youth think it is harder to buy tobacco products if a similar store existed in their neighborhood. We found no evidence that banning tobacco ads in the store would influence youth tobacco purchase attempts.

### *Study Caveats*

As with any research study, our study has strengths and limitations and so our conclusions must be viewed within this context.

- **Limitation:** We cannot know for certain whether youth's action in our virtual store study would translate to real world behaviors. We optimized the store environment and product offerings to simulate a real world convenience store and nearly 85% of the youth in our study reported that the virtual store resembled real world convenience stores in their neighborhoods.
- **Strength:** It would be nearly impossible to conduct a study of this nature in real life. By using a virtual reality application, we were able to create different scenarios of retail stores in which the tobacco display was visible vs. hidden/enclosed and immerse youth in these simulated store environment to study a behavior like purchase attempts. Virtual reality applications are used by researchers,<sup>18,19</sup> government agencies,<sup>20</sup> and consumer product

manufacturers/retailers<sup>21,22, 23</sup> alike to study a wide range of behaviors and to offer services and products. Virtual stores are an integral component of how business marketing researchers study consumer behavior:

“Virtual shopping simulations allow us to capture the realism and complexity of the physical store. Unlike traditional laboratory research methods, such as focus groups, surveys, and concept tests, we can test new ideas in a cluttered, competitive environment and collect detailed information on the shopping process.” – Dr. Raymond Burke, Professor of Marketing, Kelly School of Business, Indiana University Bloomington<sup>24</sup>

- Strength: Our study design has technical advantages. By randomly assigning youth to different conditions we can tease out the influence of the display vs. ads while ensuring that other factors like youth demographic characteristics were not influencing the results. Randomized controlled experiments are the gold standard in research study design.

## **Conclusion**

In conclusion, the results of our study suggest that policies requiring retailers to store tobacco products out of view could have a positive public health impact by deterring youth from attempting to purchase tobacco products.

A copy of the study is attached to my prepared statement.

Thank you.



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# PEDIATRICS®

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John W. Holloway, Matthew C. Farrelly and Paul R. Shafer

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# Influence of Tobacco Displays and Ads on Youth: A Virtual Store Experiment

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## KEY WORDS

adolescence, tobacco advertising, tobacco control policy, tobacco use/smoking

## ABBREVIATION

POS—point of sale

Drs Kim and Nonnemaker, Mr Loomis and Ms Baig contributed to study design, data collection, data analysis, and writing of the manuscript; Mr Hill and Mr Holloway contributed to study design, data collection, and review of the manuscript; Dr Farrelly contributed to study design and review of the manuscript; and Mr Shafer contributed to revising of the manuscript and addressing reviewer comments.

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**WHAT'S KNOWN ON THIS SUBJECT:** Youth exposure to retail tobacco advertisements and displays is associated with smoking initiation. The Family Smoking Prevention and Tobacco Control Act of 2009 gives states and local governments legal authority to regulate the time, place, and manner of tobacco advertising.



**WHAT THIS STUDY ADDS:** This is the first experimental study using a virtual store environment to provide evidence that a policy banning tobacco product displays at the point of sale may deter youth from attempting to purchase tobacco products at retail stores.

## abstract

FREE

**OBJECTIVE:** To examine the potential impact of banning tobacco displays and ads at the point of sale (POS) on youth outcomes.

**METHODS:** An interactive virtual convenience store was created with scenarios in which the tobacco product display at the POS was either openly visible (status quo) or enclosed behind a cabinet (display ban), and tobacco ads in the store were either present or absent. A national convenience sample of 1216 youth aged 13 to 17 who were either smokers or nonsmokers susceptible to smoking participated in the study. Youth were randomized to 1 of 6 virtual store conditions and given a shopping task to complete in the virtual store. During the shopping task, we tracked youth's attempts to purchase tobacco products. Subsequently, youth completed a survey that assessed their perceptions about the virtual store and perceptions about the ease of buying cigarettes from the virtual store.

**RESULTS:** Compared with youth in the status quo condition, youth in the display ban condition were less aware that tobacco products were for sale (32.0% vs 85.2%) and significantly less likely to try purchasing tobacco products in the virtual store (odds ratio = 0.30, 95% confidence interval = 0.13–0.67,  $P < .001$ ). Banning ads had minimal impact on youth's purchase attempts.

**CONCLUSIONS:** Policies that ban tobacco product displays at the POS may help reduce youth smoking by deterring youth from purchasing tobacco products at retail stores. *Pediatrics* 2013;131:1–8

Despite significant progress in reducing youth smoking in the United States, the rates of decline have stalled in the past decade.<sup>1</sup> States have experienced dramatic budget cuts for tobacco prevention programs, but the tobacco industry continues to market its products aggressively with nearly 90% of its \$10 billion marketing expenditure spent on retailer incentives and price promotions at the point of sale (POS),<sup>2</sup> making retail stores the most important advertising channel for the tobacco industry. The level of retail cigarette advertisements and promotions has increased over time,<sup>3,4</sup> and cigarette products are prominently placed on shelves behind checkout counters, exposing all store customers, including youth, to tobacco products. Studies show that youth are highly aware of tobacco ads in stores,<sup>5</sup> and such exposure influences youth perceptions regarding ease of access to cigarettes, smoking prevalence, and peer approval of smoking.<sup>6</sup> Youth who are exposed to retail tobacco marketing are also more likely to experiment with smoking and to become smokers.<sup>7–16</sup>

The Family Smoking Prevention and Tobacco Control Act of 2009 gives states and local governments legal authority to regulate the time, place, and manner of tobacco advertising. As states consider policies such as banning the display of tobacco products, empirical studies are needed to determine the potential impact of these regulations. Case studies in Ireland and Canada show that youth and adult awareness of POS tobacco marketing dropped significantly after a ban on tobacco displays and ads.<sup>17,18</sup> Although these case studies suggest that banning POS tobacco displays and ads could help deter youth smoking, few studies have systematically examined the potential impact of these policies on smoking outcomes.

In an experimental study, Wakefield and colleagues<sup>19</sup> examined the potential impact of regulating POS tobacco product

displays and ads by showing Australian youth photos in which cigarette packs were displayed with ads (status quo in retail stores), without ads, and with neither ads nor packs displayed. They found that exposure to tobacco product displays with and without ads was associated with increased perceptions that tobacco products were easy to purchase at the store compared with those who viewed the no cigarette display condition. In addition, they found that, compared with those in the no cigarette display condition, students who were exposed to the cigarette advertising condition perceived it would be less likely they would be asked for proof of age and that a greater number of stores would sell them cigarettes. A potential limitation of this study is that the stimuli were photographs shown in a classroom setting, which does not reflect real-world exposure to POS displays. We extend the Wakefield et al study by using a virtual store to simulate a more interactive exposure to POS tobacco product displays and ad bans. Virtual reality applications are intended to simulate features of the real-world environment, which enables researchers to immerse participants into a hypothetical context and study their behavioral responses to environmental cues that may be difficult to assess in a real-life setting. Virtual reality environments have been used to study a wide range of behaviors<sup>20</sup> including behaviors among youth<sup>21,22</sup> and to test the effect of smoking cues on smokers' cravings for cigarettes in young adults<sup>23,24</sup> and adults.<sup>25</sup> However, to date, no studies have used virtual environments to study the impact of tobacco displays and ads on youth. We designed a virtual store and gave youth a specific shopping task to assess whether youth exposed to the display ban condition are less likely to attempt buying tobacco products in the virtual store and perceive that it is difficult to

buy cigarettes at the virtual store. A secondary aim was to examine whether the presence of tobacco ads in the store moderates these relationships.

## METHODS

### Study Design

We designed a 3 × 2 experimental study with 3 variations of the POS tobacco product displays (open, enclosed, enclosed with ads on cabinet) and 2 variations of tobacco ads in store (present, absent) for a total of 6 conditions (defined in Table 1 and exhibited in Figs 1 and 2).

An off-the-shelf model of a convenience store was purchased and extensively customized for this study by using Unity 3D interactive gaming software. The initial beta version of the virtual store was pilot tested with focus groups of 12 youth aged 14 through 17 who were current smokers or nonsmokers susceptible to smoking. The virtual store was updated on the basis of feedback from the focus groups (eg, improved navigation speed, expanded product selections).

### Participants and Virtual Shopping Task

A national convenience sample of current smoker or nonsmoker susceptible to smoking youth aged 13 to 17 were recruited from Research Now's e-Rewards online youth panel and via parents in their adult panel who indicated having children aged 13 to 17. Current smokers were defined as smoking at least 1 cigarette per day in the past 30 days. Nonsmokers susceptible to smoking were defined as those who had not smoked in the past 30 days and answered "definitely yes, probably yes, or probably not" to any 1 of these 3 questions: "Do you think you will smoke a cigarette anytime during the next year?" "Do you think you will try a cigarette soon?" and "If one of your best friends offered you a cigarette, would you smoke it?"

**TABLE 1** Study Conditions

Tobacco Product Display at POS	Tobacco Ads in Store	
	Present	Absent
Open Display: Open, fully visible current status quo situation	C1	C4
Enclosed Display: Not visible, enclosed behind opaque cabinet with black and white signs noting "Cigarette Center" and "Chewing Tobacco & Cigars" at the top of the display cabinet <sup>a</sup>	C2	C5
Enclosed display + ads on cabinet: Not visible, enclosed behind opaque cabinet with "Cigarette Center" sign at top + ads on cabinet doors <sup>b</sup>	C3	C6

<sup>a</sup> Enclosed display condition was modeled after an actual policy adopted by stores in New York State to ban the display of tobacco products.

<sup>b</sup> We created this scenario as a potential unintended consequence of the display ban.

E-mail invitations were sent, and 4189 panelists consented to participate and met the eligibility criteria (Fig 3). Participants initiated the study by clicking on a link that randomized them to 1 of 6 conditions. If participants already had the Unity 3D player installed on their computer, the virtual store application loaded, and they began the virtual shopping task. If participants did not have the Unity player, they were prompted to download the player.

For the virtual shopping task, participants were instructed to select 4 items for purchase: a snack from the aisles, a drink from the coolers, and 2 items of their choice from the checkout counter. Participants were not specifically instructed to purchase tobacco. Participants had a total of 10 minutes to complete their shopping task. As participants navigated through the store, they were exposed to one of two versions of the store environment in which

tobacco ads were either present or absent (see Fig 2). When the participant moved to the checkout counter to purchase the last 2 items, he or she was exposed to 1 of the tobacco display conditions (Fig 1). At the checkout counter area, if the participant attempted to purchase tobacco by clicking on the tobacco product display, the animated cashier asked, "Do you want to buy tobacco products?" If the participant clicked "No," the cashier responded "OK" and resumed talking on his phone. If the participant clicked "Yes," the cashier responded "Sorry, you are not old enough to purchase this product" and resumed talking on his phone. Once the final 2 items from the checkout counter had been selected, the participant was exposed to the display for another 10 seconds before the shopping task ended and the participant was directed to the survey.

One thousand two hundred sixteen participants completed the study, and most were recruited from the parent panel (62%). There were no meaningful socio-demographic differences among youth who qualified ( $n = 4189$ ) versus completed ( $n = 1216$ ) the study. Youth received a \$6.50 e-Rewards dollar incentive to be redeemed for products/services upon study completion. This study was approved by Institutional Review Boards at RTI International and the New York State Department of Health.

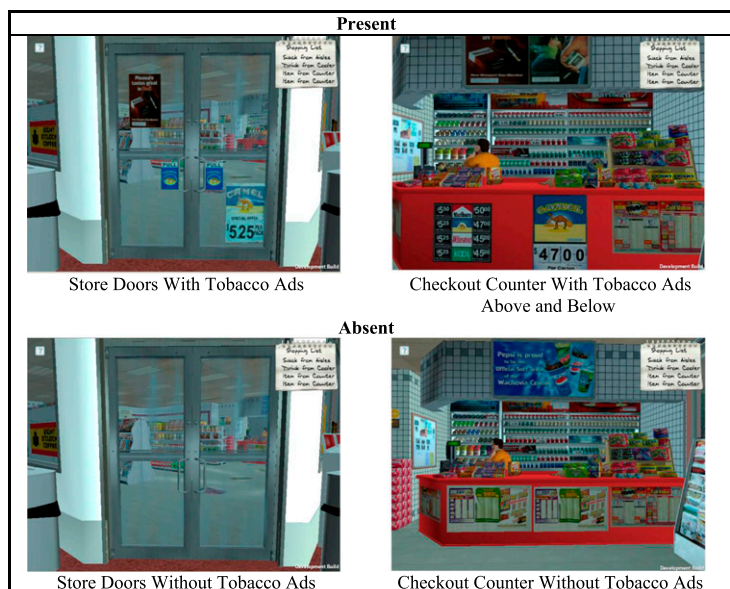
## Measures

The 2 key study outcomes were whether youth perceived cigarettes as easy to purchase in the virtual store and whether youth tried to click and purchase tobacco in the virtual store. Perceived ease of access was measured with the following item: "Imagine that a real store like this virtual store was near where you live; how easy or hard would it be for you to buy cigarettes from this store?" Youth were defined as attempting to purchase tobacco if during their shopping task they clicked

**FIGURE 1**

Screenshots of tobacco product display conditions in virtual retail store.





**FIGURE 2**

Screenshots of tobacco ad conditions in virtual retail store. Note: in the conditions in which tobacco ads were present in the store (C4–C6), there were 2 ads on the exterior door along with 2 branded “pull” signs, 2 ads above the checkout counter, and 2 ads below the checkout counter. In the conditions in which tobacco ads were absent (C1–C3), there were no ads on the exterior door and ads for soft drink and lottery tickets above and below the checkout counter.

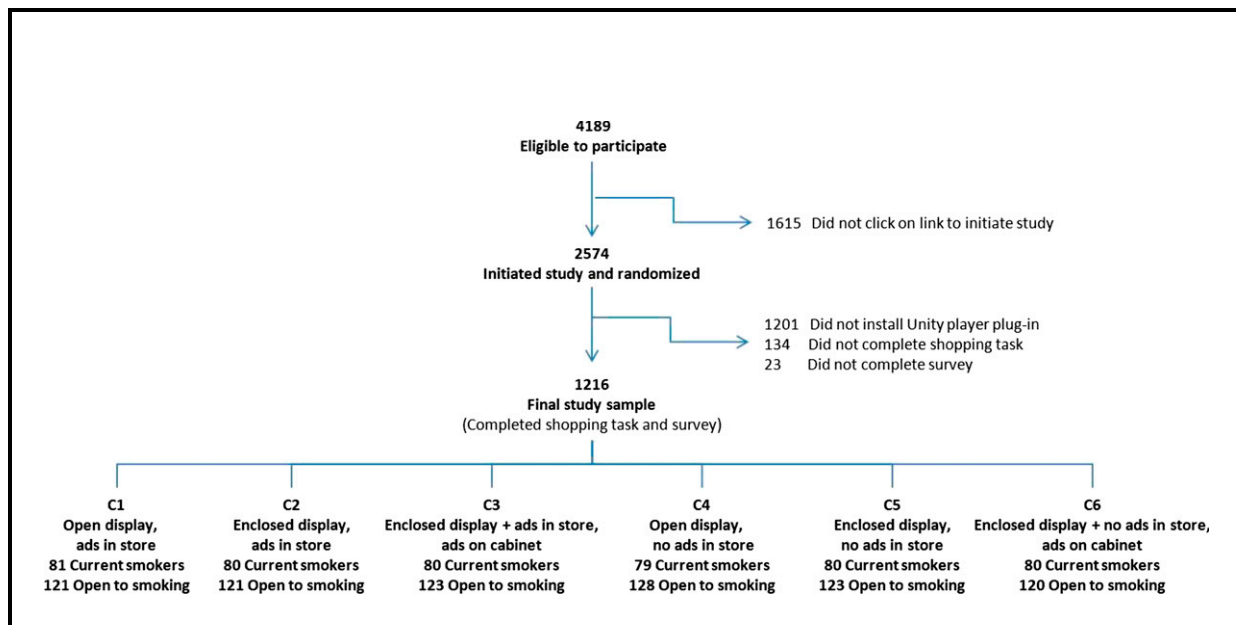
on the tobacco product display and confirmed they wanted to purchase tobacco. This information was captured by the Unity 3D software.

We also assessed perceptions about the virtual store, including whether youth were aware that tobacco products were for sale in the virtual store and the extent

to which they thought the virtual store resembled a real convenience store. We also measured the following covariates: smoking behavior, youth’s usual source of cigarettes (retail or nonretail), social influence to smoke (whether youth lives with smoker, number of best friends who smoke), sensation-seeking behavior (additive scale constructed from 4 items that assessed the extent to which youth like to explore new places, like to do frightening things, like new and exciting experiences, and prefer friends who are exciting and unpredictable), and key demographics (age, gender, race/ethnicity).

## Analysis

Process data from the virtual store shopping tasks were linked to the survey data via unique identifiers for each study participant. We tested for potential differences in each outcome by condition. Logistic regression was used because the main outcomes were dichotomized. In general form, we estimated the following regression equation:



**FIGURE 3**

Study sample. Note: “Did not install Unity player plug-in” indicates participants who did not already have the Unity player and were unwilling to download it. “Did not complete shopping task” indicates participants who did not have complete data from the virtual retail store. These participants may have ended their virtual shopping task early and thus did not have survey data. “Did not complete survey” indicates participants who completed the virtual retail store data but did not complete the survey.

$$\begin{aligned} \text{logit}(\text{outcome}) = & \alpha + \beta_2 C_2 + \beta_3 C_3 \\ & + \beta_4 C_4 + \beta_5 C_5 + \beta_6 C_6 \\ & + \sum_{j=7}^k \beta_j X_j \end{aligned}$$

$C_i$  are the indicators for each condition with condition 1 omitted as the referent category (ie, we compared each condition to the open display with ads in the store condition because this is the current practice in stores).  $X_j$  refers to the set of covariates delineated in the measures section. The perceived ease of access model excludes participants who attempted to purchase tobacco in the virtual store. All descriptive statistics and regression models were estimated by using Stata 11.0 (Stata Corp, College Station, TX).

## RESULTS

Sample characteristics are summarized in Table 2. The distribution of demographics was similar across the 6 conditions. The majority of study participants were aged 15 to 17, male, and white. More than half of participants visit convenience stores more than once per week and 17.4% of current youth smokers report usually getting their cigarettes in a retail store. On average, participants took 172.3 seconds to complete the virtual store shopping task with ~32.1 seconds spent at the checkout counter. More than 80% of respondents agreed that the virtual store resembled a real convenience store.

The proportion of participants who reported seeing tobacco products for sale was highest in the open display condition with ads (C1, 85.2%) and lowest for the enclosed display condition with no ads (C5, 32.0%). When tobacco advertisements are present in the store, 24.3% of study participants clicked to purchase tobacco in the open display condition (C1) compared with only 9.0% in the enclosed display condition (C2). When no tobacco ads were present in the store, 16.4% of youth clicked to pur-

chase tobacco in the open display condition (C4), compared with 10.8% in the enclosed display condition (C5).

The proportion of youth who perceived that it would be hard or very hard to buy cigarettes from the retail store was higher for youth in the open display condition with tobacco ads in store (51.5% for C1) than in the enclosed display condition (48% for C2). This pattern holds when tobacco advertising was removed from the store, with 47.6% in the open display condition (C4) versus 40.5% in the enclosed condition (C5).

Table 3 presents adjusted odds ratios for the 6 experimental conditions for the key outcomes of perceived ease of access to cigarettes and attempting to purchase tobacco. Current smokers did not show significant differences across conditions regarding perceived ease of access to cigarettes. Among nonsmokers susceptible to smoking, youth in condition C5 (enclosed display, no ads in store) were significantly less likely to believe that it would be hard to purchase cigarettes in the virtual convenience store than youth in condition C1 (open display; odds ratio = 0.49, 95% confidence interval = 0.28–0.85,  $P < .05$ ). Current smokers in condition C2 (enclosed display, ads in store) were significantly more likely to say it would be hard to buy cigarettes from the virtual store than current smokers in condition C3 (enclosed display, ads in store, ads on cabinet;  $P < .05$ ). Nonsmokers in condition C4 (open display, no ads in store) were significantly more likely to say it would be hard to buy cigarettes from the virtual store than those in condition C5 (enclosed display, no ads in store;  $P < .05$ ).

After controlling for the covariates, all youth who were exposed to any of the enclosed display conditions (except open-to-smoking youth in C5) were significantly less likely to try purchasing tobacco in the virtual store than youth who were exposed to the open display

condition (C1; see Table 3). Current smokers in conditions C5 (enclosed display, no ads in store) and C6 (enclosed display, no ads in store + ads on cabinet) were less likely than current smokers in condition C4 (open display, no ads in store) to attempt purchasing tobacco.

## DISCUSSION

In summary, we found that enclosing tobacco product displays significantly lowers the likelihood that youth will try to purchase tobacco in the virtual store but inconsistent results on whether they perceive cigarettes to be difficult to purchase. Whereas Wakefield and colleagues<sup>19</sup> found that youth who were exposed to no display or ads were more likely to perceive tobacco as difficult to purchase from the store, we found opposite results among nonsmokers. One possible explanation for this may be that youth in enclosed conditions may perceive cigarettes to be more difficult to access and thus are more likely to try and purchase because they see it as a challenge. Policies that restrict access to tobacco products may have the unintended consequences of youth perceiving these products as “forbidden fruit” that are more desirable because they are associated with being an adult.<sup>26</sup> Tobacco industry documents reveal that tobacco advertising has explicitly attempted to convey the message that smoking cigarettes is synonymous with being an adult. In our experiment, although tobacco products were not visible in the enclosed conditions, the cabinets were labeled with the word “cigarettes,” which indicated cigarette products may be available for sale. Enclosing the display in this manner may have the unintended effect of emphasizing the message that tobacco is for adults, thereby increasing youth’s desire to use those products. We included this signage in our design because it resembled how stores in New York State and in other countries<sup>27</sup> had implemented tobacco product display

**TABLE 2** Characteristics of Study Sample

Characteristic	Total ( <i>N</i> = 1216)	C1 Open Display, Ads in Store ( <i>N</i> = 202)	C2 Enclosed Display, Ads in Store ( <i>N</i> = 201)	C3 Enclosed Display + Ads in Store, Ads on Cabinet ( <i>N</i> = 203)	C4 Open Display, No Ads in Store ( <i>N</i> = 207)	C5 Enclosed Display, No Ads in Store ( <i>N</i> = 203)	C6 Enclosed Display + No Ads in Store, Ads on Cabinet ( <i>N</i> = 200)
Smoking status, %							
Open to smoking	60.5	59.9	60.2	60.6	61.8	60.6	60.0
Current smoker	39.5	40.1	39.8	39.4	38.2	39.4	40.0
Age, y (%)							
13	4.8	6.4	4.0	5.9	4.8	4.9	2.5
14	13.8	11.9	14.4	14.8	14.5	8.9	18.5
15	21.1	23.8	17.9	22.2	19.8	22.2	20.5
16	30.1	33.2	26.9	31.5	30.9	31.0	27.0
17	30.3	24.8	36.8	25.6	30.0	33.0	31.5
Male, %	53.5	52.0	56.2	51.7	56.0	50.7	54.5
Race, %							
White, non-Hispanic	72.4	68.3	72.6	76.4	69.1	72.9	75.0
Nonwhite, non-Hispanic	14.6	15.4	12.9	13.8	20.3	15.3	10.0
Hispanic	13.0	16.3	13.8	9.9	10.6	11.8	15.0
Sensation scale: 0 (lowest sensation seeking) → 20 (highest sensation seeking), avg (SD)	13.6 (3.8)	13.5 (3.6)	13.6 (3.2)	13.6 (3.3)	13.5 (3.4)	13.3 (3.4)	13.9 (3.3)
Current smokers who purchased from a convenience store, supermarket, or gas station, %	17.4	19.7	16.9	14.3	17.7	18.2	18.1
Live with smoker, %	32.3	31.7	32.0	36.5	29.6	34.2	30.0
Said they have 2–5 best friends who smoke, % <sup>a</sup>	38.2	38.3	39.5	40.6	34.3	40.4	36.4
Time spent in shopping aisles, s, avg (SD)	172.3 (91.0)	171.1 (87.7)	169.5 (81.4)	173.7 (83.5)	176.2 (109.80)	166.1 (87.6)	177.1 (93.0)
Time spent at counter, s, avg (SD)	32.1 (16.7)	32.4 (15.9)	30.8 (16.8)	31.0 (15.9)	33.9 (18.3)	32.3 (16.1)	32.1 (16.7)
Said the virtual store resembles real-world convenience stores a lot, very, or somewhat, % <sup>b</sup>	84.8	83.1	89.1	80.8	89.4	82.3	84.0
Saw tobacco for sale, %	60.3	85.2	54.2	62.1	79.2	32.0	48.5
Saw tobacco advertisements, %	57.1	75.3	59.2	69.5	49.8	29.6	59.5
Said they go to convenience stores at least a few times a week, % <sup>c</sup>	54.8	58.7	53.7	52.7	58.0	53.7	52.0
Tried to purchase tobacco, %	13.5	24.3	9.0	10.3	16.4	10.8	10.0
Said it would be hard or very hard to buy cigarettes in virtual store, % <sup>d</sup>	45.0	51.5	48.0	40.9	47.6	40.5	41.7

avg, average.

<sup>a</sup> Dichotomized variable: reference category is 0–1 best friends who smoke.<sup>b</sup> Dichotomized variable: reference category is the virtual store resembles real-world stores a little or not at all.<sup>c</sup> Dichotomized variable: reference category is those who go to convenience stores approximately once a week, once a month, or hardly ever.<sup>d</sup> Dichotomized variable: reference category is those who said it would be very easy, easy, neither easy nor hard to buy cigarettes from the virtual store.

bans and therefore represents a likely scenario of how such policies may be adopted in the United States.

Although we found no evidence that enclosing the display decreased youth's perceived ease of access, we found that youth who were exposed to the enclosed display conditions were less likely to try purchasing tobacco in the

virtual store. We believe that an observational measure of youth clicking on the tobacco product display and affirming that they want to purchase tobacco products may be a more valid measure of youth's desire and intention to buy cigarettes than a self-reported measure about how easy it would be to purchase cigarettes from a pictured

store. It is better to observe what youth will actually do in a situation in which tobacco product displays are enclosed than to simply ask them about what they might do. Additionally, the virtual store may be a more realistic way to expose participants to potential display ban conditions than static images and to engage them with the environment by

**TABLE 3** Adjusted Odds Ratios (95% CI) for Perceived Ease of Access to Cigarettes and Attempting to Purchase Tobacco in the Virtual Store

	Perceived Ease of Access to Cigarettes		Attempting to Purchase Tobacco	
	Current Smokers	Open to Smoking	Current Smokers	Open to Smoking
	(N = 293)	(N = 681)	(N = 409)	(N = 723)
C1: Open display, ads in store	1.00	1.00	1.00	1.00
C2: Enclosed display, ads in store	1.20 <sup>a</sup> (0.45–3.22)	0.78 (0.45–1.35)	0.30** (0.13–0.67)	0.28* (0.08–0.96)
C3: Enclosed display, ads in store + ads on cabinet	0.38 <sup>a</sup> (0.14–1.06)	0.68 (0.40–1.18)	0.39* (0.18–0.86)	0.22* (0.06–0.85)
C4: Open display, no ads in store	0.65 (0.23–1.86)	0.96 <sup>b</sup> (0.56–1.65)	0.84 <sup>c,d</sup> (0.40–1.74)	0.45 (0.15–1.34)
C5: Enclosed display, no ads in store	1.19 (0.45–3.16)	0.49 <sup>a,b</sup> (0.28–0.85)	0.27** <sup>c</sup> (0.12–0.63)	0.46 (0.16–1.33)
C6: Enclosed display, no ads in store + ads on cabinet	0.68 (0.25–1.83)	0.70 (0.41–1.21)	0.32** <sup>d</sup> (0.14–0.69)	0.22* (0.06–0.86)

All odds ratios adjusted for age, race, gender, sensation-seeking scale, number of best friends who smoke, living with a smoker, frequency of going to a convenience store, and virtual store resembles a real convenience store. Current smoker models also control for source of cigarettes (retail versus social source). Perceived ease of access to cigarettes model excludes those who attempted to purchase tobacco in the virtual store.

<sup>a</sup> Significant difference ( $P < .05$ ) between C2 and C3 in current smoker model.

<sup>b</sup> Significant difference ( $P < .05$ ) between C4 and C5 in open to smoking model.

<sup>c</sup> Significant difference ( $P < .05$ ) between C4 and C5 in current smoker model.

<sup>d</sup> Significant difference ( $P < .05$ ) between C4 and C6 in current smoker model.

\*  $P < .05$ ;

\*\*  $P < .01$ .

giving them a specific shopping task. Indeed, previous studies in the field of experimental psychology confer the benefits of using interactive virtual environments to simulate and test the impact of environments or situations that are difficult to study.<sup>28–30</sup> In addition, we also confirmed that youth thought our virtual store was a realistic representation of convenience stores that they frequent. Despite these strengths, our study has some potential limitations. First, youth's exposure to the conditions may not have been sufficient. We attempted to provide substantial exposure to the display conditions by having youth select multiple products at the checkout counter and having the animated retailer purposely keep the youth waiting by talking on his cell phone, but youth only spent an average of 3.4 minutes in the virtual store, which is considerably less than the average of 16 minutes teenagers typically spend when visiting convenience stores.<sup>31</sup> However, a previous eye-tracking study<sup>32</sup> found differences in outcomes when

youth viewed tobacco ads for only 9 to 17 seconds, suggesting that the 32 seconds our study participants spent on average at the POS may have been adequate exposure to the display conditions. Second, it is possible that participants may have been aware that the virtual task was related to smoking. To select the right participants, the screener questions asked about smoking and, per institutional review board guidelines, the consent form mentioned that the survey would assess perceptions about smoking. This may have primed the respondent that the shopping task was about smoking. However, the shopping task itself did not mention anything about smoking and participants were not directed to purchase cigarettes. Furthermore, if priming occurred, it should affect participants across all conditions. Finally, our results have limited generalizability because Research Now's panelists are a convenience sample recruited via non-probability-based online methods. However, because the purpose of our study was to

test the potential impact of banning tobacco displays and ads, our primary concern was to minimize potential threats to internal validity at the cost of potentially limiting external validity. Using an online panel like Research Now provided the benefits of accessing a large number of youth who could be systematically screened and randomized to the virtual store conditions via the Internet.

## CONCLUSIONS

We found that enclosing tobacco product displays could deter youth from attempting to purchase tobacco in retail stores. These results provide support for policies that would ban the display of tobacco products at the POS. The virtual store application can be used to test the impact of other POS policies, such as whether antismoking messages at the POS could mitigate the impact of open tobacco displays or potentially strengthen the impact of enclosed tobacco displays on smoking-related outcomes for youth and adults.

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## **Influence of Tobacco Displays and Ads on Youth: A Virtual Store Experiment**

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**Vice President, Research**

**Campaign for Tobacco-Free Kids**

**In Support of Proposed Int. 250A, Int. 1020-2013, Int. 1021-2013**

**New York, NY**

**May 2, 2013**



Good afternoon, Chair Arroyo and Members of the Committee. Thank you for the opportunity to speak briefly on the opportunity New York City has to further reduce smoking, especially among kids. Actions taken by the Council over the past decade have been instrumental in reducing smoking among New York City kids and adults and making New York City a world leader in this regard. By increasing tobacco taxes, making New York smoke-free, and encouraging and helping New York smokers to quit, New York has cut youth smoking in half and reduced adult smoking by a third. In recent years, however, progress has slowed. Youth smoking has held constant at 8.5 percent since 2007, and adult smoking has declined by just 6 percent since 2008.<sup>1</sup>

Tobacco company actions to reduce price and ensure prominent display of their products in retail outlets contribute to the slowing of progress in reducing smoking in New York City. Increasingly, their efforts to recruit and keep smokers are focused at the point of sale, where they spend about 90 percent of their budget on price discounting and promotional allowances, making their products cheaper and ubiquitous in stores.<sup>2</sup> With tobacco retailers more densely located in lower income and minority neighborhoods, these efforts have a disproportionate effect on vulnerable populations least able to bear the health burdens of tobacco use.<sup>3</sup> In addition, the companies continue to target youth and young adults with their products, including a variety of new ones. The sale of untaxed cigarettes in the City also contributes to lower prices and therefore increased use.

The evidence is clear that each of the actions under consideration by the committee today will help counter all of these issues.

- By prohibiting discounting and coupon redemption, creating a minimum price for tobacco products, setting a minimum pack size for certain cigars, and enhancing enforcement to stop untaxed sales, the City will keep prices higher and thereby deter kids from smoking. Everyone who has studied the issue, including the tobacco companies, has concluded that increasing price is one of the best ways to reduce smoking.
- The ban on the display of tobacco products will also contribute to reducing use. Tobacco companies have spent billions of dollars to ensure that their products are displayed prominently in retail outlets across the country. This prominent display of tobacco products makes tobacco use seem normal and acceptable to young people. Two-thirds of teenagers visit convenience stores at least once per week, so they are particularly affected by tobacco displays in their most vulnerable years for smoking. These displays also prompt impulse buys by smokers, increasing use and making quitting more difficult.
- Increasing the minimum age of sale to 21 will counter the efforts of the tobacco industry to target young adults, which they acknowledge as a key market and an age during which many young people transition from experimental to regular smoking. In addition to reducing smoking among 18 to 20 year olds, it will help keep tobacco out of high schools, where many younger students obtain tobacco products from older peers.

This testimony, along with the supporting documents attached, presents the evidence that each of these interventions will reduce tobacco use in New York City.

### **Interventions to Increase the Price of Tobacco Products (Int. 1021-2013)**

The scientific research is very clear that raising cigarette prices is one of the most effective ways to reduce smoking, especially among kids. In New York City, price increases brought about by higher city and state tobacco taxes have been instrumental in reducing smoking in the city.

Tax increases only work to the extent that they translate into increases in price, and several factors can reduce the impact of tax increases. These include aggressive price discounting by tobacco companies, selling small cigarette-like cigars and packaging them in smaller quantities to keep prices low, and the selling of untaxed cigarettes.

To ensure that price has the desired effect on reducing smoking, the Sensible Tobacco Enforcement bill (Int. 1021) includes several provisions to counter actions that reduce the price of tobacco products:

- Prohibiting tobacco product discounts
- Setting a minimum price on cigarettes and cigars
- Setting minimum package sizes for certain cigars and little cigars
- Enhanced tobacco tax enforcement efforts to reduce tax evasion by retailers

These proposals are solidly grounded in science. Decades of research on price increases and tobacco use show that when prices increase, use of tobacco products declines, especially among kids. Together, these measures will protect kids from the tobacco companies' aggressive strategies to target them with cheap products, helping ensure that higher tobacco prices in NYC continue to drive down smoking rates.

The attached fact sheet, "Strategies to Increase Tobacco Product Prices Will Reduce Tobacco Use Among Kids," details the evidence for the impact of price on smoking, including the impact of industry coupons and discounting on price. As a recent U.S. Surgeon General's Report concluded: "In considering the numerous studies demonstrating that tobacco use among young people is responsive to changes in the prices of tobacco products, it can be concluded that the industry's extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions."<sup>4</sup>

### **Cheap Cigars That Appeal to Kids**

The price provisions specific to cigars are critical to helping counter the explosion of new small cheap cigars that clearly target young people in New York City and around the country. Between 2000 and 2010, while cigarette sales declined by 33.8 percent nationally, cigar sales increased by 124 percent.<sup>5</sup> Sales of small cigars have accounted for almost all of this increase<sup>6</sup> such that the majority of today's cigars are smaller (sometimes even the size of a cigarette), and nearly always cheap (many sell for less than \$1.00). Except in certain localities,<sup>7</sup> cigars can be sold in any package size – five, two, or even singles. Some cigarette products have even been manipulated to meet the definition of a large cigar to avoid higher taxes and thus be sold cheaply (see Figure 2). These characteristics make them appealing and affordable, especially for price-sensitive customers like kids and young adults.<sup>8</sup>

These are not your grandfather's cigars, and the people smoking them are not your grandfather – or even your father. Nationally, high school students are almost twice as likely (13.1% v. 6.6%) as adults to report smoking a cigar in the past month, and young adults are even more likely (15.9%).<sup>10</sup> In New York City, while cigarette smoking among youth has been cut in half since 2001, cigar smoking has not declined at all and may have even increased.<sup>11</sup>

Just consider the following quotes from the trade publication, *Convenience Store Decisions*:

*"It's cheaper, so it's more in the grasp of kids."*<sup>12</sup> (Nik Modi, Senior Tobacco Analyst for UBS)

*"Little cigars are an easy product to suggest to price-sensitive customers. If anybody complains about the cigarette prices all we have to say is, 'Hey, have you tried these?' You hold them up; they look like a cigarette pack. You tell them, 'Yeah, the wrapper is brown, but don't knock them until you try them.' We do have quite a lot of people convert to them."*<sup>13</sup> (Andrea Myers, VP of Kocolene Marketing, LLC)

*"It's in the cigarillo space where we're seeing lots of competition with low-priced entries..."*<sup>14</sup> (Martin J. Barrington, Chairman, Chief Executive Officer and Chairman of Executive Committee, Altria)



**Figure 1.** Examples of cheap cigars sold in packs of 1 or 2 [images not to scale]. Black & Mild, Swisher Sweets, and White Owl are the three most popular brands among 12-17 year olds.<sup>9</sup>

Clearly, these cheap, attractive small cigars are not only accessible, appealing, and affordable, they are being aggressively promoted to recruit and keep smokers – especially the most price-sensitive ones – kids.

The proposed minimum price and pack size provisions for this new generation of cigars will help stop them from addicting a new generation of kids. The attached report, *Not Your Grandfather's Cigar: A New Generation of Cheap and Sweet Cigars Threatens a New Generation of Kids*, provides further detail on the proliferation of these cheap cigars and how they affect youth smoking.

#### Combatting Sales of Untaxed Tobacco Products

As noted above, one of the key elements of the City's successful efforts to reduce smoking has been increasing the price of cigarettes by increasing the tobacco tax. This has also produced dramatic increases in revenue for the City, despite declines in smoking. This hugely successful intervention would be even more so if not for the illegal sale of untaxed cigarettes in the City. According to the Office of the New York City Sheriff, more than 46 percent of cigarette retailers that they inspected were found to be selling unstamped or untaxed product.<sup>15</sup> This not only makes cigarettes cheaper but also puts law-

abiding retailers at a disadvantage. By cracking down on those who bring untaxed cigarettes into New York City, as well as those who help sell them, the City will enhance the impact of an already successful policy and reward those retailers who play by the rules.

### **Tobacco Product Display Restriction (Int. 1020-2013)**

In their efforts to maintain tobacco users and recruit new ones, tobacco companies focus more and more on the point of sale, where stores are saturated with tobacco advertising and displays. Tobacco companies spend billions of dollars to ensure that tobacco products are heavily advertised, prominently displayed, and cheaply priced in stores. Data from the Federal Trade Commission on annual cigarette and smokeless tobacco marketing expenditures reveals the importance of the retail environment to tobacco companies. In 2010, the latest year included in the FTC reports, tobacco companies spent 93 percent of their marketing budget – \$7.9 billion out of \$8.5 billion – in the retail environment.<sup>16</sup>

Studies have found that two-thirds of U.S. kids visit convenience stores at least once a week and stay twice as long in stores as adults (an average of sixteen minutes), and the frequency of exposure to store tobacco displays can influence whether kids smoke.<sup>17</sup> The scientific evidence shows that tobacco product displays and promotions at the point-of-sale have an especially powerful impact on kids. The attached fact sheet, “Restricting Product Displays in the Retail Environment,” presents the evidence that product displays impact smoking and that limiting these displays through the Tobacco Product Display Restriction bill will reduce smoking among New Yorkers, especially youth.

The attached report, *Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies*, lays out the impact of tobacco product displays and other point of sale efforts on tobacco use, particularly among kids.

### **Raising the Minimum Age of Sale to 21 (Int. 250-A)**

Raising the minimum age of sale to 21 will also reduce smoking among young people in New York City. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. While about half of adult smokers become daily smokers by the age of 18, three-quarters do so by the age of 21. According to one source, 18-20 year olds are twice as likely as 16-17 year olds to be current smokers.<sup>18</sup>

Experimentation or initiation of tobacco use during adolescence is particularly troubling because of the addictive nature of nicotine. Adolescent and even young adult brains are still developing, and as a result, they are more susceptible to nicotine addiction.<sup>19</sup> Delaying the age when young people first experiment or begin using tobacco can reduce the risk that they transition to daily tobacco use, increase their chances of successfully quitting, and ultimately reduce the duration and intensity of their smoking, which are strongly correlated with increased risk for serious health conditions, including cancer and heart disease.<sup>20</sup>

Tobacco companies know that getting minors and older teens to smoke is key to their survival and so have a long history of targeting them. In 2006, after reviewing the evidence against the tobacco

companies in a civil racketeering case brought forth by the U.S. Department of Justice, U.S. District Court Judge Gladys Kessler made this conclusion about the industry's marketing practices:

*"From the 1950s to the Present, Different Defendants, at Different Times and Using Different Methods, Have Intentionally Marketed to Young People Under the Age of Twenty-one in Order to Recruit 'Replacement Smokers' to Ensure the Economic Future of the Tobacco Industry."*<sup>21</sup>

The importance of this market is also abundantly clear from the tobacco industry's own internal documents. As one company document stated:

***"If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21, the odds are twenty-to-one."***<sup>22</sup>

Another said:

*"Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share."*<sup>23</sup>

Raising the minimum age to 21 will also help keep tobacco out of our high schools. As we do a better job of enforcing the minimum age of sale laws at retail, kids often turn to older friends and classmates as sources of cigarettes. A significant and growing proportion of high school students are at least 18, so it's no wonder that kids find it easier and easier to get cigarettes as they move through high school. In a recent survey, almost 73 percent of tenth grade students said it is easy to get cigarettes, compared to about 51 percent of eighth graders.<sup>24</sup>

The attached fact sheet, "Increasing the Minimum Legal Sale Age for Tobacco Products to 21," presents more detailed evidence on the impact of this provision.

The Campaign for Tobacco-Free Kids heartily supports the price, display, and age of sale proposals from Mayor Bloomberg and Speaker Quinn to protect New York's kids from tobacco and continue to drive down the terrible health and economic toll of tobacco use in New York City. As this testimony and attachments lay out, each of these proposals is grounded in the science of what gets kids to smoke, what keeps smokers smoking, and what works to prevent initiation and encourage cessation. Implementing them will save lives and health care dollars in New York City.



**Figure 2.** How cigarettes become “large cigars” to avoid taxes and stay cheap



Cheyenne cigarette and “cigar” sticks (from left to right: cigarette, little cigar, cigar, “heavy weight” cigar). Products labeled as “little cigars” can avoid some regulation that applies to cigarettes, while products qualifying as “cigars” can avoid higher tax rates and regulation applying to cigarettes.



Cheyenne cigarette and “cigar” packs of 20 sticks (from left to right: cigarettes, little cigars, cigars, “heavy weight” cigars).

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SUPPORTING DOCUMENTS FOR  
INT 1021-2013  
(SENSIBLE TOBACCO ENFORCEMENT)



## WHAT DOES THE “SENSIBLE TOBACCO ENFORCEMENT” BILL DO?

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On March 18, 2013, Mayor Bloomberg introduced the Sensible Tobacco Enforcement bill (Int. No. 1021), which includes pricing policies and enforcement provisions to further reduce tobacco use among New York City youth.

The specific provisions of the bill can be grouped into four categories and include:

### 1. Prohibiting tobacco product discounts

- Prohibiting the redemption of coupons
- Prohibiting multi-pack discounts (i.e., buy-one-get-one free offers)
- Prohibiting sales or offers of other products with the purchase of cigarettes or other tobacco products (OTPs)
- Prohibiting sales or offers of cigarettes or OTPs for less than the listed price

### 2. Setting a minimum price on cigarettes and little cigars

- Cigarettes and little cigars cannot be sold at retail for less than \$10.50 per 20-pack. The price floor can be modified due to inflation or tax rate changes.

### 3. Setting minimum package sizes for certain cigars and little cigars

- Cigars that cost less than \$3.00 per cigar at retail must be sold in packs of 4 or more
- Little cigars must be sold in packs of 20

### 4. Enhanced tobacco tax enforcement efforts

- Retailers must post signs at the point of sale, display, or offer that states that “cigarettes sold in the city of New York must be in packages bearing valid tax stamps”
- Retailers cannot hide nor sell unstamped or illegally stamped cigarettes, or illegal tax stamps
- Higher penalties for violating retailer licensing provisions

### Why Are These Provisions Necessary?

Pricing has become an important avenue for tobacco companies to keep tobacco users buying their products and appeal to kids. Tobacco tax increases effectively reduce tobacco use, but the tobacco industry uses price discounting strategies, including couponing and multi-pack discounts, to minimize the effects that tax increases have on price and thereby diminishes the effectiveness of tobacco tax increases in reducing smoking, especially among youth. The 2012 Surgeon General's report states, “When retail prices rise following tax increases, companies engage in a variety of price-related marketing efforts that appear to be aimed at softening the impact of the increased prices.”<sup>1</sup>

*Campaign for Tobacco-Free Kids, April 24, 2013*

For evidence of the effectiveness of these provisions, see *Strategies to Increase Tobacco Product Prices Will Reduce Tobacco Use and Initiation*.

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<sup>1</sup> U.S. Department of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, accessed April 20, 2012 from [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm), pg. 527.



## STRATEGIES TO INCREASE TOBACCO PRODUCT PRICES WILL REDUCE TOBACCO USE AMONG KIDS

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The scientific research is very clear that raising cigarette prices is one of the most effective ways to reduce smoking, especially among kids. In New York City, price increases brought about by higher city and state tobacco taxes have been instrumental in reducing smoking in the city. However, in recent years, progress in reducing smoking has slowed. For example, smoking among NYC high school students declined by half between 2001 and 2007 but has remained relatively constant since then at about 8.5 percent. Among NYC adults, smoking declined by 26.5 percent between 2002 and 2008 but has declined by only six percent (to 14.8%) since then.

Tax increases only work to the extent that they translate into increases in price, and several factors can reduce the impact of tax increases. These include aggressive price discounting by tobacco companies, selling small cigarette-like cigars and packaging them in smaller quantities to keep prices low, and the selling of untaxed cigarettes.

To ensure that price has the desired effect on reducing smoking, Mayor Bloomberg has proposed the Sensible Tobacco Enforcement bill (Int. No. 1021) to counter actions that reduce the price of tobacco products:

- Prohibiting tobacco product discounts
- Setting a minimum price on cigarettes and cigars
- Setting minimum package sizes for certain cigars and little cigars
- Enhanced tobacco tax enforcement efforts to reduce tax evasion by retailers

These proposals are solidly grounded in science. Decades of research on price increases and tobacco use show that when prices increase, use of tobacco products declines, especially among kids. Together, these measures will protect kids from the tobacco companies' aggressive strategies to target them with cheap products, helping ensure that higher tobacco prices in NYC continue to drive down smoking rates.

### ***Price Increases Reduce Tobacco Use, Especially Among Kids***

The evidence that tobacco product price increases are effective at reducing tobacco use is solid and extensive. Many scientific experts have concluded that one of the best ways to reduce tobacco use is to increase the price of tobacco products.<sup>1</sup>

- Agencies and organizations that have studied and support increasing tobacco product prices to reduce tobacco use include: the National Cancer Institute,<sup>2</sup> the U.S. Centers for Disease Control and Prevention,<sup>3</sup> the U.S. Surgeon General,<sup>4</sup> the Task Force on Community Preventive Services,<sup>5</sup> the National Academy of Sciences' Institute of Medicine,<sup>6</sup> the President's Cancer Panel,<sup>7</sup> the World Health Organization,<sup>8</sup> and the World Bank.<sup>9</sup>
- Numerous economic studies have found that particular groups are more sensitive to price than others. Youth are more price-sensitive than adults, and cigarette price and tax increases work even more effectively to reduce smoking among males, Blacks, Hispanics, and lower-income smokers.<sup>10</sup>
- Even the tobacco companies have long recognized the importance of price in promoting and sustaining tobacco use:<sup>11</sup>
  - Philip Morris: *It is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes.*<sup>12</sup>
  - Philip Morris: *A high cigarette price, more than any other cigarette attribute, has the most dramatic impact on the share of the quitting population...price, not tar level, is the main driving force for quitting.*<sup>13</sup>



- R.J. Reynolds: *If prices were 10% higher, 12-17 incidence [youth smoking] would be 11.9% lower.*<sup>14</sup>

### ***Tobacco Company Price Discounting Increases Youth Smoking***

Knowing the impact of price on smoking, tobacco companies spend billions of dollars on price discounting each year. A 2011 NYC survey showed that seven in 10 licensed tobacco retailers offered price-reducing incentives, such as sales prices and buy-one-get-one-free offers, with a higher concentration of stores offering price promotions in “high-risk neighborhoods.”<sup>15</sup> These offers diminish the impact of tobacco tax increases by lowering price, which has its biggest impact on kids. Indeed, of the nearly \$8.5 billion the biggest tobacco companies spent in 2010 trying to get people to use their products, more than 80 percent (\$6.9 billion) was spent on some form of price promotion.<sup>16</sup> In *U.S. v. Philip Morris* (the 2006 civil racketeering judgment against major cigarette manufacturers), the court specifically found that tobacco companies use strategic price reduction strategies such as coupons and multi-pack discounts to target young people.<sup>17</sup>

- Defendants recognize that youth and young adults are more responsive to increases in cigarette and other tobacco prices and will not try smoking or continue to smoke if cigarette prices rise. Despite that recognition, Defendants continue to use price-based marketing efforts as a key marketing strategy.
- Defendants’ price-related marketing efforts, including coupons [and] multi-pack discounts, have partially offset the impact of higher list prices for cigarettes, historically and currently, particularly with regard to young people.
- *Defendants could significantly reduce adolescent smoking by . . . stopping all price related marketing* (i.e., discounting and value added offers of cigarettes, especially in convenience stores, where this kind of marketing is concentrated and where young people are more likely to purchase cigarettes).

Couponing and multi-pack discounts are two effective ways to implement targeted price discounts. Both of them have the effect of reducing the actual price of cigarettes, which results in increased tobacco use.

- According to the 2012 Surgeon General’s report:<sup>18</sup>
  - “In considering the numerous studies demonstrating that tobacco use among young people is responsive to changes in the prices of tobacco products, it can be concluded that the industry’s extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions.”
  - “Because there is strong evidence that as the price of tobacco products increases, tobacco use decreases, especially among young people, then any actions that mitigate the impact of increased price and thus reduce the purchase price of tobacco can increase the initiation and level of use of tobacco products among young people.”
- A 2007 study in the *Archives of Pediatrics and Adolescent Medicine* concluded that cigarette retail marketing practices, including advertising and promotions, increase smoking initiation and that restrictions on this type of marketing may reduce youth smoking.<sup>19</sup> Specifically, the study found:
  - “These findings support previous research that shows price-based promotional offers are particularly appealing to young price-sensitive smokers. Thus, the beneficial effects of higher cigarette prices are undermined when youth are able to take advantage of cigarette promotions. In addition, our results suggest higher cigarette prices are associated with discouraging youth from progressing to established smoking at most levels of smoking uptake.”
  - “Overall, our results provide evidence that restricting point-of-sale advertising will discourage youth from trying smoking and policies that increase cigarette prices and/or restrict price-based promotions will have a long-term positive impact by preventing youth from moving farther along the smoking uptake continuum towards regular smoking.”
- A 2005 study found that the more the tobacco industry spent on price promotions, the higher the initiation to regular smoking by 14-17 year olds despite price increases by the industry or due to increasing tax rates.<sup>20</sup> In other words, the industry was able to dampen the public health benefits of preventing kids from starting to smoke from price increases by making available more promotions that reduced product prices.

- Promotional offers on cigarettes are used by all categories of smokers – especially young adults, women, and African Americans – with 35 percent of smokers using promotional offers every time they saw one.<sup>21</sup>
- In a report on “Camel Growth Among Males 18-24 Years Old in the Mid-West,” R.J. Reynolds concluded that “[t]he major factor contributing to CAMEL’s dramatic growth among Mid-West 18-24 year old males appears to be the increased level of Mid-West promotional support, and in particular, CAMEL’s targeted promotions...”<sup>22</sup>
- According to a 2012 U.S. Tobacco Retailer Survey conducted by Wells Fargo, tobacco companies’ ability to control price, or “pricing power,” has “remained healthy.” As one tobacco retailer put it, “most of the big boys have started putting in deeper discounts, which in effect have negated the price increases.”<sup>23</sup>
- Retailers selling tobacco have noted that buy downs are important because they bring more customers into the store and stimulate sales.<sup>24</sup> One convenience store owner notes, “We usually have a buydown going on all the time. It rotates around different brands and different companies.”<sup>25</sup>

The Sensible Tobacco Enforcement bill restricts the redemption of coupons, prohibits product discounts, and implements a minimum price for cigars will keep the prices of tobacco products high. As evidenced above, those policies will effectively counteract the tobacco industry’s efforts to make their products attractive to youth.

### **Cheap Cigars Target Youth**

In the past few years, tobacco companies have taken advantage of tax discrepancies and the lack of pack size restrictions to lure youth to cigars. Some have changed cigarette products to meet the definition of large cigars to avoid taxes and keep prices low, while others package small cigars in as few as two per pack to help keep prices low (e.g. 2 for 99 cents). The recent explosion of small, cheap cigars has resulted in cigar consumption increasing 124 percent nationally, even as cigarette consumption declined.<sup>26</sup> Stories in the convenience store trade publication, Convenience Store Decisions, confirm the critical role of cheap cigars in purchasing decisions.

- “It’s cheaper, so it’s more in the grasp of kids.”<sup>27</sup>
- “Little cigars are an easy product to suggest to price-sensitive customers. If anybody complains about the cigarette prices all we have to say is, ‘Hey, have you tried these?’ You hold them up; they look like a cigarette pack. You tell them, ‘Yeah, the wrapper is brown, but don’t knock them until you try them.’ We do have quite a lot of people convert to them.”<sup>28</sup>
- “Every time they raise taxes on cigarettes or the price of cigarettes goes up more and more people look at the little cigars.”<sup>29</sup>
- “Little cigars are a pretty easy suggestive sell because when people complain about the cigarettes prices increasing you can say, ‘Well, we have this option’ and show them a pack of little cigars that looks very similar to a pack of cigarettes. From that standpoint, it’s pretty easy to get people to switch.”<sup>30</sup>

The provisions in the Sensible Tobacco Enforcement bill that regulate the package size and minimum pricing of little cigars will help reduce cigar use among kids in NYC. Requiring cheap cigars (\$3 or less) and cigarillos to be sold in packs of at least four and little cigars to be sold in packs of 20 (with a minimum price of \$10.50 per pack) would effectively increase the prices of these deadly and addictive products, making them less accessible to youth and eliminating smokers’ incentives to switch to cheaper tobacco products instead of quitting.

### **Tax Evasion Lowers Tobacco Prices**

While New York’s city and state tobacco tax increases have been very successful both in reducing tobacco use and generating revenue, the degree to which retailers sell tobacco products without the appropriate taxes makes tobacco use more affordable in addition to costing the city and state revenue. The Sensible Tobacco Enforcement bill, which includes increasing the penalties to retailers for tax evasion, will help ensure that retailers only sell cigarettes that bear the appropriate tax stamps, again helping to ensure that prices are kept high for kids.

<sup>1</sup> Chaloupka, FJ & Warner, KE, "The Economics of Smoking," prepared for Newhouse, J & Culyer, A, eds, *The Handbook of Health Economics*, 2000. Chaloupka, FJ, "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research* 1(Suppl 1):S105-9, 1999; other studies at <http://tigger.uic.edu/~fjc/>; Tauras, J, "Public Policy and Smoking Cessation Among Young adults in the United States," *Health Policy* 6:321-32, 2004; Tauras, J, et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001, and others at <http://www.impactteen.org/researchproducts.htm>. Chaloupka, FJ & Pacula, R, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998; Emery, S, et al., "Does Cigarette Price Influence Adolescent Experimentation?," *Journal of Health Economics* 20:261-270, 2001; Evans, W & Huang, L, *Cigarette Taxes and Teen Smoking: New Evidence from Panels of Repeated Cross-Sections*, working paper, April 15, 1998; Harris, J & Chan, S, "The Continuum-of-Addiction: Cigarette Smoking in Relation to Price Among Americans Aged 15-29," *Health Economics Letters* 2(2):3-12, February 1998, <http://www.mit.edu/people/jeffrey/HarrisChanHEL98.pdf>. U.S. Department of Health and Human Services (HHS), *Reducing Tobacco Use: A Report of the Surgeon General*, Atlanta, Georgia: HHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000, [http://profiles.nlm.nih.gov/NN/B/B/L/Q/\\_/nnbblq.pdf](http://profiles.nlm.nih.gov/NN/B/B/L/Q/_/nnbblq.pdf).

<sup>2</sup> "While there is still much to be learned, the existing research clearly indicates that macro-level interventions, including increased tobacco taxation and stronger tobacco control policies, can be very effective in reducing cigarette smoking and other tobacco use, particularly among youths and young adults." National Cancer Institute, *Changing Adolescent Smoking Prevalence*, November 2001, <http://cancercontrol.cancer.gov/brp/tcrb/monographs/14/index.html>, pg. 198.

<sup>3</sup> "Cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking." U.S. Centers for Disease Control and Prevention (CDC), "State Cigarette Minimum Price Laws --- United States, 2009," *Morbidity and Mortality Weekly Report (MMWR)* 59(13):389-392, April 9, 2010, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5913a2.htm>. "Cigarette excise tax increases reduce tobacco use and initiation." CDC, "State Cigarette Excise Taxes --- United States, 2009," *MMWR* 59(13):385-388, April 9, 2010, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5913a1.htm>.

<sup>4</sup> "The evidence is sufficient to conclude that increases in cigarette prices reduce the initiation, prevalence, and intensity of smoking among youth and young adults." U.S. Department of Health and Human Services (HHS), *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm), pg. 812. "The price of tobacco has an important influence on the demand for tobacco products, particularly among young people." HHS, *Reducing Tobacco Use: A Report of the Surgeon General*, 2000, [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2000/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2000/index.htm), pg. 67. "Econometric and other studies indicate that increases in the real price of cigarettes significantly reduced cigarette smoking; young people are at least as responsive as adults to such price changes." HHS, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*, 1994.

<sup>5</sup> "In conclusion, the Task Force recommends increasing the unit price for tobacco on the basis of strong evidence of effectiveness in reducing tobacco use initiation among adolescents and young adults. Raising the unit price for tobacco products (through increases in the excise tax) is effective in reducing both the number of adolescents and young adults who use tobacco products and the amount of tobacco they use. Increasing the unit price for tobacco products also reduces tobacco use among adults." Task Force on Community Preventive Services, "Tobacco," in: Zaza S, Briss PA, Harris KW, eds., *The Guide to Community Preventive Services: What Works to Promote Health?* Atlanta (GA): Oxford University Press, 2005:3-79.

<sup>6</sup> National Academy of Sciences' Institute of Medicine (IOM), *Ending the tobacco problem: A blueprint for the nation*, Washington, DC: The National Academies Press, 2007.

<sup>7</sup> President's Cancer Panel, *Promoting Healthy Lifestyles*, 2006-2007 Annual Report, August 2007, <http://deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp07rpt/pcp07rpt.pdf>.

<sup>8</sup> See, e.g., "Evidence from countries of all income levels shows that price increases on cigarettes are highly effective in reducing demand. Higher prices induce cessation and prevent initiation of tobacco use." World Health Organization, *Taxation*, accessed April 19, 2013 at <http://www.who.int/tobacco/economics/taxation/en/index.html>.

<sup>9</sup> World Bank, *Curbing The Tobacco Epidemic: Governments and the Economics of Tobacco Control*, May 1999, <http://go.worldbank.org/SBKAK9ZCF0>.

<sup>10</sup> CDC, "Responses to Cigarette Prices By Race/Ethnicity, Income, and Age Groups -- United States 1976-1993," *MMWR* 47(29):605-609, July 31, 1998, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00054047.htm>. Chaloupka, FJ & Pacula, R, *An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies*, National Bureau of Economic Research, Working Paper 6541, April 1998. Oredein, T & Foulds, J, "Causes of the Decline in Cigarette Smoking Among African American Youths From the 1970s to the 1990s," *American Journal of Public Health* e1-e11, doi:10.2105/AJPH.2011.300289, August 18, 2011. See also, citations in note 1.

<sup>11</sup> See also, Chaloupka, FJ, et al., "Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies," *Tobacco Control* 11:62-72, 2002.

<sup>12</sup> Philip Morris Research Executive Myron Johnston, "Teenage Smoking and the Federal Excise Tax on Cigarettes," September 17, 1981, Bates No. TA82034-TA82038.

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<sup>13</sup> Philip Morris Executive Claude Schwab, "Cigarette Attributes and Quitting," March 4, 1993, Bates No. 2045447810.

<sup>14</sup> R.J. Reynolds Executive D. S. Burrows, "Estimated Change In Industry Trend Following Federal Excise Tax Increase," September 20, 1982, Bates No. 501988846/8849.

<sup>15</sup> New York City Health Department, *NYC Vital Signs: Promotion of Tobacco Products in New York City Retailers* 11(4), March 2013, <http://www.nyc.gov/html/doh/downloads/pdf/survey/survey-2013tobaccopromotion.pdf>. See also, New York State Department of Health, *Exposure to Pro-Tobacco Marketing and Promotions Among New Yorkers*, January 2011, [http://www.health.ny.gov/prevention/tobacco\\_control/docs/tobacco\\_marketing\\_exposure\\_rpt.pdf](http://www.health.ny.gov/prevention/tobacco_control/docs/tobacco_marketing_exposure_rpt.pdf).

<sup>16</sup> U.S. Federal Trade Commission (FTC), Cigarette Report for 2009 and 2010, 2012. See also, FTC, Smokeless Tobacco Report for 2009 and 2010, 2012. [Data for top 5 manufacturers only.]

<sup>17</sup> U.S. v. Philip Morris, 449 F. Supp. 2d at 639-40. (emphasis added)

<sup>18</sup> HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, accessed April 20, 2012 from [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm), pg. 530 and 599.

<sup>19</sup> Slater, SJ, et al., "The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake," *Archives of Pediatrics and Adolescent Medicine* 161:440-445, May 2007.

<sup>20</sup> Pierce, JP, et al., "Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking," *Health Economics* 14:1061-1071, 2005.

<sup>21</sup> White, VM, et al., "Cigarette Promotional Offers: Who Takes Advantage?" *American Journal of Preventive Medicine* 30(3):225-231, 2006.

<sup>22</sup> Caufield, RT, *Camel Growth Among Males 18-24 Years Old in the Mid-West*, R.J. Reynolds memo to FV Creighton, July 25, 1986, Bates No. 505727418/7431.

<sup>23</sup> Wells Fargo, *Tobacco Talk--U.S. Tobacco Retailer Survey*, January 25, 2012.

<sup>24</sup> Henriksen, L, et al., "Effects of youth exposure to retail tobacco advertising," *Journal of Applied Social Psychology* 32(9):1771-1789, 2002.

<sup>25</sup> Lavack, AM & Toth, G, "Tobacco point-of-purchase promotion: examining tobacco industry documents," *Tobacco Control* 15:377-384, 2006.

<sup>26</sup> U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics.

<sup>27</sup> Reill, H, "Building a Profitable Cigar Business," *Convenience Store Decisions*, February 25, 2013, <http://www.csdecisions.com/2013/02/25/building-a-profitable-cigar-business/>.

<sup>28</sup> Riell, H, "Serving Cigar Smokers," *Convenience Store Decisions*, November 2012.

<sup>29</sup> Reill, H, "Building a Profitable Cigar Business," *Convenience Store Decisions*, February 25, 2013, <http://www.csdecisions.com/2013/02/25/building-a-profitable-cigar-business/>.

<sup>30</sup> Reill, H, "Building a Profitable Cigar Business," *Convenience Store Decisions*, February 25, 2013, <http://www.csdecisions.com/2013/02/25/building-a-profitable-cigar-business/>.

SUPPORTING DOCUMENTS FOR  
INT 1020-2013  
(TOBACCO PRODUCT DISPLAY RESTRICTION)



## Restricting Tobacco Product Displays in the Retail Environment

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To continue reducing smoking, Mayor Bloomberg has proposed legislation that would prohibit retail displays of tobacco products (except in stores devoted primarily to selling tobacco products). Advertising of tobacco products in stores would still be allowed. The bill addresses one of the primary means that tobacco companies use to make tobacco products attractive to kids and to discourage smokers from quitting.

### The Retail Environment is Saturated With Tobacco Product Displays

The point-of sale has become the dominant channel for marketing and selling tobacco products in the United States. Saturating stores with tobacco product displays is part of the tobacco industry strategy to attract kids and maximize sales of tobacco products. Tobacco companies spend billions of dollars to ensure that tobacco products are heavily advertised, prominently displayed, and cheaply priced in stores. Data from the Federal Trade Commission on annual cigarette and smokeless tobacco marketing expenditures reveals the importance of the retail environment to tobacco companies. In 2010, the latest year included in the FTC reports, tobacco companies spent 93 percent of their marketing budget – \$7.9 billion out of \$8.5 billion – in the retail environment.<sup>1</sup>

The tobacco companies' own words demonstrate that promotion and visibility at the point of sale has been a major goal for more than 30 years. According to an R.J. Reynolds internal document:

*"Simply stated, the point of purchase is where the action is – it's the retail environment, it's a specific location in a store, it's a product display and its in-store advertising. Importantly, and perhaps not so obviously, the point of purchase is also in the mind of the prospective consumer."<sup>2</sup>*

A recent story in the convenience store trade publication, *Convenience Store Decisions*, confirms that making tobacco products highly visible continues to be an important strategy:

*"C-store [convenience store] operators should also look to increase the visibility of their smokeless products, Bishop suggested. 'Presentation along the back bar has become more critical, especially since June of last year when self-service merchandising displays were restricted or banned in non-age-regulated environments,' he said. 'Finding good visible space on the back bar is also important because out of sight is out of mind. If the customer doesn't see it, they aren't likely to buy it or even ask for it. It also helps speed of service.'"<sup>3</sup>*

Tobacco industry documents note that "eye level is buy level" so companies pay careful attention and spend large sums of money to ensure that tobacco products are placed where they will be seen.<sup>4</sup> In fact, a survey of retail outlets in California found that 23 percent of retailers had cigarette product displays within six inches of candy.<sup>5</sup> Where tobacco products are located in stores, how they are packaged, how they are advertised and promoted, and how they are priced, especially in the types of stores that youth frequent, is the result of careful planning.<sup>6</sup> Each company has its own retailer incentive, or merchandising program, which is often formalized in contracts or merchandising agreements with retailers.<sup>7</sup> Tobacco companies use these contracts to secure prime display space at the end of an aisle, at eye-level, or on the countertop.<sup>8</sup> The average store features multiple shelving units full of cigarette cartons and packs.<sup>9</sup> Displaying multiple shelves of cigarettes is often done to create a "power wall" of branded imagery that makes tobacco products more visible, more attractive, and more alluring.<sup>10</sup> According to the 2011 Retail Advertising of Tobacco Study, 80 percent of tobacco retailers in New York City have "power wall" displays of tobacco products covering at least 50 percent of the area behind the checkout counter.<sup>11</sup>

Tobacco product displays in stores create familiarity with tobacco products, build brand recognition and distort youth perceptions about the popularity and availability of tobacco products. As a result, exposure to tobacco product displays increases the risk that youth will smoke.<sup>12</sup> Research suggests that even low levels of exposure to brand imagery increases the risk that an adolescent will smoke.<sup>13</sup> Among adult smokers, there is evidence that tobacco product displays lead to impulse purchases and undermine efforts to quit.<sup>14</sup>



***The Mayor's legislation would eliminate large, attractive displays of tobacco products that research has shown encourage kids to use tobacco and tempt smokers trying to quit.*** There is strong evidence to support the proposed ban on retail displays of tobacco products. This evidence has led to the adoption of tobacco retail display bans in a growing number of countries including Finland, Iceland, Ireland, Kenya, Namibia, Nepal, New Zealand, Norway, Panama, Thailand, Trinidad and Tobago and the United Kingdom. In addition, all Australian states and territories and all Canadian provinces have implemented tobacco retail display bans.<sup>15</sup> The World Health Organization recommends prohibiting tobacco product displays to reduce youth exposure to tobacco.<sup>16</sup>

### **Tobacco Product Displays Impact Kids**

As a result of the emphasis on the retail environment, tobacco product displays are highly visible at the point of sale – in convenience stores, gas stations and other retail outlets. These stores are the same places kids and adolescents go to buy candy, sodas and afterschool snacks, making them highly effective venues for reaching kids. Studies have found that two-thirds of U.S. kids visit convenience stores at least once a week and stay twice as long in stores as adults (an average of sixteen minutes), and the frequency of exposure to store tobacco displays can influence whether kids smoke.<sup>17</sup> The scientific evidence shows that tobacco product displays and promotions at the point-of-sale have an especially powerful impact on kids.

- Several studies conclude that youth exposure to tobacco product displays increases youth susceptibility to smoking and suggest that removing tobacco product displays from view is warranted.<sup>18</sup> In fact, one study found that 8 out of 10 young people who have never smoked notice tobacco displays, nearly one in five pay close attention to them and one in four perceive them to be eye catching. Importantly, noticing displays and attraction to them are associated with susceptibility.<sup>19</sup>
- A 2006 study found that “the presence of cigarette displays at the point-of-sale, even in the absence of cigarette advertising, has adverse effects on students’ perceptions about ease of access to cigarettes and brand recall, both factors that increase the risk of taking up smoking.”<sup>20</sup>
- A comprehensive review of the evidence on point-of sale promotions, including tobacco product displays, found a significant association between exposure to point-of sale marketing and displays and susceptibility to smoking, experimentation and uptake among youth, even after controlling for potential confounding factors.<sup>21</sup>

The frequency of exposure to in-store displays can also influence kids’ smoking.

- A study of 26,000 14 and 15 year olds in New Zealand found that more frequent visits to stores selling tobacco and greater awareness of cigarettes sold in stores increase the likelihood of teenagers being susceptible to smoking and experimenting with smoking. The authors conclude that “tobacco displays at the POS is significantly associated with being susceptible to smoking, experimenting with smoking and current smoking.”<sup>22</sup>
- A 2010 longitudinal study in *Pediatrics* similarly found that more visits to stores per week increased the odds of teens initiating smoking. In fact, the study found that the odds of initiation more than doubled for teens who visited a store at least twice a week.<sup>23</sup>
- A study of 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> graders concluded that those students who visited a convenience, liquor or small grocery store at least weekly, and therefore were more exposed to retail tobacco marketing, had a 50 percent greater odds of ever smoking. This effect is approximately the equivalent to the effect a smoking parent or household member has over youth ever smoking.<sup>24</sup>
- One study found that stores where adolescents shop most often have twice as much shelf space devoted to Marlboro, Camel and Newport cigarettes – the three brands most popular among youth smokers - compared to other stores in the same community.<sup>25</sup>

Tobacco company documents show that tobacco companies have targeted convenience stores, grocery stores and other tobacco vendors near schools and playgrounds in an effort to attract young smokers.<sup>26</sup> Research suggests that tobacco retailer density is higher in minority and lower-income communities.<sup>27</sup> In fact, a recent report by the

New York State Department of Health, "Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York," found that census tracts with higher proportions of African-Americans and Hispanics and lower incomes generally had higher tobacco retailer density.<sup>28</sup>

This targeting strategy is reflected in smoking levels. High school smoking rates are higher in areas with higher densities of stores that sell tobacco products than in areas with lower densities.

- A 2008 study in *Preventive Medicine* found that current smoking was significantly higher at schools in neighborhoods with the highest density of tobacco retailers than the smoking rate at schools in neighborhoods without any tobacco retailers.<sup>29</sup>
- A 2006 study of Chicago youth found that youth who lived in neighborhoods with the highest density of tobacco retailers were 13 percent more likely to have smoked in the past month than those living in neighborhoods with the lowest density of tobacco retailers.<sup>30</sup>
- Similarly, several studies have found that tobacco retailer density is associated with experimental smoking among high school and middle school students.<sup>31</sup>

### **Tobacco Product Displays Provide Cues to Smoke and Make it Harder to Quit**

- A 2008 study in *Addiction* found that cigarette pack displays stimulate impulse purchases among smokers and that those trying to avoid smoking commonly experience urges to purchase cigarettes when confronted with these displays, suggesting that cigarette pack displays at the point-of-purchase may undermine intentions to quit among established smokers.<sup>32</sup>
- A 2009 study based on interviews with persons having just bought cigarettes at retail outlets with point-of-purchase displays found that more than one out of five of the purchases were unplanned.<sup>33</sup> Another survey of people who had just purchased cigarettes found that three-quarters of those who had made an unplanned cigarette purchase identified tobacco advertising or tobacco product displays as the trigger that caused them to make the purchase.<sup>34</sup>
- A qualitative study that interviewed smokers who had recently tried to quit found that seeing tobacco displays and their brands in particular stimulated desire and temptation and created physical and emotional cravings. The authors conclude that retail tobacco displays promote smoking and undermine attempts to quit.<sup>35</sup> Similarly, one study found that showing adult smokers photos of tobacco packs elicited strong cravings for cigarettes compared to the cravings induced by photos with no tobacco imagery.<sup>36</sup>

### **The Impact of Restricting Tobacco Product Displays**

As noted previously, several countries have implemented tobacco retail display bans. Research suggests that the removal of tobacco product displays denormalizes tobacco use and may contribute to decreases in youth smoking rates.

- In Ireland, after display restrictions were implemented, youth perceptions of the difficulty of buying cigarettes increased, and youth were less likely to overestimate smoking prevalence among their peers.<sup>37</sup> Higher levels of perceived smoking prevalence are associated with increased smoking intentions and uptake among youth.<sup>38</sup>
- A study that used an interactive virtual store to examine the impact of eliminating tobacco product displays at the point of sale found that, compared to youth in the status quo condition, those who shopped in virtual stores without product displays were less likely to buy tobacco products, leading the authors to conclude that prohibiting the display of tobacco products may reduce youth smoking by deterring youth from purchasing tobacco products at retail stores.<sup>39</sup>
- Every Canadian province has implemented a tobacco retail display ban as part of a broader tobacco control strategy. Data from the Canadian Tobacco Use Monitoring Survey show that both adult and youth smoking rates and consumption levels among daily smokers declined significantly following implementation of the display ban. In addition, the age of smoking initiation among 15-19 year olds increased significantly

following implementation of the display ban. Notably, smoking prevalence and consumption levels declined and the age of smoking initiation increased the most in the provinces where the bans have been in effect the longest. According to experts, "while these changes cannot necessarily be attributed to the display bans alone, the findings are consistent with a causal association between display bans and reductions in smoking behavior."<sup>40</sup> Similarly, in Iceland, youth smoking rates have declined significantly since the tobacco product display ban was implemented along with other tobacco control measures.<sup>41</sup>

- The results of focus group research in Norway suggest that removing tobacco retail displays helps to make tobacco use less appealing and acceptable to kids and contributes to a more supportive environment for non-smoking, particularly among young people.<sup>42</sup>

**Campaign for Tobacco-Free Kids, April 30, 2013 / Meg Riordan**

<sup>1</sup> U.S. Federal Trade Commission (FTC), Cigarette Report for 2009 and 2010, 2012,

<http://ftc.gov/os/2012/09/120921cigarettereport.pdf>. See also, FTC, Smokeless Tobacco Report for 2009 and 2010, 2012, <http://ftc.gov/os/2012/09/120921tobaccoreport.pdf>. [Data for top 5 manufacturers only.]

<sup>2</sup> Lavack AM & Toth G, "Tobacco point-of-purchase promotion: examining tobacco industry documents," *Tobacco Control* 15(5), October 2006.

<sup>3</sup> Riell, H, "Smokeless Sales Show Promise," *Convenience Store Decisions*, June 21, 2011.

<sup>4</sup> Pollay, RW, "More than meets the eye: on the importance of retail merchandising," *Tobacco Control*, 16(4), February 2007.

<sup>5</sup> Feighery, E, et al., "Cigarette advertising and promotional strategies in retail outlets: results of a statewide survey in California," *Tobacco Control* 10:184-188, 2001.

<sup>6</sup> Pollay, RW, "More than meets the eye: on the importance of retail merchandising," *Tobacco Control*, 16(4), February 2007; Lavack AM & Toth G, "Tobacco point-of-purchase promotion: examining tobacco industry documents," *Tobacco Control* 15(5), October 2006.

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<sup>8</sup> Lavack, AM & Toth, G, "Tobacco point-of-purchase promotion: examining tobacco industry documents," *Tobacco Control* 15:377-384, 2006; Feighery, EC, et al., "Retailer participation in cigarette company incentive programs is related to increased levels of cigarette advertising and cheaper cigarette prices in stores," *Preventive Medicine* 38(6):876-84, 2004.

<sup>9</sup> Henriksen, L, et al., "Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently," *Tobacco Control* 13(3), 2004; Rogers, T, et al., "Community mobilization to reduce point-of-purchase advertising of tobacco products," *Health Education Quarterly* 22(4):427-42, 1995.

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<sup>11</sup> Retail Advertising of Tobacco Study, 2011. Data analysis conducted by RTI, International. See also New York State Department of Health Tobacco Control Program StatShot Vol. 5, No. 1/January 2012.

<sup>12</sup> Abraham Brown and Crawford Moodie, "The influence of tobacco marketing on adolescent smoking intentions via normative beliefs," *Health Education Research* Vol. 24 no. 4, 2009; Brown, A., et al., "Support for removal of point-of-purchase advertising and displays: findings from the International Tobacco Control (ITC) Canada survey," *Tobacco Control* 21: 555-559, 2012.

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<sup>13</sup> Pierce J, et al., "Tobacco industry promotion of cigarettes and adolescent smoking," *Journal of the American Medical Association*, 18, 511-515, 1998.

<sup>14</sup> Wakefield, M, et al., "The effect of retail cigarette pack displays on impulse purchase," *Addiction* 103:322-328, 2008; Wakefield, M & Germain, D, "Adult smokers' use of point-of-sale displays to select cigarette brands," *Australia New Zealand Journal of Public Health* 30(5):483-4, 2006; Carter, OBJ, et al., "The effect of retail cigarette pack displays on unplanned purchases: results from immediate postpurchase interviews," *Tobacco Control* 18:218-221, 2009.

<sup>15</sup> Campaign for Tobacco-Free Kids International Legal Consortium database. Accessed April 9-10, 2013.

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SUPPORTING DOCUMENTS FOR  
PROPOSED INT 250-A  
(MINIMUM LEGAL SALE AGE)



## INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21

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***“Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share.”<sup>1</sup>***  
***— Philip Morris report, January 21, 1986***

Tobacco use remains the leading cause of preventable death in the United States, killing more than 400,000 people each year.<sup>2</sup> It is known to cause cancer, heart disease and respiratory diseases, among other health disorders, and costs the U.S. \$96 billion in health care expenditures each year.<sup>3</sup> Nearly 1,000 kids under the age of 18 become regular, daily smokers each day; and almost one-third will die from it.<sup>4</sup>

In addition to high tobacco taxes, comprehensive smoke-free laws and comprehensive tobacco control and prevention programs, increasing the minimum legal sale age (MLSA) for tobacco products from 18 to 21 has emerged as another policy strategy to reduce youth tobacco use and help users quit. The concept of increasing the MLSA is not new, however.

Four states already have MLSAs that prohibit the sale of tobacco products to individuals under the age of 19: Alabama, Alaska, New Jersey and Utah.<sup>5</sup> In New York, Nassau County, Onondaga County and Suffolk County require individuals to be at least 19 years of age to purchase tobacco.<sup>6</sup> Several communities in Massachusetts, including Belmont, Brookline and Watertown, also have a MLSA of 19.<sup>7</sup> In 2005, Needham, Massachusetts became the first city to implement a MLSA of 21.<sup>8</sup>

Because it is a relatively new strategy, direct research on increasing the MLSA to 21 is somewhat limited; but the data that are available provide strong reason to believe that it will contribute to reductions in youth tobacco use. Central to the strategy are the facts that many smokers transition to regular, daily use between the ages of 18 and 21; many young adult smokers serve as a social source of tobacco products for youth; and tobacco companies have long viewed young adults ages 18 to 21 as a target market group.

### **Most Adult Smokers Start Smoking Before Age 21**

National data show that 95 percent of adult smokers begin smoking before they turn 21, and a substantial number of smokers start even younger—more than 80 percent of adult smokers first try smoking before age 18.<sup>9</sup> While nearly half of adult smokers become regular, daily smokers before age 18, more than 75 percent become regular, daily smokers before they turn 21.<sup>10</sup> This means the 18 to 21 age range is a time when many smokers transition to regular use of cigarettes.<sup>11</sup>

Tobacco companies have admitted in their own internal documents that, if they don't capture new users by the age of 21, it is very unlikely that they ever will. In 1982, one RJ Reynolds researcher stated:

*“If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21, the odds are twenty-to-one.”<sup>12</sup>*

Delaying the age when young people first experiment or begin using tobacco can reduce the risk that they transition to regular or daily tobacco use and increase their chances of successfully quitting, if they do become regular users.<sup>13</sup>

Because of the addictive nature of nicotine, experimentation or initiation of tobacco use among youth and young adults is particularly troubling. These ages are a critical period of growth and development; as a result, young people are more susceptible and sensitive to nicotine's addictiveness and can often feel dependent earlier than adults.<sup>14</sup> There is considerable variation in the amount of time young people report it takes to become addicted to using tobacco, but key symptoms of dependence—withdrawal and tolerance—can be apparent after just minimal exposure to nicotine.<sup>15</sup> As a result of nicotine addiction, about three out of four teen smokers end up smoking into adulthood, even if they intend to quit after a few years.<sup>16</sup> Moreover, evidence shows that smoking-related health problems are influenced by both the



duration (years) and intensity (amount) of use. Individuals who start smoking at younger ages are more likely to smoke as adults; they also are among the heaviest users.<sup>17</sup> In addition to longer-term health risks such as cancer and heart disease, young people who smoke are at risk for more immediate health harms, like increased blood pressure, asthma and reduced lung growth.<sup>18</sup>

Nationally, 18.1 percent of high school students and 18.9 percent of young adults ages 18 to 24 currently smoke.<sup>19</sup> According to one national survey, 31.6 percent of 18 to 20 year olds currently smoke.<sup>20</sup> In New York City, 8.5 percent of high school students and 12.6 percent of young adults ages 18 to 24 currently smoke.<sup>21</sup>

### **Older Adolescents and Young Adults are a Source of Cigarettes for Youth**

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According to the 2012 Monitoring the Future Survey, 72.9 percent of 10<sup>th</sup> grade students and 50.7 percent of 8<sup>th</sup> grade students say it is easy to get cigarettes.<sup>22</sup> This perception that getting cigarettes is easy exists despite the fact that fewer retailers are selling tobacco to underage youth than ever before. In FFY2011 (the most recent year for which data are available), the national retailer violation rate was 8.5 percent—the lowest in the history of the Synar program.<sup>23</sup> New York City also recently reported its lowest retailer violation rate to date—8 percent for FFY2012.<sup>24</sup> This suggests that youth are obtaining cigarettes from sources other than direct store purchases.

Research shows that youth smokers identify social sources, such as friends and classmates, as a common source of cigarettes. Although older and more established youth smokers are more likely to attempt to purchase their cigarettes directly than kids who smoke less frequently or are only “experimenting,” they are also major suppliers for kids who do not purchase their own cigarettes but instead rely on getting them from others.<sup>25</sup> And with more 18- and 19-year olds in high school now than in previous years, younger adolescents have daily contact with students who can legally purchase tobacco for them.<sup>26</sup>

A 2005 study based on the California Tobacco Survey found that 82 percent of adolescent ever smokers obtained their cigarettes from others, most of whom were friends. A substantial percentage (40.9%) of the people buying or giving the cigarettes were of legal age (18 years or older) to purchase them, with most (31.3%) being between 18 and 20 years of age. 16- to 17-year-olds were more likely to get their cigarettes from 18- to 20-year olds than were younger adolescents.<sup>27</sup> Another study found that smokers aged 18 and 19 years were most likely to have been asked to provide tobacco to a minor, followed by smokers aged 20 to 24 years and nonsmokers aged 18 and 19 years, respectively.<sup>28</sup>

Data from the National Survey on Drug Use and Health (NSDUH) show that nearly two-thirds (63.3%) of 12- to 17-year olds who had smoked in the last month had given money to others to buy cigarettes for them. One-third (30.5%) had purchased cigarettes from a friend, family member or someone at school. In addition, six out of ten (62%) had “bummed” cigarettes from others.<sup>29</sup>

In New York City, the percentage of high school students who report getting cigarettes from someone else increased from 40 percent in 1997 to 52 percent in 2011, making it the most common source of cigarettes for New York City youth today.<sup>30</sup>

Raising the MLSA would reduce the likelihood that a high school student will be able to legally purchase tobacco products for other students and underage friends.

### **Tobacco Companies Target Young Adults Ages 18 to 21**

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Tobacco companies heavily target young adults ages 18 to 21 through a variety of marketing activities—such as music and sporting events, bar promotions, college marketing programs, college scholarships and parties—because they know it is a critical time period for solidifying tobacco addiction.<sup>31</sup> It is also a time when the industry tries to deter cessation and recapture recent quitters.<sup>32</sup>

Tobacco companies realize that the transition into regular smoking that occurs during young adulthood is accompanied by an increase in consumption, partly because the stresses of life transitions during that time—going to college, leaving home, starting a new job, joining the military, etc.—invite the use of cigarettes for the effects of nicotine.<sup>33</sup> Statements obtained from the tobacco industry’s internal

documents emphasize the importance of increasing consumption within this target market in order to maintain a profitable business:

*"...eighteen to twenty-four year olds will be "[c]ritical to long term brand vitality as consumption increases with age."<sup>34</sup>*

*"...[t]he number one priority for 1990 is to obtain younger adult smoker trial and grow younger adult smoker share of market."<sup>35</sup>*

*"To stabilize RJR's share of total smokers, it must raise share among 18-20 from 13.8% to 40%...ASAP."<sup>36</sup>*

*"Our aggressive Plan calls for gains of about 5.5 share points of smokers 18-20 per year, 1990-93 (about 120,000 smokers per year). Achieving this goal would produce an incremental cash contribution of only about \$442MM during the Plan period (excluding promotion response in other age groups and other side benefits). However, if we hold these YAS [young adult smokers] for the market average of 7 years, they would be worth **over \$2.1 billion in aggregate incremental profit**. I certainly agree with you that this payout should be worth a decent sized investment." [emphasis in original]<sup>37</sup>*

In 2006, after reviewing the evidence against the tobacco companies in a civil racketeering case brought forth by the U.S. Department of Justice, U.S. District Court Judge Gladys Kessler made this conclusion about the industry's marketing practices:

*"From the 1950s to the Present, Different Defendants, at Different Times and Using Different Methods, Have Intentionally Marketed to Young People Under the Age of Twenty-one in Order to Recruit 'Replacement Smokers' to Ensure the Economic Future of the Tobacco Industry."<sup>38</sup>*

### **Benefits of Raising the MLSA to 21**

Though a higher MLSA will not eliminate underage tobacco use, it would offer several benefits that could help reduce youth tobacco use and increase the likelihood that youth will grow up to be tobacco-free:

- Raising the MLSA to 21 would increase the age gap between adolescents initiating tobacco use and those who can legally provide them with tobacco products by helping to keep tobacco out of schools.<sup>39</sup>
- Delaying the age when young people first begin using tobacco would reduce the risk that they will transition to regular or daily tobacco use and increase their chances of quitting, if they become regular users.<sup>40</sup>
- Younger adolescents would also have a harder time passing themselves off as 21-year-olds than they would 18-year-olds, which could reduce underage sales.<sup>41</sup>
- In addition, a MLSA of 21 may simplify identification checks for retailers, since many state drivers' licenses indicate that a driver is under the age of 21 (e.g. license format, color or photo placement).<sup>42</sup>

**Campaign for Tobacco-Free Kids, April 30, 2013**

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## SUPPLEMENTAL REPORTS



# DEADLY ALLIANCE



March 5, 2012

**How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies**





# DEADLY ALLIANCE: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies

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# **DEADLY ALLIANCE: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies**

## **EXECUTIVE SUMMARY**

As other forms of tobacco marketing have been restricted, tobacco companies increasingly have focused their marketing of cigarettes and other tobacco products at the point of sale – in convenience stores, gas stations and other retail outlets. In the first 10 years after the November 1998 legal settlement between the states and the tobacco companies (1999-2008), tobacco manufacturers spent more than \$110 billion – 92 percent of their total marketing expenditures – to advertise and promote cigarettes and smokeless tobacco products in the retail environment, according to the latest data from the Federal Trade Commission.

As a result, convenience stores and other retail outlets today are saturated with tobacco products, advertisements and promotions. Big Tobacco has taken over convenience stores to ensure that tobacco products are advertised heavily, displayed prominently and priced cheaply to appeal to both current and potential tobacco users, including impressionable, price-sensitive kids.

This report details how convenience stores and other retail outlets have become the dominant channel for marketing and selling tobacco products in the United States. In exchange for billions of dollars in direct payments, price incentives and other inducements, they have become veritable marketing arms of the tobacco companies.

Unfortunately for the nation's health, point-of-sale strategies have proven highly effective at helping tobacco companies market and sell their deadly and addictive products. As the scientific evidence summarized in this report shows, these strategies help tobacco companies achieve the same marketing goals they have always had: Entice kids to start using tobacco, build brand loyalty and discourage quitting among current users, target minority communities and portray their harmful products as acceptable and appealing.

Convenience stores have also become essential partners with the tobacco industry in fighting public policies – especially tobacco tax increases – that are proven to reduce tobacco use and its devastating toll. With tobacco companies discredited in the public eye and viewed as a political negative for elected officials linked to them, convenience stores have become a key front group for the tobacco industry in these policy battles.

The powerful alliance between Big Tobacco and convenience stores deals a double blow to efforts to reduce tobacco use, which remains the leading cause of preventable death in the United States. It is the primary means for marketing tobacco products that kill 443,000 Americans and cost the nation \$193 billion in health care bills and lost productivity each year. And it has helped to thwart proven public policies that reduce tobacco use, improve health, save lives and reduce

health care costs for employers, workers and taxpayers. The result of this alliance is more kids smoking, fewer adults quitting, more tobacco-related death and disease, and higher health care costs for everyone.

In short, the tobacco industry and its convenience store allies are making a killing by making deadly and addictive tobacco products all too convenient.

Specific findings of this report include:

**Point-of-sale marketing is more valuable than ever to tobacco companies, ubiquitous in stores and highly effective at reaching current and potential tobacco users.** Tobacco companies utilize point-of-sale strategies, including detailed merchandising agreements with retailers, to promote, place and price tobacco products to make them most appealing and maximize sales. Marketing at the point of sale allows tobacco companies to reach shoppers right when they can immediately buy specific products or brands. It builds brand recognition, creates positive feelings toward tobacco products and motivates people of all ages to “buy now,” which stimulates tobacco use and undermines attempts to quit. The ubiquity of tobacco products and marketing also sends a message to kids that that tobacco use is common and acceptable.

**Point-of-sale marketing is very effective at reaching and influencing kids.** While other forms of tobacco marketing have been restricted, convenience stores, gas stations and other retail outlets remain places where kids are certain to see tobacco advertising and promotions, often near their schools and playgrounds. These stores are the same places kids and adolescents go to buy candy, sodas and afterschool snacks, making them highly effective venues for marketing to kids. In fact, research has found that two-thirds of teenagers visit a convenience store at least once a week. Studies have found that cigarette marketing is more prevalent in stores where adolescents shop frequently and that tobacco advertisements and product displays are often placed at young kids’ eye level or near candy. In addition, tobacco company documents show that the companies have targeted convenience stores, grocery stores and other tobacco vendors near schools and playgrounds in an effort to attract young smokers.

The massive amount of tobacco advertising and promotion at the point of sale hits its mark. Studies show the more cigarette marketing teens are exposed to in retail stores, the more likely they are to smoke. Price discounts are especially effective at influencing kids, leading to increases in initiation, experimentation and regular smoking.

**Tobacco companies target minority and lower-income communities with point-of-sale marketing.** The tobacco companies have a long history of targeting minority communities, and they have taken advantage of the greater density of convenience stores and gas stations in lower-income and minority neighborhoods to do so. Their marketing strategies have included price discounts, promotional giveaways, heavy product placement and culturally tailored ad content at

retail locations, both indoors and out. Numerous studies have documented the disproportionate amount of advertising in low-income, minority communities. These studies have found more exterior tobacco advertising in retail outlets in these communities, more advertising of price discounts, and a higher density of tobacco-selling retailers near schools in minority or lower-income communities.

**The tobacco industry and convenience stores collaborate to oppose public policies that reduce smoking and other tobacco use, especially tobacco tax increases.** Because of their negative reputation, tobacco companies know that policy makers don't want to be seen as doing their bidding. So they enlist neighborhood stores and store associations to oppose tobacco control policies. Particularly on tobacco taxes, retailers are the voice of the tobacco companies – their front group. Tobacco companies aggressively communicate with retailers, urging them to become more involved in the legislative process, supplying them with the tools and information to do so, and providing them with financial support.

In 2011, the New Hampshire Legislature reduced the state cigarette tax based on a “report” issued by the New Hampshire Grocers Association, which contained little evidence except for materials produced by other tobacco industry allies. Convenience stores have distributed tobacco industry flyers urging opposition to tobacco tax increases, and one Georgia grocery store in 2010 even placed an anti-tobacco tax message on cigarette receipts – with a clear statement that the message was “Paid for by Altria Client Services on behalf of Philip Morris USA.”

**Tobacco companies and convenience stores overstate the harm to retailers caused by tobacco control policies.** Research shows that convenience stores are not affected by tobacco control policies – including tobacco tax increases – to the extent that they and the tobacco industry claim. Recent studies have found that the number of convenience stores does not decline after cigarette tax increases, and neither does overall tobacco retail employment. People who quit or cut back on tobacco purchases will still spend their money on other products. In addition, retailers recognize the declining trend in tobacco sales, which means they can and have made adjustments to compensate.

**Elected officials should adopt policies – especially higher tobacco taxes – that reduce tobacco use and counter the influence of point-of-sale advertising and price promotions.** Increasing the tobacco tax is a win-win-win for states – a health win that will reduce tobacco use and its devastating health effects, a financial win that produces significant new revenue and reduces health care costs, and a political win that polls show is supported by large majorities of voters across the country. The new revenue can also be used to fund tobacco prevention and cessation programs. Other policies can also reduce the impact of point-of-sale marketing, such as licensing and zoning policies that regulate the number, type, location and density of tobacco retailers.

## THE IMPORTANCE OF THE RETAIL ENVIRONMENT

No one knows the importance of the retail environment better than tobacco companies. For years, the industry has recognized how critical retail stores, particularly convenience stores, are to reaching current and potential customers, including children, and growing industry profits.

Point-of-sale marketing has grown in importance to the industry as it has faced restrictions on other forms of marketing as a result of the 1998 legal settlement between the states and the tobacco industry (the Master Settlement Agreement). Additional restrictions were imposed by a 2009 federal law, the Family Smoking Prevention and Tobacco Control Act (2009 Tobacco Control Act), which gave the U.S. Food and Drug Administration (FDA) authority to regulate tobacco products and marketing.

The Federal Trade Commission (FTC) issues reports on annual cigarette and smokeless tobacco marketing expenditures, which are based on data from the major tobacco manufacturers. The FTC's reports show that the point of sale is by far the tobacco industry's dominant marketing channel today, and that it has grown in importance since the 1998 tobacco settlement.<sup>1</sup> According to the FTC's latest reports:

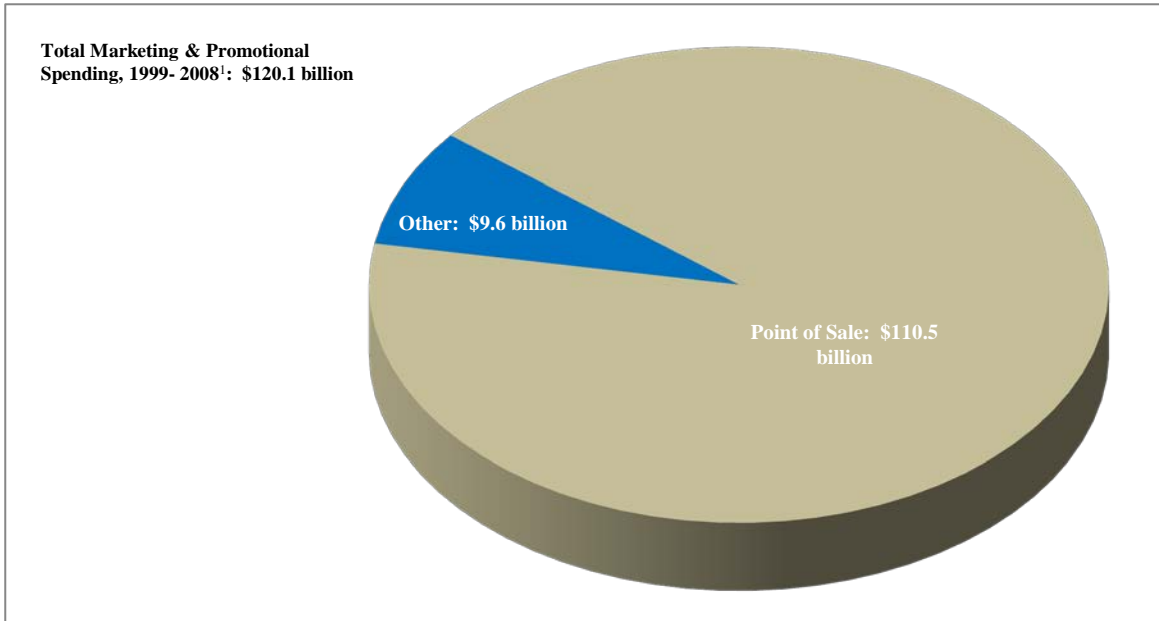
- In the first ten years after the 1998 tobacco settlement (1999 to 2008), tobacco manufacturers spent more than \$110 billion – 92 percent of their total marketing expenditures – to advertise and promote cigarettes and smokeless tobacco products in the retail environment.\*
- From 1998 to 2008, annual tobacco company spending in the retail environment increased by 81 percent (from \$5.4 billion to \$9.8 billion).



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\*Point of sale marketing expenditures include the following categories for both cigarettes and smokeless tobacco products: point-of-sale advertising, price discounts; promotional allowances to retailers, wholesalers, and others; coupons; and retail value added – bonus and non-bonus. See Appendix A for a description of these categories.

- In 1998, the tobacco companies spent 78 percent of their marketing budget in the retail environment. In 2008, the latest year included in the FTC reports, tobacco companies spent 93 percent of their marketing budget – \$9.8 billion out of \$10.5 billion – in the retail environment.



The retail environment is critical for tobacco companies because it allows them to communicate directly with consumers, especially when tobacco ads are prohibited on television, radio and billboards and increasingly scarce in magazines. Convenience stores are also vital to tobacco company sales. In 2010, more than half of all cigarettes sold were sold at convenience stores.<sup>2</sup>

Marketing at the point of sale allows tobacco companies to reach shoppers right at the place where they can immediately buy specific products or brands. This type of marketing builds brand recognition, creates positive feelings towards tobacco products, and gives people of all ages and smoking status – heavy or light smokers and even experimenters – a reason to “buy now.” This stimulates tobacco use and undermines quit attempts. The ubiquity of tobacco products and marketing also creates a norm for kids that makes tobacco use seem common, acceptable and even cool.

Tobacco companies compete against one another at the point of sale for shelf space and consumer loyalty. This competition creates a massive amount of marketing at point of sale, which is good for both tobacco companies and convenience stores because it drives up total tobacco sales.<sup>3</sup>

The tobacco industry recognizes that influencing consumers at the moment of purchase is a key strategy to drive sales. Where tobacco products are located in stores, how they are packaged, how they are advertised and promoted, and how they are priced, especially in the types of stores that



youth frequent, is the result of careful planning. Tobacco companies invest huge sums to make sure their products and advertisements are noticed, are purchased, and then purchased again.

The tobacco companies' own words demonstrate that promotion and visibility at the point of sale has been a major goal for more than 30 years. According to an R.J. Reynolds internal document:

*“Simply stated, the point of purchase is where the action is – it’s the retail environment, it’s a specific location in a store, it’s a product display and its in-store advertising. Importantly, and perhaps not so obviously, the point of purchase is also in the mind of the prospective consumer.”*<sup>4</sup>

The tobacco industry’s laser-like focus on convenience stores is apparent in an R.J. Reynolds internal memo that lays out a strategy to capture more of the convenience store market.<sup>5</sup>

*“Based on the growth of cigarette sales in convenience stores, their targeted demographic appeal and the threat posed by Philip Morris in these outlets, **RJR should take an aggressive stand in developing merchandising and promotional programs for convenience stores.**”*

*“**RJR should make convenience stores the Company’s number one priority for the placement of permanent POS (point-of-sale) and should consider increasing the amount of a permanent POS that is earmarked for these outlets.**”*

*“Convenience store outlets are showing significant growth and are increasing in importance as outlets for cigarette sales. **Furthermore, they represent the single most effective outlet for reaching younger adult smokers.**”*

The objective of point-of-sale marketing is to promote, place, and price tobacco products to make them most appealing and maximize sales. It includes tobacco advertisements and other branded items such as shelving units, counter mats, and shopping baskets that are located inside, outside, and on the property of convenience stores, drug stores, gas stations, and other retail sales outlets.

Point-of-sale marketing also includes promotional expenditures, which are tobacco company payments to retailers to display the company’s brands, ads and related materials prominently, in specific store locations or on “good” shelving space (known as slotting allowances). Tobacco industry documents note that “eye level is buy level” so companies pay careful attention and spend large sums of money to ensure that tobacco products are placed where they will be seen.<sup>6</sup> These promotional materials are often coordinated with current advertising campaigns to promote the images and appeal of specific tobacco products.<sup>7</sup>

Finally and perhaps most importantly, point-of-sale marketing includes price discounts paid to retailers and coupons and multi-pack discounts (e.g., buy two packs get one free) for which retailers are reimbursed. Each of these promotional strategies makes tobacco products cheaper and more accessible to consumers, especially kids. In 2008, tobacco companies spent far more on discounting strategies – \$7.5 billion – than any other category of marketing, demonstrating its importance in enticing new customers and keeping current ones.<sup>8</sup>

## TOBACCO COMPANIES SPEND BILLIONS TO SATURATE CONVENIENCE STORES

Walk into any convenience store, and it won't take long to spot advertisements, branded materials and product displays designed to push the sale of tobacco products. Several studies have documented the increasing pervasiveness of tobacco advertising and promotion in retail outlets. For example, the average store features 15 to 25 tobacco product advertisements and multiple shelving units full of cigarette cartons and packs.<sup>9</sup> Displaying multiple shelves of cigarettes is often done to create a “powerwall” of branded imagery that makes tobacco products more visible, more attractive, and more alluring.<sup>10</sup> In one survey, 80 percent of retail outlets had interior tobacco product advertising, 60 percent had exterior tobacco product advertising, and over 70 percent had tobacco product functional items, such as display racks, counter mats, entrance and exit signs, and change cups.<sup>11</sup>



Image and content are the result of research conducted by the Association for Nonsmokers-Minnesota, [www.ansrmn.org](http://www.ansrmn.org).

Recent stories in the convenience store trade publications, *Convenience Store News* and *Convenience Store Decisions*, confirm that saturating the convenience store with tobacco ads and highly visible tobacco products continues to be an important tobacco industry strategy:

*“A change in the tobacco company’s strategies has led Brazie [director of retail marketing for a chain of tobacco stores] to adapt new cigarette sets in the convenience stores and Smoker Outlet sites. ‘We had 8 feet of cigarette packs and 10 feet of cartons in*

*our Smoker Outlet sites. We are adjusting our sets to provide more room for new opportunities in OTP [other tobacco products].”<sup>12</sup>*

*“C-store [convenience store] operators should also look to increase the visibility of their smokeless products, Bishop suggested. ‘Presentation along the back bar has become more critical, especially since June of last year when self-service merchandising displays were restricted or banned in non-age-regulated environments,’ he said. ‘Finding good visible space on the back bar is also important because out of sight is out of mind. If the customer doesn’t see it, they aren’t likely to buy it or even ask for it. It also helps speed of service.’”<sup>13</sup>*

Tobacco companies spend billions of dollars to ensure that tobacco products are heavily advertised, prominently displayed, and cheaply priced in stores. Convenience stores are more than willing to take these payments. Each company has its own retailer incentive, or merchandising program, which is often formalized in contracts or merchandising agreements with retailers. These contracts are often tailored to individual stores and convenience store chains.<sup>14</sup>

**When describing merchandising programs and the impact on retailers, a senior vice-president of sales for Philip Morris USA explained, “What we’ve done is to compensate retailers for doing the right thing for their business which is also the right thing for our business.”<sup>15</sup>**



The tobacco companies often strong-arm retailers into signing contracts to ensure that retailers promote their products effectively and adhere to specific advertising and promotion plans developed by the tobacco company. Tobacco companies use these contracts to secure prime display space (at the end of an aisle, at eye-level, or on the countertop), define the amount of advertising to be displayed, and establish price and promotional incentive programs. Retailers are paid specific, negotiated amounts of money for entering into contracts with tobacco companies. According to a Philip Morris sales manual, “we pay the retailer for performance on our behalf.”<sup>15</sup>

Price incentives and promotions are often part of the contracts between tobacco companies and convenience stores. Tobacco companies offer retailers volume-based discounts, “buy two, get one

free” specials, and buy downs which are used to place existing inventory on sale. In exchange for being able to offer these discounts and buy downs, retailers are expected to place tobacco products and advertisements in high profile locations, use special displays provided by the company, and display special prices and deals prominently.<sup>16</sup>

Through these contracts, tobacco companies are able to motivate retailers to display, promote, and advertise tobacco products, keep the price of cigarettes low and keep the convenience store dependent on them. Stores are routinely audited by the companies and noncompliant stores are punished by withdrawal of price discounts and other promotions.

See Appendix B and C of this report for more information on these merchandising programs and examples of contracts with retailers.

## CONVENIENCE STORES: WHERE KIDS AND TOBACCO MEET

There is strong evidence that point-of-sale marketing is very effective at reaching and influencing kids. Convenience stores are the places that kids and adolescents go to buy candy, sodas and afterschool snacks, and as a result kids are regularly exposed to tobacco advertising. Two-thirds of teenagers visit a convenience store at least once a week.<sup>17</sup> The volume of tobacco brand imagery and product placement in convenience stores helps portray tobacco to kids as normal and even appealing.

Both the tobacco industry and the convenience store industry are keenly aware of their customer base and share the common goal of targeting young people.

Conveniently Aligned	
<u>Tobacco Industry:</u>	<u>Convenience Store Industry:</u>
<p><b>“Today’s teen-ager is tomorrow’s potential regular customer</b> and the overwhelming majority of smokers first begin to smoke while in their teens.”<sup>18</sup></p>	<p><b>“We chose to focus on teens because of their strategic position as the next generation of shoppers.</b> If the convenience industry can connect with them now, we will be laying a foundation for building lifelong loyalty.”<sup>19</sup></p>

Knowing that convenience stores are the key to increasing tobacco sales, it is not surprising that tobacco advertisements in convenience stores, gas stations, and other retail stores have become ubiquitous. It is also not surprising that much of this promotion is conducted in stores and in

ways that make it highly visible to kids. Tobacco advertising and promotion is more common at convenience stores and gas stations compared to pharmacies and grocery stores.

- A 2009 survey found that convenience stores had four times as many tobacco ads as pharmacies and grocery stores.<sup>20</sup>
- A study of retail outlets in California found that about 85 percent of retailers had tobacco ads within four feet of the counter, nearly 50 percent of tobacco retailers had tobacco ads at young kids' eye level (three feet or lower), and 23 percent had cigarette product displays within six inches of candy.<sup>21</sup>
- Another survey found that stores where adolescents shop most often have more than three times the amount of cigarette advertisements and promotional materials outside of the stores and almost three times more materials inside, compared to other stores in the community.<sup>22</sup>

In addition, tobacco company documents show that tobacco companies have targeted convenience stores, grocery stores and other tobacco vendors near schools and playgrounds in an effort to attract young smokers. Internal R.J. Reynolds memos demonstrate the focus on young people, and while tobacco company executives would argue that their discussion of “younger adults” was referring to those older than 18, it is clear that they defined “young adult” broadly to include school-age youth. For example, an R.J. Reynolds supervisor instructed regional sales representatives to implement promotional programs in stores frequented by young adult shoppers. The memo said, “those stores can be in close proximity to colleges or high schools or areas where there are a large number of young adults frequenting the store.”<sup>23</sup>



Tobacco companies also know that when it comes to kids, price is paramount. Their own documents reveal their concern about tobacco taxes, as well as their knowledge that price increases reduce youth smoking. After a year of tax and price hikes and a corresponding reduction in teen smoking, Philip Morris Executive Jon Zoler stated, “We don’t need to have that happen again.”<sup>24</sup> As described previously, a huge part of tobacco marketing involves price discounting. Through direct payments to retailers, incentives, coupons and other pricing strategies, tobacco companies are able to reduce prices to offset tobacco tax increases and make tobacco products more affordable for kids and low income smokers, who are most price-



sensitive. The cigarette companies' spending on price promotions amounts to a discount of about 50-cents per pack.<sup>25</sup>

## IT WORKS: POINT-OF-SALE TOBACCO ADVERTISING AND PROMOTIONS IMPACTS KIDS

The massive amount of tobacco product advertising and promotion at the point of sale hits its mark. It is clear that such displays and promotions have an especially powerful impact on kids.

- A 2009 review of point-of sale promotions found that among youth, there is a significant association between exposure to point-of sale advertising and smoking initiation, susceptibility to smoking, beliefs about the availability of tobacco and beliefs about smoking prevalence.<sup>27</sup>
- A 2007 study in the *Archives of Pediatrics and Adolescent Medicine* found that the more cigarette marketing teens are exposed to in retail stores the more likely they are to smoke. Specifically, researchers found that increasing the types of advertising in stores would result in an 11 percent increase in the number of teens who try smoking.<sup>28</sup>
- A 2009 study in *Tobacco Control* found that more frequent visits to stores selling tobacco and greater awareness of cigarettes sold in stores increase the likelihood of teenagers being susceptible to initiating, experimenting, or becoming current smokers.<sup>29</sup>
- More visits to stores per week increases smoking initiation among teens. In fact, a 2010 study in *Pediatrics* found that the odds of initiation more than doubled for teens who visited a store with point-of-sale tobacco ads at least twice a week.<sup>30</sup>

**In sum, the ubiquity of [the companies'] marketing increases young peoples' perceptions of the prevalence of smoking ('everyone is doing it'), normalizes smoking, and connects positive imagery (sex appeal, popularity, peer approval, success, and independence) with smoking, all of which work together to encourage youth smoking initiation and continued consumption.**

– U.S. District Court Judge Gladys Kessler  
*Final Opinion*, United States v. Philip Morris<sup>26</sup>

In addition, pricing strategies used to make tobacco products cheaper lead to increases in youth initiation, experimentation, and regular smoking.<sup>31</sup> According to the 1994 U.S. Surgeon General's report, *Preventing Tobacco Use Among Young People*, the use of coupons makes cigarettes more affordable and affects new users by encouraging them to smoke more, moving from the trial stage to becoming a regular smoker.<sup>32</sup>



These scientific findings are reflected in smoking levels. High school smoking rates are higher in areas with higher densities of stores that sell tobacco products than in areas with lower densities.

- A 2008 study in *Preventive Medicine* found that current smoking was significantly higher at schools in neighborhoods with the highest density of tobacco retailers than the smoking rate at schools in neighborhoods without any tobacco retailers.<sup>33</sup>
- A 2006 study of Chicago youth found that youth who lived in neighborhoods with the highest density of tobacco retailers were 13 percent more likely to have smoked in the past month than those living in neighborhoods with the lowest density of tobacco retailers.<sup>34</sup>
- Similarly, several studies have found that tobacco retailer density is associated with experimental smoking among high school and middle school students.<sup>35</sup>

Point-of-sale marketing also encourages purchases and makes it harder for smokers to quit. It has been found to increase average retail tobacco product sales by as much as 12 to 28 percent.<sup>36</sup> Cigarette pack displays at retail outlets stimulate impulse purchases among smokers. In addition, smokers trying to quit commonly experience urges to purchase cigarettes when confronted with these displays, suggesting that cigarette pack displays undermine intentions to quit among established smokers. One study found that 25 percent of the surveyed smokers had made an unplanned purchase of cigarettes in the last 12 months as a result of seeing point-of-purchase tobacco product displays.<sup>37</sup> Another found that one out of five cigarette purchases at a store with tobacco product displays was unplanned.<sup>38</sup>

**"Overall, our results provide evidence that restricting point-of-sale advertising will discourage youth from trying smoking and policies that increase cigarette prices and/or restrict price-based promotions will have a long-term positive impact by preventing youth from moving farther along the smoking uptake continuum towards regular smoking."<sup>28</sup>**

## TOBACCO COMPANIES TARGET MINORITY AND LOW-INCOME COMMUNITIES WITH POINT-OF-SALE MARKETING

Lower-income, minority communities face a barrage of tobacco advertising at the point of sale. One reason is because these communities typically have more convenience stores and gas stations compared to more affluent, white communities. Another reason is because tobacco companies have a long history of specifically targeting minority communities.

Cigarette companies have undertaken aggressive advertising campaigns targeted at minority and low-income populations. As discussed earlier, tobacco advertising campaigns

include price discounts, culturally tailored ad content, promotional giveaways, and heavy product placement at retail locations both indoors and out. The disproportionate amount of advertising in low-income, minority communities has been well-documented.



- A comprehensive review of the literature, published in 2007, found that there were 2.6 times more tobacco advertisements per person in areas with an African-American majority compared to white-majority areas.<sup>39</sup>
- A study of tobacco advertising in six Boston neighborhoods found that exposure to tobacco advertising was more intense in neighborhoods with more children, with significant African-American and Hispanic/Latino populations, and with low socioeconomic status.<sup>40</sup>
- Another study, based on data collected in Los Angeles, found that compared with white neighborhood thoroughfares, African-American and Hispanic neighborhoods contained greater tobacco ad density, and all minority neighborhoods contained greater tobacco ad concentration along the roadsides.<sup>41</sup>
- A study of retail outlets in California found that the number of cigarette ads per store and the proportion of stores with at least one ad for a sales promotion are increasing more rapidly in neighborhoods with a higher proportion of African-Americans.<sup>42</sup>

- A survey of convenience stores in Oklahoma County found that there were significantly more point-of-purchase tobacco ads in low-income and minority neighborhoods than in better-educated, higher-income, predominantly white neighborhoods.<sup>43</sup>

Studies have also found that there is more *exterior* tobacco advertising in retail outlets in predominantly minority, low-income communities than in non-minority, higher income communities.<sup>44</sup> A 2010 study in the *American Journal of Health Promotion* compared characteristics of storefront tobacco advertisements in a low-income, minority community and a high-income, nonminority community. It found that the low-income, minority community had more tobacco retailers and advertisements were more likely to be larger and promote menthol products.<sup>45</sup> Additionally, point-of-sale ads in minority communities are more likely to advertise a cheaper price on cigarettes or provide better buy-one, get-one deals than in more affluent white communities.<sup>46</sup>

Alarminglly, research suggests that tobacco-selling retailer density near schools is higher in minority and lower-income communities.<sup>47</sup> A recent study of neighborhoods with high schools in California found that as the proportion of African-American high school students rose, the proportion of advertising for menthol cigarettes increased, the odds of a Newport promotion were higher and the cost of Newport cigarettes was lower.<sup>48</sup>

## TOBACCO COMPANIES ENLIST CONVENIENCE STORES TO OPPOSE TOBACCO CONTROL POLICIES

Big Tobacco not only uses convenience stores to promote and sell their deadly products, but also to oppose policies like increased tobacco taxes that prevent kids from smoking and encourage smokers to quit. Because of their negative reputation, Big Tobacco knows that

**We recommend that retailers get engaged with their legislators and governors—and stay engaged.**

– Bruce Gates, Senior Vice President, Altria Client Services  
“*The Cutting Edge*,” CSP Magazine, July 2011

policy makers don’t want to be seen as doing their bidding. Therefore they enlist neighborhood convenience stores and store associations to oppose policy change. Particularly on taxes, retailers are the voices of the tobacco companies – their new front group.

This relationship is the result of a carefully orchestrated tobacco industry strategy.

In the mid-1980s, a member poll by the National Association of Convenience Stores (NACS) revealed that “many do not believe that tobacco will remain as a major category” and “some key [convenience store] industry executives are personally opposed to the [tobacco] product and have banned or restricted smoking in their facilities.”<sup>49</sup> Recognizing that the convenience store

industry would be useful allies on tobacco-related legislation, the tobacco industry strategized how to develop an alliance. In memos titled, “Convenience Stores: Issue and Strategy Discussion” and “Convenience Store Industry: Coalition Activity Plan,” the tobacco companies planned to convince the convenience store industry of the importance of tobacco products. The tobacco companies developed relationships not only with retailer associations, but retailers themselves, in order to involve them politically.<sup>50</sup> In a strategy document on cigarette excise taxes, they blatantly stated, “Use businesses affected by cigarette excises to convince government and the public that increases in tobacco excise taxes are harmful and unfair.”<sup>51</sup>

In 2001, when Washington State voted on a ballot initiative to increase the cigarette tax by 60 cents, voters’ pamphlets included a statement opposing the initiative supposedly prepared by the Korean Grocers Association and the Washington Association of Neighborhood Stores. It was soon revealed, however, that the author of the document was Brendan McCormick, Director of Media Relations for Philip Morris USA, and that the company was only using the two groups to cover up its own actions against the ballot initiative.<sup>52</sup> Voters passed the tax increase overwhelmingly.

Providing financial and coordinating assistance enables the tobacco industry’s messages to filter through retailers to policymakers and stop or stall tobacco control policies – a relationship that continues to work today. Tobacco companies communicate aggressively with retailers, urging them to become more involved in the legislative process. They supply them with the tools and information to do so and provide them with financial support.

**The NoCigTax.com website is maintained by R.J. Reynolds. This page, directed specifically to retailers, provides reasons to oppose tobacco tax increases. Screenshot accessed February 21, 2012.**

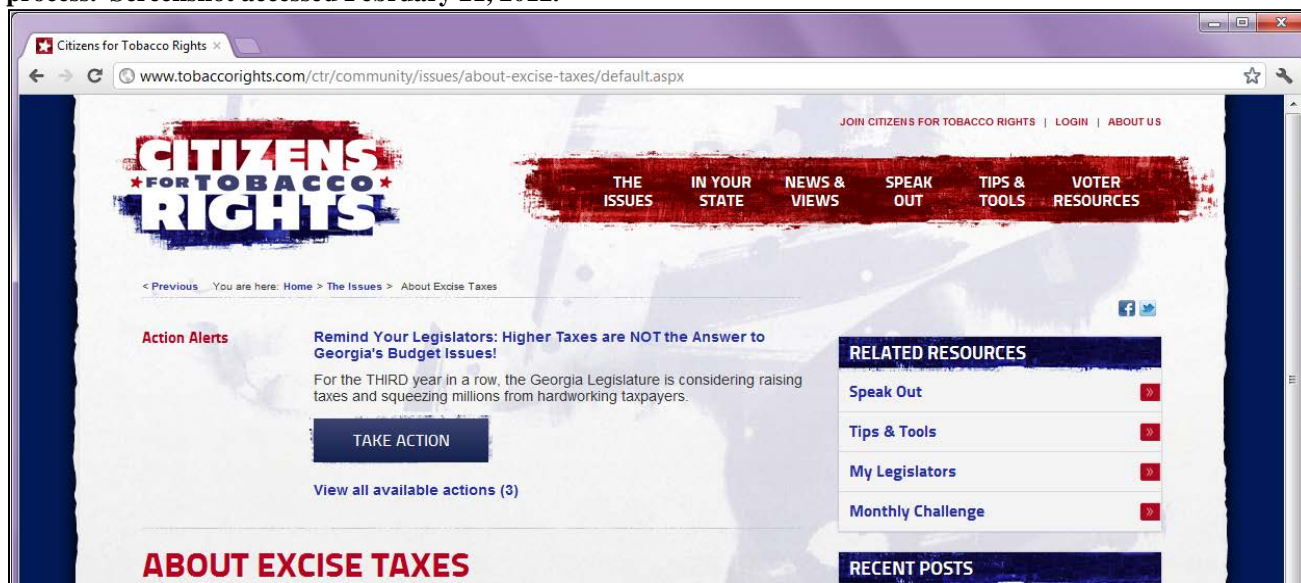




Altria (parent company of Philip Morris USA) has two websites to engage the pro-tobacco side. TobaccoIssues.com includes this page directed to tobacco retailers. Screenshot accessed February 21, 2012.



The tobacco subsidiaries under Altria – Philip Morris USA, John Middleton and U.S. Smokeless Tobacco Company – teamed up for this website, to encourage and teach smokers to get involved in the legislative process. Screenshot accessed February 21, 2012.

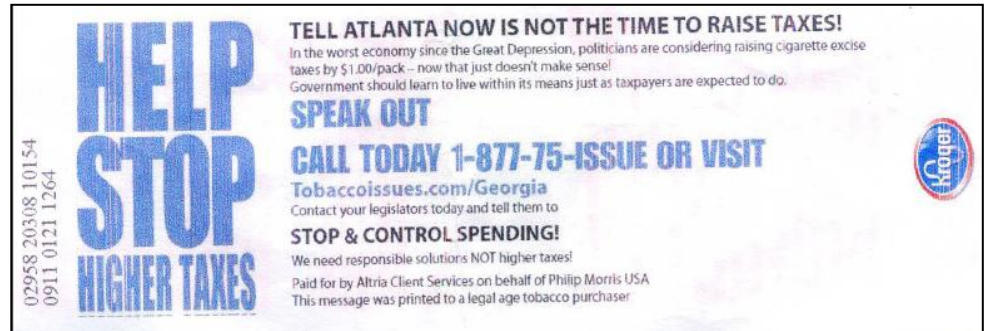


With or without explicit help from the tobacco companies, retailers and associated groups are doing their bidding. Recent examples include:

- Philip Morris USA and R.J. Reynolds have provided “major funding” for Californians Against Out-of-Control Taxes and Spending, a group opposing an initiative to increase California’s cigarette tax that will be on the June 2012 ballot. Members of this opposing group include the California Grocers Association, California Retailers Association, and the Neighborhood Market Association.<sup>53</sup> In the first three months of 2011, Philip Morris USA

spent \$1.2 million on the campaign against the tobacco tax increase – more than twice as much as public health advocates spent supporting the measure.<sup>54</sup>

- In Georgia, receipts for cigarettes at a Kroger grocery store carried messages against the 2010 cigarette tax increase proposal. The messages were “Paid for by Altria Client Services on behalf of Philip Morris USA.”<sup>55</sup>



Altria also provided

J.Galloway, AJC, 3/16/2010

support for an anti-tax rally involving Americans for Tax Reform, Americans for Prosperity, and the Conservative Leadership Coalition.<sup>56</sup>

- In Maryland, R.J. Reynolds placed flyers in convenience stores to oppose a 2011 tobacco tax increase proposal.
- In 2011, the New Hampshire legislature passed a decrease in the tobacco tax based on a “report” issued by the New Hampshire Grocers Association. The report contained little evidence except for excerpts from news articles and claims by known industry allies such as the Heartland Institute and Americans for Tax Reform.

**THE ISSUE**

The Maryland General Assembly is considering House Bill 853, a proposal that would raise the tax rate on all tobacco products.

If passed, the tax on cigarettes would increase 50%, from the current \$2 per pack up to \$3 per pack. The tax on other tobacco products would jump from 15% of wholesale price to 95% of wholesale price, an overall increase of over 533%.

You know what happened to your tobacco sales the last time state legislators passed such a massive tax increase. Don't let that happen again.

---

**Act Now!**  
**Speak Out Against HB 853 Today**

**Contact Your Representative in Annapolis today**

**1-866-658-8337 (toll free)**

Tell your State Representative to  
**VOTE 'NO' on HB 853**

For more information:  
[www.NoCigTax.com](http://www.NoCigTax.com)

**Tell Your Legislators:**

- Retailers are already suffering from the poor economy. Tax increases will only make things worse.
- Maryland's border states already have a huge tobacco tax advantage. Such an increase will only drive more of your customers across state lines.
- The General Assembly needs to cut spending, not raise taxes.





- Similarly, Philip Morris USA has provided their own anti-tax handouts for convenience stores to distribute. The two-sided flyer to the right is from Utah in 2008.
- In California, the Neighborhood Market Association, whose political action committee receives funding from Philip Morris USA, actively opposes local tobacco retailer licensing proposals.<sup>57</sup>

By using front groups and alliances, the tobacco industry has been able to mask its real intentions – thwarting policies that would reduce their profits – behind false ones such as supporting small businesses. If the tobacco industry truly sought to boost small business, it wouldn't lock retailers into promotional contracts that limit their autonomy.

**SAY NO TO  
HIGHER TAXES**

Call your state legislators toll-free today!  
1-866-722-8669  
Or visit [pmusalac.com](http://pmusalac.com) to send an e-mail.

**CALL OR E-MAIL TODAY**

Please hold the line on spending  
rather than raising taxes.

It's just not right to raise taxes during  
tough economic times like these.

It's not fair to raise taxes on already  
burdened taxpayers.

Paid for by Altria Client Services on behalf of Philip Morris USA

## EFFECT OF TOBACCO CONTROL POLICIES ON CONVENIENCE STORES

Research shows that convenience stores are not affected by tobacco control policies – including tobacco tax increases – to the extent that the tobacco industry and its allies claim. In addition, retailers recognize the declining trend in tobacco sales, which means they can and have made adjustments to compensate. In fact, NACS (the Association for Convenience and Fuels Retailing, formerly the National Association of Convenience Stores) suggested that 2009 might

**TI-NACS study conducted last year did not demonstrate that excises have much effect on convenience stores sales of cigarettes, beer and gasoline.**

*– Tobacco Institute, Convenience Store Industry: Coalition Activity Plan, September 2, 1987*

be a good time for stores to expand – despite the fact that 14 states, Washington, DC and the federal government increased cigarette tax rates in 2009.<sup>58</sup>

Health economists from the University of Illinois at Chicago looked at the impact of increased tobacco taxes on convenience store

density from 2000 to 2009 and found a small *positive* association.<sup>59</sup> That is, the number of convenience stores actually increased with increasing tobacco tax rates. Clearly, tobacco taxes are not putting convenience stores out of business. A 2010 NACS report on the state of the convenience store industry noted a 35 percent growth in “single stores” (non-chain stores) since 2001. This trend occurred during the same period when 47 states and the District of Columbia increased their cigarette tax rates more than 100 times.<sup>60</sup>

Those results reinforced the findings from an earlier study, which found that declines in cigarette consumption from tobacco tax increases had little effect on employment in the overall retail sector, and any changes in the convenience store sector are offset by increases in other retail sectors.<sup>61</sup>

Earlier studies have found that even if smoking were entirely eliminated in the United States, the net economic effect on each state would be positive, with more jobs created as well as other increases in productive economic activity.<sup>62</sup> State-specific studies in Virginia, New Hampshire, and Texas found that cigarette tax increases would have created or saved thousands of jobs.<sup>63</sup> In the New Hampshire report, the researcher found that 180 new jobs would have been created in the retail sector from a \$1.00 per pack increase in the cigarette tax, even considering any potential loss in sales to consumers from neighboring states with higher tax rates.<sup>64</sup> The money not spent on tobacco products would be spent on other products and services, some of which are produced in-state. This would boost the state economy and allow in-state businesses to hire more employees.<sup>65</sup>

The tobacco and convenience store industries ignore the fact that people who quit or cut back on tobacco purchases will still spend their money on other products, so those dollars will not be lost to retailers entirely. For instance, when Washington state increased its cigarette tax by \$1.00 per pack in May 2010 (second quarter of 2010), gross business income for gas stations, including convenience stores, actually increased by 17.3 percent and 8.6 percent in the second and third quarters compared with the same periods the previous year.<sup>66</sup>

Retailers understand that reduced sales of one product means increased sales of other goods. As business owners, they understand the importance of diversifying the products that they offer.

**The threat of invasive legislation is not something we lose sleep over. Ultimately we're working on growing our other sales so that we're not so reliant on selling tobacco.**

– Kyle McKeen, president and CEO of ALON Brands USA, the largest licensee of 7-Eleven in the U.S.,  
“Smokeless Sales Show Promise,” *Convenience Store Decisions*, June 21, 2011

## **POLICY SOLUTIONS: TOBACCO TAX INCREASES ARE A WIN-WIN-WIN FOR STATES**

Tobacco control advocates, the tobacco industry and retailers all agree on one thing: Tobacco tax increases reduce tobacco use. The difference is that tobacco control advocates know that is a positive outcome, while the tobacco industry believes it is a negative one. And as shown earlier, retailers can continue to thrive as tobacco sales decline and lives are saved.

In reality, increasing the tobacco tax is a win-win-win for states. It is a win for public health because it will reduce tobacco use and its devastating health effects. It is a win for state budgets because, despite declines in tobacco consumption, it will produce significant new revenue and reduce health care costs. Finally, as state and national polls show, it is a political win for policy makers, as large majorities of voters across the political spectrum and around the country support tobacco tax increases. The new revenue can also be used to fund tobacco prevention and cessation programs. Tobacco tax increases could also be a win for retailers, who could break their unhealthy alliance with tobacco companies while earning profits from other goods.

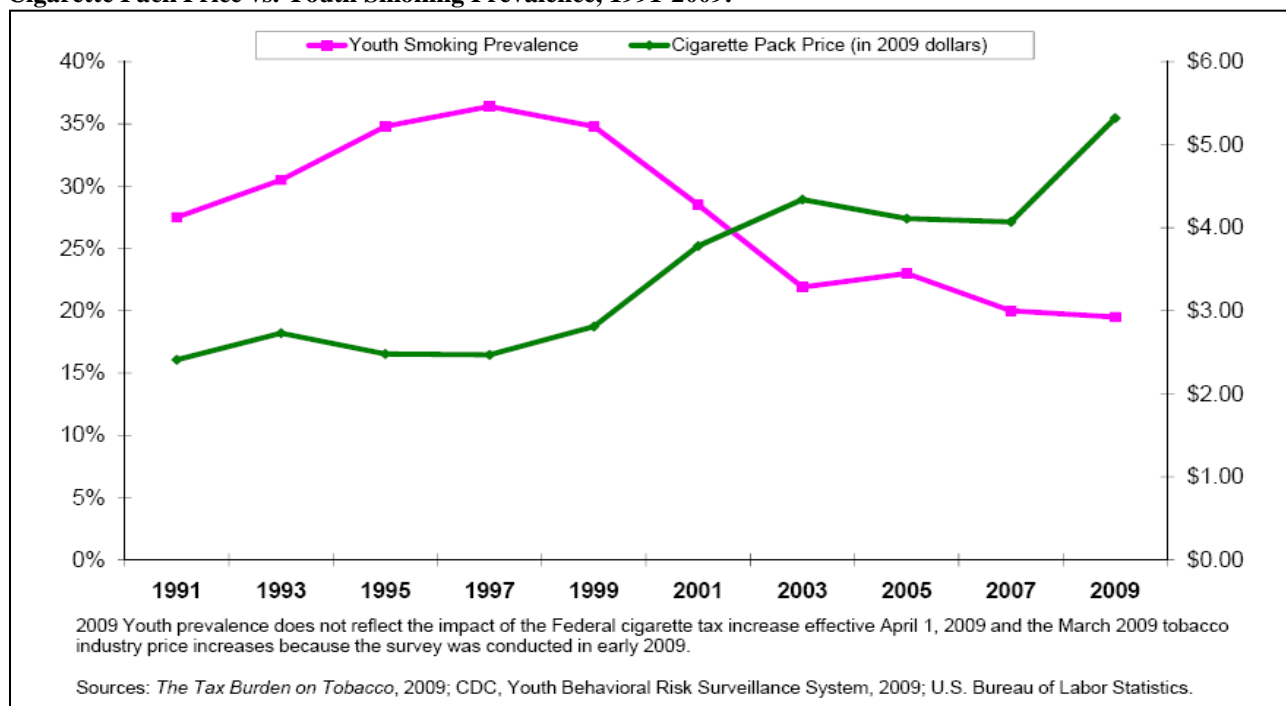
### **WIN #1: A Health Win**

Tobacco tax increases prevent kids from starting to smoke, encourage smokers to quit and save lives and health care dollars. Each year, 443,000 Americans die from tobacco use – the leading preventable cause of death in the country. Every day, nearly 4,000 kids try their first cigarette, and another 1,000 kids become regular smokers.<sup>67</sup>

Studies have shown that for every 10 percent increase in the price of cigarettes, youth smoking declines by approximately seven percent, smoking among pregnant women falls at a similar rate, and overall consumption declines by about four percent.<sup>68</sup>

The chart below shows just how strongly youth smoking prevalence is related to cigarette pack prices. As prices climbed in the late 1990s and early 2000s, youth smoking rates declined. But as the price leveled off and even decreased between 2003 and 2005 (along with reduced funding for tobacco prevention programs in many states), progress in reducing youth smoking stalled, and youth smoking rates even increased in 2005.

### Cigarette Pack Price vs. Youth Smoking Prevalence, 1991-2009.



The Campaign for Tobacco-Free estimates that if every state increased its cigarette tax rate by 50 cents per pack to counteract the 50-cents per pack discount from the cigarette companies' price promotions, more than 850,000 kids will be prevented from becoming addicted adult smokers, more than 700,000 adults will quit, and more than 460,000 lives will be saved. If every state increased its cigarette tax rate by \$1.00 per pack, 1.7 million kids will be prevented from becoming addicted adult smokers, 1.4 million adults will quit, and more than 900,000 lives will be saved.

### WIN #2: A Budget Win

Despite what the tobacco industry and its allies claim, every single state that has raised its cigarette tax rate significantly has generated dramatic new revenue despite the declines in

**[W]e sympathize with small business owners, but they have to think that in this case they are selling death. It may be legal, but it's selling death. [I find] it very difficult to be sympathetic under these circumstances.**

– Lowell (MA) Board of Health Chair, December 1998<sup>69</sup>

smoking that occur as a result of the price increase. This is simply because the increased tax per pack brings in more new state revenue than is lost from the related reductions in the number of packs sold and taxed in the state.

The higher revenue levels enjoyed by those states that significantly increase their cigarette tax rates persist over time, while

the health care savings from the related declines in smoking grow rapidly. Revenues from

tobacco taxes will drop over time, and that is a good thing for public health. But these declines will be gradual and predictable, so states can easily adjust for them. In fact, state tobacco tax revenues are more predictable and less volatile than many other state revenue sources, such as state income tax or corporate tax revenues, which can vary considerably each year because of nationwide recessions or state economic slowdowns. In sharp contrast, large drops in tobacco tax revenue from one year to the next are quite rare because of the addictive power of cigarettes.

Evidence shows that the state that increases its tobacco tax collects the most revenue, not its neighbors. Evading state taxes by buying cigarettes over the Internet or other mail order purchases has become more difficult due to state agreements with the major common carriers and payment companies. A 2010 federal law, the Prevent all Cigarette Trafficking (PACT) Act, prohibited the delivery of tobacco products through the mail and placed further restrictions on Internet sales. States can also take other steps to maximize tobacco tax revenue, such as implementing high-tech tax stamps to reduce counterfeiting and smuggling.

States will realize even more revenue if they also increase the tax on other tobacco products (OTPs), to deter children from experimenting with these products and encourage smokers to quit rather than switch to a lower-cost option.

Tobacco tax increases will produce other economic benefits. State budgets will gain from the declines in smoking and consequent drop in smoking-caused health care costs. Each year in the U.S., smoking-caused disease results in \$96 billion in health care costs, much of which is paid by taxpayers through higher insurance premiums and government-funded health programs such as Medicaid. Indeed, higher Medicaid costs are one of the reasons states are facing budget difficulties. By reducing smoking, tobacco tax increases will reduce smoking-related health care costs.

The Campaign for Tobacco-Free Kids estimates that nationally, if each state increased its tobacco tax by \$1.00 per pack, it would reduce immediate health care costs by billions of dollars and long-term health care costs by more than \$58 billion. In the first five years, health care costs would decline just from fewer smoking-caused heart attacks and strokes and fewer smoking-affected births. Overall health care savings would grow over the lifetimes of the smokers who quit or kids who never start smoking because of the \$1.00 increase.

### **WIN #3: A Political Win**

State and national polls show that large majorities of voters of both major parties and virtually all demographic groups support increasing tobacco taxes and candidates who vote to support them. Not only do voters support significant tobacco tax increases, they far prefer tobacco tax increases to other options for balancing budgets, such as other tax increases or cutting programs such as health, education and transportation.

Tobacco companies and their allies will say and do anything to oppose tobacco tax increases, including creating front groups and recruiting retailers to parrot the industry's false claims. However, that doesn't change the fact that the tobacco industry and retailers know that tobacco tax increases will reduce tobacco use.

## **POLICY SOLUTIONS: POINT-OF-SALE POLICIES**

Reducing the impact of point-of-sale marketing is part of a comprehensive strategy to prevent kids from using tobacco and reduce overall tobacco use. The 2009 Tobacco Control Act included significant restrictions on how tobacco products are sold and marketed in stores. The law established a nationwide prohibition on tobacco sales to children under 18, required photo ID checks for sales to anyone appearing under 27 years of age and provided for tough federal enforcement and penalties against retailers who sell to minors. The law also prohibited:

- The sale of candy and fruit-flavored cigarettes
- Self-service displays of cigarettes and smokeless tobacco (except in adult-only facilities)
- Non-tobacco gifts with purchase, such as T-shirt, hats and lighters
- Use of misleading terms such as "light" and "low-tar" that falsely imply some cigarettes are less harmful.

The law also requires large, graphic health warnings on cigarettes and restricted tobacco ads to black-and-white text only at the point of sale, outdoors and in magazines with significant youth readership. But these provisions are on hold pending resolution of lawsuits filed by tobacco companies. The law also directed FDA to develop regulations that would restrict tobacco advertising near schools and playgrounds.

In addition to these specific provisions, the law granted the FDA the authority to further restrict tobacco marketing to the extent allowed by the First Amendment to the Constitution. It also gave state and local governments new authority to regulate the time, place, and manner (but not content) of tobacco advertising, consistent with the First Amendment, and preserved the authority of states and localities to adopt other measures to reduce tobacco use.

At the state and local level, in addition to increasing tobacco taxes, implementing comprehensive smoke-free laws, and ensuring sufficient funding for tobacco prevention programs, point-of-sale regulation has become an emerging core strategy to reduce tobacco use. More detailed information on point-of-sale issues and solutions is available at [www.countertobacco.org](http://www.countertobacco.org).



## **Licensing and Zoning Policies**

Licensing and zoning policies impact how and where tobacco products are sold through the number, type, location, and density of tobacco retailers. They provide local and state governments effective opportunities to protect their citizens from the harmful effects of tobacco and limit youth exposure to tobacco.

Licensing and zoning rules can limit retailer locations and put restrictions on product sales methods and placement. These policies can require all retailers to register their businesses and set zoning restrictions to prevent future tobacco retailers from setting up shop near schools, playgrounds or other youth-frequented places. The requirements for obtaining and maintaining licenses can also include provisions that specifies where, how and what types of tobacco products are sold and can even prohibit the redemption of coupons.

## **Restrictions on Point-of-Sale Marketing, Advertising and Promotions**

Advocates need to raise awareness of the problem by documenting the ubiquity of advertisements and promotions at the retail level. Once awareness of the point-of-sale problem has been raised in the community and among policy makers through store audits, localities can consider policies to restrict all advertising without regard to its content (a “content neutral restriction”) and/or restrict the time, place, and manner (but not content) of tobacco advertising.

In January 2012, Providence, Rhode Island, enacted an ordinance to ban the redemption of coupons for tobacco products and cigarettes, prohibit multi-pack discounts on any tobacco product and prohibit the sale of tobacco products other than cigarettes with characterizing flavors.<sup>70</sup> Both the City Council and the mayor recognized how these promotional strategies make tobacco more attractive and accessible to youth.<sup>71</sup> Not surprisingly, the major tobacco companies, a cigar association, and the National Association of Tobacco Outlets quickly filed a lawsuit against the city.<sup>72</sup>

## **Point-of-Sale Health Warnings**

Point-of-sale health warnings are meant to ensure that both smokers and non-smokers are well aware of the many specific health effects of cigarettes and other tobacco products. This counter-advertising mechanism involves placing written and pictorial warnings of the health impacts of tobacco usage in a retail environment, together with information about cessation services.

To date, three localities have taken action on point-of-sale health warning signs: New York City, Philadelphia, and Jefferson County, AL.

- New York City’s Board of Health in September 2009 required that health warnings and cessation information be placed near the cash register or near the tobacco product display

everywhere tobacco is sold in the city. In June 2010, the regulation was challenged in court by Philip Morris, R.J. Reynolds and Lorillard, the three largest U.S. tobacco companies, as well as a convenience store trade group. In December 2010, the New York City regulation was struck down by a federal judge. According to a January 3, 2011 news update from the Public Health Law Center, “Judge Jed S. Rakoff of United States District Court in Manhattan wrote that although the regulation was well-intentioned, it violated federal law. He said that under the Federal Cigarette Labeling and Advertising Act, only the federal government has the legal authority to regulate the advertising or promotion of cigarettes, and in his view, the signage at issue related to the promotion of cigarettes.” New York City is currently appealing the decision.

- In September and October 2011, Philadelphia’s Board of Health held two meetings on a proposal to require tobacco health warning signs at the point of sale, but no decision has been made.
- Jefferson County, AL, has begun a program in which tobacco retailers have voluntarily agreed to post health warnings in their stores. The United Way of Central Alabama and the Jefferson County Department of Health worked together to create warnings based in part on the new graphic warnings that will be required by the 2009 Tobacco Control Act.<sup>73</sup>

### **Raising Tobacco Prices through Non-Tax Approaches**

Raising the price of tobacco products is the most potent strategy for reducing overall tobacco consumption. When prices go up, fewer kids start using tobacco and more adults try to quit or reduce consumption. Raising tobacco prices is also a public policy that can garner broad public support, especially when monies raised are funneled back into tobacco control or other health programs.

Increasing cigarette excise taxes is the most direct way to raise prices and reduce consumption. However, there are additional strategies to increase the price of tobacco products. It is important to use multiple methods to keep prices high because tobacco companies can easily undermine a single pricing policy with discounting.

Non-tax approaches to raising cigarette prices include:

1. ***Strong tobacco product minimum price laws*** set a floor price for tobacco products, prohibiting tobacco products from being sold for less than this price. Setting a floor price can counteract industry-supported discounts. As of December 31, 2009, 25 states (including Washington, DC) had minimum price laws, with a median markup at the wholesale level of 4 percent and a median markup at the retail level of 8 percent.<sup>74</sup>
2. ***Prohibiting price discounting/multipack offers*** prevents tobacco companies from discounting prices at select stores, select areas, or at select times (e.g., around the time of a

tax hike). This eliminates the industry's ability to target discounts to reach consumers when they are particularly price-conscious.

3. ***Increasing retailer licensing fees*** will likely force retailers to pass on their additional costs to the consumer, thereby raising cigarette prices. These fees should be used to improve enforcement and monitoring of these stores.
4. ***Mitigation fees***, such as cigarette butt litter mitigation fees, increase the overall cost of tobacco products and are used for a specific purpose, not for general revenue. By themselves, these fees may not be large enough to significantly impact tobacco use, but they can help offset industry strategies to reduce price in addition to the primary benefit of reducing litter.
5. ***Disclosure or sunshine laws*** to require tobacco companies to disclose the amount of money they provide for price discounting to retailers for a specific geographic area, such as a city or a state.

### **Restricting Product Placement**

Product placement restrictions – full or partial – require storing tobacco packages out of view of the customer, often under the counter, in closed drawers or covered cabinets.<sup>75</sup> While no government in the U.S. has yet implemented this policy, other countries including Australia, Iceland, Thailand and much of Canada have prohibited tobacco product displays in the retail environment.

## **CONCLUSION**

As this report demonstrates, the point-of-sale has become the dominant channel for the marketing of deadly and addictive tobacco products in the United States. Such marketing provides the tobacco industry with a highly effective way of enticing kids to start using tobacco, encourage continued tobacco use and discourage quitting among current users, target minority communities and portray tobacco products as appealing and acceptable.

In addition, convenience stores have become essential partners with the tobacco industry in fighting tobacco tax increases and other policies to reduce tobacco use.

This powerful alliance between Big Tobacco and convenience stores poses a serious threat to efforts to reduce tobacco use, the leading cause of preventable death in the United States. It is critical that elected officials reject the influence of these special interests and take action to protect our nation's children and health instead. They should do so by adopting policies that include tobacco tax increases, restrictions on tobacco marketing and the other point-of-sale tobacco control policies described in this report. Such actions are critical to continued progress and eventually winning the fight against tobacco use.

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## APPENDIX A: Tobacco Marketing Expenditure Categories

The Federal Trade Commission (FTC) issues reports on annual cigarette and smokeless tobacco marketing expenditures, which are based on data from the major tobacco manufacturers. This report uses the same categories of tobacco advertising and promotion expenditures as the FTC reports and includes expenditures for both cigarettes and smokeless tobacco. It counts as point-of-sale marketing expenditures all advertising and promotion expenditures that occur at the point of sale or that have a significant impact on the retail environment. Utilizing the FTC's descriptions, these categories are as follows:

**Point-of-sale:** Point-of-sale advertisements.

**Price discounts:** Price discounts paid to cigarette retailers or wholesalers in order to reduce the price of cigarettes to consumers, including off-invoice discounts, buy downs, voluntary price reductions, and trade programs.

**Promotional Allowances Retail:** Promotional allowances paid to cigarette retailers in order to facilitate the sale or placement of any cigarette, including payments for stocking, shelving, displaying and merchandising brands, volume rebates, incentive payments, and the cost of cigarettes given to retailers for free for subsequent sale to consumers.

**Promotional Allowances Wholesale:** Promotional allowances paid to cigarette wholesalers in order to facilitate the sale or placement of any cigarette, including payments for volume rebates, incentive payments, value added services, promotional execution, and satisfaction of reporting requirements.

**Promotional Allowances Other:** Promotional allowances paid to any persons other than retailers, wholesalers, and full-time company employees who are involved in the cigarette distribution and sales process in order to facilitate the sale or placement of any cigarette.

**Retail-Value-Added Bonus Cigarettes:** Retail value added expenditures for promotions involving free cigarettes (*e.g.*, buy two packs, get one free), whether or not the free cigarettes are physically bundled together with the purchased cigarettes, including all expenditures and costs associated with the value added to the purchase of cigarettes (*e.g.*, excise taxes paid for the free cigarettes and increased costs under the Master Settlement Agreement).

**Retail-Value-Added Non-Cigarette Bonus:** Retail value added expenditures for promotions involving free non-cigarette items (*e.g.*, buy two packs, get a cigarette lighter), including all expenditures and costs associated with the value added to the purchase of cigarettes.

**Coupons:** All costs associated with coupons for the reduction of the retail cost of cigarettes, whether redeemed at the point of sale or by mail, including all costs associated with advertising or promotion, design, printing, distribution, and redemption.

The FTC has used these categories of marketing expenditures since its report for 2002. Prior to 2002, price discounts and promotional allowances paid to retailers, wholesalers, and others were grouped together under the “promotional allowance” category. When comparing spending between years, this report is careful to count the same categories of spending in each year.


The latest FTC reports on cigarette and smokeless tobacco marketing expenditures, for 2007 and 2008, can be found at:

Cigarette report: <http://ftc.gov/os/2011/07/110729cigarettereport.pdf>

Smokeless tobacco report: <http://ftc.gov/os/2011/07/110729smokelesstobaccoreport.pdf>

## APPENDIX B. Tobacco Company Merchandising Agreements with Retailers

Tobacco companies spend billions of dollars, and convenience stores are more than willing to take it, to ensure that tobacco products are heavily advertised, prominently displayed, and cheaply priced in stores. Through contracts or merchandising agreements, tobacco companies are able to motivate retailers to display, promote, and advertise tobacco products, keep the price of cigarettes low and keep the convenience store dependent on them.



Starting price of Camel cigarettes + Camel SNUS: **\$11.10**

- \$1.91 off in-store discount on Camel cigarettes
- Free SNUS with any Camel purchase manufacturer coupon
- \$2.00 off Camel cigarettes manufacturer coupon

**= FINAL PRICE: \$3.46**

Minneapolis, MN 55407-3634

Register:3 Transaction#1447432  
7/30/2010 3:57:12 PM Adam H.

1 CAMEL MN SILVER BX SINGLE	7.06
1 W208-CAMEL PK (NT)- MN	-1.46
1 9R09-CAMEL PK (NT)- MN	-0.45
1 Manufacturer Tax	-2.00
1 CAMEL SNUS FROST SINGLE	4.04
1 Manufacturer Tax	-4.04
Sub. Total:	\$3.15
Tax:	\$0.31
Total:	<b>\$3.46</b>

This image shows how store discounts (for which stores get reimbursed from tobacco companies under their promotional contracts) and coupons provided directly to consumers by the tobacco companies can reduce the price paid on products to **one-third** of the original price.

It appears that these price incentives and promotions are used by the major tobacco companies to reduce the impact of tobacco tax increases.<sup>1</sup>

Promotional offers on cigarettes

are used by all categories of smokers – especially young adults, women and African Americans – with 35 percent of smokers using promotional offers every time they saw one.<sup>2</sup> According to a U.S. Tobacco Retailer Survey, conducted by Wells Fargo, tobacco companies’ ability to control price, or “pricing power”, has “remained healthy.” As one tobacco retailer put it, “most of the big boys have started putting in deeper discounts, which in effect have negated the price increases.”<sup>3</sup>

Interviews with retailers illustrate how meticulous a merchandising agreement could be:<sup>4</sup>

*“They come in and say I want 45% of your space...they say I will provide the rack/bin and I will pay you 35 cents a pack for a year...you have to maintain the right percentage of their product, put up signage and keep track of your cartons which they pay for.”*  
(Independent convenience store owner)

*“They send a diagram that show where the signs should go.”* (Franchise convenience store owner)

*“Philip Morris has different contracts for different levels for different volume. More volume, the better the contract – the more money you get. Buydowns, percent of display area and placement of display are part of the contract. Some contracts last 30 days, others quarterly, still others last longer. Marlboro is the most demanding.” (Independent convenience store owner)*

Tobacco companies carefully cultivate and train sales representatives who are responsible for explaining the options and opportunities to retailers, negotiating the contracts and enforcing them. According to a Philip Morris sales manual, working out merchandising agreements with retailers is one of the most important aspects of a sales representative’s jobs:

*“One of the more important parts of your job is merchandising PM’s brands effectively to gain optimal product exposure and effective in-store advertising visibility. The more visible our products are to consumers, the more sales we make. Effective merchandising helps the retailers, attracts new customers to our brands and makes you successful in performing your sales mission.”<sup>5</sup>*

Research and real-world experience indicate that tobacco companies used contracts and merchandising agreements successfully to control the retail environment. One study, based on a national sample of retail outlets, found that about two-thirds of retailers participate in at least one cigarette company incentive program and most retailers participate in multiple incentive programs. Convenience stores were the type of store most likely to participate in cigarette company incentive programs. In the study, stores that participated in incentive programs had nearly twice as many marketing materials as those that did not. Stores with incentive programs were also more likely to feature the company’s brands on the top shelf, a highly prized location in the store.<sup>6</sup> Another study found that 62 percent of stores had received slotting/display allowances from tobacco companies and that the allowances received for tobacco products were higher than those received for candy, snack foods, and soft drinks.<sup>7</sup>

Convenience stores make a lot of money off merchandising agreements with tobacco companies. In fact, these agreements are considered essential to a store’s survival. Retailers have noted that buy-downs are important because they bring more customers into the store and stimulate sales.<sup>8</sup> One convenience store owner notes, “We usually have a buydown going on all the time. It rotates around different brands and different companies.”<sup>9</sup>

Statements submitted by the National Association of Convenience Stores (NACS)<sup>\*</sup> to the United States District Court for the District of Columbia in the U.S. government’s lawsuit against the

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<sup>\*</sup> The National Association of Convenience Stores (NACS) is now known as The Association for Convenience and Fuels Retailing.

major tobacco companies<sup>10</sup> provide further evidence of the high value assigned to these agreements, not just by tobacco companies, but by the convenience stores themselves:

*“The majority of NACS members have retail merchandising agreements with at least one cigarette manufacturer and many have more than one agreement. . . . Those with merchandising agreements derive significant revenue from such agreements.” (NACS Submission at 4)*

*“A major component of all Retail Merchandising Programs is the buy-down provision. All Retail Merchandising Program contracts contain buy down provisions, whereby each tobacco manufacturer reimburses retailers for selling its cigarettes at discounted prices. . . . The buy-down provisions are integral to the convenience store business. Cigarette sales typically constitute a large percentage of a store’s revenue, 45% in the case of Ricker Oil Company. Buy-down provisions are essential to the continued viability of a convenience store’s cigarette sales.” (NACS Submission at 11)*

*“The convenience store business model is dependent on the sale of high-margin, high impulse items at the point of sale as well as competitive pricing on cigarettes.” (NACS Submission at 12)*

All of these promotional efforts are undertaken to boost sales for tobacco companies and grow their bottom line. It is true for cigarettes as well as smokeless tobacco and flavored cigars that appeal to kids. The following quotes from industry publications illustrate this point.

***“One thing boosting sales is the promotional efforts of tobacco companies. Manufacturers frequently offer special pricing on two- and three-packs. ‘Snuff comes in five-packs, and we sell a lot of five-packs,’ said Metzinger. Some promotions include free trial pack of snus with a purchased package of cigarettes.”<sup>11</sup>***

***“Cigars are still well behind chew, Audet said, but the segment is plowing forward because of the suppliers’ active and insistent strategies. Suppliers, Audet said, **have been offering 50-cent buydowns and plenty of buy-one-get-one and buy-two-get-one deals, all of which have positively impacted overall category sales.**”<sup>12</sup>***

***“‘The cigar contracts have a clause in place where, if you grow their business, the money that changes hands grows accordingly, so it has evolved as kind of a dual partnership,’ Monaco said.”<sup>13</sup>***

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<sup>1</sup> Pierce, JP, et al., “Tobacco Industry Price-Subsidizing Promotions May Overcome the Downward Pressure of Higher Prices on Initiation of Regular Smoking,” *Health Economics* 14:1061-71, 2005. Chaloupka, F, et al., “USA: Price Cuts and Point of Sale Ads Follow Tax Rise,” *Tobacco Control* 8:242, 1999.



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## APPENDIX C. Excerpts from Cigarette Company Sales Training Manuals on Point-of-sale Marketing

These excerpts illustrate extent to which tobacco companies control tobacco product price, placement, and promotion at the retail level.



# RETAIL LEADERS 2000

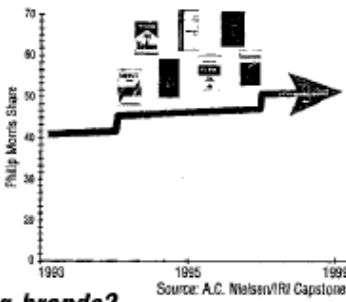

## *Start with Solid Merchandising Principles*

**Let's See...**  
*The Foundation of Retail Leaders 2000*

<u>CORE PRINCIPLES</u>	<u>CORE BENEFITS</u>
1. Put best selling brands in best locations	} <i>What Your Customers Want</i>
2. Use best selling brands to build store traffic	
3. Build brand value - point-of-sale and brand news	
4. Increase return on investment	} <i>What You Want</i>
5. Prevent cigarette access to minors	

**Build a Successful Partnership Based On...**

- **Similar Needs / Wants**  
We both want to satisfy adult smokers' preferences
- **Similar Strengths**  
Our strength is in our brands



Philip Morris Share

Source: A.C. Nielsen/TRI Capstone

**What are your best selling brands?**  
**What do your adult smokers want?**

2082246149

2000

## RETAIL LEADERS

PHILIP  
MORRIS  
U.S.A.

## PLAN CR - LEVEL "D" VALUE GRID

- Maintain an Industry Carton Fixture(s) in 100% of the Carton Fixture Space that is no less than 3 feet wide. The Carton Fixture Space must be in the #1 NSS location or the #1 SS location within the line of sight of the store's staff.
- Merchandise PM USA domestic cigarettes beginning on the top shelf, and contiguously thereafter, until the PM USA occupied space is equal to the PM USA Share of the Carton Fixture Space, subject to the 90% rule. Post an authorized PM USA sign, and only a PM USA sign, at the top of the Industry Carton Fixture(s). Permanent competitive signage may be placed on the Retailer Choice areas of the Industry Fixture(s).
- Maintain an Industry Front-Faced Pack Fixture(s) in 100% of the Pack Fixture Space that is no less than 3 feet wide. The Industry Front-Faced Pack Fixture(s) must be in the #1 NSS staffed location at the transaction area or the #1 SS location within the line of sight of the store's staff, as designated by PM USA.
- Merchandise PM USA domestic cigarettes beginning on the top shelf, and contiguously thereafter, until the PM USA occupied space is equal to the PM USA Share of the Pack Fixture Space, subject to the 90% rule. Post an authorized PM USA sign, and only a PM USA sign, at the top of the Industry Front-Faced Pack Fixture(s). Permanent competitive signage may be placed on the Retailer Choice areas of the Industry Fixture(s).
- Maintain PM USA permanent interior signs in the #1 sign locations. PM USA signs shall be the only permanent interior or exterior cigarette signs. Notwithstanding the foregoing, other manufacturers may place permanent signs on the Retailer Choice area of any Fixture.
- PM USA counter displays shall be the only permanent counter displays in the store.

## Specific Elements

- If the retailer chooses to maintain any temporary counter/checklane display, the retailer must maintain a Marlboro display in the #1 counter/checklane display location. If the retailer merchandises any temporary premium brand counter/checklane display, the retailer must maintain a PM USA premium brand counter/checklane display in the #3 counter/checklane display location. If the retailer merchandises any temporary discount brand counter/checklane display, the retailer must maintain a PM USA discount brand counter/checklane display in the #1 discount counter/checklane display location.
- If any other manufacturer's temporary counter displays offer product in a self-service manner, the retailer must maintain the PM USA counter displays in a self-service manner in the line of sight of the store's staff consistent with applicable laws.
- The retailer may choose to utilize PM USA-supplied inventory storage cabinets. They must be located at the bottom of the fixtures, placed horizontally across the entire Carton Fixture Space, and leave at least 36" of vertical merchandising space.
- PM USA will supply all fixtures or they may be retailer-owned.

## Common Universal Values

- Maintain 2 "We Card" or equivalent signs.
- Accept PM USA new brands as recommended by PM USA.
- Keep all space allocated to PM USA on fixtures, displays, and promotions fully stocked with appropriate PM packings. Rotate PM cartons and packs on a "first in, first out" basis and remove any unsaleables.
- Maintain distribution on PM B&W/private label or other designated brand. If any B&W/private label brand is present.
- Maintain adequate distribution and inventory of PM USA brand packings to satisfy local market demand, subject to the approval of PM USA.
- Retailers who choose to accept PM USA consumer promotions agree to prebook additional inventory for shipment prior to the promotion, offer PM consumer promotions to consumers only, and assemble PM promotion displays and POS as required.
- If retailer chooses to maintain an OPM, it must be PM USA-supplied or retailer-owned. On PM USA-supplied OPMs, feature either permanent cigarette signage provided by PM USA or any non-branded, non-tobacco signage retailer chooses. On retailer-owned OPMs, feature either permanent cigarette signage provided by PM USA or any non tobacco signage retailer chooses.
- Submit velocity reports verifying the store's cigarette sales by brand and packing, in a format satisfactory to PM USA, and authorize cigarette supplier(s) to provide PM USA, on request, shipment data of PM USA products to retailer.
- The retailer may post any temporary or permanent price call-outs from any cigarette manufacturer in any location provided these price call-outs do not obstruct PM USA signs or cigarettes. The retailer may place temporary or permanent channel strips from any cigarette manufacturer within the channels of any fixture provided those channel strips do not obstruct PM USA cigarettes or signs and are not placed immediately below PM USA cigarettes or signs. The retailer may post any temporary signs from any cigarette manufacturer in any location provided these signs do not obstruct PM USA signs or cigarettes.

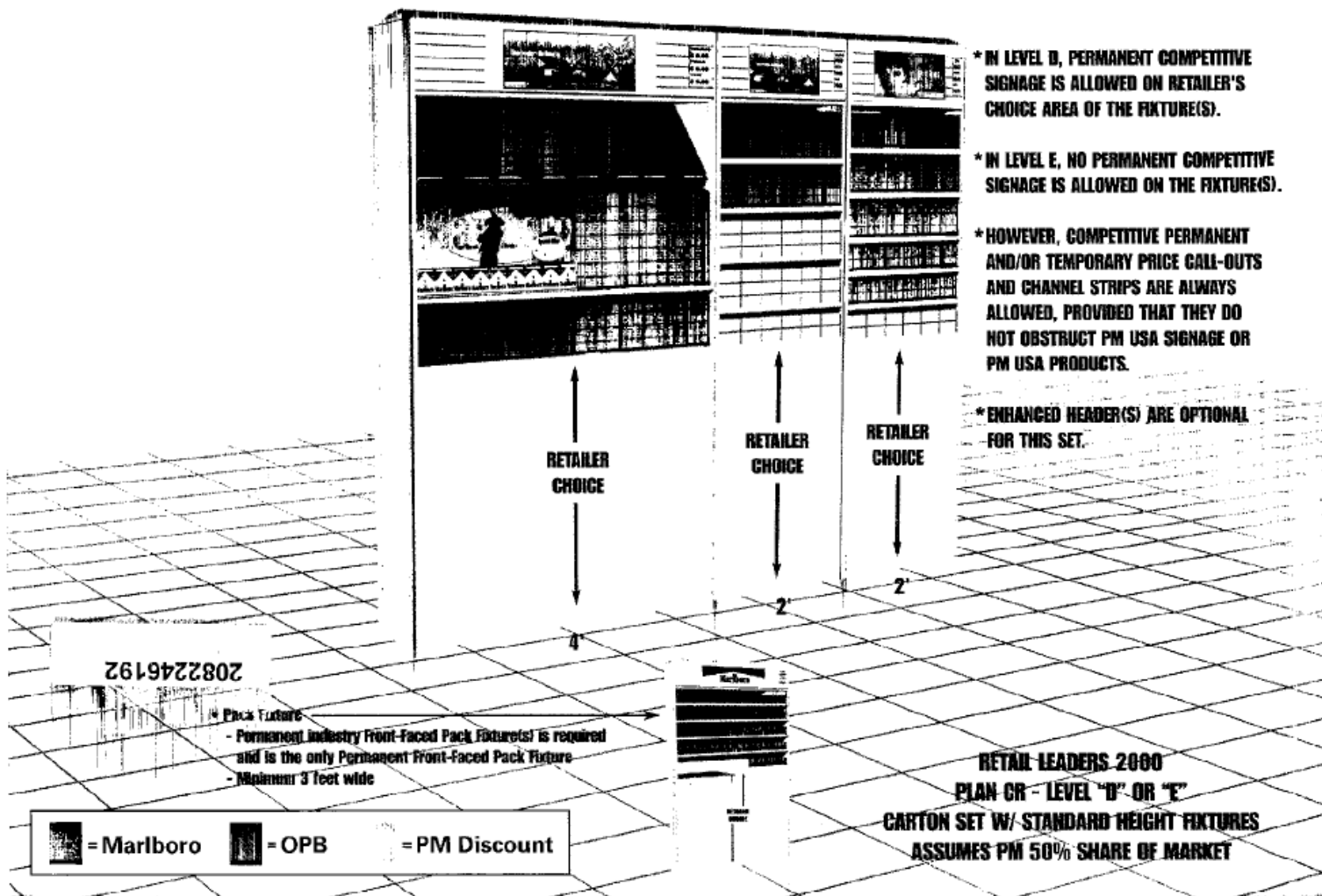
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Program Details

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The information on this Value Grid is a summary of selected terms provided for convenience. You must refer to the Retail Leaders contracts which set forth all of the terms of the Retail Leaders Program.



2000

## RETAIL LEADERS

PHILIP  
MORRIS  
U.S.A.

## RETAIL LEADERS 2000 &amp; MARLBORO PRICE PROMOTIONS

Retail Leaders Participation Level	Growth Funds (Approximate)	National Marlboro Price Promotions
Level E	7 weeks	Yes
CPL 3** (terminates June 30, 2000)	3.5 weeks for 6 months ending 6/30/00 or until terminated	Yes
Base CPL*, CPL 1&2*, Levels A,B,C, and D	Not Available	Yes
Plan PM	Not Available	Approximately 83% of the full schedule
*Base CPL, CPL 2 & CPL 3 accounts are eligible as Retail Leaders for National Price Promotions until June 30, 2000 or their contracts are terminated, whichever comes first		
**CPL 3 accounts can earn and spend Growth Funds until June 30, 2000 or their contracts are terminated, whichever comes first		

Growth Fund 2000 - Policy

- Level E and CPL 3 (CPL 3 only until June 30, 2000) accounts qualify for a Growth Fund budget.
- Growth Funds in 2000 are intended for Marlboro price promotions only.
- **Growth Fund promotions are budget-based.** Commitments with accounts must be based on a quantity multiplied by the allowance rate not to exceed the budget balance amount known at the agreed upon time of execution.
- Growth Funds are intended for use as follows:
  - Promotion of Marlboro brand styles of cartons, packs, and/or multi-packs only.
  - Extension of a national Marlboro price promotion.
  - Increase in the amount of a Marlboro price promotion via an increase to the allowance not to exceed the national Marlboro price promotion allowance for the period as stated in the Monthly Sales Promotion Planner by more than 10¢ per pack or \$1.00 per carton.
  - Support of Every Day Low Price (EDLP) promotions provided one of the following three conditions are met:
    1. Account stops EDLP at least one week before the start of a nationally scheduled price promotion, thereby resuming normal premium brand pricing;
    - or
    2. Account reduces EDLP by at least the amount of the price promotion allowance of the nationally scheduled Marlboro price promotion stated in the Monthly Sales Promotion Planner.
    - or
    3. Account stops EDLP for 3 consecutive weeks in the first half of the year (January 1 - June 30, 2000) and 3 consecutive weeks in the second half of the year (July 1 - December 31, 2000).

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ORIGINAL

Growth Fund

4

2000

## RETAIL LEADERS

PHILIP  
MORRIS  
U.S.A.

## The Fixture Process Checklist

The following is a checklist of activities required to complete a successful fixture installation.

- ☐ Qualify the account using Retail Leaders program guidelines. (e.g., minimum of 50 CPW to qualify for Retail Leaders).
- ☐ Recommend the size of the cigarette department using the Merchandising Guideline Matrix.
- ☐ Visit the account to discuss the recommended department size and location for fixtures, and measure the available space.
- ☐ Select the proper fixtures and shelves for the account. Use the Uniflex Cabinet Calculator and Fixture Guide for Third Party Installations (supplied on the diskettes included with your Fixture Process Manual).
- ☐ Create the Plan-O-Gram (POG) and fill out the Installation Work Order (IWO) in *presented* status for presentation to the account.
- ☐ Revisit the account to agree on a final POG.
- ☐ Submit the POG to your Section Fixture Logistics Manager (SFLM) and finalize your IWO in *ordered* status. The SFLM will process your IWO and send the POG to Madden.
- ☐ Fixtures will be installed within **45 days from the date Madden accepts the IWO**.
- ☐ Installation dates can be viewed in Field Sales Invoicing (FSI) after acceptance from Madden.
- ☐ You will receive a hard copy confirmation from Madden when your IWO materials have been shipped from the Madden warehouse bound for a designated TPI depot.
- ☐ Twenty-four hours prior to installation, the retailer will receive a phone call from TPI to confirm materials and the installation date with the retailer.
- ☐ Twenty-four hours prior to installation, you will receive an Octel confirmation date of installation from your TPI agent.
- ☐ TPI Agent completes the installation and has the retailer sign the IWO.
- ☐ On your next scheduled store visit, verify and update the POS/Fixture Screen in SFA.

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ORIGINAL

Retail Materials



2000

## RETAIL LEADERS

PHILIP  
MORRIS  
U.S.A.

## Merchandising Items

**Marlboro POS** - An asterisk (\*) next to an item indicates that the item can not be placed at retail in Minnesota, Mississippi, Florida, or Texas (Continued)

Item	POS#	KIT#	Total Area (Square Inches of Graphic Only)
"Pull/Please Use Other Door" Decal *	01005	57810	28
"Billy Salute" "Open/Closed" Sign *	01006	57811	221
Lit Pricing Sign - Large	81910	Not Available	793
Lit Pricing Sign - Small	81911	Not Available	440
Fade In/Fade Out	77416	Not Available	677
Edgelit Sign	91005	Not Available	1176
Backlit Sign	91007	Not Available	1075
Open Neon *	91058	Not Available	369
Cigarette Neon	69680	Not Available	560
Illuminated Menu Board *	08655	Not Available	468
Illuminated LED *	12297	Not Available	499

**Metro Marlboro POS**

"Billy Salute" "Open/Closed" Sign *	88386	88255	221
"Billy Salute" Jumbo See-Through Door Decal	07220	57404	1148
"Billy Salute" Metal Signs (3 signs)	07218	57402	376
"Billy Salute" See-Through Door Decal	07221	57405	483

**OPB POS****Window Door Decals**

VS	Open Order	23903	72
VS Menthol	Open Order	23905	72
Merit	Open Order	23902	72
B&H Menthol	Open Order	88496	72
Parliament <sup>1</sup>	Open Order	22756	72

**Metal Signs**

VS	Open Order	76697	187
Parliament <sup>1</sup>	Open Order	22760	386

Parliament Multi - Level Lit Sign <sup>1</sup>	15272	Not Available	324
Parliament Full Flavor Mobile <sup>1</sup>	15068	96407	Center Graphic: 77 Top Graphic: 9
Parliament Full Flavor Sequential Neon <sup>1</sup>	15271	Not Available	Overall Display Area: 148 308

<sup>1</sup>(Only Available in Key Parliament Markets)

ORIGINAL

Fixtures and Permanent POS

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2000

## RETAIL LEADERS

PHILIP  
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U.S.A.

## Merchandising Items

## OPB POS (Continued)

Item	POS#	KIT#	Total Area (Square Inches of Graphic Only)
Counter Flats			
VS	Open Order	10675	185
B&H Menthol	Open Order	90093	135

## Basic POS

Double Sided Window Pricer - Small	12980	95208	500
Double Sided Window Pricer - Large	00432	12301	876
Basic Corrugated Plastic Sign	12894	95207	1536

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ORIGINAL

Fixtures and Permanent POS

## Questions & Answers (cont'd.)

### 40. What are high visibility items and at what Level are they required?

- At least one high visibility item is required for all Level E accounts.
- High visibility items are Point-of-Sale signs selected from a list for placement in contracted Retail Leaders accounts (subject to availability and the restrictions of local law):

These are items currently listed for Retailer Selection.

- |                            |                    |
|----------------------------|--------------------|
| ✓ Cigarette Neon           | ✓ Fade In/Fade Out |
| ✓ Vertical Window Pricer   | ✓ Edgelit Sign     |
| ✓ Horizontal Window Pricer | ✓ Large Lit Pricer |
| ✓ Pump Topper              | ✓ Small Lit Pricer |

- PM USA headquarters may designate additional items that fulfill this requirement.

### 41. What should I do if I find a retailer selling promotions to other retailers or products in non face-to-face transactions (mail order, internet, etc.)?

Cease all promotions with the account and pay only for promotional product sold to legal age adult customers in face-to-face transactions.

### 42. What happens to an account if I find Philip Morris product intended for foreign markets being sold at a store?

Domestic sales of cigarettes manufactured by PM USA for export (or manufactured by or for entities related to PM USA for sale outside the United States) infringe PM USA trademarks and damage PM USA's goodwill. Retailers who sell cigarettes manufactured by PM USA for export (or manufactured by or for entities related to PM USA for sale outside the United States) will be ineligible for participation in the Retail Leaders Program and in PM USA consumer promotions, and, effective 1/1/00, will remain ineligible for participation in the Retail Leaders Program for twelve (12) months following the retailers' discontinuation of such sales.

### 43. What should I do if an account splits their store down the middle by building a wall and wants to contract with PM in one store and with other tobacco companies but not PM in the other store?

The account manager must require that Retail Leaders contract values are in place in the entire store. The contract states that accounts who divide one store literally or in effect must fulfill the requirements of the Retail Leaders program for the entire undivided store.

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## Module 2, Lesson 4

### Job Aide: Selling vs. Execution

The 3 P's		
	Selling	Execution
<b>Product Availability:</b> <i>Ensuring that adequate products are available in each account for consumers to purchase.</i>	<ul style="list-style-type: none"> <li>Analyze store data to determine which brands are selling in each account and which brands present the greatest opportunity for growth.</li> <li>Demonstrate the financial benefits of proper inventory levels to retailers, and work with them to ensure that proper inventory levels are maintained.</li> <li>Make sure that the right brands are in distribution in each account.</li> <li>Ensure that enough product is on hand to prevent out-of-stocks.</li> <li>Sell new brands.</li> </ul>	<ul style="list-style-type: none"> <li>Fill displays.</li> <li>Rotate stock.</li> <li>Identify out-of-date product.</li> <li>Check the inventory; if low or out-of-stock, ask the retailer to order additional product.</li> </ul>
<b>Promotion:</b> <i>Ensuring that our brands are properly promoted at retail.</i>	<ul style="list-style-type: none"> <li>Educate retailers about the financial and business-building benefits of our promotion programs.</li> <li>Sell the right RJR promotions, in the right quantities to grow RJR share.</li> <li>Sell the right RJR pricing strategies to grow RJR share.</li> <li>Evaluate the success/failure of promotions for future planning.</li> </ul>	<ul style="list-style-type: none"> <li>Place current pricing information for promotions; verify that the correct pricing is displayed.</li> <li>Place promotion-specific displays with proper point-of-sale advertising.</li> <li>Place coupons and/or VPR stickers for promotions.</li> <li>Ensure that promotions are displayed in a timely manner.</li> </ul>
<b>Presence:</b> <i>Ensuring that a brand's image and message are properly and consistently communicated to consumers.</i>  <i>"Big Brand Presence"</i>	<ul style="list-style-type: none"> <li>Determine which brands should be displayed (priority brands).</li> <li>Sell the appropriate permanent/temporary displays and merchandisers in the appropriate locations.</li> <li>Sell permanent advertising pieces, such as clocks and neon signs, in an appropriate position to impact RJR presence.</li> </ul>	<ul style="list-style-type: none"> <li>Place and maintain permanent and temporary displays with correct point-of-sale advertising and price communication.</li> <li>Place and maintain merchandisers.</li> <li>Install and maintain permanent signage, such as clocks and neon signs.</li> </ul>

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## Pricing Strategies

*Pricing strategies* are a key tool for maintaining RJR share. In this section, you will learn about the following three pricing strategies:

- ❖ *DORAL Ceiling or Savings Pricing Strategies*
- ❖ *Full-Price Gap Strategies*
- ❖ *SALEM Pricing Strategies*

These strategies are designed to avoid share losses by defending RJR's business against competitive discounting. When used effectively, these strategies will be the foundation on which we build future business-building efforts.

The importance of managing the price relationship between RJR full-price and competitive brands at retail cannot be underestimated. These relationships are based on sophisticated statistical models, and when executed properly, have proven to be successful at defending our business and maintaining our share. Our purpose, simply stated, is to *prevent RJR smokers from switching to competitive products due to their price promotions.*

*"In fact, we know that managing price gaps within your accounts will have a greater and more immediate impact on our share than any other retail activity."*

It is important to understand that these strategies are defensive in nature and are designed to protect our business, not to grow our business in the long term.

### RJR Brand Styles and the Gap

RJR full-price brands are sensitive to the branded savings category. This means that RJR full-price smokers are more likely to switch to branded savings products, such as GPC or BASIC, if the gap between the full-price brands and the savings brands goes beyond 35 cents per pack or \$3.50 per carton. Therefore, if the branded savings competitor is discounting, we want to discount also as a defensive measure to keep the gap at 35 cents, plus or minus a nickel.

**Non-Self-Service Method:** An attendant issues cigarettes. Non-self-service is the less effective of the two merchandising methods but is still more desirable than no visibility of our products at all.

The main reason or **advantage** for offering this method of behind-the-counter or non-self-service merchandising is maximum security to minimize stolen product, or where local ordinances prohibit self-service.

The **disadvantages** of non-self-service merchandising are:

- ◆ Limits promotional moneys. (retail display allowances)
- ◆ Limits visibility and exposure.
- ◆ Reduces potential sales and profits.
- ◆ Increases customer inconvenience.
- ◆ Does not necessarily use cigarettes as a traffic builder.
- ◆ Requires clerk time and labor.
- ◆ Does not eliminate internal pilferage.
- ◆ Dilutes the impact of impulse purchases.

### **Merchandisers**

Merchandisers are units that hold cartons and packs. RJR offers a complete line of carton and package merchandisers to meet a particular retail account's specific merchandising needs. Merchandisers are available in various sizes, styles, and capacities. Merchandisers can also be called fixtures.

### **Displays**

Displays are vehicles used to gain additional exposure: **P**resence. All displays should be placed in a preferred location to display product, which aids in developing brand awareness, promoting consumer trial, and providing an opportunity for impulse sales. Displays can be free-standing on the floor and counter or placed as an attachment to a package merchandiser. Displays are also available in various sizes, styles, and capacities that can be placed according to the retail outlet's needs.

You should review all of the available display and merchandising brochures.



## MERCHANDISING/PRESENCE LEVEL I

### REQUIREMENTS

- 1 Full Price Display
- 1 Savings Display
- 40 Pack Facings Minimum
- Share of Signage No Less Than RJR SOM
- Lighted Signage

### PRIMARY FULL PRICE DISPLAY

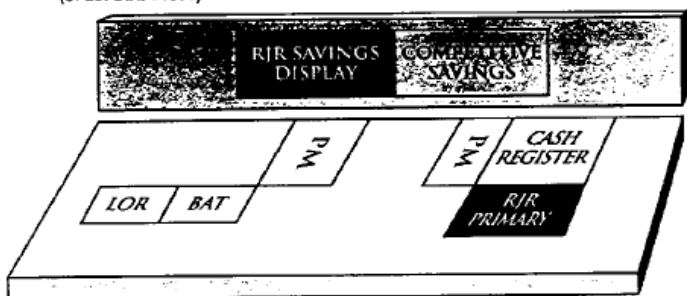


- 2 - 40 Pack Tray System III Display
- Enhanced Lighted Top Sign
- Enhanced Lighted Tray Kit (SPEC. DIA. #1801)

### DORAL COUNTER DISPLAY



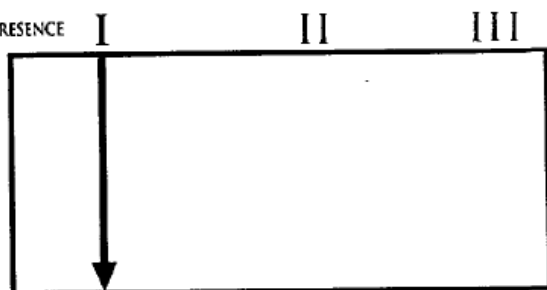
- Doral 9 - Tray Counter Display
- Enhanced Top Sign
- Non-Illuminated
- Item #484001



## RETAIL ACCRUAL PROGRAM LEVEL I

### MERCHANDISING/PRESENCE

On which accruals are based with RJR, the retailer's share of the promotional program is determined by the level of merchandising/presence. The accrual is based on the number of packs of the brand displayed in the store.



### RETAIL ACCRUAL

**I**  
EDLP  
DISADVANTAGED  
.10c

**II**  
EDLP  
PARITY  
.20c

**III**  
RJR + EDLP  
EXCLUSIVE  
.25c

LEVEL I, II OR III MERCHANDISING/PRESENCE IS THE KEY TO ENTRY INTO THE TOTAL PROMOTIONAL PACKAGE

RDA  
MERCHANDISING/  
PRESENCE  
PROGRAM

+

### CONSUMER DOLLARS

#### RETAILER ACCRUAL PROMOTIONS

- Partners Promotions
- Co-Operative Retail Program

#### NATIONAL WORKPLAN PROMOTIONS

#### FULL PRICE/SAVINGS DISCOUNTING

=

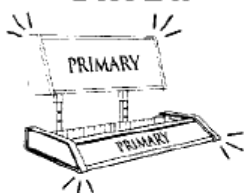
A  
COMPLETE  
RETAIL  
PACKAGE  
FOR OUR  
PARTNERS

## MERCHANDISING PRESENCE LEVEL III

### REQUIREMENTS

- 2 Full Price Displays
- 1 Savings Display
- Lighted Signage
- 40 Pack Facings Minimum
- Only Two Manufacturers Participating in Programs
- Share of Signage/Pack Facings Significantly Greater than RJR SOM - Share of Market

#### PRIMARY FULL PRICE DISPLAY



- 1 - 40 Pack Tray System III Display
- Enhanced Lighted Top Sign
- Enhanced Lighted Tray Kit (SPEC. DIA. #1802)

#### SECONDARY FULL PRICE DISPLAY



- 2 - 40 Pack Tray System III Display
- Enhanced Lighted Top Sign
- Enhanced End Caps (SPEC. DIA. #1800)

#### SAVINGS DISPLAY



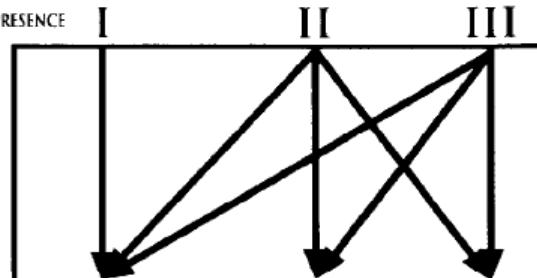
- Doral 9 - Tray Counter Display
- Enhanced Top Sign
- Non-Illuminated
- Item #484001



\*In Some Markets P. Mark's May Mandate An Inside Position On Secondary Displays.

## RETAIL ACCRUAL PROGRAM LEVEL III

### MERCHANDISING/PRESENCE



### RETAIL ACCRUAL

**I**  
EDLP  
DISADVANTAGED  
.10¢

**II**  
EDLP  
PARITY  
.20¢

**III**  
RJR - EDLP  
EXCLUSIVE  
.25¢

LEVEL I, II OR III MERCHANDISING/PRESENCE IS THE KEY  
TO ENTRY INTO THE TOTAL PROMOTIONAL PACKAGE

RDA  
MERCHANDISING/  
PRESENCE  
PROGRAM

+

CONSUMER  
DOLLARS  
RETAILER ACCRUAL  
PROMOTIONS  
• Partners Promotions  
• Co-Operative Retail  
Program  
NATIONAL WORKPLAN  
PROMOTIONS  
FULL PRICE/SAVINGS  
DISCOUNTING

=

A  
COMPLETE  
RETAIL  
PACKAGE  
FOR OUR  
PARTNERS

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# Not Your Grandfather's Cigar

*A New Generation of Cheap and Sweet Cigars  
Threatens a New Generation of Kids*



# Not Your Grandfather's Cigar

A New Generation of Cheap & Sweet Cigars Threatens a New Generation of Kids

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March 13, 2013

Campaign for Tobacco-Free Kids

[www.tobaccofreekids.org](http://www.tobaccofreekids.org)

# Not Your Grandfather's Cigar

## A New Generation of Cheap & Sweet Cigars Threatens a New Generation of Kids

### EXECUTIVE SUMMARY

An explosion of cheap, flavored cigars in recent years has driven a two-fold increase in annual sales of cigars in the United States – from 6 billion cigars to more than 13 billion in the last 12 years – and changed the demographics of cigar smoking. Cheap, flavored, small cigars that appeal to young people are marketed aggressively and have resulted in high school kids and young adults being twice as likely as their older counterparts to be cigar smokers.

These trends come at a time when some in Congress want to prohibit the Food and Drug Administration (FDA) from regulating certain kinds of cigars rather than pushing it to do so. A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act), gave the FDA immediate authority to regulate cigarettes, smokeless tobacco, and roll-your-own tobacco, and authorized the agency to extend its jurisdiction to all other tobacco products, including cigars. The FDA has announced its intention to do so, but has yet to act.

In the absence of FDA regulation of cigars, cigarette manufacturers have manipulated some cigarette brands to qualify as small or even large cigars. By doing so, they have evaded a ban on flavored cigarettes and other regulations intended to prevent kids from using tobacco products and protect public health. In addition, to avoid higher federal taxes and keep their products cheap, some cigarette and small cigar manufacturers have manipulated the weight of their products to qualify for lower tax rates charged on large cigars. Both actions make these manipulated products more appealing and more affordable to our nation's kids.

This report documents how the proliferation of new cigar products and their marketing has changed the market in ways that threaten our kids and establishes the need for common-sense regulation of cigars. It also explains how tobacco tax policy should be reformed to help prevent kids from falling prey to the lure of cheap, sweet cigars.

### **The Cigar Landscape**

- Cigars today are no longer the “big stogies” that our grandfathers used to smoke. Instead, the cigar category consists of products that vary widely in sizes, shapes, flavors, and price points, making them appealing to a broader audience, including kids.
- The common terms used to describe today's products – “premium cigars,” “cigarillos,” “blunts,” and “little” or “small cigars” – are not mutually exclusive because there is a lot of overlap in the characteristics of different products that allow some to fall in multiple, or in between, categories.

## **Not Your Grandfather's Cigar**

- Annual cigar sales have more than doubled in the past decade. This has been driven by a dramatic increase in the number and types of small cigar products that are flavored, packaged, placed, promoted, and priced to appeal to young people.
- High school students are about twice as likely (13.1 percent v. 6.6 percent) as adults to report smoking a cigar in the past month, and young adults (18-24 year olds) are even more likely (15.9 percent) to do so. Every state that reports cigar use data for youth shows a higher cigar smoking rate for high school kids than for adults.
- Each day, about 3,050 kids under age 18 try cigar smoking for the first time – compared to about 3,650 who try cigarettes. In at least six states – Florida, Georgia, Maryland, Massachusetts, Rhode Island, and Wisconsin – youth cigar smoking now equals or surpasses cigarette smoking.
- Flavored cigars are the most popular among youth and young adults. One state survey showed that nearly three-fourths of its high school cigar smokers smoked flavored cigars.
- Today's cigar market is dominated not by large, traditional cigars hand-rolled in whole tobacco leaf, but by an ever-expanding variety of products of all sizes that include filters, flavors and names (e.g. "Da Bomb Blueberry," "Pinkberry") with obvious appeal to kids.
- The most popular cigar brands among youth come in a dizzying array of candy and fruit flavors that underscore how different these products are from your grandfather's cigar. Swisher Sweets flavors include peach, strawberry, chocolate, grape, and blueberry. White Owl flavors include grape, strawberry, wild apple, pineapple, peach, and watermelon.
- A lack of regulation of cigars by the FDA enables manufacturers to modify cigarettes to evade the ban on flavored cigarettes and to aggressively market cheap, sweet cigar products that appeal to youth. In addition to being flavored and packaged attractively, they are displayed prominently and sold cheaply.
- Between 2001 and 2008, the sale of cigars increased by 87 percent. However, that was driven almost entirely by the sale of small cigars, which increased by 158 percent, while large cigar sales increased by only 46 percent.
- Cigar sales continued to increase between 2008 and 2011. While technically this appears to be driven by an increase in sales of cigars classified as "large," in actuality it was because small cigar makers slightly increased the weight of their products to meet the definition of large cigars and avoid a higher federal tax on small cigars implemented in 2009 (these "large cigars" continue to be of similar size and shape as cigarettes). Other data sources show that sales of so-called premium large cigars actually declined during this time period.



## **Health Harms from Cigars**

- According to the National Cancer Institute and the U.S. Surgeon General, regular cigar smoking causes cancer, heart disease, and chronic obstructive pulmonary disease (COPD).
- Cigar smoke contains the same toxins as cigarette smoke. Any difference in risks between cigars and cigarettes is likely attributable to differences in frequency of use and the fact that not all cigar smokers inhale. However, many new cigar products are more like cigarettes and therefore are more easily smoked and inhaled like cigarettes.
- Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.

## **Manipulation to Avoid Regulation and Taxation**

- In recent years, tobacco companies have manipulated their products to avoid regulation and taxation. Federal and state laws distinguish between cigarettes and cigars based on the composition of the wrapper and the weight of the product, while the distinction between small and large cigars is determined by weight.
- To circumvent the FDA's ban on fruit- and candy-flavored cigarettes that appealed to kids, some cigarette makers have added tobacco to the wrapper and weight to their products so they meet the definition of small or large cigars, despite still being sold in packs of 20 like cigarettes. These products come in various flavors including wild berry, "Pinkberry," and lemonade.
- In addition to avoiding the ban on flavorings, these manipulated cigarettes have also escaped other FDA regulations, including a ban on deceptive terms like "light" and "low-tar" and a requirement that cigarettes be kept behind the counter and out of reach of kids.
- Some small cigars and cigarettes have added weight to their products to meet the legal definition of large cigars. As a result, they not only avoid the flavor ban, but are taxed at a lower rate. Some of these "large cigars" are still sold with 20 in a pack and with prices as low as 88 cents per pack.

## **The Need for Regulation of Cigars**

- The Tobacco Control Act gave the FDA's Center for Tobacco Products the authority to regulate all tobacco products. It gave immediate jurisdiction to the Center to regulate cigarettes, smokeless tobacco, and roll-your-own (RYO) cigarette tobacco and established specific regulations for each (e.g., bans on flavored cigarettes and deceptive terms like "light" and "low-tar").

- The Tobacco Control Act also gave the FDA the authority to assert its jurisdiction over all tobacco products through a rule-making process. The FDA has announced its intention to regulate all tobacco products, but has yet to take action to do so.
- The law gives the FDA flexibility to determine what specific regulations to apply to each type of tobacco product. The FDA would not be required to impose the same regulations over cigars as cigarettes or to regulate all types of cigars in the same way. The agency would base its regulations on what is necessary to best protect the public health, taking into account the harms caused by different products, who uses the products, how the products are marketed, and other evidence-based criteria.
- Given their success in marketing their products to kids and young adults, it is not surprising that some in the cigar industry are aggressively pressuring Congress to exempt them from any regulation by the FDA. No tobacco product should be exempt from regulation. The FDA should be able to take actions to protect children and consumers from the harms caused by every tobacco product. Consumers should be informed about the contents and health consequences of all tobacco products, and the FDA should be able to prevent practices that appeal to kids, mislead consumers, and/or increase the addictiveness or harm of tobacco use.
- While supporters say these bills would exempt only so-called premium large cigars, their definitions could exempt some machine-made cigars from FDA oversight and would not prohibit flavored cigars from qualifying for an exemption. The bill also would create incentives for tobacco companies to further manipulate their products to escape regulation, as they have done in the past.

# Not Your Grandfather's Cigar

## A New Generation of Cheap & Sweet Cigars Threatens a New Generation of Kids

Between 2000 and 2012, there has been an explosion of cheap, flavored cigars that has more than doubled the sale of cigars in the United States – from six billion cigars to more than 13 billion a year.<sup>1</sup> While cigar smoking conjures images of middle-aged and older men puffing on a stogie, today's cigar smoker is more likely to be a kid or young adult smoking a small cigar or cigarette-like product labeled as a cigar. That product is usually smaller (sometimes even the size of a cigarette), often fruit- or candy-flavored, and nearly always cheap. In fact, high school students are about twice as likely as adults (13.1 percent vs. 6.6 percent) to report smoking a cigar in the past month, and young adults (18-24 year olds) are even more likely (15.9 percent) to do so.<sup>2</sup> These statistics are disturbing. Tobacco companies know that most smokers start as kids, and they are taking advantage of loopholes in the regulation and taxation of cigars to design and market products in ways that clearly appeal to kids.

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act), gave the Food and Drug Administration (FDA) immediate authority to regulate cigarettes, smokeless tobacco, and roll-your-own tobacco, and authorized the agency to extend its jurisdiction to all other tobacco products, including cigars.<sup>3</sup> The FDA has announced its intention to do so,<sup>4</sup> but has yet to act.

This report documents the proliferation of new cigars and their use, the marketing of these products, and the manipulation of these products to avoid product regulations, marketing restrictions, and tobacco taxes. It points to the need for the FDA's Center for Tobacco Products to assert jurisdiction over all tobacco products so it can take action to prevent marketing to kids, consumer deception and product changes that make cigars more appealing to youth, more addictive, or more harmful. It also demonstrates the need to equalize tax rates across tobacco products to discourage tobacco companies from manipulating products to make them affordable to young people.

## The Cigar Landscape

The longstanding view that cigars are just large stogies smoked primarily by older men no longer holds true as a new generation of cigars has taken over the marketplace. Today, cigars come in a wide variety of sizes, flavors, and price points; as a result, they appeal to a broader, more diverse market, including kids. The different types of cigars are often described using the following terms, but as the images on the following page show, there is enough overlap in product characteristics that it is quite difficult to delineate between the categories. Appendix A also attempts to describe the products in each category.



Sample of Cigar Products. Images are not to scale.

- **Premium Cigars:** Often are traditional, hand-rolled cigars made with whole-leaf tobacco. These products can vary in size and weight, but tend to be large and are generally more expensive.
- **Cigarillos:** Medium-sized sticks that are often wrapped in homogenized tobacco leaf (HTL), which is made from ground tobacco, combustible additives, and water. Some more recent products advertise that they are made with “natural leaf” wrappers. These products often come in a wide variety of flavors and package sizes. While cigarillos used to refer to the smaller versions of traditional cigars, more often cigarillos are cheaper and machine-made.
- **Blunts:** Wider than cigarillos, machine-made and often wrapped in HTL. These products may also be advertised as having “natural leaf” wrappers. Like cigarillos, these products often come in a wide variety of flavors and package sizes.
- **Little or Small Cigars\*:** These products are comparable to cigarettes in that they are roughly the same size and shape as cigarettes and usually include an internal cellulose acetate filter. However, because they contain some tobacco remnants in the paper wrapper, they are categorized separately from cigarettes and are excluded from many states’ definitions of cigarettes. These products can also come in a variety of flavors and are usually sold singly, or in packs of 12 or 20. These products look like “filtered cigars,” but filtered cigars usually weigh slightly more. Further blurring the lines, more and more products that contain an internal filter are wrapped in whole leaf, or what looks like a whole leaf. There are a few small cigars that are wrapped in whole leaf and lack a filter, but those are a very small part of this group.

For tax and other policy purposes, two criteria distinguish cigars from cigarettes and large cigars from little cigars: the wrapper and weight. For the most part, a product that includes any tobacco in the wrapper is considered a cigar and not a cigarette. Three pounds per 1,000 is the common weight threshold to distinguish between “large” and “little” cigars. As detailed above, however, there is tremendous variation within these categories.

## Cigar Consumption is on the Rise

Although cigarette smoking has been slowly declining in the United States, total U.S. consumption of cigars (i.e., large cigars, cigarillos, and little cigars) has increased dramatically since 1993, reversing a decline that had persisted for most of the 20<sup>th</sup> century.<sup>5</sup> Between 2000 and 2012, cigar consumption increased by 124 percent while cigarette consumption declined by 33.8 percent.<sup>6</sup>

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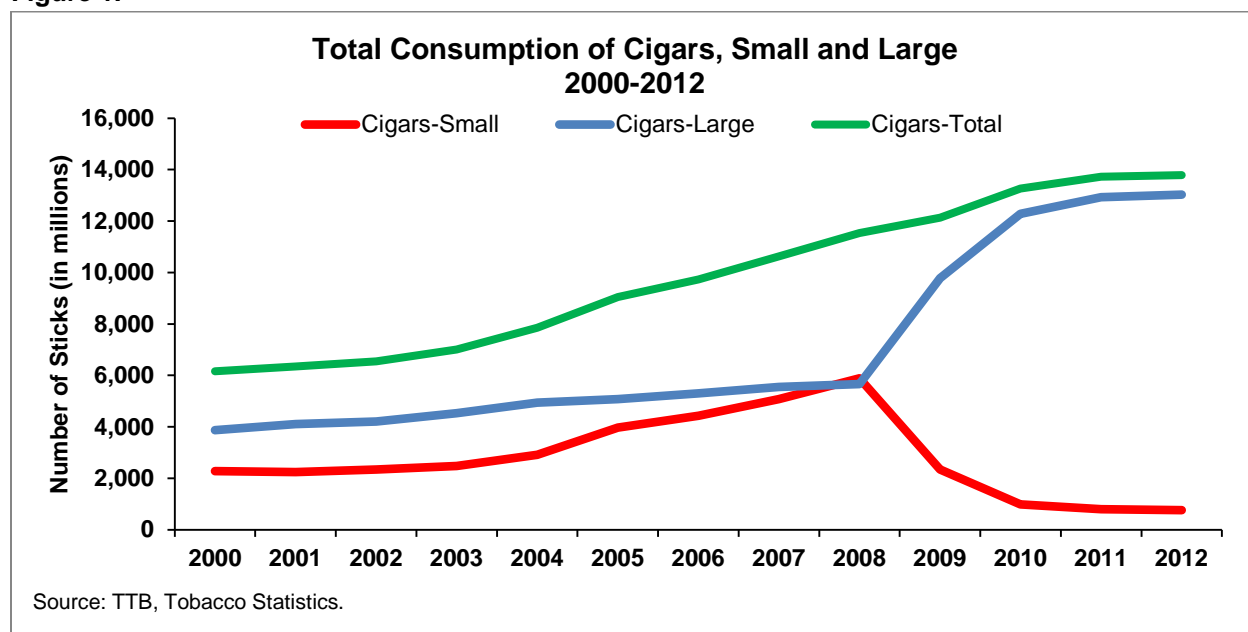
\* This report will use the term little and small cigars interchangeably depending on the source being cited. The federal tax code calls these products “small cigars” instead of “little cigars,” which is the more common term at the state level.

## Little/Small Cigars vs. Large Cigars

In the last few decades, sales of little cigars have increased at a much faster rate than all other tobacco products and have accounted for almost all of the growth in the cigar category. As shown in Figure 1, total cigar consumption increased by 87.4 percent between 2000 and 2008. However, small cigar consumption increased by 157.6 percent during that time, while large cigar consumption increased by only 46.1 percent.<sup>7</sup>

A 2009 increase in the federal tax on small cigars prompted some cigar and cigarette makers to add just enough weight to their products to meet the federal tax definition of large cigars and avoid the higher tax on cigarettes and small cigars. Thus, the dip in small cigar sales in 2009 is more than countered by the even larger growth in large cigar sales. Both the U.S. Centers for Disease Control and Prevention (CDC) and the U.S. General Accounting Office (GAO) attributed the change to the tax disparity, not a real increase in the sale of large cigars. In fact, data from Euromonitor (an industry market research firm) show a decline in U.S. retail sales of large cigars\* each year from 2008 to 2011.<sup>8</sup> It is clear that small cigars, including products which were classified as small cigars prior to 2009, are driving the growth in overall cigar sales.

Figure 1.



\* Euromonitor defines "large cigars" as "cigars weighing over ten pounds per thousand and measuring 6.5 inches in length and above."



## Who is Smoking Today's Cigars?

Because today's cigar is not your grandfather's cigar, today's cigar smoker is not your grandfather – or even your father. Teens and young adults are much more likely than adults 25 years and older to report smoking cigars.

Survey data show that kids are more likely than every age group except 18-24 year olds to smoke today's cigars. In fact, cigar smoking\* is the second most common form of tobacco use among youth, and recent surveys show cigar smoking now equals or surpasses cigarette smoking among high school students in at least six states for which data are available: Florida, Georgia, Maryland, Massachusetts, Rhode Island, and Wisconsin.

According to the national 2011 Youth Risk Behavior Survey (YRBS), 13.1 percent of all high school students and 17.8 percent of high school boys currently smoke cigars.<sup>10</sup> Each day, *about 3,050 kids* under 18 try cigar smoking for the first time – compared to the 3,650 kids who try cigarettes.<sup>11</sup>

There are also indications that cigar smoking is increasing among some specific groups. One recent survey showed that cigar use among African-American high school students increased

At the state level, every single state that has cigar use data from the 2011 YRBS reports a high school cigar smoking rate higher than the adult cigar smoking rate reported in the 2009-2010 NATS.

significantly – by more than 60 percent – between 2009 and 2011.<sup>12</sup> And while past-month cigarette smoking among high school students has declined significantly in recent years – from 23 percent in 2005 to 18.1 percent in 2011 – past-month cigar use in this population has remained relatively constant (14.0 percent in 2005 and 13.1 percent in 2011).

As noted previously, in six states, cigar smoking is even more prevalent than cigarette smoking. For example, data from the 2012 Florida Youth Tobacco Survey

show that 11.4 percent of high school students currently use cigars while 10.1 percent smoke cigarettes.<sup>13</sup> In Montana, 18.1 percent of high school boys currently smoke cigarettes, but 22.1 percent smoke cigars.<sup>14</sup> In Wisconsin, 15.5 percent of high school boys currently smoke cigarettes, but 20.8 percent smoke cigars.<sup>15</sup> In Maryland, 12.2 percent of high school boys currently smoke cigarettes, but 16.1 percent smoke cigars.<sup>16</sup> A 2008 study in Ohio found cigars to be the most popular tobacco product among high school students.<sup>17</sup>

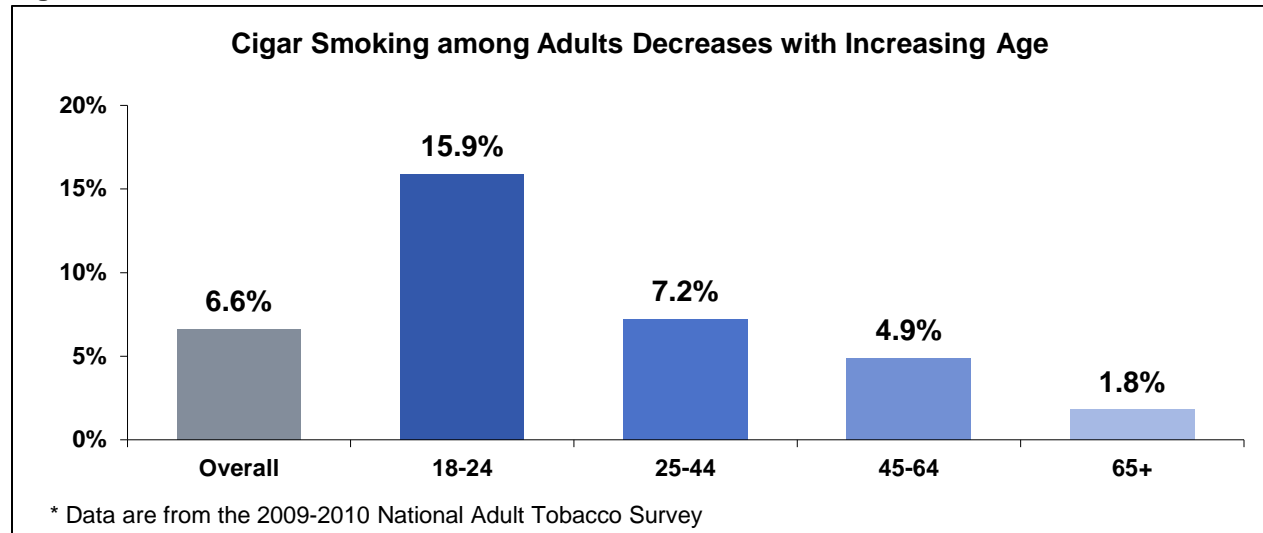
### Top 5 Cigar Brands among 12-17 Year Olds<sup>9</sup>

1. Black & Mild
2. Swisher Sweets
3. White Owl
4. Dutch Masters
5. Phillies

\* Cigars in this section are defined as cigars, cigarillos or little cigars.

According to the 2009-2010 National Adult Tobacco Survey (NATS), 6.6 percent of adults (18+ years old) smoked cigars in the past month.<sup>\*</sup> Young adults aged 18-24 are much more likely than older adults to be cigar smokers – with use decreasing dramatically by age (Figure 2).<sup>18</sup>

**Figure 2.**



Like the use of other tobacco products, cigar use is also higher among lower income, less educated and lesbian, gay, bisexual, and transgender (LGBT) groups in the adult population. For example, 10.3 percent of those with incomes under \$20,000, 16.2 percent of those with a GED and 12.2 percent of the LGBT community report past month cigar smoking – compared to the national number of 6.6 percent. In terms of ethnicity, non-Hispanic Blacks and non-Hispanic Other have the highest rates of cigar use, at 9.2 percent and 12.0 percent, respectively.

While the data on cigar use among adults and youth are not directly comparable because they come from different surveys, the measures are similar, and they suggest that cigar use is much more prevalent among youth and young adults. The 2011 YRBS reports a higher prevalence of cigar smoking among high school students (13.1 percent) compared to the adult cigar smoking rate from the NATS (6.6 percent).<sup>†</sup> Further, cigar use among adults decreases with increasing age, with younger adults much more likely to be cigar smokers.

At the state level, every single state that has cigar use data from the 2011 YRBS reports a high school cigar smoking rate higher than the adult cigar smoking rate reported in the 2009-2010 NATS. The high school data may even underestimate cigar use, as kids who smoke cigarette-like products labeled as cigars may report that as cigarette smoking.

<sup>\*</sup> Cigars in this section are defined as cigars, cigarillos or very small cigars that look like cigarettes.

<sup>†</sup> The 2011 YRBS asked, "During the past 30 days, on how many days did you smoke cigars, cigarillos, or little cigars?" while the 2009-2010 NATS asked, "During the past 30 days, on how many days did you smoke cigars, cigarillos, or very small cigars that look like cigarettes?"

## ***Use of Flavored Cigars***

Much of the growing popularity of little cigars comes from the explosive growth in flavorings, such as candy, fruit, chocolate, and various other kid-attracting tastes. Nielsen market scanner data show that sales of flavored little cigars increased by 23 percent between 2008 and 2010.<sup>19</sup>

Not surprisingly, flavored cigars are the most popular among youth. These include the brands Black & Mild, Swisher Sweets, White Owl blunts and cigarillos, and Phillies Sugarillo Cigarillos, which have been advertised with the tagline, “when sweet isn’t enough.” Data from the National Survey on Drug Use and Health (NSDUH) show that Black & Mild, White Owl, Phillies, and Swisher Sweets are among the most popular cigar brands among all youth aged 12-17.<sup>21</sup> Further, the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets.<sup>22</sup>

“While different cigars target a variety of markets, all flavored tobacco products tend to appeal primarily to younger consumers.”<sup>20</sup>

*Tobacco Reporter*, April 2007  
(tobacco industry publication)

The most popular cigar brands among youth come in a dizzying array of candy and fruit flavors that underscore how different these products are from your grandfather’s cigar. Swisher Sweets flavors include peach, strawberry, chocolate, grape, and blueberry. White Owl flavors include grape, strawberry, wild apple, pineapple, peach, and watermelon. The names of some cigar products also reveal the target market – “DA Bomb Blueberry” and “Pinkberry” are just a few examples.

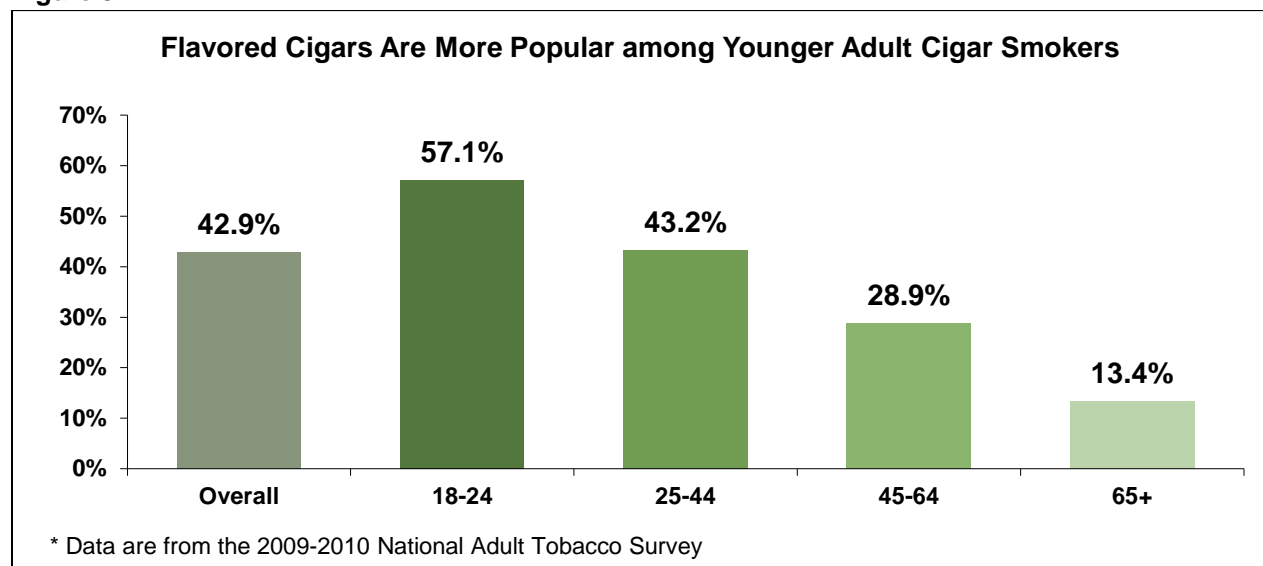
State youth tobacco use surveys that have collected data on flavored cigar use confirm that flavored cigars are popular among kids. The Florida Youth Tobacco Survey found that 17.5 percent of high school students and 5.2 percent of middle school students had tried flavored cigars and that the majority of high school cigar smokers (72.8 percent) use flavored cigars.<sup>23</sup> In Maryland, almost 80 percent of high school cigar smokers used flavored cigars.<sup>24</sup>

While complete data on the impact of flavored cigars on youth initiation still need to be collected and analyzed, research on the now-banned flavored cigarettes shows that they were being tried and used primarily by the young.<sup>25</sup> As a cigar retailer commented, “The flavors attract customers.”<sup>26</sup>

Data from the 2009-2010 NATS suggest that flavored cigar products are much more popular among young adults than among older ones (Figure 3). Nationally, 42.9 percent of adult cigar smokers report smoking flavored cigars. With few exceptions, use of flavored cigars among adult cigar smokers is also highest among those groups with the highest overall cigar use rates, including young adults aged 18-24 (as noted above), those with incomes below \$20,000 (51.7 percent), those with a GED (65.3 percent), those in the LGBT community (67 percent), and

women (60.8 percent).<sup>27</sup> Except for women, all of these groups also had higher overall cigar smoking rates, which suggests that flavored cigars are driving cigar use among these groups.

**Figure 3.**



## Health Harms from Cigar Use

Cigar smoke contains the same toxic and carcinogenic constituents found in cigarette smoke. Thus it is primarily the way the products are used – whether the smoke is inhaled and how often one smokes them – that creates differential risk among the various products. To the extent that some “cigars” are simply cigarettes disguised as cigars and smoked just like cigarettes, the health risks are likely very similar to smoking cigarettes. In the end, any cigar use increases health risks compared to not using tobacco at all.

According to the National Cancer Institute and the U.S. Surgeon General, regular cigar smoking causes cancer of the oral cavity, larynx, esophagus and lung, as well as heart disease and chronic obstructive pulmonary disease (COPD).<sup>28</sup> Cigar smokers are also at increased risk for an aortic aneurysm. Cigar smokers who inhale absorb smoke into their lungs and bloodstream, and deposit tobacco smoke particles in their lungs as well as their stomachs and digestive tract.<sup>29</sup> Daily cigar smokers, particularly those who inhale, have an increased risk of heart disease and COPD.<sup>30</sup> In addition, all cigar smokers, whether they inhale or not, expose their lips, tongue, and throat to smoke and its toxic and cancer-causing chemicals.<sup>31</sup>

Many youth and adult users are now smoking small cigars much like cigarettes, and a number smoke both cigarettes and cigars. These dual users are more likely than cigar-only smokers to inhale cigar smoke.<sup>32</sup> At least one study found that cigar use is common among high school cigarette smokers, and another study found that 12.5 percent of adult cigarette smokers also smoke cigars.<sup>33</sup>

## The Aggressive Marketing of Cigars Using the “4 Ps”

Because cigars are not currently regulated by the FDA, cigar makers are free to use the classic “four Ps” of marketing – product, placement, promotion, and price – to effectively market their products to kids.

### The Product

The cigar category is made up of products that come in a wide variety of weights, sizes, wrappers, and tips. In addition, the flavors and packaging of the products are additional characteristics that can appeal to kids.

#### Examples of Flavors and Flavor Names of Cigar Products

Grape	Cherry	Honey
White Grape	Wild Cherry	“Hush Honey”
Strawberry	“Pinkberry”	Lemonade
Peach	“SwagBerry”	Wine
Banana	“DA Bomb Blueberry”	Wine Grapes
Pineapple	“Maybach Melon”	Bourbon
Blueberry	Banana Split	Cognac
Raspberry	Vanilla	Peach Cognac
Apple	“White Vanilla”	“Cosmo”
Green Apple	“Vanilla Sky”	Pina Colada
Sour Apple	Chocolate	“Rozay Wine”
Wild Apple	“Choco Mint”	Appletini
Watermelon	“Sugarillos”	Bellini
Mango	“Sweets”	
Coconut	“Green Sweets”	
Wild Berry	“Green”	

**Flavors.** As detailed in this report, cigars are currently available in many flavors, including candy and fruit flavors that appeal to kids. These flavors are even described in youthful jargon, such “Purple Haze,” “Hush Honey,” and “Banana Split.”<sup>34</sup> Adding to their appeal, flavored cigars often have related smells, which customers can experience in the retail environment before purchase.

Although flavored cigars have been around for a century, an article in a convenience store trade magazine described the rapid rise of modern fruit and candy flavors in the last decade. Further, the article acknowledges, “While the demand for variety is still out there, four flavors stand as the core performers in the fruity-flavored category: grape, wine, strawberry and peach. According to Nielsen c-store data, this core four drives 84% of flavored cigar sales.”<sup>35</sup> Further, one distributor stated, “The demand for flavored cigars has migrated from the larger cigar to the cigarillo-sized, smaller cigar.”<sup>36</sup>

“More likely, flavored cigars serve as a bridge to premium cigars for the uninitiated, something to be smoked as an entryway into the world of cigar smoking. For the novice, a simple, sweet and easily identifiable flavor (honey or cherry, for example) is an easier step than moving into a box marked Cuban-seed Corojo.”

*Cigar Aficionado*, July/August 2005  
(tobacco industry publication)

Flavors are used in the entire cigar market. A 2005 article in *Cigar Aficionado* describes flavored premium cigars as “the fastest-growing segment of the industry.” The added flavors are applied through various methods, including applying the flavoring to the leaves, adding syrups, or infusing flavors in other manners. Flavors provide variety for the current cigar smokers in this segment, but as the article points out, “More likely, flavored cigars

serve as a bridge to premium cigars for the uninitiated, something to be smoked as an entryway into the world of cigar smoking. For the novice, a simple, sweet and easily identifiable flavor (honey or cherry, for example) is an easier step than moving into a box marked Cuban-seed Corajo.”<sup>37</sup>

Although manufacturers continue to claim that the use of different flavors is merely to provide adults with variety (as they did with flavored cigarettes), data show that 12-17 year olds prefer using cigar brands that come in the most flavors.<sup>38</sup>

**Packaging.** Many cigars, especially flavored ones, come in shiny, colorful packages that boldly communicate the fruit and candy flavors that appeal to kids. This can be especially effective when placed in prominent locations in the store.



A sample of cigar packaging. Images are not to scale.

In addition, except in certain localities, cigars can be sold in any package size, from individual sticks to packs of two, five, or even 20 for the cigarettes disguised as cigars. Cigarillos or bigger cigars have traditionally been sold in packs of four or five. However, in recent years, cigar companies have reduced the size of their cigarillo packages to single sticks or packs of two.<sup>39</sup> One executive of a retail chain stated, “Right now our singles, and our two- and three-pack cigars represent about 81% of the whole cigar volume. People are looking for value in this economy and are more apt to buy individually than buying at a four- or five-pack price.”<sup>40</sup> The smaller packages enable these products to be sold at lower prices, which make them more accessible to youth, who are much more price-sensitive than adults.



## Placement

Most cigars are sold in convenience stores rather than in cigar shops.<sup>41</sup> Unlike cigarettes and smokeless tobacco, which under the 2009 Tobacco Control Act must be placed behind the counter or otherwise inaccessible to consumers, brightly packaged, flavored cigars can be placed on store countertops where they are easily seen or picked up by kids. These products may even be placed right next to candy. In addition, their placement on countertops enables self-service, unlike



A counter display for flavored White Owl cigars near Easter candy at a convenience store in Washington, DC.

cigarettes and smokeless tobacco, which can only be sold through an attendant. A convenience store trade magazine article stated, “Key retailers are taking advantage of the fact that cigars can still be out on the floor at c-stores in many states.”<sup>42</sup>

## Promotion

Posters and signs advertising cheap and flavored cigar products cover retail stores, promoting the products with low prices and making their use seem normal and acceptable.

Celebrities have become involved in promoting cigar products. Snoop Lion (formerly Snoop Dogg) is a spokesperson for Executive Branch cigarillos. Other musicians popular with youth glorify the use of cigars in their songs, sometimes referencing “blunting,” the practice of adding marijuana to the cigar.

## Price

Price is one of the most important determinants of tobacco use, especially among youth, but it also affects quitting among adults. As with cigarettes, the lower the price, the more appealing the product to youth, who generally have less disposable income



An advertisement for a price deal for single flavored cigarillos at a store in Clinton, NC. Photo courtesy of Counter Tobacco, [www.countertobacco.org](http://www.countertobacco.org).

than adults and are thus more responsive to price.

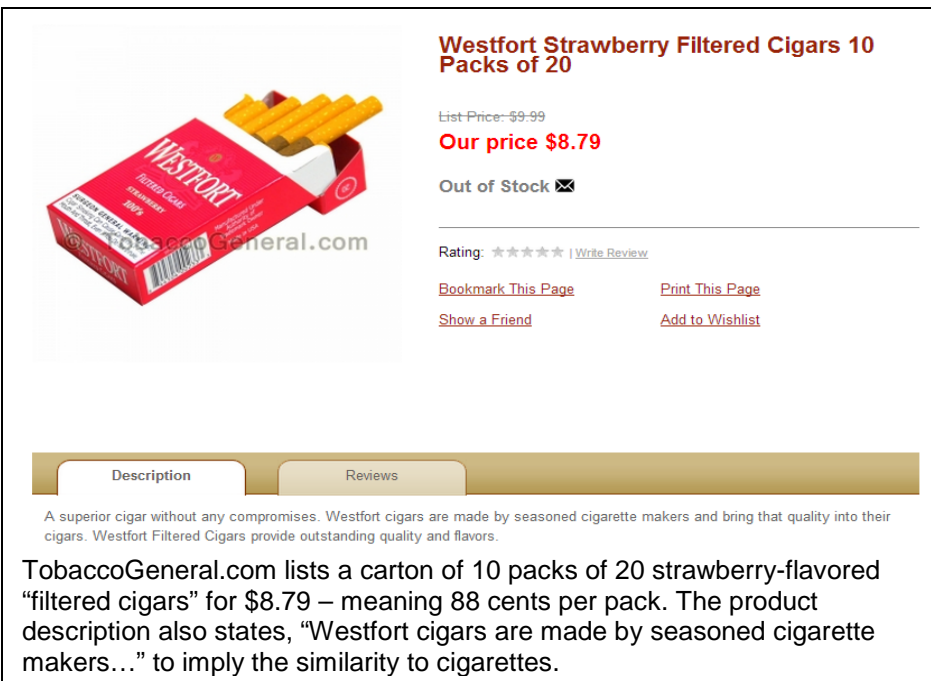
Some cigars are sold for much less than cigarettes. In fact, market research has found that “a pack of 20 cigarillos can generally be found for a much lower price than even economy cigarettes.”<sup>44</sup> It is likely that this report was referring to little cigars or cigarettes disguised as cigars because cigarillos are not typically sold in packs of 20. More importantly, the disparity in price encourages product switching among smokers who might otherwise quit. An industry analyst has observed, “People are using them as a cheaper alternative to cigarettes.”<sup>45</sup> And in fact, retailers are suggesting to customers that they do so. One retailer executive stated, “Little cigars are an easy product to suggest to price-sensitive customers. If anybody complains about the cigarette prices all we have to say is, ‘Hey, have you

“Little cigars are an easy product to suggest to price-sensitive customers. If anybody complains about the cigarette prices all we have to say is, ‘Hey, have you tried these?’ You hold them up; they look like a cigarette pack. You tell them, ‘Yeah, the wrapper is brown, but don’t knock them until you try them.’ We do have quite a lot of people convert to them.”

-- Andrea Myers, executive vice president of Kocolene Marketing LLC<sup>43</sup>

tried these?’ You hold them up; they look like a cigarette pack. You tell them, ‘Yeah, the

wrapper is brown, but don’t knock them until you try them.’ We do have quite a lot of people convert to them.”<sup>46</sup>



**Westfort Strawberry Filtered Cigars 10 Packs of 20**

List Price: \$9.99  
**Our price \$8.79**

Out of Stock ✉

Rating: ★★★★★ | [Write Review](#)

[Bookmark This Page](#) [Print This Page](#)  
[Show a Friend](#) [Add to Wishlist](#)

**Description**

A superior cigar without any compromises. Westfort cigars are made by seasoned cigarette makers and bring that quality into their cigars. Westfort Filtered Cigars provide outstanding quality and flavors.

TobaccoGeneral.com lists a carton of 10 packs of 20 strawberry-flavored “filtered cigars” for \$8.79 – meaning 88 cents per pack. The product description also states, “Westfort cigars are made by seasoned cigarette makers...” to imply the similarity to cigarettes.

Cigarette and cigar makers have manipulated their products to avoid federal and state taxes in order to make them cheaper. Flavored “large cigars” have been advertised for as little as 88 cents for a pack of 20.

## Manipulation of Cigarettes and Cigars to Circumvent Regulations

Taking advantage of the current lack of regulation of cigars, tobacco companies have avoided cigarette regulations, such as the federal ban on flavored cigarettes, by making small changes to

their cigarettes so that they technically qualify as “cigars.” They have also made small changes to the weight of some of their products to take advantage of lower tax rates for large cigars.

The federal government and most states define cigarettes and little cigars by the contents of the wrapper and the weight of the stick, so to change a cigarette to a small cigar, manufacturers merely mix tobacco remnants into the cigarette’s paper wrapper. To change a small cigar into a large cigar, manufacturers just add some weight to the stick (often by making the filter heavier) so that they weigh more than three pounds per 1,000 sticks, the most common weight threshold in federal and state cigarette and little cigar definitions.



Manipulating products to avoid regulation is not new. R.J. Reynolds developed Winchester little cigars in the late 1960s and early 1970s to avoid the threat of a broadcast advertising ban on cigarettes and higher cigarette prices from increasing cigarette tax rates. Although R.J. Reynolds developed these products to meet the technical “cigar” definitions, they wanted these products to have the look and feel of cigarettes to appeal to cigarette smokers. As one study showed, the company sought to “look for additional clues as to how to position Winchester closer to cigarettes” in its product marketing.<sup>47</sup> Similarly, noting the “considerably lower taxation for cigars/cigarillos than for manufactured cigarettes,” one Philip Morris document stated that a cigarillo-type product should be developed that is “acceptable taste-wise for usual cigarette smokers.”<sup>48</sup>

The intentional similarity between cigarette-like cigars and traditional cigarettes is effective. Surveys show that this marketing strategy is working – when smokers were asked what type of *cigarette* brand they usually smoke, some participants actually named *little cigar* brands like Phillies, Swisher Sweets, and Captain Black.<sup>49</sup> In addition, data from the 2011 National Survey on Drug Use and Health show that when youth aged 12-17 were asked to name their usual *cigarette* brand, some responded with brands of little cigars or cigarillos.<sup>50</sup>

## ***Avoiding the Federal Flavored Cigarette Ban***

To circumvent the FDA's ban on fruit- and candy-flavored cigarettes,<sup>\*</sup> several flavored cigarette manufacturers modified their products so that they would be considered cigars, not cigarettes. In doing so, they also escaped other FDA regulations, including a requirement that cigarettes be placed behind the counter. The 2012 Surgeon General's report, *Preventing Tobacco Use Among Youth and Young Adults*, noted that flavored cigarettes such as Sweet Dreams re-emerged as flavored cigars.<sup>51</sup>



Cigar manufacturers are already considering ways to circumvent possible restrictions on flavored cigars – by substituting names that allude to flavors instead of actual descriptive flavor names. A cigar manufacturer executive stated, “The expectation that many observers have about flavors is that the FDA will make manufacturers shift from using names of specific descriptive flavors such as vanilla, chocolate or cherry, to using ‘concept names’ such as, for instance, ‘purple passion.’”<sup>52</sup>

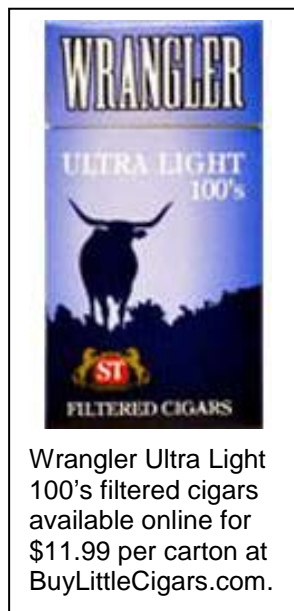
These changes have effectively blurred the lines between cigarettes and cigars. In 2012, more than two years after the FDA's prohibition on flavored cigarette sales, nearly five percent of Florida high school students responded that they currently used flavored cigarettes. More likely, the students being surveyed were mistaking flavored little cigars as cigarettes.<sup>53</sup>

## ***Avoiding the Federal Ban on Misleading Descriptors***

The 2009 Tobacco Control Act also prohibited the use of misleading terms such as “light” and “low-tar” for cigarettes. Since cigars are not yet subject to the Tobacco Control Act, some filtered cigars come in “light” or “ultra light” varieties. In August 2012, U.S. Representative Henry Waxman sent a letter to FDA Commissioner Margaret Hamburg with internal tobacco industry documents detailing how tobacco companies have been circumventing the cigarette descriptors ban by becoming little or filtered cigars.<sup>54</sup>

<sup>\*</sup> Specifically, Section 907 of the Tobacco Control Act states, “Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.”





The cigarette companies first introduced these descriptors in the 1950s and 1960s to relieve smoker's fears about the health consequences of smoking and discourage quitting. "Light" and "low-tar" cigarettes were no safer than full-strength brands, yet the tobacco companies marketed and sold them as safer products. A 2006 study published by the *American Journal of Public Health* found that smokers who switched to light cigarettes to reduce health risks were about 50 percent less likely to quit smoking than those who smoked non-light cigarettes.<sup>55</sup> By continuing to make such claims about cigars, tobacco companies perpetuate what U.S. District Court Judge Gladys Kessler found as "false and misleading statements regarding low tar cigarettes in order to reassure smokers and dissuade them from quitting."<sup>56</sup>

### ***Avoiding Higher Federal and State Cigarette and Little Cigar Taxes***

In 2009, Congress increased federal tobacco taxes and equalized the tax between small cigars and cigarettes at a rate of \$1.0066 per 20-pack. At the federal level, small cigars are defined as those weighing less than three pounds per 1,000 sticks; any cigar weighing more than that weight threshold is considered a "large cigar" and is subject to the federal cigar tax, currently at 53.72 percent of the manufacturer's price, with a cap of 40.26 cents per cigar.

The lower federal tax on large cigars compared to cigarettes and small cigars makes these products more affordable to price-sensitive youth and encourages cigarette smokers to switch to virtually identical cigars, rather than quit.

"Price matters. It makes sense to have a large cigar because it's a cheaper product. It doesn't get any more complicated than that."

-- Paul Marquardt, marketing director for Prime Time International<sup>57</sup>

In its March 2011 report, the GAO found that the higher tax rates on cigarettes and small cigars compared to large cigars "created an incentive for producers to modify products to qualify as large cigars according to TTB [U.S. Alcohol and Tobacco Tax and Trade Bureau]."<sup>58</sup> And a retailer magazine article boasted, "When it came to [federal] taxation..., manufacturers simply bumped up the sizes of their cigars to make them unaffected large cigars."<sup>59</sup> Representative Waxman's August 2012 letter also discussed how tobacco companies changed their products to avoid the higher federal tax on little cigars.<sup>60</sup> Most recently, *Bloomberg News* reported that Cheyenne International added sepiolite, a clay substance also used in cat litter, to its filters to create "heavy weight" cigars and avoid higher tax rates.<sup>61</sup>

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- Dark Hawk Filtered Cigars
- Dark Horse Filtered Cigars
- Hats Off Filtered Cigars
- Murano Filtered Cigars
- Muriel Filtered Cigars
- Noble Filtered Cigars
- Racer Filtered Cigars
- Red Buck Filtered Cigars
- Richwood Filtered Cigars
- Santa Fe Filtered Cigars
- Seneca Sweets Filtered Cigars
- Smoker's Best Filtered Cigars
- Stampede Filtered Cigars
- Supre Sweet Filtered Cigars

Wrangler Filtered Cigars

Wrangler Filtered Cigars are made in the U.S.A. by Sunshine Tobacco. With a quality blend of tobacco it is a great product for any smoker switching over to filtered cigars from cigarettes. Here is what one customer said about Wrangler Light:

"It's very hard to believe these aren't cigarettes! Compared to the Seneca 100 lights that I have been smoking, these Wrangler light cigars can't be beat! And one can't beat the fantastic price either compared to cigarettes! One can't afford NOT TO try them - they're a sure bet!"

So come and be part of the growing population of Filtered Cigar smokers who enjoy a great smoke at a great price!

Wrangler Full Flavor Filtered Cigars

\$14.99

★★★★☆

Average Customer Rating: 3 out of 5

Wrangler Light Filtered Cigars

\$14.99

★★★★★

Average Customer Rating: 4.5 out of 5

Wrangler Menthol Filtered Cigars

\$14.99

★★★★★

Average Customer Rating: 5 out of 5

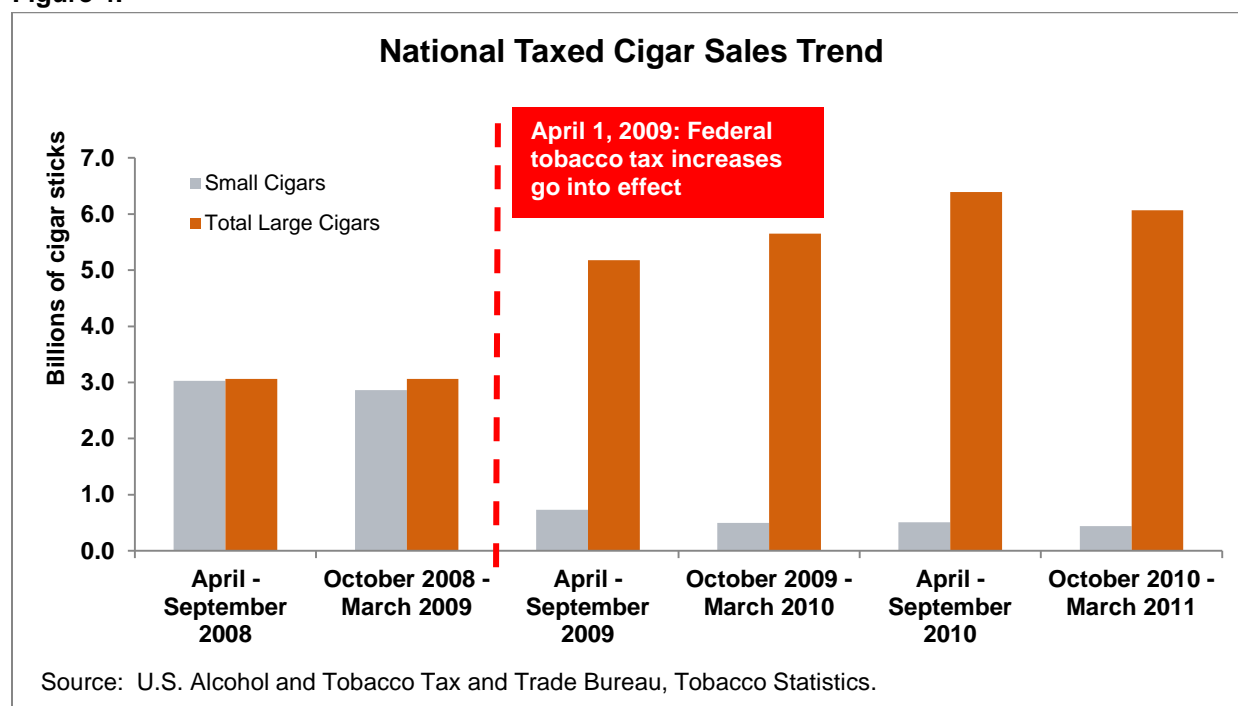
This website includes comments from a user comparing the price of Wrangler filtered cigars to cigarettes. It states, "It's very hard to believe these aren't cigarettes! Compared to the Seneca 100 lights that I have been smoking, these Wrangler light cigars can't be beat! And one can't beat the fantastic price either compared to cigarettes! One can't afford NOT TO try them – they're a sure bet!"

As a result of these tax avoidance strategies, sales of large cigars increased, while sales of small cigars decreased, even though there was actually little change in the mix of products sold (Figure 4). The shift was not due to a sudden increase in people smoking the traditional "stogies," but rather to an increase in the products that, because of the manipulated weight, qualified for the large cigar category.<sup>62</sup> These sales data reinforce results from a 2004 study of adult cigar use in New Jersey before and after the state's 2002 cigarette tax increase, which concluded that "a small but notable proportion of recently quit cigarettes smokers tried cigars, substituted cigars for cigarettes, or remained tobacco users in the form of cigars."<sup>63</sup>

Not Your Grandfather's Cigar | 16



Figure 4.



## Cigars Harm Health and Must be Regulated Based on Scientific Evidence and Without Political Interference

Given the serious health risks associated with cigar use and the appeal of these products to kids, it is critical that clear steps be taken to address this growing public health problem. At a minimum, all tobacco users, including cigar smokers, deserve to know what is in their products and to expect that the products are not changed in ways that make them more harmful or addictive.

### ***Federal Regulation***

The FDA should quickly assert jurisdiction over all tobacco products, as authorized by the Tobacco Control Act. The Tobacco Control Act gives the FDA flexibility to determine what specific regulations to apply to each type of tobacco product. The FDA would not be required to impose the same regulations over cigars as cigarettes or to regulate all types of cigars in the same way. Some provisions, such as registration, would automatically apply to all newly-regulated products.<sup>64</sup> Otherwise, the FDA would base its regulations on what is necessary to best protect the public health, taking into account the harms caused by different products, who uses the products, how the products are marketed, and other evidence-based criteria. Any regulations would have to undergo a public rulemaking process in which all parties would have the right to comment.

The FDA has announced that it intends to issue regulations asserting jurisdiction over cigars and all tobacco products.<sup>65</sup> But it has not yet done so, nor has it stated which regulatory provisions it proposes to apply to which products.

By regulating all tobacco products, the FDA can prevent tobacco companies from exploiting regulatory loopholes as they have done since enactment of the Tobacco Control Act and the 2009 tax increase. Without oversight, cigar makers could make their products more hazardous and more addictive, not to mention more appealing to kids, all without the knowledge of cigar smokers or health agencies. Congress should allow the FDA to move forward in determining the appropriate oversight for each type of tobacco product, including cigars, based on the science and without political interference.

### ***Federal and State Taxation***

Increasing the tax rates of all cigars to the same rate as the excise tax on cigarettes would reduce the use of lower-taxed tobacco products. At the very least, there should be a minimum tax rate for all cigars that is equal to the cigarette tax rate, to ensure that all cigars are adequately taxed and that cigarettes cannot masquerade as cigars to escape taxation. These improvements to the tax system can be implemented at the state and federal level.

“It’s cheaper, so it’s more in the grasp of kids.”

-- Nik Modi,  
senior tobacco analyst, UBS<sup>66</sup>

### ***Other State and Local Policies***

States and localities also have the authority to regulate how cigar products are marketed and sold. States can restrict sales of cigar products with flavors that appeal to youth; require that cigar products be placed behind the counter (and prohibit self-service displays) like cigarettes and smokeless tobacco products; require minimum pack sizes of four or more cigars per package; and/or require a minimum price on cigar products. More detail about state and local policies is provided in Appendix B.

## **Cigar Industry’s Efforts to Exempt Cigars from Regulation**

As this report demonstrates, cigar use is becoming more prevalent, kids and young adults are smoking cigars at the highest rates and manufacturers are targeting kids with cheap, sweet-flavored cigars. Yet some cigar manufacturers and retailers are asking Congress to exempt many of these products from any regulation by the FDA.

### ***Recent Efforts to Exclude Cigars from FDA Regulation***

Legislation was introduced in late February 2013 in the U.S. House of Representatives (H.R. 792) to exempt certain cigars from regulation by the FDA. The bill would prohibit FDA from issuing any regulation of “traditional large and premium cigars” no matter how significant the

benefit to public health or how little the cost to cigar manufacturers or retailers. The science-based process created by the Tobacco Control Act to determine the appropriate regulatory structure for tobacco products would be undermined, and FDA would be prohibited from providing any oversight over these cigars. FDA would be prevented from implementing even basic public health protections such as registration and measures to reduce youth access to these products.

The bill is similar to legislation that was introduced in 2011 but with a somewhat different definition of “traditional large and premium cigar.” The new definition, like the previous bill, would likely include cigars that are not commonly considered “premium” cigars. The new bill would not only exempt hand-made cigars from FDA oversight, but also some machine-made cigars. The bill could even exempt cigars with strawberry, grape, cherry or other flavors that appeal to kids. The number of cigars that would be exempt from FDA’s jurisdiction would likely increase over time as cigar manufacturers modify their products or change their manufacturing processes to qualify for the exemption from FDA oversight. Their recent actions show they are all too willing and able to modify their products to avoid regulations or higher tax rates.

Even if legislation included a definition that would only exclude so-called “premium” cigars, it would not be appropriate to exempt these cigars from FDA oversight. Federal agencies oversee virtually all products that Americans consume. For example, FDA requires food manufacturers under its authority to disclose ingredients, follow rules for making health claims and for the use of additives, and adhere to good manufacturing practices. FDA requires that drugs and medical devices are safe and effective and are not mislabeled or adulterated. FDA also regulates vaccines, animal food and drugs, and cosmetics. Yet H.R. 792 would exempt a product that is known to cause serious harm to health from any oversight by FDA.

Cigars have been shown to be harmful to health. FDA should have the authority to implement common sense rules to protect the public from these products.

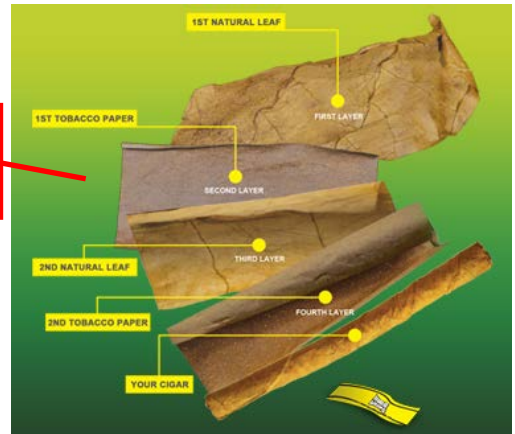


- Wrapped in whole leaf
- Weighs >6 lbs per 1,000 sticks



- Wrapped in whole leaf & HTL\*
- Weight unknown

- Wrapped in HTL and "100% natural wrapper"
- Weight unknown



- Wrapped in whole leaf
- No filter
- Weighs <3 lbs per 1,000 sticks



- Wrapped HTL
- Weighs >6 lbs per 1,000 sticks



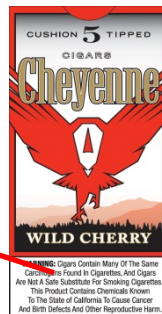
- Wrapped HTL
- Weighs >6 lbs per 1,000 sticks



- Wrapped HTL
- Weighs >6 lbs per 1,000 sticks



- Wrapped in HTL
- Internal filter
- Weighs >4 lbs per 1,000 sticks



- Wrapped in HTL
- Internal filter
- Weighs >4 lbs per 1,000 sticks



- Wrapped in whole leaf
- Internal filter
- Weighs <3 lbs per 1,000 sticks



- Labeled as "filtered cigar"
- Wrapped in paper with tobacco remnants
- Internal filter
- Weighs >3 lbs per 1,000 sticks



- Labeled as "little cigar"
- Wrapped in paper with tobacco remnants
- Internal filter
- Weighs <3 lbs per 1,000 sticks

Descriptions of some cigar products. Images are not to scale.

\* HTL = homogenized tobacco leaf, which is made from ground tobacco, combustible additives, and water.

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## Appendix A. Categories of Cigar Products

This table attempts to place cigar products into four categories. However, as discussed in the body of the report, there is a lot of overlap in product characteristics that makes it difficult to delineate between categories without exceptions.

	Premium	Cigarillos	Blunts	Little Cigar/Small Cigar/Filtered Cigar
<b>Wrapper</b>	100% whole leaf	Usually HTL <sup>*</sup> , sometimes whole leaf	Usually HTL, sometimes whole leaf	Paper with tobacco remnants
<b>Manufacturing Process</b>	Hand-rolled	Usually machine-made	Usually machine-made	Machine-made
<b>Filler</b>	100% whole leaf	Usually ground tobacco and additives	Usually ground tobacco and additives	Ground tobacco and additives
<b>Weight (per 1,000 sticks)</b>	Varies between 3 lbs. and more than 40 lbs.	Varies between 5 lbs. and 9 lbs.	Varies between 8 lbs. and 20 lbs.	Less than 5 lbs.
<b>Filter</b>	No	No	No	Like cigarettes
<b>Flavorings</b>	Some	Many	Many	Many

<sup>\*</sup> HTL = homogenized tobacco leaf, which is made from ground tobacco, combustible additives, and water.

## Appendix B. State and Local Regulation of Cigar Products

**State and Local Regulation.** Regulation of cigars at the state level includes taxation and policies related to the sale of cigars.

States tax cigars per stick or as a percentage of price (either wholesale, manufacturer, or retail price). Some state cigar tax rates differ depending on the type of cigar, while others apply the same tax rate across all cigars, and some states specifically tax little cigars at the same rate as cigarettes. Some states include a maximum tax rate (also called a “tax cap”) on cigars. Two states, Florida and Pennsylvania, do not tax cigars at all, while New Hampshire only taxes non-premium cigars\*. In most cases, cigars are taxed at lower rates compared to cigarettes.

States have regulated the sale of cigars in a variety of ways. Some states and localities have passed policies that restrict the sale of cigars, including prohibiting flavored cigar sales or requiring minimum pack sizes on cigars. Limiting or prohibiting the sale of flavored cigars would reduce the attractiveness of the products to youth, while requiring minimum pack sizes would make the products less accessible by youth, since the prices would be higher. Not surprisingly, the cigar industry and its allies, particularly the convenience store industry, have filed lawsuits or otherwise worked to block implementation of the policies.

Here is a list of some of the state or local policies:

- **Maine:** A law prohibiting the sale of cigarettes and cigars with characterizing flavors (with the exception of menthol, clove, coffee, nuts, or peppers) went into effect on July 1, 2009, and was amended to apply only to non-premium cigars after the 2009 federal Tobacco Control Act went into effect.<sup>1</sup>
- **New York City:** All flavored tobacco products, including cigars, are prohibited from being sold in the city except in tobacco bars, effective February 25, 2010. The tobacco companies filed suit against the city just before the effective date, but a federal judge upheld the law. An appellate court affirmed the decision in February 2013.<sup>2</sup>
- **Providence, Rhode Island:** The City Council passed an ordinance in 2012 to prohibit the sale of all flavored tobacco products, including cigars. Tobacco companies and retailers filed suit against the city, but a federal judge upheld the law in December 2012.<sup>3</sup>
- **Boston, Massachusetts:** The Boston Public Health Commission passed changes to its Youth Access Regulation to require that cigars selling for \$2.00 or less at wholesale only be sold in packs of four or more.<sup>4</sup>

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\* “Premium cigar” is defined differently in each place. In New Hampshire, “ ‘Premium cigars’ means cigars which are made entirely by hand of all natural tobacco leaf, hand constructed and hand wrapped, wholesaling for \$2 or more, and weighing more than 3 pounds per 1000 cigars. These cigars shall be kept in a humidor at the proper humidity.” [New Hampshire Revised Statutes, §78-1]

- **Baltimore, Maryland:** The Baltimore City Health Department passed an ordinance in 2009 to require a minimum pack size of five cigars, but the cigar industry sued the city and the lawsuit is still pending.<sup>5</sup>
- **Prince George's County, Maryland:** The county council passed an ordinance in 2009 to require minimum pack sizes of five cigars, but like Baltimore, the county has been sued and the policy is not in effect pending the outcome of the lawsuit.<sup>6</sup>
- **Washington, DC:** Single cigars cannot be sold at convenience stores and gas stations.<sup>7</sup>

## References

<sup>1</sup> Maine Revised Statutes, 22 §1560-D, <http://www.mainelegislature.org/legis/statutes/22/title22sec1560-D.html>.

<sup>2</sup> New York City Local Law 69, <http://www.nyc.gov/html/doh/downloads/pdf/smoke/flavored-law.pdf>.

<sup>3</sup> City of Providence, Rhode Island, Chapter 2012-6, No. 42, <http://www.providenceri.gov/efile/2036>.

<sup>4</sup> Boston Public Health Commission, *A Regulation Limiting Tobacco and Nicotine Access By Youth*, December 1, 2011, <http://www.bphc.org/boardofhealth/regulations/Forms%20%20Documents/Tobacco%20Control%20Regulation%20FINAL%20Adopted%20December%201%202011%20Corrected%20Version%20-%20Update%203.pdf>.

<sup>5</sup> Baltimore City Health Department, *Final Regulation Banning the Sale of Single, Cheap Cigars in Baltimore City*, January 14, 2009, [http://www.baltimorehealth.org/info/2009\\_01\\_14.CigarRegs.pdf](http://www.baltimorehealth.org/info/2009_01_14.CigarRegs.pdf).

<sup>6</sup> County Council of Prince George's County, Maryland, Bill No. CB-6-2009.

<sup>7</sup> DC Code §7-1721.06.

## Testimony – In Support

Int 1020-2013 / Int 1021-2013 / Int 0250-A

### Submitted by:

American Heart Association / American Stroke Association

Dr. Tara Narula, Associate Director of the Cardiac Care Unit at Lenox Hill Hospital, North Shore LIJ

**Date:** May 2, 2013

**To:** New York City Council Committee on Health, Council Member Maria del Carmen Arroyo, Chair

Thank you, Chair Arroyo and the members of the NYC Council Committee on Health for the opportunity to provide testimony regarding the three proposed Introductions addressing tobacco control in New York City.

The American Heart Association / American Stroke Association is the nation's oldest and largest voluntary organization dedicated to building healthier lives, free of cardiovascular diseases and stroke. Our mission is imperative as these diseases remain our nation's #1 and #4 causes of mortality while stroke is a leading cause of disability. Efforts to prevent these diseases and improve outcomes for heart disease and stroke patients remain a pivotal concern as we pursue our 2020 goal of both a 20 percent improvement in cardiovascular health for *all* Americans and a 20 percent reduction in cardiovascular and stroke deaths.

Tobacco use persists as the leading preventable cause of heart disease and stroke in our country. Indications of heart disease such as atherosclerosis (buildup of fatty substances in the arteries), hypertension (high blood pressure), increased tendency for blood clots, decrease of HDL (good) cholesterol as well as a decreased tolerance for exercise are all directly tied to tobacco use. Inhaling cigarette smoke produces several effects that damage the cerebrovascular system, leading to stroke. Smoking also creates a higher risk for peripheral arterial disease and aortic aneurysm. Cigarette smoking is the most important risk factor for young men and women. It produces a greater relative risk in persons under age 50 than in those over 50.<sup>1</sup>

Costs of smoking are extensive. Direct medical costs (\$96 billion) and lost productivity costs (\$97 billion) associated with smoking totaled an estimated \$193 billion per year between 2000 and 2004. In that same timeline, smoking caused 3.1 million years of potential life lost for males and 2.0 million years for females, excluding deaths attributable to smoking-attributable residential fires and adult deaths attributable to secondhand smoke.<sup>2</sup>

New York City should be applauded for its steadfast focus to reduce tobacco use within its borders. From leading the state to approve a comprehensive clean indoor-air policy to the city and state's combined

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<sup>1</sup> [http://www.heart.org/HEARTORG/GettingHealthy/QuitSmoking/QuittingResources/Smoking-Cardiovascular-Disease-Heart-Disease\\_UCM\\_305187\\_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/QuitSmoking/QuittingResources/Smoking-Cardiovascular-Disease-Heart-Disease_UCM_305187_Article.jsp)

<sup>2</sup> Go AS, et al; on behalf of the American Heart Association Statistics Committee and Stroke Statistics Subcommittee. Heart disease and stroke statistics—2013 update: a report from the American Heart Association. *Circulation*. 2013;127:e6-e245.

highest excise tax in the nation, New York has continuously lead others in the pursuit of quality tobacco control. While we agree with our partners that contend that additional funding for tobacco control programs is needed<sup>3</sup>, we believe that the City of New York has made great progress on the three most impactful elements to curb tobacco use: clean indoor air, excise taxes and prevention and cessation funding. Given this solid tobacco policy foundation, we believe that it is certainly warranted that New York City leaders focus their attention to new tobacco policy interventions that strengthen our efforts and can build upon the existing science in support of tobacco control policies.

The three new innovative tobacco policies to be considered by the Council Committee on Health today each address a distinct concern that has evolved over time while the city seeks to improve overall health-related statistics. While smoking rates in New York City have declined in general<sup>4</sup>, nearly 100,000 young adults continue to smoke in our city<sup>5</sup> with approximately 80% of city residents who smoke starting before the age of 21<sup>6</sup>. Unfortunately, when looking at the currently accessible data, the rate of youth smoking has remained level at 8.5% since 2007.<sup>7</sup>

### **Int 1020 – 2013 (Product Display Ban)**

The Federal Trade Commission annual reports on the tobacco industry's marketing expenditures detail an alarming trend: in one decade, from 1998 to 2008, tobacco company spending in the retail environment increased by 81% (from \$5.4 billion to \$9.8 billion).<sup>8</sup> This represents 93% of their overall marketing budget. The level of spending the industry has invested indicates the value they place in their displays at the point-of-sale.

The more tobacco marketing presented at their retail location, the greater the potential for impulse purchasing thereby making it harder for smokers to quit.<sup>9</sup> Additionally, tobacco displays have a tremendous impact on our youth, with a direct corollary between exposure to tobacco marketing in stores and smoking initiation.<sup>10</sup>

Introduction 1020 would essentially remove industry marketing at the nearly 10,000 licensed tobacco retailers in New York City.<sup>11</sup> Many of these stores predominantly present tobacco in elaborate display cases, promoting greater visibility and product awareness of popular brands.

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<sup>3</sup> Go A, et al. Heart Disease and Stroke Statistics 2013 Update: A Report from the American Heart Association. *Circulation*. Published online December 12, 2012

<sup>4</sup> New York City Department of Health and Mental Hygiene. Preventing Non-Communicable Disease and Injuries: Innovative Solutions from New York City. New York: New York City Department of Health and Mental Hygiene, 2011.

<sup>5</sup> Community Health Survey. New York City Department of Health and Mental Hygiene. 2011

<sup>6</sup> New York City Community Health Survey 2004-2007. Internal analysis of data. New York City Department of Health and Mental Hygiene.

<sup>7</sup> New York City Department of Health and Mental Hygiene, Youth Risk Behavior Survey, 2007, 2011.

<sup>8</sup> US Federal Trade Commission, *Cigarette Report for 2007 and 2008*, 2011, <http://www.ftc.gov/os/2011/07/110729cigarettereport.pdf>. US Federal Trade Commission, *Smokeless Tobacco Report for 2007 and 2008*, 2011. <http://www.ftc.gov/os/2011/07/110729smokelesstobaccoreport.pdf>. Data for top 6 manufacturers only.

<sup>9</sup> Wakefield, M, et al., "The effect of retail cigarette pack displays on impulse purchase," *Addiction* 103:322-328, 2008.

<sup>10</sup> Payntner, J & Edwards, R. "The impact of tobacco promotion at the point of sale: A systematic review," *Nicotine & Tobacco Research* 11(1), 2009.

<sup>11</sup> Stalvey L, Grimshaw V, Johns M, Coady MH. Promotion of Tobacco Products in Retailers in New York City.



In addition to our support for this proposal, the American Heart Association is also eager to use this opportunity to deepen the body of research that would indicate a public health benefit to this policy.<sup>12</sup> The American Heart Association values New York's leadership in conducting robust surveillance and evaluation of innovative public health policy and expect a similar commitment with these policies as they are implemented.

We also strongly encourage working with and securing the support of the retail community as they make the necessary changes to their infrastructure in order to remove the influence of Big Tobacco's marketing.

### **Int 1021-2013 (Sensible Tobacco Enforcement)**

There is strong science supporting a high excise tax on cigarettes as it serves to promote tobacco cessation efforts, particularly among young smokers.<sup>13</sup> Research indicates that for every 10% increase in the real price of cigarettes it reduces overall cigarette consumption by approximately 3-5%, lowers the number of young-adult smokers by 3.5%, and cuts the number of kids who smoke by 6-7%.<sup>14</sup> With New York City's own tax rate at \$1.50, coupled with the state rate of \$4.35, public health in New York City should be benefitting from the highest tax rate in the nation.

Unfortunately, there is a concern that the city's high tax rate is being undermined by illegal sales from either falsified or counterfeit tax stamps.<sup>15</sup> The state has estimated a loss of \$500 million in revenue annually since the June 2008 cigarette tax increase. The purchase of taxed cigarettes decreased by 22.8%, but an equivalent reduction in self-reported cigarette consumption, intentions to quit smoking, or quit attempts did not present significantly. It is clear that tax evasion schemes must be stopped if the full health impact of the city's excise tax will be felt. The increase of penalties and fees associated with tax evasion, as a result of Introduction 1021, is a strong step forward to deter this activity.

Additionally, there is troubling evidence that the tobacco industry is actively pursuing pricing mechanisms to further undermine the city's efforts. The use of coupons and promotional sales are strategic attempts by the tobacco industry to incentivize current smokers and entice new smokers to their ranks. By permitting cigarettes, cigarillos or little cigars to be sold at a lesser price point, the city is again losing the valuable health benefit of the tax. By restricting the use of retail discounts, requiring cigarillos and little cigars to be packaged appropriately and establishing a baseline cost for these products, the city can help ensure the maximum motivation to quit smoking.

### **Introduction 0250 (Tobacco 21)**

In addition to the restriction on marketing and strengthening the price structure of tobacco products, we believe it is reasonable for New York City to address rate of youth smoking by redefining the legal age to purchase these products. According to the NYC Department of Health and Mental Hygiene and their analysis of the Youth Risk Behavior Survey 2011, 25% of city minors who described themselves as smokers stated

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<sup>12</sup> [http://apps.who.int/gb/fctc/PDF/cop3/FCTC\\_COP3\\_9-en.pdf](http://apps.who.int/gb/fctc/PDF/cop3/FCTC_COP3_9-en.pdf)

<sup>13</sup> Carpenter C, Cook PJ. Cigarette taxes and youth smoking: New evidence from national, state, and local Youth Risk Behavior Surveys. *Journal of Health Economics*. Mar 2008;27(2):287-299

<sup>14</sup> Chaloupka, F, "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," *Nicotine and Tobacco Research*, 1999.

<sup>15</sup> [http://www.health.ny.gov/prevention/tobacco\\_control/docs/2010-11-12\\_tax\\_increase\\_topical\\_report.pdf](http://www.health.ny.gov/prevention/tobacco_control/docs/2010-11-12_tax_increase_topical_report.pdf)

that they purchased their cigarettes in stores.<sup>16</sup> While more can always be done to strengthen enforcement of illegal sales to minors, many underage smokers are relying on others to purchase these products for them. Alarming, 90% of individuals currently purchasing cigarettes for minors are reported to be between 18 and 20 years of age.<sup>17</sup>

It is worth reiterating that the AHA's support for New York City's new, progressive tobacco policies is based on the fact that these efforts are building upon existing tobacco control efforts: the highest tobacco excise tax; comprehensive clean indoor air and an adequately funded tobacco control program. The AHA remains committed to working with other states and communities to ensure these basic policy elements of tobacco control are in place before pursuing these and other innovative policy solutions.

However, in one town where the legal age to purchase cigarettes was increased to 21 and was accompanied by a robust surveillance and strong enforcement, some marked improvement has already been witnessed. Needham, MA implemented their new policy with a phase-in approach beginning in 2005. According to the Needham High School Report from the MetroWest Adolescent Health Survey, high school students who identified themselves as current smokers fell from 12.9% in 2006 to just 6.7% in 2010. High Schools in the surrounding area outside of Needham did not see the same dramatic drop in youth smoking rates.<sup>18</sup> We believe that ample evidence exists to indicate that an increased age restriction law; when coupled with robust enforcement, community education and in the presence of policies supportive of basic tobacco control elements, may contribute to even greater decreases in youth smoking rates.

The enforcement of this measure should be easily managed by tobacco retailers, largely due to the fact that New York driver's license are clearly indicated if the individual is 'Under 21.' Additionally, the American Heart Association asks that appropriate effort be made to educate the business community to provide for a smooth transition and that the city undertakes necessary steps to ensure the proper enforcement of the policy. Lastly, as this is an example of a new, innovative tobacco control policy, the American Heart Association appreciates the city's commitment to data collection and evaluation which will directly serve to strengthen the body of evidence to support the increased minimum age for the sale of tobacco products.

The American Heart Association is proud to work in partnership with the New York City Council and the administration of the NYC Department of Health and Mental Hygiene as we continue to encourage New York smokers to quit and help protect NYC kids from tobacco industry tactics.

I welcome any questions you may have.

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<sup>16</sup> New York City Youth Risk Behavior Survey 2011. Internal Analysis of Data. New York City Department of Health and Mental Hygiene.

<sup>17</sup> DiFranza J and Coleman M (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tobacco Control* 2001; 10:323-328.

<sup>18</sup> MetroWest Adolescent Health Survey 2010. Internal Analysis of Data. Needham Public Health Department.

April 29, 2013

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Dear Chairwoman Arroyo,

My name is Dr. Kurt Ribisl, and I am a Professor and researcher who studies tobacco control policy and tobacco product regulation. I have published nearly 40 articles in the area of tobacco control, wrote and edited portions of the 2012 Surgeon General Report on Tobacco, and I wrote the "Tobacco Retailing" chapter of the Scribner Encyclopedia of Tobacco. I am Principal Investigator on four grants to research effective tobacco control policies, funded by the National Cancer Institute and the Centers for Disease Control and Prevention. Ashley Leighton, MPH, has served as my Project Director on my current research. I am writing to comment on the proposed NYC laws, *Sensible Tobacco Enforcement* and *Tobacco Product Display Regulation*, which aim to further regulate the sale and display of tobacco products.

Tobacco products are the most lethal consumer product ever introduced into commerce, killing nearly half of all regular users. Yet the 2010 Federal Trade Commission report shows that the tobacco industry spends \$1 million dollars an hour on retail marketing<sup>1</sup>. A study by RTI International found that the average tobacco display in NY features about 204 cigarette packs and is about 32 square feet, about the surface area of two refrigerators<sup>2</sup>. There are approximately 10,000 tobacco retailers in NYC, and thus the total area of their tobacco displays could more than cover the entire 5<sup>th</sup> Avenue side of the 102-story Empire State Building. With over 13 tobacco ads in a store, if each tobacco ad were given its own seat, these ads would more than fill Yankee Stadium, the Mets Citi Field, the Barclay Center, and Madison Square Garden.

If you're wondering why the tobacco industry spends so much money advertising at the "point of sale," the answer is that they are buying consumer behavior. Colorful displays and promotions in stores draw the attention not only of smokers, but especially of children. I published a study in 2001 showing that 50% of retail stores featured tobacco advertising at or below 3 feet, the eye level of a small child<sup>3</sup>. Tobacco companies have even used eye-tracking studies to ensure that their tobacco ads maximize attention. CDC just published a new study showing that 81.5% of middle school students and 86.9% of high school students report seeing tobacco advertisements at stores<sup>4</sup>. In addition, the middle school students who were exposed to tobacco advertising in stores had higher odds of being susceptible to starting smoking (compared to students not exposed)<sup>4</sup>. In fact, a growing number of studies have shown that children notice tobacco displays and the brands they advertise, which triggers their curiosity, and lead many to experiment with smoking. In one particular study, researchers looked at middle school students who were all non-smokers at the beginning of the study and followed them over

time<sup>5</sup>. One of the main findings is that after 12 months, 18% of students initiated smoking overall, but the smoking rate was 29% among students who visited convenience, liquor, or small grocery stores at least twice per week, and only 9% among those who reported the lowest visit frequency (less than twice per month)<sup>5</sup>.

While over 70% of smokers regret starting smoking and many attempt to quit each year, retail cigarette displays tempt quitters back to their favorite brand. Indeed tobacco companies step up their advertising efforts in January right after many smokers made a New Year's resolution to quit smoking. Like in other forms of retail, price promotions and coupons offer a temptation to "buy now" and, in the case of smoking, undermine quit attempts. In our recent research in 2,270 stores across 40 U.S. states, our preliminary results show that the overwhelming majority of stores (73.6%) had at least one price promotion on the interior and/or exterior of the store<sup>6</sup>.

Through their marketing campaigns and price promotions, the tobacco industry has caused disproportionate sickness and premature death among minorities and poor people for decades. It is no surprise that the smoking rate is 29% for people living below the poverty line and 18% for those above it<sup>7</sup>. The incidence of lung cancer in the U.S. is also much higher for African American men (99.9 per 100,000 men) than for White men (76.4 per 100,000 men)<sup>8</sup>. Tobacco industry documents reveal information about minority marketing campaigns such as the memos entitled "Black Marketing Task Force" and "Ethnic Program Development" that say that Philip Morris USA has a "unique opportunity" to develop "comprehensive marketing programs specifically for the Black Market" because "advertising designed specifically for Blacks will indeed be more helpful in boosting sales"<sup>9</sup>. An RJ Reynolds document recommends that they "implement [an] aggressive local marketing-oriented program that creates big presence for RJR brands in the Hispanic market" including ensuring "retail visibility for key brand styles"<sup>10</sup>.

The proposed regulations will prohibit tobacco companies from discounting cigarettes and giving customers a free pack when they buy a pack. These price discounts and coupons are used by tobacco companies to selectively prey on low income and minority smokers in poor neighborhoods where they know their customers are more sensitive to prices. A 2010 Harvard study found that in poor Boston neighborhoods (compared to higher income Boston neighborhoods), cigarettes were 41 cents cheaper, tobacco ads were larger, and stores were more likely to feature tobacco ads<sup>11</sup>. In our own large national study funded by the National Cancer Institute, we compared different neighborhoods across 40 states to see how often stores featured tobacco promotions, such as buy one pack get one free or \$1 off price discounts. Our preliminary results show that in neighborhoods with about 1% African Americans, about 67% of stores had a tobacco promotion, but in areas with 20% or more African Americans, nearly 80% had a price promotion, and Marlboro and Newport cigarette prices were significantly cheaper<sup>6</sup>. Moreover, cigarette prices in low income neighborhoods are about 20% cheaper (or more than \$1.00 cheaper) than in high income neighborhoods<sup>6</sup>.

The regulations will also decrease the appeal and use of tobacco products, particularly among youth. The first bill prohibits the display of tobacco products, requiring that they are kept out of customer sight, in cabinets, drawers, or behind a curtain. Tobacco companies often incentivize retailers to give tobacco displays prime placement behind the checkout counter and they tell retailers "eye level is buy level."

The second bill, the Sensible Tobacco Enforcement Act, raises retailer penalties for selling untaxed or bootleg cigarettes. New York is losing hundreds of millions of dollars to illicit cigarette trade<sup>12</sup>, and this bill protects the business interests of honest retailers who abide by the law.

A criticism of these proposed policies (by those making a profit on tobacco sales) is that they will hurt small business. While I do believe that the combined impact of these policies will be to reduce smoking rates, particularly among children and the poor, I do not believe overall that they will hurt business owners. I recently worked with professors at Columbia University to estimate what would happen to retailers if smoking rates fell in the U.S. We published our findings in the book *After Tobacco: What Would Happen if Americans Stopped Smoking?*. For the past several decades, smoking rates have been dropping; meanwhile, retail employment has been increasing. How can this be? When people spend less money on cigarettes, they actually spend more money on other products. Economists note that the money formerly spent on tobacco products does not disappear into thin air, rather it is spent on other (less harmful) goods and services. For example, while there were dire predictions for bar/restaurant and hotel revenue during the implementation of NYC's smoke-free air laws, the end result was that the overall revenue for these industries was not substantially reduced<sup>13</sup>.

The proposed law also has a minimum pricing provision that prevents stores from selling a cigarette pack for under \$10.50, which strengthens an existing New York state minimum price law. Policymakers originated cigarette minimum price policies in the 1950s as a way to protect small retailers from unfair competition from larger chains. Thus, these policies may even help some small retailers while preventing tobacco companies from flooding poor communities with cheap and deadly cigarettes.

In sum, these policies will help ensure some fairness by providing reasonable balance to company tactics that continue to selectively market deadly products to young and poor people. New York City now has a chance to pass landmark policies that will reduce smoking rates, particularly among children and the poor.

Sincerely,



Kurt M. Ribisl, Ph.D.  
Professor, Department of Health Behavior  
Director, Cancer Prevention and Control,  
Lineberger Comprehensive Cancer Center



Ashley E. Leighton, MPH  
Project Director, Point-of-Sale Tobacco Marketing Study  
Department of Health Behavior

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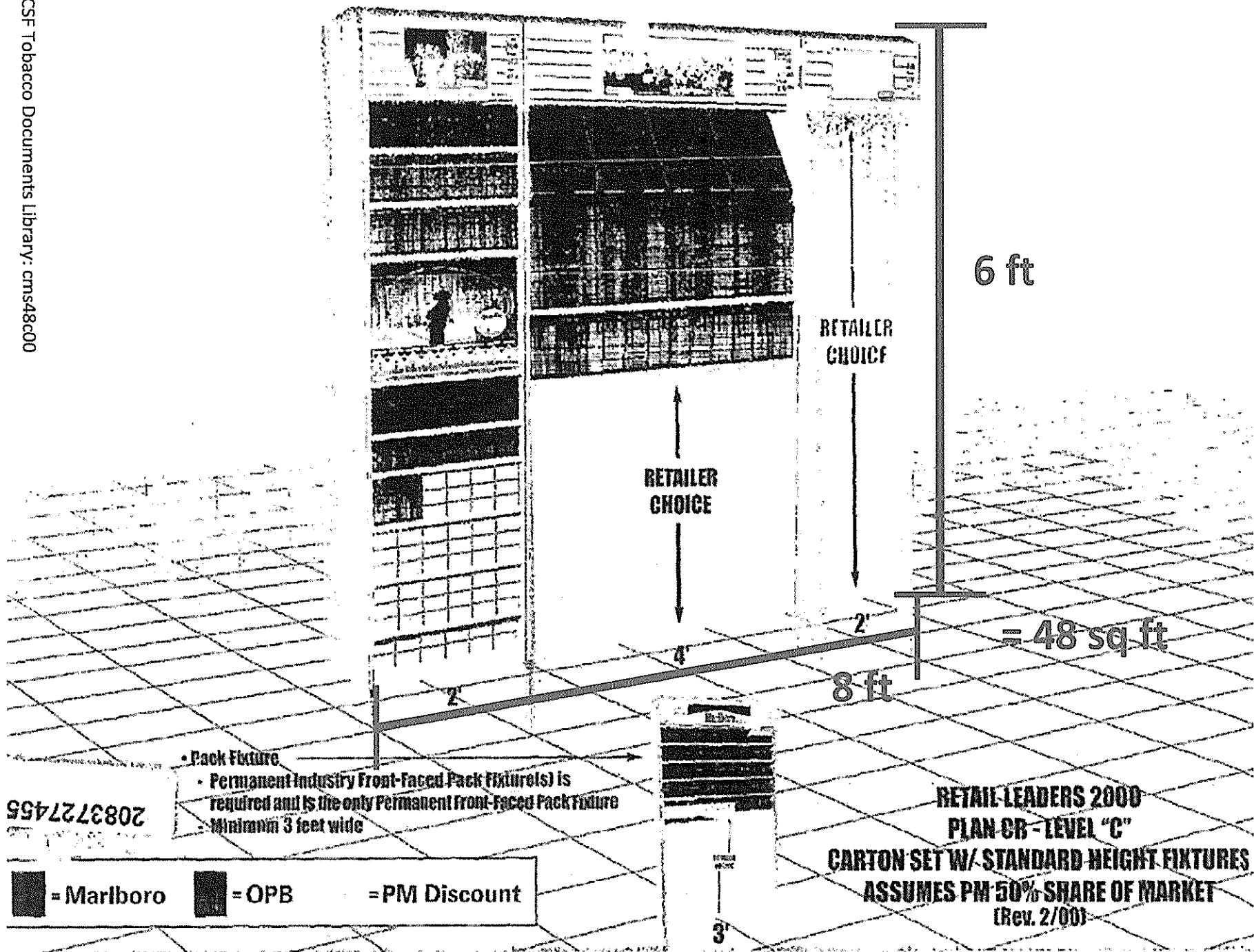
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<sup>1</sup> *Federal Trade Commission Cigarette Report for 2009 and 2010*. Available at <http://www.ftc.gov/os/2012/09/120921tobaccoreport.pdf>, accessed April 29 2013.

<sup>2</sup> *"Power Wall" Display of Tobacco Products by New York State Licensed Tobacco Retailers*. Available at [http://www.health.ny.gov/prevention/tobacco\\_control/reports/statshots/volume5/n1\\_display\\_of\\_tobacco\\_products\\_by\\_retailers.pdf](http://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume5/n1_display_of_tobacco_products_by_retailers.pdf), accessed April 29 2013.

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- <sup>6</sup> Ribisl KM, Henriksen L, Luke DA, et al. Preliminary results from grant # U01 CA154281, funded by the National Cancer Institute at the National Institutes of Health.
- <sup>7</sup> *Smoking and Tobacco Use CDC Report*. Available at [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/adult\\_data/cig\\_smoking/](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/), accessed April 29 2013.
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- <sup>10</sup> Accessed through Legacy Tobacco Documents Library, UCSF, at <http://legacy.library.ucsf.edu/>. Bates number 507135127/5159.
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- <sup>13</sup> Hyland A, Cummings KM, Nauenberg E. Analysis of taxable sales receipts: was New York City's Smoke-Free Air Act bad for restaurant business? *J Public Health Manag Pract*. 1999;5(1):14-21.





# SALES

RJR Sales Company / May-June 1989

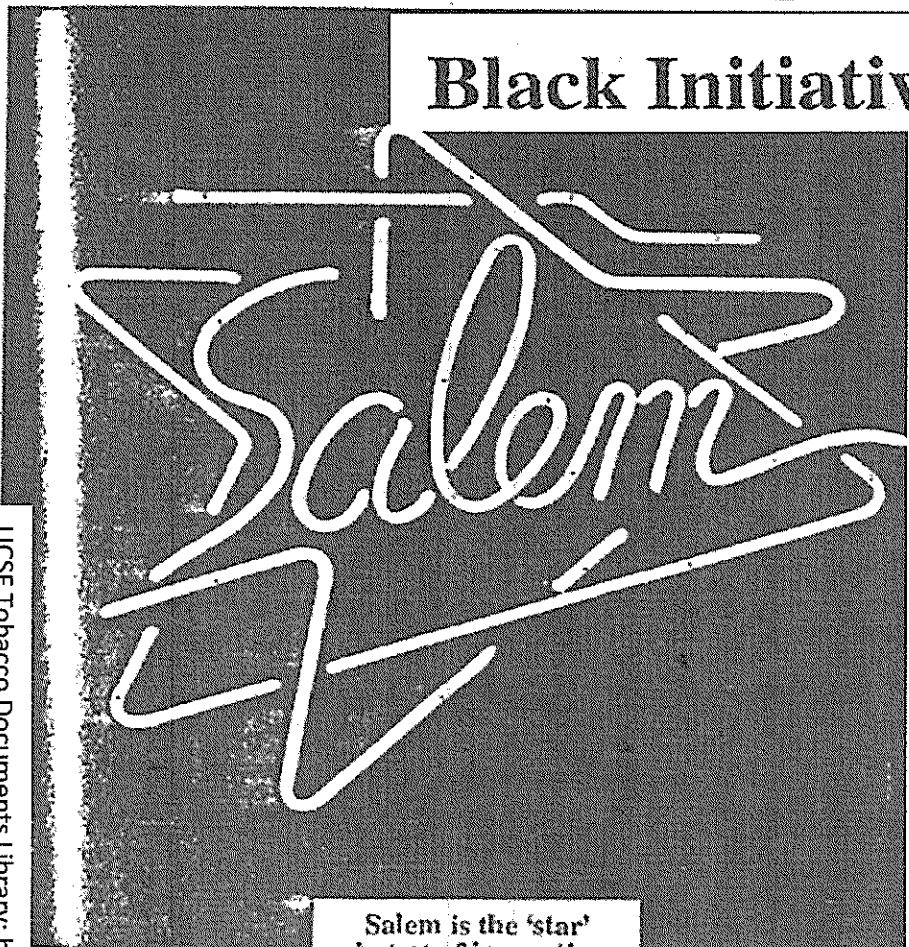
# MERCHANDISER

## Black Initiative program boosts sales

In the retail trade, reps focus their attention on Salem, with monthly single-pack premium promotions; "fresh on the scene" ads, from storefront posters to billboards on the viaducts that carry Chicago's famous "el" trains; and more frequent calls on smaller, neighborhood retail outlets.

"It's a grass-roots campaign that gives us market saturation like we've never had before," says Tony James, South Chicago training and development manager.

In the evenings, Salem remains "fresh on the scene" with the target market of younger-adult black smokers in their favorite nightclubs, says Allison Perkins, Chicago field marketing manager. "The club scene is appealing to our target, and we are there too, sampling and giving away premiums."



Salem is the 'star'  
In test of innovative  
sales/marketing program

May 2, 2013

PHILIP MORRIS, U.S.A.

INTEROFFICE CORRESPONDENCE  
120 PARK AVENUE, NEW YORK, N.Y. 10017

TO: R. P. Roper, Jr.

DATE: October 1, 1984

FROM: H. H. Foster, III

SUBJECT: Black Marketing Task Force

At the Black Marketing Task Force meeting last week in Washington, a number of recommendations were made that related directly to Benson & Hedges. The consensus was that Benson & Hedges and Virginia Slims are the only PM brands that can be really "worked" inner-city, and they repeatedly requested additional B&H materials and programs.

While Jean Troupe will be doing a complete summary, the following outlines a few recommendations for discussion and immediate implementation:

Ethnic Incentive Display - Our current incentive display program is unrealistic in the black market. The displays are too large and require a major investment from the retailer. The recommendation is to provide 70 20-deal units and 10 40-deal units for black outlets only. As this does not change the overall number of incentives required, this change can be made for the B&H pen offer. I would like to proceed in developing a 20-deal display.

B&H Summer Sampling Program - Similar to Marlboro Summer Sampling, this would provide black samplers inner-city during the summer months, in the top 25 ethnic markets. Larry Glennie/George Powell consider this an excellent suggestion -- and would welcome a full program recommendation from Brand.

Black Outlet Point-of-Sale - A number of requests were made for POS relating specifically to Benson & Hedges -- graphics for

Black Outlet Point-of-Sale - A number of requests were made for POS relating specifically to Benson & Hedges -- graphics for existing overheads, "sold here" signs, flip tab clocks, neons, etc. A special meeting should be set up with Merchandising Materials and Headquarter Sales to develop better permanent POS for these accounts.

At your convenience, I would like to discuss.

HNF:mdl

*HNF*

UCSF Tobacco Documents Library: wqp06e00

## HISPANIC MARKET LEARNING

### RECOMMENDATIONS

Implement aggressive local marketing-oriented program that creates big presence for RJR brands in the Hispanic market. Key features of program are:

- Retail visibility for key brand styles
- High profile local marketing programs

Rationale: Heightening familiarity with RJR brands will improve performance in neglected market. However, only local marketing programs can effectively reach Hispanics.

UCSF Tobacco Documents Library: wxg34d00

### TARGET:

**Younger Adult Hispanic Competitive Smokers 21-24 Years of Age**

The Regional Initiative program has two key target sub-categories defined as follow:

- ...Non-assimilated - Spanish speaking (60%)
- ...Assimilated - Bilingual (40%)

### OBJECTIVES:

...Increase awareness, trial and sales of Camel and Salem brands among target smokers within specific Hispanic markets.

...Provide increased brand presence and brand sponsored activities in locations frequented by assimilated and non-assimilated Hispanics.

...Continue to improve brand perceptions among target smokers.

...Invigorate program promotion through comprehensive creative and execution continuity.

UCSF Tobacco Documents Library: szk76b00

**STATEMENT ON THE HEALTH IMPACT OF CIGARETTE SMOKING  
FROM DR. CRAIG B. THOMPSON, PRESIDENT AND CEO  
OF MEMORIAL SLOAN-KETTERING CANCER CENTER**

Thank you, Speaker Quinn, Chair Arroyo, the committee and the council for the opportunity to testify.

Tobacco remains the leading cause of preventable death in the United States, causing more than 440,000 deaths annually and resulting in \$193 billion in health-related economic losses each year — \$96 billion in direct medical costs and \$97 billion in lost productivity (CDC, 2008).

Smoking accounts for at least 30 percent of all cancer deaths and 80 percent of deaths from lung cancer — the leading cause of cancer death in both men and women (ACS, 2012). To put it into perspective, more than 228,000 new cases of lung cancer will be diagnosed in 2013, and that nearly 160,000 Americans will die from the disease (ACS, 2013).

Decades of research link tobacco use to the development of cancer and other life-threatening conditions, including cardiovascular and respiratory diseases (HHS, 2004). However, despite widespread agreement on the dangers of tobacco use, an estimated 19 percent of adults smoke cigarettes (more than 45 million Americans) (CDC, 2012; HHS, 2012).

The 2012 Surgeon General's report "Preventing Tobacco Use Among Youth and Young Adults" emphasizes that prevention efforts must focus on adolescents and young adults because nearly nine out of 10 adults who smoke started by age 18 and few start smoking after age 25 (HHS, 2012).

Compared to a decade ago, fewer New Yorkers smoke and die from smoking-related illnesses thanks to successful health policy initiatives. Smoking rates for teenagers in New York are well under the national average of 18.1%. In New York City teenage smoking has dropped from 25% 15 years ago to only 8.5% today.

But there is still room for improvement. As many as 19,000 New York high school students still smoke and more than 1/3 of them will die prematurely by an average of 14 years as a result of tobacco use.

I believe that additional efforts — such as those pending before the City Council — will help New York City further reduce its smoking rates. Tobacco experimentation is often an impulse decision. Reducing the display of tobacco products in stores where teenagers shop can be expected to decrease the impulse to experiment. Raising the age for tobacco purchase may do the same. One encouraging example lies in the experience in Needham, Massachusetts, where the minimum age for cigarette sales was raised to 21 in 2005. According to a health survey conducted in Massachusetts high schools, teenage smoking in Needham declined from 12.9% immediately after the law was enacted to 5.5% in 2012 (*New York Times*, 4/30/13).

The City of New York has demonstrated leadership in mandating smoke-free workplaces and public places, tobacco taxation, and strong funding for tobacco prevention and cessation programs, including a media campaign to help people quit. The anti-smoking efforts in New York have been based on an evidence-driven tobacco control program — a key element in helping to frame tobacco as a public health issue. What does the evidence show?

- Smoking cigarettes harms nearly every organ of the body and is a leading cause of at least 18 different types of cancer.
- Tobacco is also the leading cause of premature, preventable death in this country, killing more people than AIDS, alcohol, car accidents, murders, suicides, illegal drugs, and fires combined.
- And smoking is especially harmful to our youth. If fact, unless current smoking rates decline, more than six million American kids under the age of 18 today will ultimately die from smoking-related disease.

At Memorial Sloan-Kettering Cancer Center, our teams of physicians, nurses, and other health professionals witness the devastating consequences of cigarette smoking on a daily basis. Public health policies save lives, and we stand shoulder to shoulder with the Department of Health in supporting the



passage of the Tobacco Product Display Restriction bill, the Tobacco 21 bill, and the Sensible Tobacco Enforcement bill.

## **FACT SHEET: HEALTH IMPACT OF CIGARETTE SMOKING**

**Smoking cigarettes harms nearly every organ of the body and is a leading cause of cancer.**

- Research has shown that smoking heightens the risk of up to 18 types of cancers, including those of the lung, esophagus, larynx, mouth, throat, kidney, bladder, pancreas, stomach, cervix, colon, and rectum, as well as leukemia (HHS, 2010).
- Smoking not only raises the risk of developing various cancers, but it worsens cancer outcomes (NCI, 2012) for those diagnosed with cancer, with emerging evidence indicating reduced survival rates, decreased therapeutic responses, increased risk of cancer recurrences, treatment complications.
- It has also been shown to cause chronic bronchitis, emphysema, asthma, cataracts, high blood pressure, stroke, and heart disease.
- Smoking causes reduced circulation by narrowing the blood vessels (arteries) and puts smokers at risk of developing peripheral vascular disease (obstruction of the large arteries in the arms and legs that can cause a range of problems from pain to tissue loss or gangrene).
- Smoking causes abdominal aortic aneurysm (a swelling or weakening of the main artery of the body — the aorta — where it runs through the abdomen).
- There are 8.6 million people in the US who currently suffer from smoking-caused illnesses.

**Smoking is the leading cause of premature, preventable death in this country.**

- Cigarette smoking and exposure to tobacco smoke cause more than 440,000 premature deaths each year in the United States. Of these premature deaths, at least 30 percent are from cancer, 35 percent are from heart disease and stroke, and 25 percent are from lung disease.
- In the US, tobacco kills more than AIDS, alcohol, car accidents, murders, suicides, illegal drug use, and fires combined.
- About 1,200 people die every day in the United States from tobacco-related disease.
- On average, adults who smoke cigarettes die 14 years earlier than nonsmokers.
- Exposure to secondhand smoke — sometimes called environmental tobacco smoke — causes nearly 50,000 deaths each year among adults in the United States

**Smoking is especially harmful to our youth.**

- There are nearly 400,000 new underage daily smokers in this country each year — and roughly one-third of them will eventually die prematurely from smoking-caused disease. In fact, more than six million kids under the age of 18 who are alive today will ultimately die from smoking-related disease (unless smoking rates decline).
- High school seniors who are regular smokers and began smoking by the ninth grade are roughly two and a half times more likely than their nonsmoking peers to report cough with phlegm, shortness of breath, wheezing, or gasping.
- Beyond smoke- or nicotine-stained teeth and bad breath, smokers are also more likely to suffer from periodontal disease and to have more serious periodontal disease, including tooth loss.
- Smoking causes mild airway obstruction and reduced lung function among adolescents. It causes chronic coughing, increased phlegm, emphysema, and bronchitis, and makes young people more susceptible to influenza and more likely to experience severe symptoms when they get the flu.
- Smoking also hurts young people's physical fitness in terms of both performance and endurance — even among young people trained in competitive running.
- The resting heart rates of young adult smokers are two to three beats per minute faster than nonsmokers, and studies have shown that early signs of heart disease and stroke can be found in adolescents who smoke.
- Smoking is associated with hearing loss, vision problems, increased headaches, and increased risk for infertility.

- While many smokers believe that smoking relieves stress, it is actually a major cause. Smoking only appears to reduce stress because it lessens the irritability and tension caused by the underlying nicotine addiction.
- Youth exposure to tobacco product displays is significantly associated with smoking experimentation and regular use. Restricting tobacco displays in retail establishments is likely to counter youth's impression that tobacco use is common and socially acceptable.

**Smoking diminishes the quality of your overall health.**

- It impacts the functioning of your heart and lungs, drains your energy level, and can affect the quality of your sleep.
- It can also affect your sense of smell and taste, increase osteoporosis-related bone fractures, lead to erectile dysfunction and infertility, cause premature aging of the skin, and loss of teeth and gum disease.

**Tobacco smoke contains chemicals that are harmful to both smokers and nonsmokers. Breathing even small amounts can be harmful.**

- Of the more than 7,000 chemicals in tobacco smoke, at least 250 are known to be harmful, including hydrogen cyanide, carbon monoxide, and ammonia. Among the 250 harmful chemicals in tobacco smoke, at least 60 of them can cause cancer (such as arsenic) or are suspected to cause cancer (such as formaldehyde.)
- Nicotine is a potent drug that is naturally present in the tobacco plant and is primarily responsible for a person's addiction to tobacco products, including cigarettes. During smoking, nicotine enters the lungs and is absorbed quickly into the bloodstream and travels to the brain in a matter of seconds.

**Quitting smoking is one of the best ways to improve your general health — it may even save your life.**

- The immediate health benefits of quitting smoking begin with your heart rate and blood pressure, which are abnormally high while smoking, returning to normal. Within a few hours, the level of carbon monoxide in the blood starts to decline.
- Quitting smoking improves your circulation, increases your lung function, and decreases coughing, wheezing, phlegm production, sinus congestion, fatigue, and shortness of breath.
- It reduces your risk of developing coronary heart disease, stroke, and a number of cancers.
- 10 years after quitting smoking, the death rate from lung cancer is 50 percent lower than that of a person who continues to smoke.

**Sources:**

[Memorial Sloan-Kettering Cancer Center Smoking Cessation Programs](#)  
[Memorial Sloan-Kettering Smoking Cessation Guide for Cancer Patients and Their Families](#)

[National Cancer Institute Tobacco and Smoking Cessation Fact Sheets](#)  
[Centers for Disease Control and Prevention Smoking and Tobacco Use Fact Sheets](#)

[Campaign for Tobacco-Free Kids](#)

[Legacy](#) (the largest non-profit public health charity in the nation devoted specifically to tobacco control)

[CDC National Cancer Policy Forum “Reducing Tobacco-Related Cancer Incidence and Mortality”](#)





## CITY OF PROVIDENCE

Angel Taveras, Mayor

May 2, 2013

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, New York 10007

Honorable Chairwoman Arroyo and Members of the Health Committee,

On behalf of the City of Providence and Mayor Angel Taveras, I am writing to urge your support for the proposal to establish a minimum pricing law for tobacco products for the city and to eliminate potential loopholes to that pricing policy by banning redemption of multipack discounts and tobacco manufacturer coupons.

The Providence City Council passed and Mayor Taveras signed an ordinance banning redemption of coupons and multipack discounts January of 2012, and after the US District Court rejected a tobacco industry effort to enjoin the law, we fully implemented and began enforcement of our discount ban on January 3, 2013. While we are proud that a series of coordinated citywide efforts in partnership with the Rhode Island Department of Health had lowered our past 30 day tobacco use rate among Providence High School students to 8.8 percent as of 2012, we still believe this rate of use is unacceptably high and will continue to work to reduce underage tobacco use in our city as much as possible.

We take seriously the evidence that young smokers are the most price sensitive, as well as anecdotal evidence from many of the hundreds of uninsured Providence residents who we have helped to connect to cessation resources in the past few years, who say that higher prices on tobacco products helped motivate them to quit once and for all. Buy one, get one free deals and coupons undermine the clear public policy goal that both of our cities and states have made to make tobacco products very expensive, and so we fully expect that banning their redemption will help us to further reduce the rate of underage smokers over time, and also to encourage more adult smokers to quit.

Thank you for your consideration and thank you also for your leadership in the area of public health – it was New York City's ban on flavored tobacco products that inspired another of Providence's tobacco prevention initiatives, our own similar ban that also took effect in January.

Sincerely,

Peter Asen, Healthy Communities Director, Executive Office of Mayor Angel Taveras

### HEALTHY COMMUNITIES OFFICE

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# Impact of Retail Display Bans

Testimony before the New York City Council Health Committee

Presented by:

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May 2, 2013

I am an Assistant Member and Assistant Professor of Oncology in the Department of Health Behavior at the Roswell Park Cancer Institute in Buffalo, New York. I have worked in tobacco control policy research for 13 years and currently direct the Health Communications Testing Lab, in the Department of Health Behavior, which focuses on testing materials, including cigarette pack design variations, print messages, point-of-sale retail displays, and television ads, using Web surveys, focus groups, and eye-tracking methodology, to help produce the most salient and effective health communications campaigns. My research interests include exploring areas of misperceptions held by smokers about cigarette package design, health warning labels, product characteristics, point-of-sale displays, and the health effects of smoking. I also work to design and evaluate materials to correct these misperceptions and promote behavior change. Since 2010 I have served as a Governor-appointed member of the Tobacco Control Advisory Board for the New York State Department of Health. The purpose of my testimony today is to share with the NYC Council Health Committee the highlights of our research to help inform their deliberations of Bill T2013-6007.

Based on my work and my review of the literature, restrictions on tobacco displays are likely to decrease adolescents' perceptions of the availability, use, and popularity of cigarettes, decrease impulse purchases of cigarettes among current smokers, decrease temptation among smokers trying to quit smoking, and decrease urges to start smoking among ex-smokers. Packaging of tobacco products is shown to convey misperceptions about the health risks from product use through color, words, shading, and size to both smokers and nonsmokers. Therefore, tobacco displays at the retail point-of-sale act as cues to smoke and foster the misperception, particularly among youth, of tobacco use as a social norm; dispelling this misperception is expected to reduce tobacco use.

As tobacco marketing has been restricted or banned, point-of-sale (PoS) promotions have come to constitute the majority of tobacco industry promotional expenditures in the U.S.[1] In 2010, the tobacco industry spent \$8.5 billion on cigarette and smokeless tobacco (SLT) marketing in the U.S., equivalent to one million dollars an hour.[1;2] Additionally, while the overwhelming majority of marketing expenditures have historically been and continue to be for cigarettes, smokeless tobacco marketing expenditures have ramped up considerably in the past few years. Of this annual marketing budget, 84% was spent on marketing in the retail environment, with 94% of that marketing budget spent on strategies specifically designed to reduce cigarette prices through price-related discounts.[1;2] In addition, the products advertised through the retail environment are changing. As of 2010, one in three dollars spent by the industry on PoS marketing has been for smokeless tobacco.[3] Trade publications indicate that retail establishments are capitalizing on SLT growth and "optimizing" their sales by dedicating more space for SLT products.[4-6] Prior observational research suggests that most exposure to pro-tobacco messaging occurs at PoS;[7] that disadvantaged neighborhoods have a higher density of retail outlets and associated PoS advertising;[8-10] that PoS exposures increases youth smoking initiation;[11;12] and, among current smokers and those who are trying to quit, PoS promotions cue unplanned purchases and smoking behavior.[13-16].

Product packaging is a key vehicle for communicating brand essence and PoS packaging displays provide a critical node for the visual differentiation of brand essence, both across brands and within brand families.[17] A great deal of research exists describing how the tobacco pack is used as a vehicle of communication between the tobacco industry and its consumer, particularly through color, descriptor terms, brand name, and pack shape and size.[18-27] Tobacco companies view the cigarette pack itself as a marketing tool, using product descriptors,

colors, and shapes to distinguish among brands. Industry documents reveal that the companies have carefully researched ways to use pack design and color to communicate the impression of lower tar or milder smoke while preserving taste ‘satisfaction’.[28-33] Smokers form beliefs about product features primarily from the colors and images portrayed in cigarette marketing, which in turn are reinforced by the “feel sensations” carefully designed into the product (e.g., smooth, not harsh, cool, etc.).[34] While the Family Smoking Prevention and Tobacco Control Act of 2009 prohibited the use of misleading labels such as ‘light’, ‘low’ or ‘mild’ on packs sold in the U.S. after June 2010, new research shows that other words, such as ‘smooth’ and ‘silver’, can also mislead many smokers into thinking a particular brand is safer or less risky, as can brands sold with lighter colors or with pictures of filters.[18;21;26]

The importance of PoS marketing in the U.S. has previously been highlighted in studies that found that adolescents exposed to PoS displays were more likely to have tried smoking and that twice as much shelf space in stores where adolescents frequent was dedicated to the three brands most popular with adolescents (Marlboro, Camel, Newport).[35-37] More recently, tobacco companies have integrated sophisticated marketing campaigns into packaging, a phenomenon first seen in the summer of 2010 with the Camel “Seize the Hump Day”



**Figure 1**

campaign. As shown in Figure 1, a current Philip Morris campaign (“Biggest Night of the Year”) is marketed through Marlboro cigarette packs, covering 100% of one side of the pack face and 20% of the other side. A pack-a-day smoker is potentially exposed to their pack 20 times a day; therefore, a consumer is potentially exposed to this integrated marketing message more than 7,000 times a year, multiplied exponentially by the other more ‘traditional’ forms of marketing

employed by the industry, such as direct mail and retail advertisement. This pack display/campaign integration also influences the PoS display; retailers are displaying these packs side-by-side next to the more traditionally branded packs.

I recently conducted a pilot study in Western New York to evaluate attention paid to point-of-sale displays using mobile eye-tracking equipment (unpublished data; manuscript in development). My team successfully tracked data from 29 participants (18-34 year old; current smokers and susceptible nonsmokers) in four convenience stores in the Buffalo area.

Participants were pre-randomized to one of three conditions: Snickers bar only, Snickers bar and Pall Mall Red, Snickers bar and cigarette pack of their choosing. We found that the entire session lasted an average of 20-25 minutes, with 3 minutes on average to complete the mobile eye-tracking portion (regardless of random group assignment). Preliminary analysis found that participants from the study spent an average of 45-75 seconds total from the time of the candy selection until the purchase time (i.e. total possible time available to look at the power wall).

From the data, for example, we noted that the participant illustrated in Figure 2 (current daily smoker; candy bar only condition) spent a total of 22.2 seconds from the point of candy selection to the point of checkout, with 5.4 seconds of that time (24.3%) looking at the power wall. This participant was not asked to purchase any cigarettes at all and yet spent nearly one-fourth of their time in line looking at the retail tobacco display.





**Figure 2.**  
Sample  
'snapshot'  
eye path  
diagrams  
from one  
mobile eye-  
tracking  
participant

One-third of patients who come to the cancer hospital where I work are here because of a tobacco-related illness. The literature shows that the tobacco industry has made concerted and deliberate efforts to entice young people in particular to use tobacco products with calculated and appealing design and packaging characteristics, as well as price promotions and discounts, which, when coupled with the vulnerability of these younger groups to peer influences and their increased exposure to advertising in the retail environment, results in a powerful advertising campaign to a vulnerable population.

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## **Needham Public Health Department**

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www.needhamma.gov/health 781-455-0892 (fax)



**April 28, 2013**

**Honorable Maria Del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New Your, NY 10007**

**The Needham Board of Health passed a regulation in 2003 to increase the age to buy cigarettes to 21 years of age. This was stepped in over a three year period to 19 years of age in 2004, to 20 years of age in 2005, and to 21 years of age in 2006. The Board of Health's goal was to make it harder for high school students to purchase cigarettes. We had some resistance from businesses during the initial discussions. Since it was passed it has gone smoothly with no complaints from the public or businesses.**

**We do compliance checks four times a year. Vendors as a part of yearly permitting have to have all employees who sell cigarettes watch a 30 minute video on the procedures for selling cigarettes and sign their names to a sheet attached with their permit application. We have a strong suspension and fine policy for vendors who sell to minors.**

**The MetroWest Adolescent Health Survey (metrowestsurvey.com) is administered in the Needham Public Schools every two years. In grades 9 – 12 the current cigarette smoking (past 30 days) was 12.9% in 2006, 10.3% in 2008, 6.7% in 2010 and 5.5% in 2012. This is much lower than the average of 9% for the 25 town surveyed.**

**A Needham resident, Dr. Lester Hartman, is a Pediatrician in Westwood, Massachusetts has taken our regulations to many Boards of Health in surrounding towns to encourage them to rise the age to 21 to buy cigarettes. Canton, Sharon and Arlington are currently in the process of raising the age to 21. Brookline, Belmont, Watertown, Westwood and Walpole have recently risen the age to 19. Several other towns in the state are also in discussion now.**

**I hope that New York City will raise the age to buy cigarettes to 21 to protect our youth.**

**Sincerely,**

**Janice Berns, R.N., M.S., Ed.D  
Director of Public Health**

Frank J. Chaloupka, PhD

Written Testimony on New York City's "Sensible Tobacco Enforcement and Pricing" and  
"Protecting Youth From Tobacco: Keeping Product Displays Out of Sight" Proposals

May 1, 2013

**Background**

I am a Distinguished Professor of Economics in the Department of Economics, College of Liberal Arts and Sciences, at the University of Illinois at Chicago. I also hold an appointment in the UIC School of Public Health's Division of Health Policy and Administration. I am Director of the UIC Health Policy Center and am a Fellow in the University of Illinois' Institute for Government and Public Affairs. I am also a Research Associate in the Health Economics Program and the Children's Research Program at the National Bureau of Economic Research. I direct the World Health Organization Collaborating Centre on the Economics of Tobacco and Tobacco Control. I am submitting these comments in support of New York City's "Sensible Tobacco Enforcement and Pricing" and "Protecting Youth From Tobacco: Keeping Displays Out of Sight" proposals.

I specialize in the field of health economics, with an emphasis on the role of policy and environmental influences on health behaviors. I co-direct the Bridging the Gap: Research Informing Policies and Practices for Healthy Youth research program and direct the program's ImpacTeen: A Policy Research Partnership for Healthier Youth Behavior project.

I have over two hundred and fifty publications, including peer-reviewed articles in a variety of economic, policy and health-related journals, book chapters, reports, and other products. I currently serve as the Economics Editor for *Tobacco Control: An International Journal*, as an Associate Editor for *Nicotine & Tobacco Research*, and as an Assistant Editor for *Addiction*. I am on the editorial boards of the *American Journal of Preventive Medicine*, *Archives of Pediatrics & Adolescent Medicine*, *Contemporary Economic Policy*, *The Open Public Health Journal*, and *The Open Addiction Journal*. I have provided consultation to numerous non-governmental organizations, government agencies, and policy makers around the world.

I am co-author of the World Bank's tobacco policy report *Curbing the Epidemic: Governments and the Economics of Tobacco Control* and co-editor of the volume *Tobacco Control Policies in Developing Countries* containing the background papers prepared for the report. I am lead editor for the in progress, joint World Health Organization and National Cancer Institute Monograph on *The Economics of Tobacco and Tobacco Control*. I served on the working groups for the International Agency for Research on Cancer's Handbooks of Cancer Prevention Volume 12, *Methods for Evaluating Tobacco Control Policies*, and Volume 13, *Evaluating the Effectiveness of Smoke-Free Policies*, and chaired the working group for the recently published Volume 14, *The Effectiveness of Tax and Price Policy for Tobacco Control*.

I have contributed to several U.S. Surgeon General's reports. I authored a section on "Effect of Tobacco Taxation" for the 1994 report *Preventing Tobacco Use Among Young People*. I was a consulting scientific editor on the 2000 report *Reducing Tobacco Use*, and authored a chapter entitled "Economic Approaches." I was consulting scientific editor on the most recently

published Surgeon General's report *Preventing Tobacco Use Among Youth and Young Adults*, lead editor for the chapter "The Tobacco Industry's Influences on the Use of Tobacco Among Youth," and author of several sections in that chapter, including the section on the impact of price-reducing marketing on tobacco use among young people.

My research focuses on the impact of policy and environmental influences on health behaviors, including cigarette smoking and other tobacco use, alcohol use and abuse, illicit drug use, diet and nutrition, physical activity, and related outcomes. My research on policy influences and tobacco use includes research on the effects of tobacco control policies and programs including tobacco product excise taxes, marketing restrictions, smoke-free air policies, mass-media anti-smoking campaigns, and comprehensive tobacco control program funding. Similarly, my work on the effects of environmental influences includes research on tobacco company advertising and price-reducing marketing tactics, tobacco product placement, and availability. Much of my research has focused on the impact of these factors on youth and young adult tobacco use. This research is relevant to the two proposed policies - "Sensible Tobacco Enforcement and Pricing" and "Protecting Youth From Tobacco: Keeping Displays Out of Sight". My conclusions on the likely impact of each policy, along with a review of relevant research evidence, are provided below.



## **SENSIBLE TOBACCO ENFORCEMENT AND PRICING**

### **I. Summary of Conclusions**

Extensive economic research demonstrates that increases in cigarette and other tobacco product prices are highly effective in reducing cigarette smoking and the use of other tobacco products, particularly among young people.

Preventing the redemption of coupons, use of multi-pack discounts, and other price-reducing promotions will keep tobacco product prices high, leading to less use of these products, including among young people, than if these forms of price-reducing marketing continued to be available.

Tax evasion undermines the effectiveness of tobacco taxes and price-related policies, while at the same time costing governments revenue. Strengthening efforts to curb tax evasion will reduce the extent of these illegal activities as well as the availability of low-priced tobacco products, and enhance the effectiveness of tax and price policies in reducing tobacco use and its consequences.

A policy that establishes minimum prices for tobacco products will facilitate the enforcement of policies addressing price discounting and help efforts to curb tax evasion by making non-compliant cigarettes more apparent to enforcement authorities, while also reducing incentives for tobacco users to switch to cheaper brands and products.

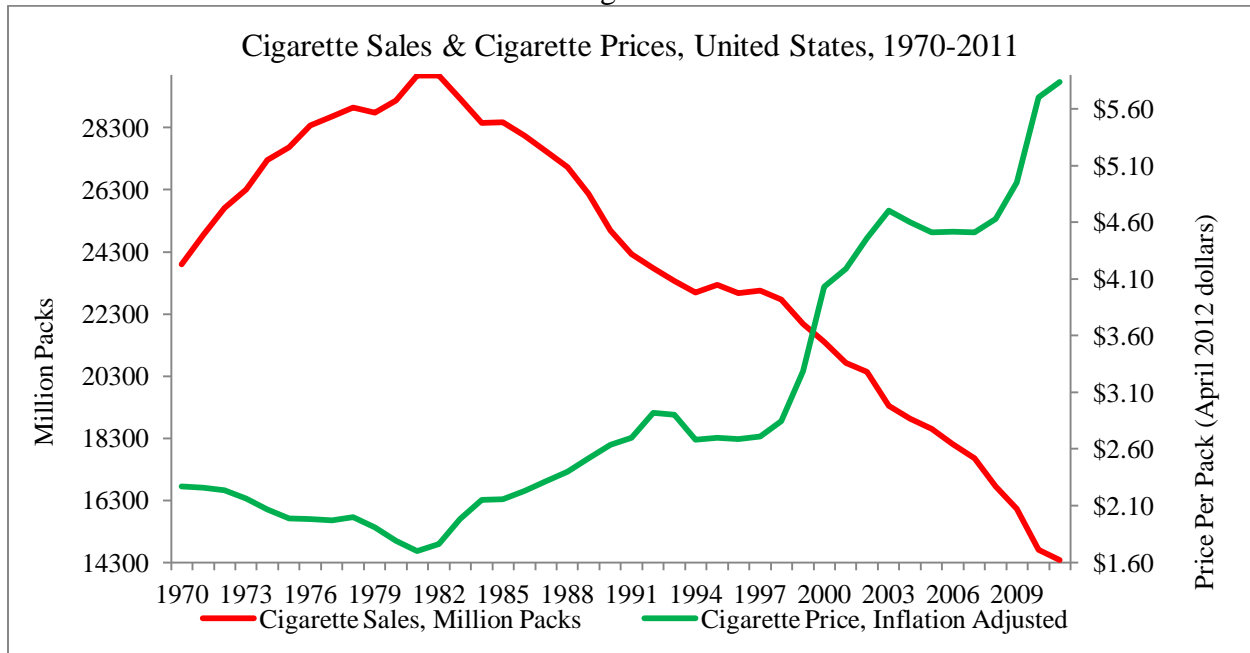
### **II. Impact of Price on Tobacco Use**

Extensive research by economists and other researchers have assessed the impact of tobacco product prices on tobacco use. These studies consistently find that increases in prices on tobacco products lead to reductions in tobacco use. The majority of studies from the United States and other high-income countries have produced estimates of price elasticity - the percentage reduction in consumption resulting from a one percent increase in price - in the range from -0.25 to -0.5, implying that a 10 percent increase in price will reduce consumption by between 2.5 and five percent.<sup>1</sup> These findings are consistent with one of the most basic laws of economics - the law of the downward sloping demand curve, which states that increases in prices result in reductions in the quantity consumed and vice versa. This is clearly illustrated in Figure 1 which shows cigarette prices and cigarettes sales in the United States over the past few decades.

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<sup>1</sup> For a comprehensive review of this research, see the recently published International Agency for Research on Cancer (IARC) handbook: *IARC Handbooks of Cancer Prevention, Tobacco Control, Volume 14: Effectiveness of Tax and Price Policies in Tobacco Control*. Lyon, France (2011).

Figure 1

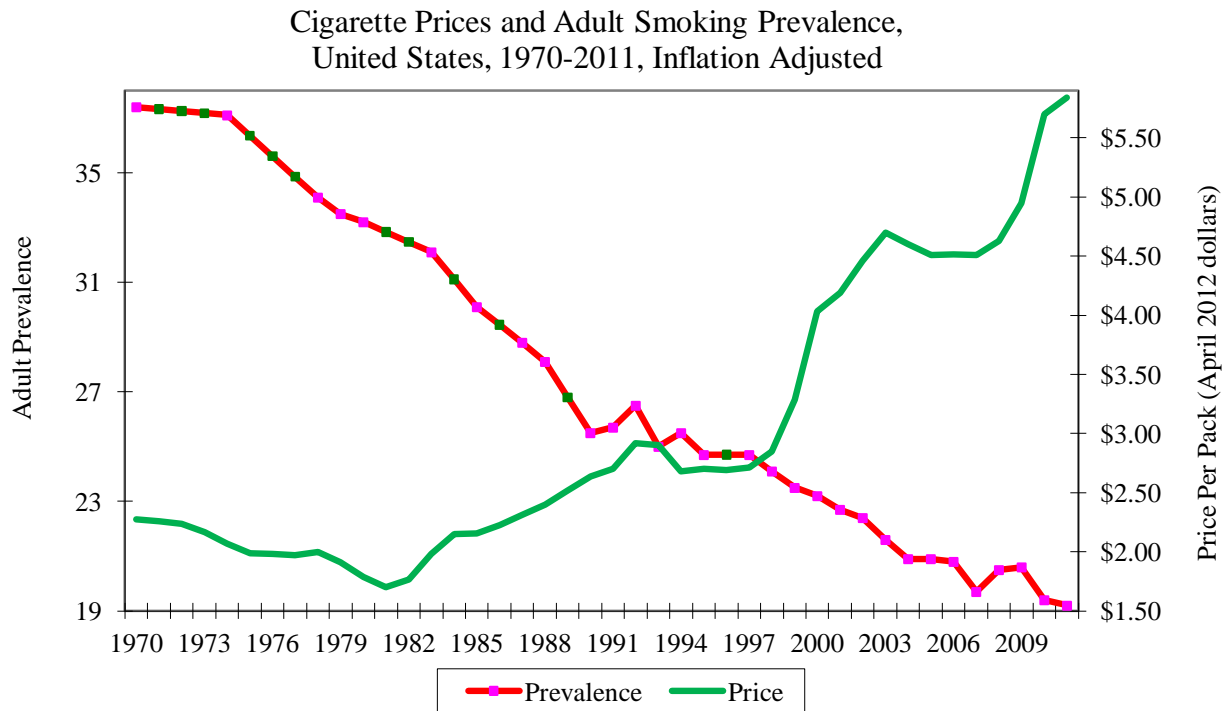


Sources: Orzechowski and Walker (2012). *Tax Burden on Tobacco*. Arlington: Orzechowski and Walker; Consumer Price Index, Bureau of Labor Statistics, [www.bls.gov/cpi](http://www.bls.gov/cpi); and author's calculations.

Findings from econometric studies based on survey data of adult tobacco use show that prices influence both the prevalence of tobacco use and amount of tobacco consumed by users. In general, these estimates suggest that about half of the impact of price on tobacco use results from its effect on prevalence, largely reflecting cessation among adult users.<sup>2</sup> Thus, a ten percent increase in price reduces adult prevalence by between 1.25 and 2.5 percent. This is illustrated in Figure 2 which shows cigarette prices and adult smoking prevalence in the United States over the past several decades.

<sup>2</sup> For example: Lewit EM, Coate D (1982). The potential for using excise taxes to reduce smoking. *Journal of Health Economics* 1(2):121-145; and Farrelly MC, Bray JW, Pechacek T, Woollery T (2001). Response by adults to increases in cigarette prices by sociodemographic characteristics. *Southern Economic Journal* 68(1):156-165.

Figure 2

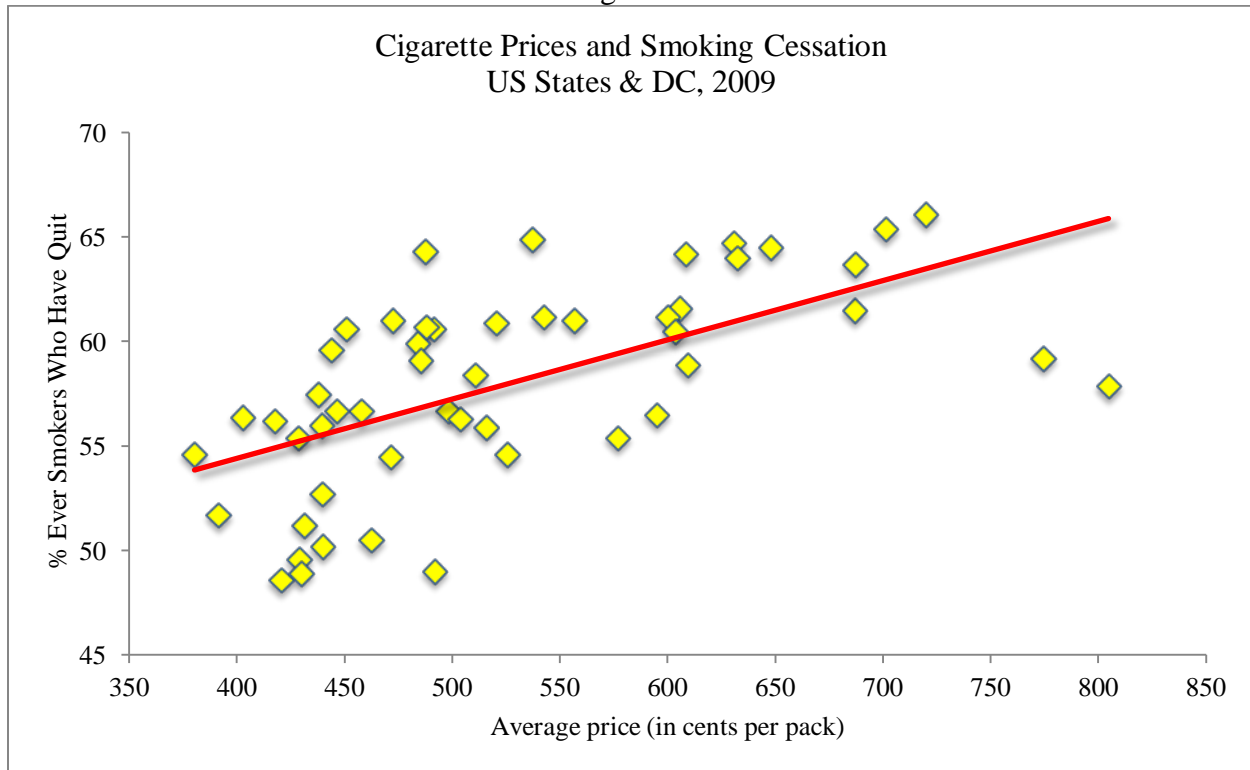


Sources: National Health Interview Survey, various years - [www.cdc.gov/nchs/data/nhis](http://www.cdc.gov/nchs/data/nhis); Orzechowski and Walker (2012). *Tax Burden on Tobacco*. Arlington: Orzechowski and Walker; Consumer Price Index, Bureau of Labor Statistics, [www.bls.gov/cpi](http://www.bls.gov/cpi); and author's calculations. Note: green data points for prevalence are interpolated assuming linear trend.

This is confirmed by econometric studies which find that increases in prices lead current users to try to quit, with some successful in doing so in the long run.<sup>3</sup> This is illustrated in Figure 3 which shows the percentage of ever smokers who have successfully quit, by state, relative to average state level cigarette prices. As shown in the figure, greater percentages of smokers have successfully quit in states that have higher cigarette prices.

<sup>3</sup> For example: Douglas S (1998). The duration of the smoking habit. *Economic Inquiry* 36(1):49-64; and Tauras JA (2004). Public policy and smoking cessation among young adults in the United States. *Health Policy* 68(3):321-332.

Figure 3



Sources: National Survey on Drug Use and Health; Orzechowski and Walker (2012). *Tax Burden on Tobacco*. Arlington: Orzechowski and Walker; and author's calculations.

Economic theory suggests several reasons for prices having a greater impact on tobacco use among young people than on adult tobacco use.<sup>4</sup> These include:

- the lower disposable income of the typical young person, implying that changes in the prices of any of the products they consume will have a greater impact on consumption of these products;
- the greater importance of peer behavior among youth, implying that price-induced changes in tobacco use by some youth will lead to changes in tobacco use among other young people;
- the shorter tobacco use histories of younger tobacco users, suggesting that they may be less addicted and able to respond more quickly to changes in prices;
- the greater relative importance to young people of short term costs (e.g. monetary prices) versus long term costs (e.g. health consequences), given their greater propensity to discount the future; and

<sup>4</sup> Chaloupka FJ (2003). Contextual factors and youth tobacco use: policy linkages. *Addiction* 98(S1):147-150; and Chaloupka FJ, Hu TW, Warner KE, Jacobs R, Yurekli A (2000). The taxation of tobacco products. In *Tobacco Control in Developing Countries*, P Jha and FJ Chaloupka, editors. Oxford: Oxford University Press.

- other channels through which price indirectly influences young people's tobacco use (e.g. through parental use).

Early research on youth smoking based on cross-sectional survey data confirmed these predictions. In the first studies of the impact of price on youth, young adult, and adult smoking, Lewit and colleagues found that smoking among teens was about three times more responsive to price than was smoking among adults, with young adults about twice as responsive as older adults.<sup>5</sup>

While some studies do not find differences in the effects of price on smoking among different age groups, most studies have confirmed that price has a greater impact on smoking among younger person than on smoking among older persons. For example, Harris and Chan (1999) estimated that a ten percent price increase would reduce smoking by about ten percent among 15 through 17 year olds, almost eight percent among 18 through 20 year olds, between six and seven percent among 21 through 26 year olds, and just over three percent among 27 through 29 year olds.<sup>6</sup>

Similarly, a small number of studies have examined the impact of smokeless tobacco taxes on youth smokeless tobacco use, concluding that higher prices are effective in reducing the prevalence and frequency of youth use of these products.<sup>7</sup>

The relationship between cigarette prices and youth smoking are illustrated in Figures 4 and 5 showing cigarette prices and youth smoking rates over time and across states, respectively. As with cigarette sales and adult prevalence, youth smoking is higher when prices are lower and lower when prices are higher.

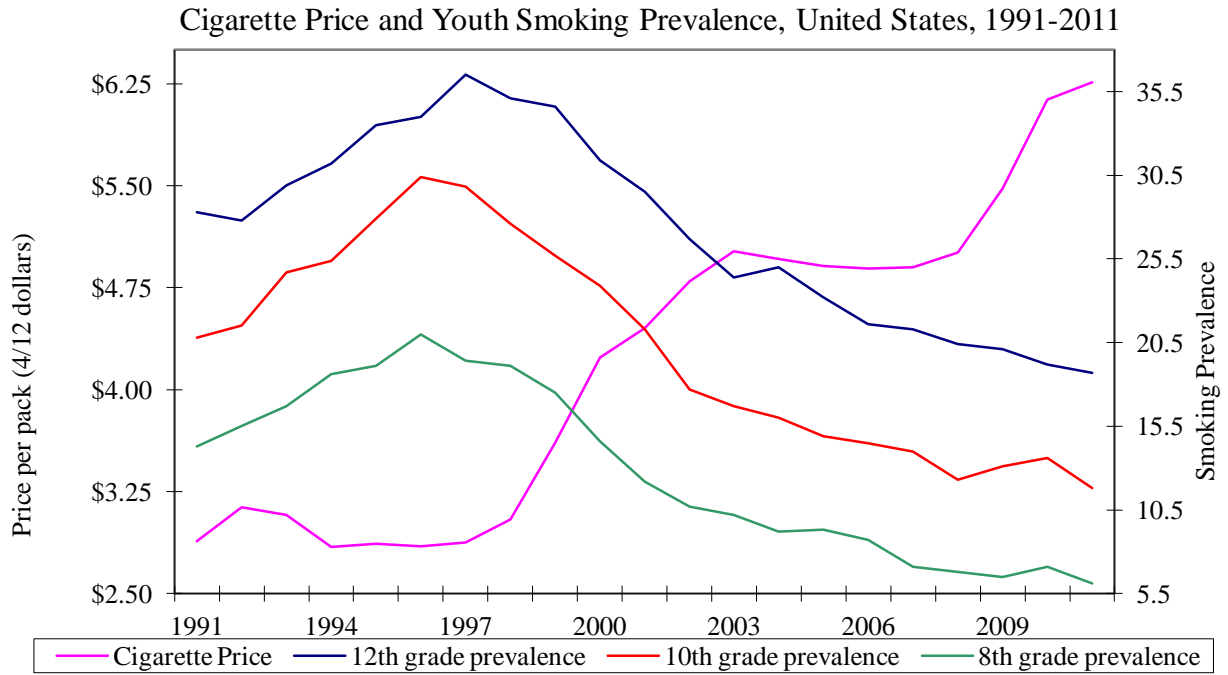
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<sup>5</sup> Lewit EM, Coate D (1982). The potential for using excise taxes to reduce smoking. *Journal of Health Economics* 1(2):121-145; and Lewit EM, Coate D, Grossman M (1981). The effects of government regulation on teenage smoking. *Journal of Law and Economics* 24(3):545-569.

<sup>6</sup> Harris JE, Chan SW (1999). The continuum of addiction: cigarette smoking in relation to price among Americans aged 15-29. *Health Economics* 8(1):81-86.

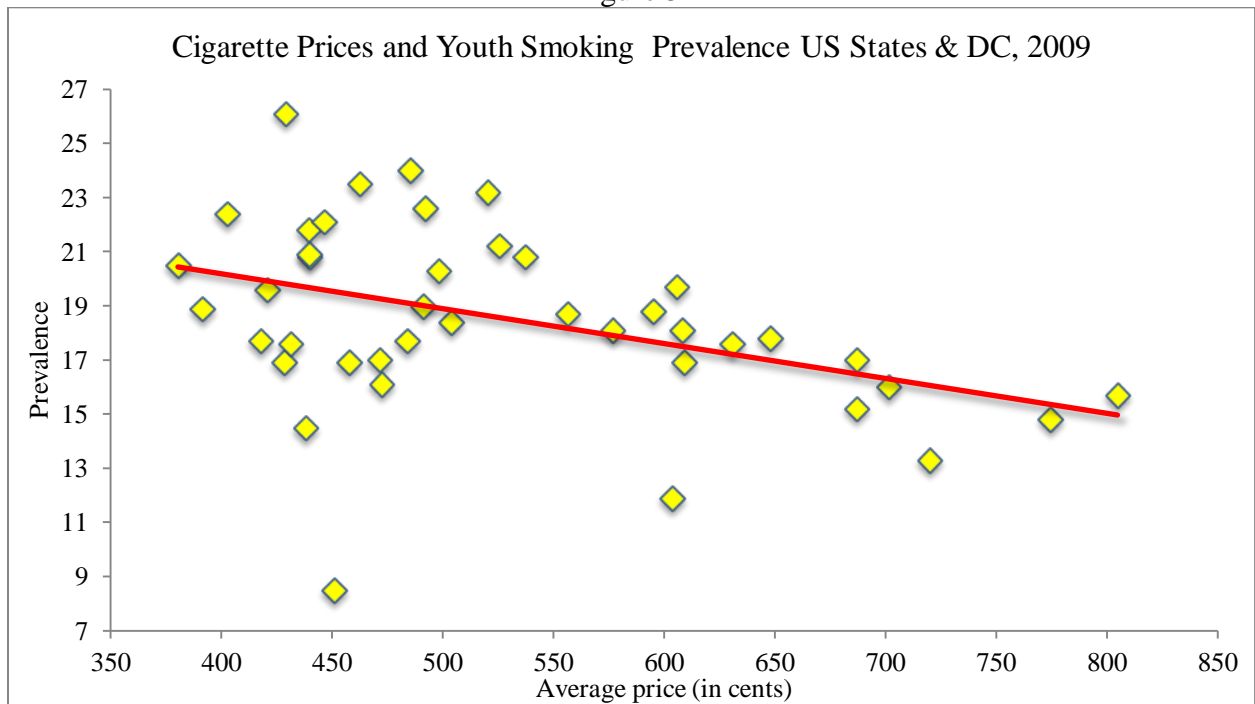
<sup>7</sup> Chaloupka FJ, Tauras JA, Grossman M (1997). Public policy and youth smokeless tobacco use. *Southern Economic Journal* 64(2):503-516; and Tauras JA, Powell LM, Chaloupka FJ, Ross H (2007). The demand for smokeless tobacco among male high school students in the United States: the impact of taxes, prices and policies. *Applied Economics* 39(1):31-41.

Figure 4



Sources: Monitoring the Future project - [www.monitoringthefuture.org](http://www.monitoringthefuture.org); Orzechowski and Walker (2012). *Tax Burden on Tobacco*. Arlington: Orzechowski and Walker; Consumer Price Index, Bureau of Labor Statistics, [www.bls.gov/cpi](http://www.bls.gov/cpi); and author's calculations.

Figure 5



Sources: National Survey on Drug Use and Health; Orzechowski and Walker (2012). *Tax Burden on Tobacco*. Arlington: Orzechowski and Walker; and author's calculations.

A few studies have explored the direct and indirect influences of price on youth smoking that are suggested by economic theory, as described above. For example, Powell and her colleagues (2005) find that more than one-third of the overall impact of price on youth smoking is the result of the indirect effects of price on peer smoking.<sup>8</sup> That is, as some youth are deterred from smoking by higher prices, other youth are less likely to smoke because fewer of their peers smoke. Similarly, Powell and Chaloupka (2005) find that about one-fifth of the overall impact of price on youth smoking is accounted for by the effects of price on parental smoking.<sup>9</sup>

Other research has focused on the role of cigarette prices in the youth smoking uptake process. The Surgeon General (USDHHS, 1994) described uptake as moving through several stages, including experimentation, regular smoking, and addiction.<sup>10</sup> A few econometric studies using cross-sectional data find that prices have relatively little impact on the early stages of smoking uptake, but have a much greater impact on moving from experimentation into regular smoking and, eventually, addiction.<sup>11</sup> This is consistent with the observation that most youth at early stages of smoking uptake smoke few cigarettes and typically get their cigarettes from social sources, while those smoking more regularly are more likely to buy their own cigarettes and, as a result, be more directly influenced by price.

This finding is generally confirmed by studies using longitudinal data on youth. For example, Tauras and his colleagues (2001) use the Monitoring the Future longitudinal data on youth smoking, with baseline data collected from eighth and tenth graders in the early 1990s to examine the impact of cigarette price on smoking initiation.<sup>12</sup> These data are ideal given the multiple cohorts (six) they include and the many changes in cigarette prices (up and down) in the 1990s. Tauras and his colleagues estimate that a ten percent price increase reduces the

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<sup>8</sup> Powell LM, Tauras JA, Ross H (2005). The importance of peer effects, cigarette prices, and tobacco control policies for youth smoking behavior. *Journal of Health Economics* 24(5):950-968.

<sup>9</sup> Powell LM, Chaloupka FJ (2004). Parents, public policy, and youth smoking. *Journal of Policy Analysis and Management* 24:93-112.

<sup>10</sup> U.S. Department of Health and Human Services (1994). *Preventing Tobacco Use Among Young People: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>11</sup> For example: Gruber J, Zinman J (2001). Youth smoking in the U.S.: Evidence and implications. In *Risky Behavior among Youth: An Economic Analysis*. Chicago: University of Chicago Press for the National Bureau of Economic Research; Liang L, Chaloupka FJ (2002). Differential effects of price on youth smoking intensity. *Nicotine & Tobacco Research* 4:109-114; Emery S, White MM, Pierce JP (2001). Does cigarette price influence adolescent experimentation? *Journal of Health Economics* 20(2):261-270; and Ross H, Chaloupka FJ, Wakefield M (2006). Youth smoking uptake progress: price and public policy effects. *Eastern Economic Journal* 32(2):355-367.

<sup>12</sup> Tauras JA, Johnson LD, O'Malley PM (2001). *Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis*. Cambridge MA: National Bureau of Economic Research Working Paper Number 8331.



probability of any smoking initiation (including experimentation) by one to three percent, but that this price increase reduces the probabilities of initiating daily smoking and heavy daily smoking (half pack or more per day) by eight to 12 percent and ten to 14 percent, respectively. Tauras (2005) finds similar effects in his research on the effects of price on smoking escalation among young adults, concluding that higher cigarette prices are most effective in keeping young adults from moving from less than daily smoking into daily and heavy daily smoking.<sup>13</sup>

The effects of increased prices on tobacco use among young people are immediate and grow over time as more and more youth are deterred from taking up tobacco use as a result of higher prices. For example, Huang and Chaloupka (2012) recently estimated that the April 2009 Federal tobacco tax increases that raised the federal cigarette tax by 61.67 cents per pack and raised other tobacco product taxes by relatively more reduced the number of youth smokers by at least 9.7 percent in the two months after the tax increase and reduced the number of youth smokeless tobacco users by at least 16 percent in the two months after the tax increase.<sup>14</sup>

The extensive evidence base on the impact of price on tobacco use and its consequences was recently reviewed by the World Health Organization's International Agency for Research on Cancer (IARC, 2011), which concluded that there was sufficient evidence that higher tobacco product prices:<sup>15</sup>

- result in a decline in overall tobacco use;
- reduce the prevalence of adult tobacco use;
- induce current tobacco users to quit;
- lower the consumption of tobacco products among continuing users;
- reduce the prevalence of tobacco use among young people;
- reduce the initiation and uptake of tobacco use among young people, with a greater impact on the transition to regular use;
- lead to larger reductions in tobacco use among young people than among adults.

In her most recent report, U.S. Surgeon General Regina Benjamin reached the same conclusions as IARC with respect to the impact of price on tobacco use among young people, stating that:<sup>16</sup>

*"The evidence is sufficient to conclude that increases in cigarette prices reduce the initiation, prevalence, and intensity of smoking among youth and young adults."*

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<sup>13</sup> Tauras JA (2005). Can public policy deter smoking escalation among young adults? *Journal of Policy Analysis and Management* 24(4):771-784.

<sup>14</sup> Huang J, Chaloupka FJ (2012). *The Impact of the 2009 Federal Tobacco Excise Tax Increase on Youth Tobacco Use*. Cambridge, MA: National Bureau of Economic Research Working Paper Number 18026.

<sup>15</sup> International Agency for Research on Cancer (2011). *IARC Handbooks of Cancer Prevention, Tobacco Control, Volume 14: Effectiveness of Tax and Price Policies in Tobacco Control*. Lyon, France.

<sup>16</sup> U.S. Department of Health and Human Services (2012). *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

### III. Tobacco Companies' Price-Reducing Marketing Strategies

Each year, cigarette and smokeless tobacco companies are required to report detailed information on their domestic sales and marketing expenditures to the Federal Trade Commission.<sup>17</sup> Over time, FTC's reports on these data have become increasingly detailed, with expenditures now reported in numerous categories, including the following categories reflecting price-reducing marketing strategies:

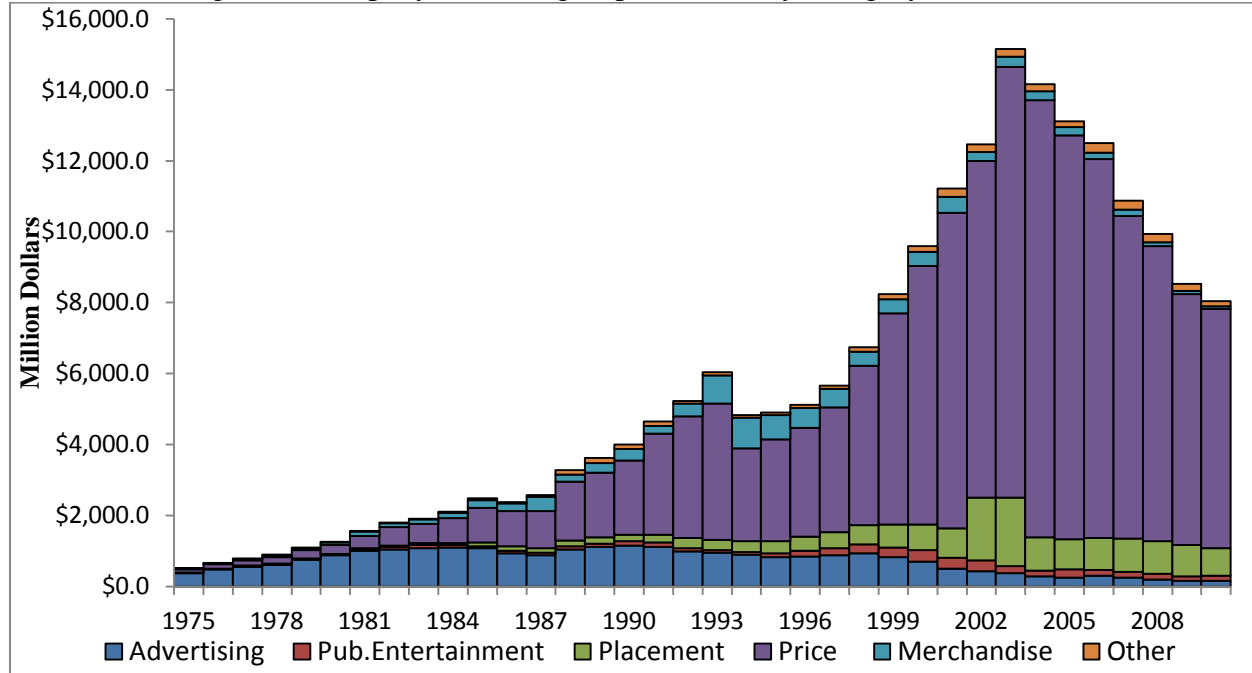
- Price discounts: price discounts paid to retailers or wholesalers in order to reduce the price of tobacco products to consumers, including off-invoice discounts, buy-downs, voluntary price reductions and trade programs; but excluding retail-value-added expenditures for promotions involving free products and expenditures involving coupons.
- Sampling – sampling of tobacco products, including the cost of these products, all associated excise taxes, and increased costs under the MSA, and the cost of organizing, promoting, and conducting sampling. Sampling includes the distribution of products for consumer testing or evaluation when consumers are able to use the products outside of a facility operated by the company, but not the cost of actual clinical testing or market research associated with such distributions. Sampling also includes the distribution of coupons for free products, when no purchase or payment is required to obtain the coupons or products.
- Retail-value-added – bonus product: Retail-value-added expenditures for promotions involving free products (e.g., buy two packs, get one free), whether or not the free products are physically bundled together with the purchased product, including all expenditures and costs associated with the value added to the purchase of tobacco products (e.g., excise taxes paid for the free product and increased costs under the MSA).
- Coupons: all costs associated with coupons for the reduction of the retail cost of tobacco products, whether redeemed at the point-of-sale or by mail, including all costs associated with advertising or promotion, design, printing, distribution, and redemption. However, when coupons are distributed for free products and no purchase or payment is required to obtain the coupons or the products, these activities are considered to be sampling and not couponing.

As shown in Figures 6 and 7, the shares of cigarette and smokeless tobacco company marketing expenditures on marketing tactics that reduce the price of tobacco products have grown substantially, with these expenditures accounting for the significant share of overall expenditures in recent years. In the most recent year for which data are available (2010), 83.9 percent of cigarette marketing expenditures and 43.8 percent of smokeless tobacco marketing expenditures were on price-reducing marketing tactics.

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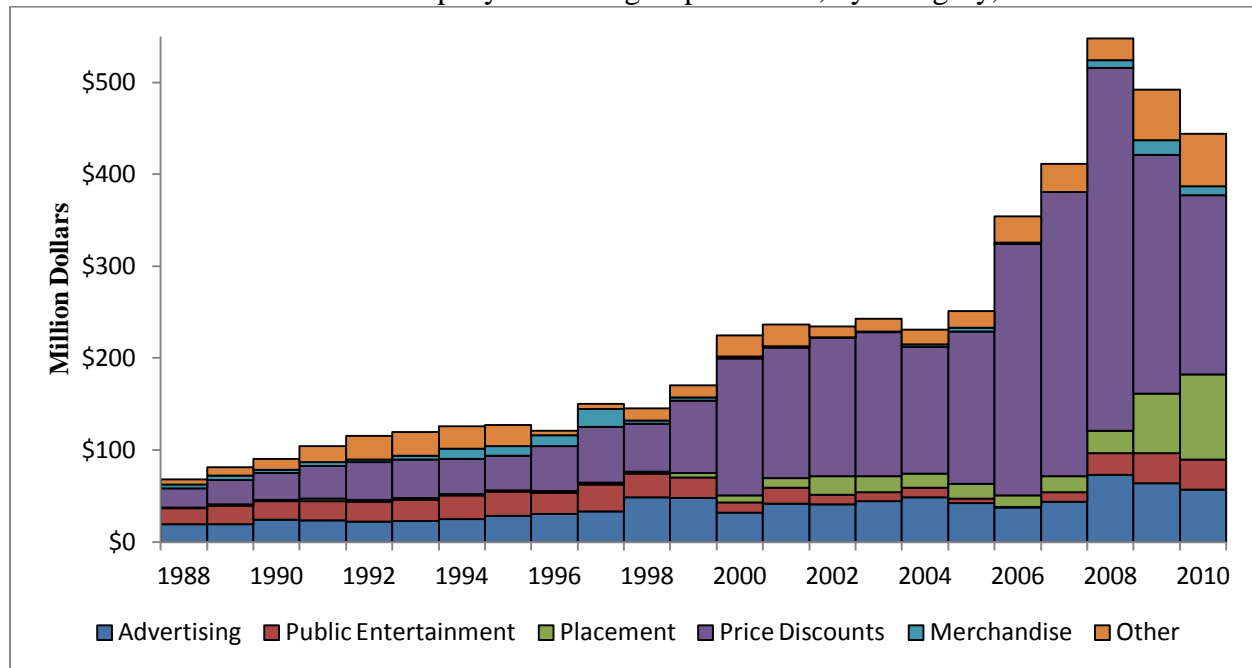
<sup>17</sup> Federal Trade Commission. (2011). *Federal Trade Commission Cigarette Report for 2007 and 2008*. Washington D.C.: Federal Trade Commission; and Federal Trade Commission. (2011). *Federal Trade Commission Smokeless Tobacco Report for 2007 and 2008*. Washington D.C.: Federal Trade Commission.

Figure 6  
Cigarette Company Marketing Expenditures, by Category, 1975-2010



Source: Federal Trade Commission, 2012 cigarette report, and author's calculations.

Figure 7  
Smokeless Tobacco Company Marketing Expenditures, by Category, 1975-2010



Source: Federal Trade Commission, 2012 smokeless tobacco report, and author's calculations.

Figure 6 illustrates how the focus of cigarette marketing expenditures changed over time as cigarette companies became increasingly aware of the importance of price in affecting cigarette smoking, particularly among young people, as described above. From 1975 through 1981, spending on price-reducing marketing tactics accounted for roughly one-fifth of overall cigarette marketing expenditures. Following the publication of the studies by Lewit and colleagues in 1981 and 1982, cigarette company spending on marketing tactics that reduce price grew sharply, both in absolute terms and as a share of total spending, rising to over half of all spending by 1988 and to nearly two-thirds of spending by 1992.

On April 2, 1993, in what's become known as "Marlboro Friday", Philip Morris "*announced a major shift in business strategy designed to increase market share and grow long term profitability in a highly price sensitive market.*"<sup>18</sup> By implementing a series of price-reducing marketing tactics, Philip Morris reduced the price of Marlboro cigarettes by 40 cents per pack. Other cigarette companies quickly implemented similar marketing efforts to reduce prices on their leading brands. Later that year, the price-reductions initially implemented through price-reducing marketing tactics were made permanent through reductions in industry cigarette prices. For Philip Morris, its "Marlboro Friday" strategy was highly effective - by the end of 1994, its market share had grown to 46.9 percent and Marlboro's market share had risen to 30.0 percent.<sup>19</sup>

For the next several years following the "Marlboro Friday" price reductions, average, inflation-adjusted cigarette prices were relatively stable, after rising steadily over the previous decade. As shown in Figures 1 and 2, the downward trends in overall cigarette sales and adult smoking prevalence resulting from the price increases of the 1980s and early 1990s were halted as cigarette prices fell and remained flat for much of the mid-1990s. An additional consequence of the "Marlboro Friday" price reductions was a sharp rise in youth smoking prevalence. Gruber and Zinman (2001), for example, estimate that over one-quarter of the increase in youth smoking observed in the mid-1990s was caused by the reductions in prices for Marlboro and other leading brands.<sup>20</sup>

Internal tobacco company documents from the 1980s and 1990s reveal a range of price-reducing marketing strategies and discussions of how these tactics would affect tobacco use among young people. For example, RJR internal documents discussed a variety of approaches in response to its perception that the price sensitivity of cigarette demand was on the rise and had important implications for its long run success. For example, noting the greater price sensitivity of young adult smokers, RJR's 1984 Strategic Research Report stated:

*"Tactically, extended periods of closely targeted pack promotion (BIGIF (buy-one get-one free), sampling) in selected sites (e.g., convenience stores, military exchanges,*

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<sup>18</sup> Philip Morris Companies Inc., April 2, 1993 press release. Bates Number 2048188736.

<sup>19</sup> Falconer C. "Tobacco Operations – Primary Questions", Philip Morris document, April 10, 1995. Bates Number 2048537819.

<sup>20</sup> Gruber J, Zinman J. "Youth Smoking in the United States: Evidence and Implications," in Gruber J, ed., *Risky Behavior Among Youths: An Economic Analysis*. Chicago: University of Chicago Press, 2001.

*special events) could lead to brand loyalty from repeated trial. This should be considered an investment program.”<sup>21</sup>*

These price-reducing marketing strategies appear to have been a critical factor in the growth of RJR’s Camel brand, particularly among younger smokers, in the 1980s and early 1990s. The importance of these efforts was noted early in the rise of Camel among young adult males in the Midwest, where it was observed that:<sup>22</sup>

*“The major factor contributing to CAMEL’s dramatic growth among Mid-West 18-24 year old males appears to be the increased level of Mid-West promotional support, and in particular, CAMEL’s targeted promotions (which were implemented the same time as the boost in CAMEL’s share and completed just prior to the downward trend).”*

These promotions included buy-three-get-three-free (“six pack”) discounts, coupons, the “Camel Cash” program, and other retail value added strategies.

As described in a subsequent report, it appears that these promotions were critical to sustaining any increase in Camel’s market share. Based on data from an RJR tracking survey, an almost two percentage point decline in Camel’s market share among young adult smokers was observed during a more than one year period when promotional support for Camel was significantly reduced (from an expected eight percent in the middle of the period to just over six percent). As the report stated:<sup>23</sup>

*“While “Old Joe” might be able to generate growth by imagery alone, the above patterns suggest that retail pack programs play an important role in maintaining loyalty among the brand’s YAS franchise during this key stage in brand choice, as well as in generating trial, which could stimulate further growth momentum. Thus, reducing CAMEL’s pack presence would likely jeopardize the brand’s ability to sustain the rate of YAS growth achieved in 1988.”*

This suggests that the combination of imagery (Joe Camel) and price reductions contributed significantly to the growth in Camel’s market share among teens and young adults in the late 1980s and early 1990s.

Similarly, Philip Morris actively considered a number of other price-reducing marketing strategies after “Marlboro Friday” to further expand its position as market leader. In a document from a new product development meeting in June 1993, a number of projects are described that include some price “hook.”<sup>24</sup> Some of these were in the early stages, while others had been market tested and were ready to go. Project RX, for example, was “*designed to capitalize on*

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<sup>21</sup> Burrows DS. *Young Adult Smokers: Strategies and Opportunities*. Winston-Salem (NC): Marketing Development Department, R.J. Reynolds Tobacco Company, February 29, 1984. Bates Number 501928462.

<sup>22</sup> Creighton FV. “Camel Growth Among Males 18-24 Years Old in the Mid-West.” R.J. Reynolds memorandum, July 25, 1986. Bates Number 505727418.

<sup>23</sup> R.J. Reynolds. “Volume Impact of Camel YAS Growth.” R.J. Reynolds document, 1989. Bates Number 507181150.

<sup>24</sup> Philip Morris U.S.A. “Marlboro New Product Development.” Presentation at PMUSA New Product Meeting, June 30, 1993. Bates Number 2021383397.

*consumer price sensitivity by delivering a product that combines a rational price break with the equity and value of the Marlboro trademark.”*

In addition, tobacco companies also used their price-reducing marketing strategies to offset the impact of tobacco tax increases and other tobacco control efforts, at both the state and national levels. Philip Morris, for example, developed a “defense plan” in response to California’s Proposition 99 that raised the state’s cigarette tax by 25 cents per pack in 1989.<sup>25</sup> This plan considered a variety of price-reducing marketing tactics designed to offset the short run impact of the tax increase, including couponing and multipack discounts, and included efforts via direct mail, at the point-of-purchase and through the mass media. Different strategies were discussed for using different approaches to reach smokers with different characteristics (those who are brand loyal, those who are undecided, and those who are price sensitive). In addition to targeting California, the plan was to “*test defensive elements for national rollout against future federal excise tax increase.*” A similar plan, based on the California experience, was developed in response to New Jersey’s 1990 tax increase.<sup>26</sup>

Similar strategies are discussed in an RJR memo regarding their planning for an expected 1987 federal cigarette excise tax increase.<sup>27</sup> Additionally, the plan called for including postage paid reply cards in cartons that would allow smokers to let their Congressperson know of their opposition to the tax hike, as well as the creation of a 1-800 number “*for smokers to call for additional tax protection if an increase does in fact occur.*” Smokers participating in the call-in program would have received 6 \$1.00 carton coupons by mail if the tax increase had taken place, a strategy described as “*self-selecting, or targeted to price-sensitive franchise smokers.*”

Other internal tobacco company documents show how some of these strategies were implemented. For example, Philip Morris documents from 1991 and 1992 contained ads for its discount Cambridge brand that showed newspaper clips referring to recent Pennsylvania, Maryland and/or Washington state cigarette tax increases.<sup>28</sup> These ads included a coupon for one-dollar off the purchase of two packs as a way to “*get tax relief.*” RJR did much the same in a 1991 Salem ad that contained a newspaper clip with the headline “*Delaware joins FEDS in*

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<sup>25</sup> Leo Burnett. *Philip Morris USA Proposition 99: Tobacco Tax Initiative California Defense Plan*. Presentation to Philip Morris U.S.A., September 22, 1988. Bates Number 2048486666.

<sup>26</sup> Leo Burnett USA. *Philip Morris U.S.A. New Jersey Tobacco Tax Initiative Defense Media Recommendation*. July 9, 1990. Bates Number 2060295221; and Leo Burnett USA. “New Jersey Tobacco Tax Plan.” Letter to Sheila Spicehandler, Philip Morris U.S.A., July 11, 1990. Bates Number 2060295219.

<sup>27</sup> Shouse DW. “1987 Federal Excise Tax Increase.” R.J. Reynolds memorandum, December 22, 1986. Bates Number 506767411.

<sup>28</sup> Philip Morris. Cambridge advertisement with “Pennsylvania raises cigarette taxes 72%” headline. 1991. Bates Number 2049033112; and Philip Morris. Cambridge advertisement with “Taxes raised 125% for Maryland Smokers” and “Cigarette tax up 67% in Washington” headlines. 1992. Bates Number 2049033132.

*increasing cigarette taxes.*"<sup>29</sup> This ad included a one-dollar off coupon for the purchase of either four packs or one carton of Salem cigarettes.

The strategy of providing price reductions through coupons, multi-pack discounts, and other promotions that are described in these documents appear to have been relatively widely employed in response to the 1991 and 1993 federal cigarette excise tax increases and in response to the more recent Master Settlement Agreement (MSA)-induced price increases. In the three years prior to the 1991 tax increase, cigarette companies reported expenditures of about \$1 billion per year on coupons and retail value added promotions to the Federal Trade Commission. During the three-year period from 1991 through 1993, however, expenditures in these categories rose to almost \$2.4 billion on average, before declining to about \$1.3 billion per year from 1994 through 1996.

While neither more recent internal tobacco company documents nor FTC data on tobacco company marketing expenditures are publicly available, there is some evidence that tobacco companies continue to use price-reducing marketing strategies to offset the impact of tobacco tax increases. For example, as described in the most recent U.S. Surgeon General's report, Philip Morris increased prices on its leading cigarette brands (including Marlboro) by 71 cents per pack and on its other brands by 78 cents per pack when the federal cigarette excise tax was raised by 61.67 cents per pack in April 2009.<sup>30</sup> At the same time, Philip Morris contacted smokers through e-mail and, possibly, other communications with the following note:<sup>31</sup>

*On February 4th, 2009, the Federal Government enacted legislation to fund the expansion of the State Children's Health Insurance Program (CHIP) that increases excise taxes on cigarettes by 158%. As a result, you will see the price of all cigarettes, including ours, increase in retail stores. We know times are tough, so we'd like to help. We invite you to register at [Marlboro.com](http://Marlboro.com) to become eligible for cigarette coupons and special offers using this code: MAR1558.*

This and other evidence led the WHO's International Agency for Research on Cancer to conclude that there is sufficient evidence that:<sup>32</sup>

*"Tobacco industry price discounting strategies, price-reducing marketing activities, and lobbying efforts mitigate the impact of tobacco excise tax increases."*

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<sup>29</sup> R.J. Reynolds. Salem advertisement with "Delaware joins FEDS in increasing cigarette taxes" headline. 1991. Bates Number 2040264594.

<sup>30</sup> U.S. Department of Health and Human Services (2012). *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>31</sup> Auerbach P. A reprehensible message from Philip Morris USA, 2009. [http://www.healthline.com/blogs/outdoor\\_health/2009/04/reprehensible-message-from-philip.html](http://www.healthline.com/blogs/outdoor_health/2009/04/reprehensible-message-from-philip.html).

<sup>32</sup> International Agency for Research on Cancer (2011). *IARC Handbooks of Cancer Prevention, Tobacco Control, Volume 14: Effectiveness of Tax and Price Policies in Tobacco Control*. Lyon, France.



As is clear from Figure 6, the restrictions on marketing contained in the MSA have done little to slow the growth of cigarette marketing. This is particularly true for spending on price-reducing marketing strategies; for example, following the MSA, expenditures on coupons and retail value added programs again rose significantly, going from just over \$1.5 billion in 1997 to almost \$3.1 billion in 1999. This massive increase in price related promotions cushioned the impact of the settlement-related increases in cigarette prices during this time, leading to smaller reductions in cigarette consumption and adult and youth smoking prevalence than would have otherwise resulted from the price increases alone. For example, Keeler and his colleagues (2004) estimate that the increases in cigarette company marketing expenditures, largely the result of increases in spending on price-reducing marketing tactics, that followed the marketing restrictions and price increases resulting from the MSA offset as much as 57 percent of the decline in smoking caused by the MSA-induced price increases.<sup>33</sup>

In addition, there is growing evidence that at least some tobacco company marketing activities reflect efforts to offset the impact of other state and local tobacco control efforts. Slater and her colleagues (2001), for example, find that the use of point-of-sale promotions is greater in states with comprehensive tobacco control program funding, while Loomis and his colleagues (2006) observe more of these promotions in following the MSA as well as in response to state cigarette tax increases.<sup>34</sup>

#### **IV. Impact of Price-Reducing Marketing Strategies on Tobacco Use among Young People**

Research shows that young people are most likely to smoke the most heavily advertised cigarette brands. For example, in the late 1980s and early 1990s, the Centers for Disease Control and Prevention (1994) found that youth overwhelmingly smoked the three most heavily advertised cigarette brands, with at least 85 percent of young smokers smoking Marlboro, Camel, or Newport cigarettes, compared to about 35 percent of adults.<sup>35</sup> Likewise, Pollay and colleagues (1996) concluded that teenagers are about three times more sensitive to cigarette advertising than are adults.<sup>36</sup>

The testimony of industry marketing executives, other industry representatives, and various expert witnesses in the federal tobacco litigation (US v. Philip Morris et al.), and at least some

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<sup>33</sup> Keeler TE, Hu TW, Ong M, Sung HY (2004). The US National Tobacco Settlement: the effects of advertising and price changes on cigarette consumption. *Applied Economics* 36:1623-1629.

<sup>34</sup> Slater S, Chaloupka FJ, Wakefield M (2001). State variation in retail promotions and advertising for Marlboro cigarettes. *Tobacco Control* 10:337-339; and Loomis BR, Farrelly MC, Nonnemaker JM, Mann NJ (2006). Point of purchase cigarette promotions before and after the Master Settlement Agreement: exploring retail scanner data. *Tobacco Control* 15:140-142.

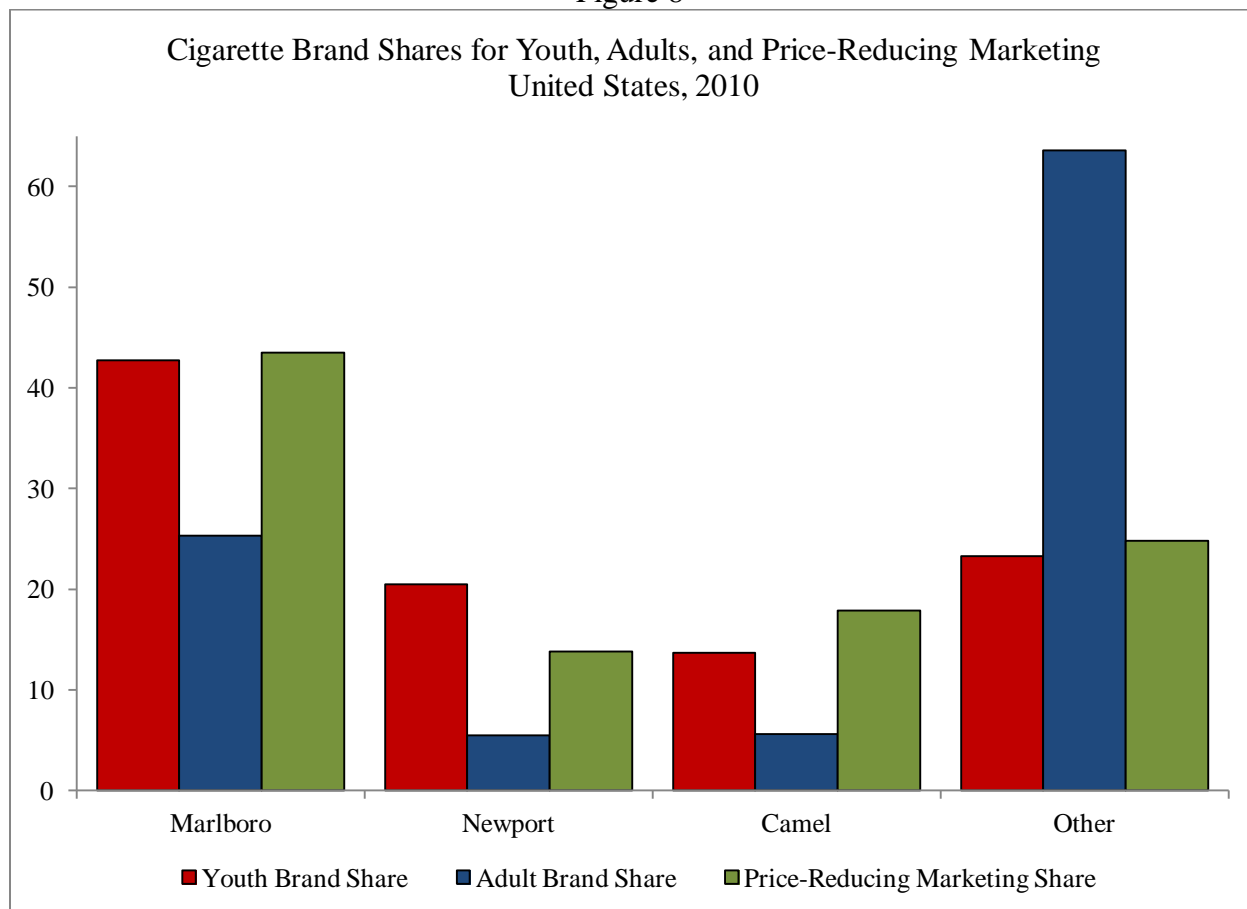
<sup>35</sup> Centers for Disease Control and Prevention (1994). Changes in the cigarette brand preferences of adolescent smokers - United States, 1989-1993. *Morbidity and Mortality Weekly Report* 43(32):577-581.

<sup>36</sup> Pollay RW, Siddarth S, Siegel M, Haddix A, Merritt RK, Giovino GA, Eriksen MP (1996). The last straw? Cigarette advertising and realized market shares among youths and adults, 1979-1993. *Journal of Marketing* 60:1-16.

company Web sites, suggests that over time, there has been an increased focus of tobacco company marketing efforts on a limited number of brands, most notably the brands most likely to be used smoked by young tobacco users.<sup>37</sup> This trends parallels the increased focus of tobacco company marketing spending on price-reducing marketing strategies described above.

While detailed data on marketing spending by company, brand, and type of marketing tactic are not publicly available, some evidence suggests that tobacco company spending on price-reducing marketing strategies is most heavily concentrated on the brands most likely to be consumed by youth. Figure 8 shows cigarette brand shares for young smokers, adult smokers, and extent of price-reducing marketing tactics in 2010. The youth data come from the nationally representative data from the Monitoring the Future surveys of 8th, 10th, and 12th grade students. The data on adult smokers and use of price-reducing marketing tactic by brand come from the nationally representative data from the International Tobacco Policy Evaluation Study surveys of adult smokers. As these data show, young smokers are much more likely to smoke brands on which price-reducing marketing tactics are being used.

Figure 8



Sources: Monitoring the Future Surveys, [www.monitoringthefuture.org](http://www.monitoringthefuture.org), and International Tobacco Control Policy Evaluation Study surveys, [www.itcproject.org](http://www.itcproject.org).

<sup>37</sup> Written testimony of government witnesses is available online at <http://www.usdoj.gov/civil/cases/tobacc02>.

White and colleagues (2006) provide some evidence on the characteristics of smokers who take advantage of price-reducing marketing opportunities, using data from the 2002 California Tobacco Survey.<sup>38</sup> They find that over one-third of smokers used price-reducing marketing offers whenever such offers were available, with young adults, women, African Americans, heavier smokers, and those expressing concern about cigarette costs more likely to use these offers.

Two peer-reviewed academic studies provide evidence that the availability of price-reducing marketing strategies is associated with increased tobacco use among young people. Pierce and colleagues (2005) used data on the age of initiation of fairly regular smoking take from the 1992/93, 1995/96, and 1998/99 Tobacco Use Supplements to the Current Population Survey to assess the associations between price and the extent of price-reducing marketing tactics on the initiation of regular smoking among 14-17 and 18-21 year olds.<sup>39</sup> They conclude that increases in tobacco company spending on price-reducing marketing tactics overcame the effects of higher cigarette prices were associated with a halt in the decline in the incidence of smoking initiation by the mid-1980s, and a reversal of the decline in smoking initiation among 14-17 year olds. They go on to state:

*"...to the extent initiation decisions of young smokers and would-be smokers affect the level of price-subsidizing promotions, it would strengthen the point that cigarette companies specifically target this segment of the market with these promotions."*

In the second study, Slater and colleagues (2007) combined novel data on point-of-sale cigarette marketing collected in the Bridging the Gap project with Monitoring the Future survey (MTF) data on youth smoking to assess the impact of price-reducing marketing tactics and advertising at the point-of-sale on uptake of smoking among youth.<sup>40</sup> Their data on point-of-sale marketing practices were collected from 17,746 stores in 966 communities during 1999 to 2003; these communities reflected the location of the student population for the second-year half-sample of the 8th-, 10th-, and 12th-grade schools participating in the MTF project during these years. Data on cigarette marketing practices included in-store, exterior, and parking lot measures of advertising; the presence of low-height advertising and functional objects (defined as branded objects that have some use, such as clocks, trash cans, and grocery baskets); the presence of price-reducing marketing offers (cents-off specials, on-pack coupons, multipack discounts, and non-cigarette retail value-added promotions) for Marlboro and Newport; prices for Marlboro and Newport; and product placement (self-service versus clerk assisted only). Marlboro and Newport brands were selected for the data on pricing and price-reducing marketing tactics because of the popularity of these brands among young people. The measure on uptake of

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<sup>38</sup> White VM, White MM, Freeman K, Gilpin EA, Pierce JP (2006). Cigarette promotional offers - who takes advantage? *American Journal of Preventive Medicine*, 30(3):225-231.

<sup>39</sup> Pierce JP, Gilmer TP, Lee L, Gilpin EA, de Beyer J, Messer K (2005). Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking. *Health Economics* 14:1061-1071.

<sup>40</sup> Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM (2007). The impact of retail cigarette marketing practices on youth smoking uptake. *Archives of Pediatrics & Adolescent Medicine* 161(5):440-445.

smoking among youth used by Slater and associates was constructed from the MTF survey data on current and past smoking behavior and future smoking. Slater and colleagues concluded that cigarette marketing has a significant impact on uptake of smoking among youth. Specifically, they found that an increased prevalence of point-of-sale advertising was associated with a significant increase in the likelihood of moving from never smoking to experimentation (puffing), with the magnitude of the association falling and becoming insignificant for later stages of uptake. In contrast, they found a significant association between the availability of price-reducing marketing tactics and later stages of smoking uptake, with the magnitude of the effect and its significance increasing at these later stages. Similarly, Slater and colleagues found a significant negative association between cigarette prices and the uptake of smoking among youth, with the size and significance of the effect consistent across the different stages of uptake (with the exception of an insignificant association for the transition from never smoking to experimentation). The findings that price and price-reducing marketing tactics have a greater impact at later stages of the uptake of smoking among youth are consistent with the evidence on price and youth smoking described above. Based on their estimates, Slater and colleagues performed various simulations to assess the impact of point-of-sale advertising and price-reducing marketing on smoking uptake among youth. Specifically, they estimated that if price-reducing marketing offers were not available in any of the stores in the communities covered by their data, the prevalence of current established smoking in their sample would have been reduced by more than 13 percent.

## V. Tax Evasion

Tobacco tax evasion includes a variety of illegal activities, from the bootlegging of cigarettes and other tobacco products sold in low-tax jurisdictions (such as low tax states and Native American reservations) to smuggling of untaxed products (including counterfeit cigarettes). One consequence of tax evasion is the increased availability of lower priced cigarettes and other tobacco products, leading to greater use of these products among young people and adults and increases in the health and economic consequences of tobacco use.<sup>41</sup> At the same time, increased tax evasion costs governments much needed tax revenues.<sup>41</sup> In recent years, the links between tobacco tax evasion and organized crime and terrorist networks has become increasingly clear.<sup>42</sup>

In an effort to assess the extent of tax evasion and tax avoidance, one recent study collected littered cigarette packs in New York City before and after the 2008 increase in the New York State cigarette excise tax.<sup>43</sup> Before the state tax increase, 52 percent of the littered cigarette packs collected had New York City tax stamps. Immediately after the tax increase, this fell to 42

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<sup>41</sup> Joossens L, Merriman D, Ross H, Raw M (2009). *How Eliminating the Global Illicit Cigarette Trade Would Increase Tax Revenues and Save Lives*. Paris: International Union Against Tuberculosis and Lung Disease.

<sup>42</sup> US Government Accountability Office (2011). *Illicit Tobacco: Various Schemes are Used to Evade Taxes and Fees*. Washington DC: United States Government Accountability Office.  
Billingslea W (2003). Illicit cigarette trafficking and the funding of terrorism. *The Police Chief* 71(2).

<sup>43</sup> Chernick H, Merriman D (2010). Using littered pack data to estimate cigarette tax avoidance in NYC. Manuscript, Department of Economics, Hunter College.

percent. Many of the littered packs collected for the study came bore tax stamps from other jurisdictions, with a significant share of these from low tax states such as Virginia. A sizable share - 24 percent after the state tax increase - bore no tax stamp, while about 5 percent of packs had counterfeit New York City stamps. Together, these data suggest considerable tax evasion in New York City. Based on the sample of packs with either no tax stamp or a counterfeit New York City stamp, the researchers estimated that tax evasion cost New York City and State between \$235 and \$272 million, roughly half of total cigarette tax revenues collected. Another recent study that accounted for both tax avoidance and tax evasion estimated that New York State's lost revenues from untaxed cigarettes was over half a billion dollars in 2009.<sup>44</sup>

In its comprehensive review of the global evidence on the effectiveness of tax and price policies for tobacco control, the International Agency for Research on Cancer reached several conclusions about tobacco tax avoidance and evasion, including:<sup>45</sup>

- higher cigarette taxes and prices will reduce cigarette consumption and increase cigarette tax revenues, despite the presence of tax avoidance and evasion;
- eliminating tax evasion would lead to relatively larger reductions in tobacco use among young people and the poor;
- tax evasion undermines the impact of other effective tobacco control policies, including restrictions on youth access to tobacco products; and
- a multifaceted and flexible approach is needed to curb tax evasion.

Based on its review of experiences from a variety of countries, IARC concluded that there was strong evidence that:

*"A coordinated set of interventions that includes international collaborations, strengthened tax administration, increased enforcement, and swift, severe penalties reduces illicit trade in tobacco products."*

Similarly, in the *WHO Technical Manual on Tobacco Tax Administration*, the World Health Organization drew on experiences in numerous countries to identify 'best practices' in tobacco tax administration, including several targeting tax evasion:<sup>46</sup>

- strengthening the capacity of tobacco tax administrators to monitor tobacco product markets;
- adopting new technologies to strengthen tobacco tax administration;
- licensing all involved in tobacco product manufacturing and distribution; and
- ensuring swift and severe penalties for those caught engaging in illicit trade in tobacco products.

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<sup>44</sup> Loomis B, et al. (2010). *Implications of the June 2008 \$1.25 Cigarette Tax Increase*. Research Triangle Park, NC: Research Triangle Institute.

<sup>45</sup> International Agency for Research on Cancer (2011). *IARC Handbooks of Cancer Prevention, Tobacco Control, Volume 14: Effectiveness of Tax and Price Policies in Tobacco Control*. Lyon, France: International Agency for Research On Cancer.

<sup>46</sup> World Health Organization (2010). *WHO Technical Manual on Tobacco Tax Administration*. Geneva, Switzerland: World Health Organization.

## VI. Minimum Pricing for Tobacco Products

As described above, tobacco company price-reducing marketing tactics result in significantly lower prices for tobacco products than would exist in the absence of these activities. Based on the data reported by cigarette companies to the Federal Trade Commission, price-reduction promotions reduced cigarette prices by nearly 50 cents per pack, on average, in 2010.<sup>47</sup> Some promotions, such as buy-one-get-one-free offers, will lead to considerably larger reductions in price. Recent data from New York City show that these price promotions are widely available, with more than two-thirds of retailers offering some price-reducing promotion for cigarettes, with those in high-risk and/or lower-income neighborhoods more likely to offer them.<sup>48</sup> Many of the City's tobacco users take advantage of these price-reductions, with those who do so saving an average of about \$1.25 per pack.<sup>49</sup>

Likewise, tax evasion results in cheaper tobacco products being widely available. Based on the prices smokers report paying for recent purchases, it is likely that these contraband cigarettes are being sold at a discount of \$1.50 per pack or more, undermining the effectiveness of high state and local taxes in reducing smoking. Based on data from the 2011 New York State Adult Tobacco Survey, more than one in ten packs purchased by New York City smokers cost less than \$8.60, a plausible lower bound for legal cigarettes.<sup>50</sup>

Enforcing proposed provisions aimed at restricting price-reducing marketing practices and curbing tax evasion will be challenging. A policy that establishes a minimum price for cigarettes and other tobacco products will facilitate enforcement efforts by making it easier to detect products that are being sold below the minimum price, likely reflecting price discounting or tax evasion. The proposed \$10.50 minimum price for a pack of 20 cigarettes or little cigars is below the price paid by most New York City Smokers, as shown in Figure 9.

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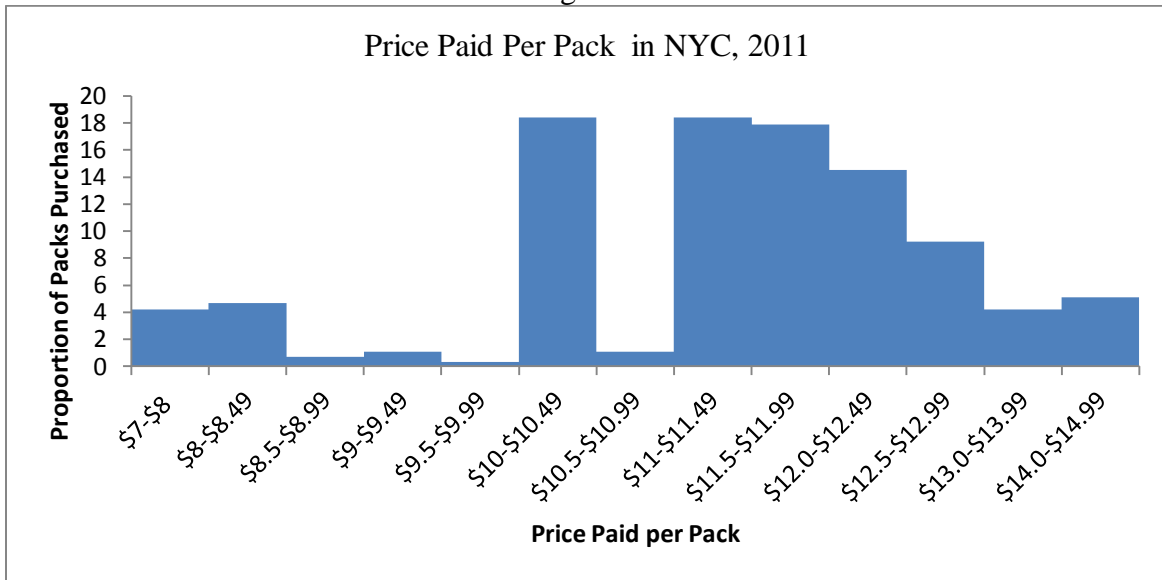
<sup>47</sup> Federal Trade Commission (2012). *Cigarette Report for 2009 and 2010*. Washington DC: Federal Trade Commission.

<sup>48</sup> New York City Health Department (2013). Promotion of tobacco products in New York City Retailers. *NYC Vital Signs* 11(4).

<sup>49</sup> Unpublished data from 2011 Nicotine Patch and Gum Program Registrants, provided by the New York City Department of Health and Mental Hygiene.

<sup>50</sup> Unpublished data from the 2011 New York State Adult Tobacco Survey, provided by the New York City Department of Health and Mental Hygiene.

Figure 9



Source: 2011 New York State Adult Tobacco Survey, provided by the New York City Department of Health and Mental Hygiene.

## VII. Summary

The "Sensible Tobacco Enforcement" bill that proposes several integrated measures that together would significantly increase the prices New Yorkers pay for cigarettes, something that extensive economic research has demonstrated to be highly effective in preventing young people from taking up smoking, leading adult smokers to quit, and reducing cigarette consumption among those who continue to smoke. This bill builds on New York City's successful efforts to reduce smoking over the past decade, through high cigarette taxes, a hard-hitting mass media public education campaign, a comprehensive smoke-free air policy, and support for smokers trying to quit. At the same time, it reflects the need to implement innovative strategies that both strengthen existing efforts and break new ground.

One key provision would prevent the redemption of coupons, the use of buy-one-get-one-free and other multi-pack discounts, and other price reducing strategies that account for the vast majority of tobacco company marketing spending in recent years. Data from New York City show that the use of these price reducing strategies is pervasive, and that they are more likely to be used in high-risk neighborhoods than other neighborhoods. A survey of New York city smokers trying to quit found that many take advantage of these discounts, saving an average of about \$1.25 per pack. Research by my colleagues and I show that these types of price reductions are strongly associated with uptake of cigarette smoking by teenagers, particularly with the progression from experimentation with cigarettes into regular use and, ultimately, addiction. Eliminating these price reducing tactics would hamper tobacco companies' ability to target young people and other price sensitive consumers, raise retailer prices for cigarettes, prevent thousands of New York City youth from becoming smokers, and lead many adult smokers to quit.



A second key focus is on the sale and distribution of untaxed cigarettes, which cost the city and state hundreds of millions of dollars in tax revenues, put law-abiding cigarette retailers at a competitive disadvantage, and result in increased smoking rates as a result of the widespread availability of cheaper cigarettes. Recent inspections of the city's cigarette retailers found that about half were selling unstamped, illegal cigarettes, while more than one in ten New York City smokers in a recent survey reported buying from street vendors or other individuals, almost certainly evading state and city cigarette taxes. The proposed strengthening of enforcement efforts and higher penalties on tax evaders should greatly reduce the availability of illegal cigarettes and raise tax revenues, while at the same time drive down smoking rates.

The proposed minimum cigarette and little cigar price of \$10.50 per pack of 20 is a third important element of the bill. While New York State currently has a minimum cigarette pricing policy that mandates minimum markups at each stage in the distribution chain, the proposed price floor would greatly simplify enforcement of the rule on price discounts and help efforts to curb tax evasion by making non-compliant cigarettes more apparent to enforcement authorities. At the same time, it would all but eliminate cigarette smokers' incentives to switch to cheaper brands or the little cigars that are taxed at lower rates and that have become increasingly popular among young smokers in recent years. Similarly, the proposed minimum pack sizes for cheap cigars and cigarillos, by increasing the outlay required of purchasers, will make these products less appealing to smokers.

## **Protecting Youth From Tobacco: Keeping Product Displays Out of Sight**

### **I. Summary of Conclusions**

The weight of the evidence from the variety of studies conducted using different research designs and methods and using data from many countries indicates that there is a causal relationship between tobacco company marketing practices and tobacco use and that stronger restriction on tobacco company marketing will lead to reductions in tobacco use, particularly among young people.

Tobacco product displays are an important component of tobacco company marketing strategies, particularly in places where other types of marketing have been restricted. Banning tobacco product displays at the point-of-sale will almost certainly add to the effectiveness of existing marketing restrictions in reducing tobacco use, with the impact of a display ban likely to grow over time.

### **II. Impact of Marketing on Tobacco Use**

Tobacco company marketing strategies involve a variety of integrated efforts, including point-of-sales displays. Understanding the impact of overall marketing on tobacco use is important in understanding how limits on different types of marketing practices can impact the initiation, uptake, and continued use of tobacco products. Marketers and others refer to the 'four P's' of marketing: Product, which includes brand names, packaging, product quality, product characteristics, and other features of the product; Price, which includes wholesale and retail pricing and price discounts such as coupons, multipack discounts, and special price reductions; Place, which includes choices of sales venues and placement of products within these venues; and Promotion, which includes advertising and sponsorship.

As summarized in the 1989 U.S. Surgeon General's report<sup>51</sup>, increased exposure to tobacco company marketing directly affects tobacco by: enticing children and young adults to experiment with and to initiate regular use of tobacco products; reducing current users' willingness to quit; providing cues or stimuli that lead to increased consumption among current users; and inducing former users to restart by reinforcing the attractions of tobacco use. The report goes on to state that tobacco company marketing can indirectly affect tobacco use by: discouraging full discussion of the health consequences of tobacco use in media dependent on tobacco marketing; contributing to an environment in which tobacco use is perceived to be socially acceptable; and creating political opposition to effective tobacco control policies among institutions dependent on tobacco company marketing support.

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<sup>51</sup> United States Department of Health and Human Services (1989). *Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General*. Rockville MD: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

For several decades, researchers from many disciplines have studied the role of tobacco company marketing in influencing tobacco use, testing the hypotheses that marketing directly and indirectly increases tobacco use. These analyses have used a variety of quantitative and qualitative methods applied to diverse data from many countries. Some have focused on broad measures of marketing, while others have looked at specific marketing practices. Over time, as the extent of this evidence has grown, so too have the strength and consistency of the research findings, with recent reviews concluding that when looked at in its totality, the evidence shows that there is a causal relationship between tobacco company marketing and increased tobacco use.

The strengthening of the evidence that tobacco company marketing practices cause increased tobacco use can be seen in the increasingly clear conclusions contained in various reviews of this evidence over time. For example, in his 1989 report, when reviewing the evidence on the impact of advertising and promotion on cigarette smoking, U.S. Surgeon General C. Everett Koop concluded:

*"The most comprehensive review of both the direct and indirect mechanisms concluded that the collective empirical, experiential, and logical evidence make it more likely than not that advertising and promotional activities do stimulate cigarette consumption."*

Koop noted the difficulties in establishing the causal role of marketing in influencing tobacco use, stating that:

*"There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption. Given the complexity of the issues, none is likely to be forthcoming in the foreseeable future."*

He goes on to note that *"in part, this reflects the high visibility of advertising and promotion."*

A few years later, in her 1994 report on tobacco use among young people, U.S. Surgeon General M. Joycelyn Elders concluded<sup>52</sup>:

*"A substantial and growing body of scientific literature has reported on young people's awareness of, and attitudes about, cigarette advertising and promotional activities. Research has also focused on the effects of these activities on the psychosocial risk factors for beginning to smoke. Considered together, these studies offer a compelling argument for the mediated relationship of cigarette advertising and adolescent smoking."*

With respect to the impact of advertising on youth initiation, Elders stated:

*"Even though the tobacco industry asserts that the sole purpose of advertising and promotional activities is to maintain and potentially increase market shares of adult consumers, it appears that some young people are recruited to smoking by brand*

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<sup>52</sup> United States Department of Health and Human Services (1994). *Preventing Tobacco Use Among Young People. A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

*advertising. Two sources of epidemiologic data support this assertion. Adolescents consistently smoke the most advertised brands of cigarettes, both in the United States and elsewhere. ....Moreover, following the introduction of advertisements that appeal to young people, the prevalence of use of those brands - or even the prevalence of smoking altogether - increases."*

Echoing Koop's comment about the ubiquity of tobacco company marketing, she also noted that:  
*"Current research suggests that pervasive tobacco promotion has two major effects: it creates the perception that more people smoke than actually do, and ..... smoking is made to look cool."*

Surgeon General David Satcher reached a similar conclusion in his 1998 report, finding that<sup>53</sup>:  
*"Advertising is an important influence on tobacco use initiation and maintenance... Cigarette advertising and promotion may stimulate cigarette consumption by ...encouraging children and adolescents to experiment with and initiate regular use of cigarettes."*

He too described the indirect roles of advertising in influencing perceptions, stating:  
*"Cigarette advertising appears to influence the perceptions of youth and adults about the pervasiveness of cigarette smoking and the images they hold of smokers."*

The continually accumulating evidence led Satcher to go further in his subsequent reports. For example, in his 2000 report he concluded that<sup>54</sup>:

*Intensive review of the available data, however, suggests a positive correlation between level of advertising and overall tobacco consumption - that is, as advertising funds increase, the amount of tobacco products purchased by consumers also increases."*

And in his 2001 report that<sup>55</sup>:  
*"Tobacco industry marketing, including product design, advertising and promotional activities, is a factor influencing susceptibility to and initiation of smoking."*

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<sup>53</sup> United States Department of Health and Human Services (1998). *Tobacco Use Among U.S. Racial/Ethnic Minority Groups - African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics. A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>54</sup> United States Department of Health and Human Services (2000). *Reducing Tobacco Use. A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

<sup>55</sup> United States Department of Health and Human Services (2001). *Women and Smoking. A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

In addition to the growing mix of research evidence, litigation in the United States led to the release of millions of pages of internal tobacco company documents that described their internal marketing research and their own conclusions about the role of their marketing practices in influencing tobacco use, particularly among young people. This documentary evidence together with the growing research evidence, played a key role Judge Gladys Kessler's 2006 decision in *United States v. Philip Morris*<sup>56</sup>. With respect to tobacco company marketing activities, Judge Kessler concluded:

*"The overwhelming evidence set forth in this Section -- both Defendants' internal documents, testimony from extraordinarily qualified and experienced experts called by the United States, and the many pictorial and demonstrative exhibits used by the Government -- prove that, historically, as well as currently, Defendants do market to young people, including those under twenty-one, as well as those under eighteen. Defendants' marketing activities are intended to bring new, young, and hopefully long-lived smokers into the market in order to replace those who die (largely from tobacco-caused illnesses) or quit. Defendants intensively researched and tracked young people's attitudes, preferences, and habits. As a result of those investigations, Defendants knew that youth were highly susceptible to marketing and advertising appeals, would underestimate the health risks and effects of smoking, would overestimate their ability to stop smoking, and were price sensitive. Defendants used their knowledge of young people to create highly sophisticated and appealing marketing campaigns targeted to lure them into starting smoking and later becoming nicotine addicts."*

With respect to the research evidence, Judge Kessler went on to state:

*"Independent scientific studies published in prestigious peer-reviewed scientific journals and in official government reports have confirmed Defendants' knowledge, as demonstrated in their internal documents, that their marketing contributes substantially to the initial demand for and continuing use of cigarettes by young people. Over the past ten years, there have been a number of comprehensive reviews of the scientific evidence concerning the effects of cigarette marketing, including advertising and promotion, on smoking decisions by young people. The weight of all available evidence, including survey data, scientific studies and experiments, reports of public health and governmental bodies, and the testimony of experts in this case, supports the conclusion that cigarette marketing is a substantial contributing factor to youth smoking initiation and continuation."*

As in the various U.S. Surgeon General's reports, Judge Kessler described how the pervasiveness of tobacco company marketing influences perceptions and norms about smoking, concluding:

*"In sum, the ubiquity of Defendants' marketing increases young peoples' perceptions of the prevalence of smoking ("everyone is doing it"), normalizes smoking, and connects positive imagery (sex appeal, popularity, peer approval, success, and independence) with smoking, all of which work together to encourage youth smoking initiation and continued consumption."*

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<sup>56</sup> Judge Gladys Kessler (2006). *United States of America, et al., v. Philip Morris USA, Inc., et al., Final Opinion*. Washington DC: United States District Court for the District of Columbia.

More recently, the U.S. National Cancer Institute (NCI) reviewed the evidence on the effects of tobacco company marketing and other activities on tobacco use in its 2008 monograph *The Role of the Media in Promoting and Reducing Tobacco Use*<sup>57</sup>. This review produced the strongest conclusion to that time on the causal effects of marketing on tobacco use:

*"The total weight of evidence - from multiple types of studies, conducted by investigators from different disciplines, and using data from many countries - demonstrates a causal relationship between tobacco advertising and promotion and increased tobacco use."*

Most recently, Surgeon General Regina Benjamin reached a similarly strong conclusion with respect to the impact of tobacco company marketing practices and tobacco use among young people, stating in her 2012 report that<sup>58</sup>:

*"The evidence is sufficient to conclude that there is a causal relationship between advertising and promotional efforts of the tobacco companies and the initiation and progression of tobacco use among young people."*

As these and other reviews note, no single study can definitively prove that tobacco company marketing practices cause increases in tobacco use. Every study has its strengths and limitations, hence the need to assess the totality of the evidence rather than to critique each individual study. Determining causality is significant challenge in nearly all social science research. With respect to the causal role of tobacco company marketing on tobacco use in individual studies, the US NCI describes the following inherent challenges:

- the complex and multidimensional effects of marketing influences, some of which occur in the short term (e.g. the effects of bursts of marketing on tobacco-related attitudes and behaviors) and others that occur over time (e.g. the impact of marketing on social norms);
- difficulties in establishing appropriate control groups given the inability of researchers to fully limit exposure to tobacco company marketing activities;
- the durable and cumulative nature of the effects of marketing, requiring a sufficiently long time to fully assess the impact on behaviors;
- the differential effects of marketing on some population subgroups that are masked when assessing the effect of marketing at the population level;
- the indirect channels through which marketing can influence behaviors, including those that work through peer, family and social networks; and
- the ubiquity of tobacco company and other marketing.

Given these challenges, a full appreciation of the impact of tobacco company marketing activities on tobacco use requires a synthesis of the evidence from studies using diverse research designs, alternative methods, and a variety of data.

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<sup>57</sup> National Cancer Institute (2008). *The Role of the Media in Promoting and Reducing Tobacco Use*. Tobacco Control Monograph No. 19. Bethesda MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute.

<sup>58</sup> United States Department of Health and Human Services (2012). *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

Research demonstrating the causal relationships between tobacco use and disease faced similar challenges, given the non-experimental nature of much of this research. Despite these challenges, there is now nearly universal agreement that cigarette smoking and other tobacco use cause a wide variety of diseases. As U.S. Surgeon General Richard Carmona concluded in his 2004 report<sup>59</sup>, "Smoking harms nearly every organ of the body, causing many diseases and reducing the health of smokers in general." In that report, he laid out several criteria for assessing causality based on the criteria developed by Sir Austin Bradford Hill in 1965 that have since been widely used by researchers in epidemiology, public health, and other disciplines. While not explicitly discussed in the various reviews described above, the body of research assessed in determining that there is a causal role of tobacco company marketing in increasing tobacco use appears to satisfy most of these criteria. Specifically:

- consistency of association - numerous studies have produced similar findings of an association between tobacco company marketing and various tobacco-related outcomes using diverse data for in different populations, in different places, and at different times;
- strength of association - numerous studies have found associations between marketing and tobacco-related outcomes that are strong in both magnitude and statistical significance;
- specificity of association - as with the evidence on tobacco use and lung cancer, the associations between tobacco marketing and tobacco use are not specific in that there are many factors that influence tobacco use and many who are exposed to tobacco company marketing do not become tobacco users;
- temporality of association - numerous studies demonstrate that changes in tobacco product marketing are followed by changes in tobacco use and related outcomes;
- dose-response nature of association - many studies demonstrate that increased exposure to tobacco company marketing increases the likelihood of tobacco use and related outcomes;
- experimental evidence of association - research involving controlled experiments of exposure to tobacco company marketing and studies of natural experiments (e.g. studies of bans on advertising and other marketing practices) find evidence of associations between tobacco company marketing and tobacco use and related outcomes;
- coherence, plausibility, and analogy - research from experimental and observational studies are consistent in demonstrating associations between tobacco company marketing and a variety of outcomes (coherence); theoretical models from various disciplines provide mechanisms through which tobacco company marketing influences tobacco use (plausibility); and there is evidence that marketing of other consumer goods and services leads to increased use of these products (analogy).

As noted in the 2004 U.S. Surgeon General's report, these criteria can be used to integrate evidence from studies that use alternative designs and methods and the application of these criteria requires a multidisciplinary perspective. As described above, as the research evidence has accumulated over time, reviews that have taken such a multidisciplinary perspective in

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<sup>59</sup> United States Department of Health and Human Services (2004). *The Health Consequences of Smoking. A Report of the Surgeon General*. Atlanta GA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.



assessing the totality of the evidence have come to increasingly strong conclusions that there is a causal relationship between tobacco company marketing and increased tobacco use.

### III. Point-of-Sale Display Bans and Tobacco Use

Point-of-sale displays of tobacco products fall into two of the four P's of marketing - product and place. The display of the product provides an opportunity to highlight the brand and the imagery displayed on packaging while at the same time providing a visible reminder of the availability of these products to potential consumers. In addition, the continued display of tobacco products at the point-of-sale reinforces perceptions that tobacco use is normative.

Saffer and Chaloupka (2000)<sup>60</sup> and Blecher (2008)<sup>61</sup>, among others, have shown that increasingly comprehensive limits on tobacco company marketing activities are associated with reductions in tobacco use, with both studies estimating that relatively comprehensive marketing restrictions can reduce overall cigarette consumption by six to seven percent. As marketing restrictions become more and more comprehensive, tobacco companies adapt by increasingly focusing their marketing efforts on the channels that have not been banned. While tobacco company marketing in the U.S. has become increasingly constrained over time, tobacco products continue to be allowed to be displayed at the point-of-sale, raising the importance of these displays as a marketing tool for tobacco companies to communicate with their current and potential customers.

Much of the communication through point-of-sale displays occurs via tobacco product packaging. As Wakefield and colleagues (2002)<sup>62</sup> describe, based on their review of tobacco company internal documents:

*"Documents show that, especially in the context of higher restrictions on conventional avenues for tobacco marketing, tobacco companies view cigarette packaging as an integral component of marketing strategy and a vehicle for (a) creating significant in-store presence at the point of purchase, and (b) communicating brand image."*

They go on to discuss the importance of mandating plain packaging and banning visible displays of tobacco products as part of a comprehensive approach to restricting tobacco company marketing.

Point-of-sale display bans are an emerging tobacco control policy, having been adopted by a growing number of governments in recent years, while plain packaging requirements have only been implemented in Australia. Some governments have phased in their display ban, applying it first to larger retailers and subsequently to smaller retailers. Some include tobacco shops in the display ban, while others provide an exception for these shops. Iceland was the first country to adopt a display ban, effective August 2001. Canada's Saskatchewan province adopted a display

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<sup>60</sup> Saffer H, Chaloupka FJ (2000). The effect of tobacco advertising bans on tobacco consumption. *Journal of Health Economics* 19(6):1117-1137.

<sup>61</sup> Blecher E (2008). The impact of tobacco advertising bans on consumption in developing countries. *Journal of Health Economics* 27(4):930-942.

<sup>62</sup> Wakefield M, Morley C, Horan JK, Cummings KM (2002). The cigarette pack as image: new evidence from tobacco industry documents. *Tobacco Control* 15(Supplement 4):iv44-iv53.

ban in 2002, but the policy was struck down after a challenge from tobacco companies. Since then, however, all Canadian provinces and territories have implemented a display ban, beginning with Manitoba (January 2004) and followed by Nunavut Territories (February 2004), Saskatchewan (January 2005), Prince Edward Island (June 2006), Northwest Territories (January 2007), Nova Scotia (March 2007), British Columbia (March 2008), Ontario (May 2008), Quebec (May 2008), Alberta (July 2008), New Brunswick (January 2009), Yukon Territory (May 2009), and Newfoundland and Labrador (January 2010). Thailand's display ban took effect September 2005, followed by the British Virgin Islands' in May 2007, Ireland's in July 2009 and Norway's in January 2010. Since the start of 2010, several Australian states and territories have implemented display bans, including the Australian Capital Territory (January 2010), New South Wales (July 2010), Western Australia (September 2010), Victoria (January 2011), Northern Territory (January 2011), Tasmania (February 2011), and South Australia (January 2012). Additionally, displays ban were recently implemented in Finland (January 2012) and the United Kingdom (for large shops in April 2012 and scheduled to take effect in small shops in April 2015). Finally, several other governments are considering such bans.

Given the recent adoption and implementation of most display bans, research evidence on the effects of these bans on tobacco use and related outcomes is scarce, but emerging. Some of this emerging research has yet to be published in the peer-reviewed literature, but has been presented at various academic conferences and/or in other venues. As with the broader research literature on the impact of tobacco company marketing, there are a number of challenges to establishing a causal relationship between point-of-sales displays and display bans and tobacco use and no one study will provide definitive proof that banning the display of tobacco products at the point of sale will lead to reduced tobacco use. Nevertheless, the weight of the evidence from studies using different designs and methods in different countries suggests that display bans are almost certainly effective in reducing tobacco use, both among young people and among adults.

Some studies have used an experimental approach to assess the potential effect of point-of-sale displays on tobacco-related outcomes among youth. For example, Wakefield and colleagues (2006)<sup>63</sup> randomly assigned 605 Australian youth to one of three groups, with one group shown a photograph of a convenience store with point-of-sale displays and advertising, a second group shown a digitally altered photograph that had displays only, and a third shown a digitally altered photograph with advertising and displays removed. They found that youth viewing photographs with advertising and displays or displays only thought that it would be easier to purchase tobacco in these stores than did those viewing photographs with no advertising or displays. In addition, Wakefield and colleagues found that those viewing photographs with displays only showed greater brand recall than those exposed to the photographs with no advertising or displays. However, they found little difference between the display only group and the others on perceived smoking prevalence, risk perceptions, or smoking intentions. Given the ubiquity of point-of-sale tobacco displays in Victoria at the time of the study, it is not surprising that the researchers found little impact of exposure to the different photographs on most outcomes.

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<sup>63</sup> Wakefield M, Germain D, Durkin S, Henriksen L (2006). An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays. *Health Education Research* 21(3):338-347.

Others have looked at the associations between exposure or sensitivity to point-of-sale displays and tobacco use and/or related outcomes. For example, Paynter and colleagues (2009)<sup>64</sup> used data from a survey of New Zealand students ages 14 to 15 years to assess the impact of exposure to point-of-sale tobacco displays and youth smoking prevalence and susceptibility in an environment where there is an otherwise comprehensive ban on tobacco company advertising. They developed two measures of exposure to point-of-sale displays - one based on youth responses to questions about the frequency with which they visited the types of stores most likely to sell tobacco products in New Zealand and the second based on response to questions about how often they noticed tobacco products on each store type visit. They controlled for a variety of other factors that potentially influence youth smoking, including age, gender, ethnicity, socio-economic status, parental smoking, and smoking in the home. Paynter and colleagues find that there is a statistically significant association between the frequency of store visits and susceptibility to smoking, experimentation with smoking, and current smoking. Similarly, they find that there is a positive association between frequency of noticing cigarettes and each of the three measures of smoking behavior. As the authors note, the cross-sectional nature of their data do not allow them to assess causality, but the strong associations they observe suggest that exposure to point-of-sale cigarette displays does contribute to increased smoking among youth.

MacKintosh and colleagues (2012)<sup>65</sup> found similar evidence on an association between point-of-sale displays and youth smoking susceptibility using cross-sectional survey data collected in 2008 from U.K. youth ages 11 through 16 years. The focus specifically on never-smokers and define youth susceptible to smoking as those who did not have a firm decision not to smoke, based on responses to questions about the likelihood of smoking at age 18, in the next year, and if a friend offered them cigarettes. Most of the surveyed never smokers (81%) noticed cigarette displays. In their multivariate logistic regression models, MacKintosh and colleagues estimated a statistically significant association between noticing cigarette displays and susceptibility to smoking. Using responses to questions about how often respondents paid close attention to displayed cigarettes, and how tidy, colorful, eye-catching, and attractive they perceived displays to be, MacKintosh and colleagues developed an index to measure attraction to cigarette displays. In their multivariate logistic regression models, they estimated a statistically significant association, with never smoking youth who were more attracted to displays more susceptible to smoking. Again, the authors note that the cross-sectional nature of their data does not allow them to identify causality, but that their findings, coupled with the growing international evidence, do suggest that point-of-sale displays raise exposure to tobacco products and normalize smoking among youth.

Brown and Moodie (2010)<sup>66</sup> provide some insights into how that point-of-sale tobacco product displays can influence youth tobacco use. They conducted 12 focus groups of youth smokers

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<sup>64</sup> Paynter J, Edwards R, Schluter PJ, McDuff I (2009). Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: a cross-sectional study. *Tobacco Control* 18(4):268-274.

<sup>65</sup> MacKintosh AM, Moodie C, Hastings G (2012). The association between point-of-sale displays and youth smoking susceptibility. *Nicotine & Tobacco Research* doi:10.1093/ntr/ntr185

<sup>66</sup> Brown A, Moodie C (2010). Adolescents' perceptions of tobacco control measures in the United Kingdom. *Health Promotion Practice* doi:10.1177/1524839910369222.

and non-smokers ages 11 through 16 in Glasgow and Lothian Scotland, during which they discussed a variety of potential influences on youth smoking. Based on the discussions about point-of-sale displays, they concluded that these displays encourage youth smoking and that youth perceive them as attractive and cool.

Three studies looked at the impact of point-of-sale displays on cigarette purchase behaviors among smokers in Australia. Wakefield and colleagues (2008)<sup>67</sup> conducted a telephone survey of 526 current smokers and 67 recent quitters (in the year prior to the survey) in Victoria. They found that one-quarter of smokers reported buying cigarettes on impulse when seeing a point-of-sale display while shopping for other products. Additionally, they found that almost two in five (38%) of smokers who tried to quit recently and more than one in three (33.9%) of those who had recently quit had an urge to buy cigarettes after seeing a point-of-sale display. Moreover, they found that nearly one in three smokers (31.4%) thought that removing point-of-sale displays would make it easier for them to quit, with those more likely to notice the displays to begin with more likely to respond that their removal would make quitting easier. In a similar study, Carter and colleagues (2009)<sup>68</sup> interviewed 206 smokers intercepted after purchasing cigarettes in two Perth supermarkets to assess the role of point-of-sale cigarette displays on those who made planned and unplanned purchases (78% and 22% of the sample, respectively). Those making unplanned purchases were nearly four times as likely to indicate that their purchase decision was influenced by the point-of-sale display (47%) than were those who were making planned purchases (12%). Burton and colleagues (2011)<sup>69</sup> used a diary survey to collect data from 998 current smokers and 111 smokers attempting to quit smoking to assess the impact of displays in New South Wales. Respondents were asked to report on four-hour blocks of time they were awake over a four day period. Data were collected on a variety of demographic measures, exposure to cigarette smoking, exposure to point-of-sale displays, and cigarette purchases and consumption. Respondents indicated frequently seeing point-of-sale displays, reporting seeing cigarettes for sale in 42.6% of the four-hour blocks when they were outside of the home for some of the time. In multivariate models limited to those who did not buy cigarettes during a given four hour period, Burton and colleagues estimated statistically significant associations between seeing cigarettes for sale and both the likelihood of smoking and cigarette consumption. They also found a marginally significant association between seeing cigarettes for sale in one time period and the likelihood of buying cigarettes in the next time period.

Unpublished data from a 2010 survey of New York City smokers are consistent with these findings.<sup>70</sup> About half of current smokers and recent quitters who reported making an unplanned

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<sup>67</sup> Wakefield M, Germain D, Henriksen L (2008). The effect of retail cigarette pack displays on impulse purchases. *Addiction* 103(2):322-328.

<sup>68</sup> Carter OBJ, Mills BW, Donovan R (2009). The effect of retail cigarette pack displays on unplanned purchase: results from immediate postpurchase interviews. *Tobacco Control* 18(3):218-221.

<sup>69</sup> Burton S, Clark L, Jackson K (2011). The association between seeing retail displays of tobacco and tobacco smoking and purchase: findings from a diary-style survey. *Addiction* 107(1):169-175.

<sup>70</sup> Unpublished data from a 2010 point-of-sale street intercept survey, provided by the New York City Department of Health and Mental Hygiene.

purchase indicated that they were prompted by reminders in the store, with 36 percent of them indicating that it was the point-of-sale display that was the key prompt.

Tobacco companies have argued that point-of-sale displays are needed to provide adult smokers with information about the variety of brands available, affecting brand choice rather than tobacco use. However, Wakefield and Germain (2006)<sup>71</sup>, Hickling and Miller (2008)<sup>72</sup>, and Carter and colleagues (2009) found little evidence that point-of-sale displays influenced brand choices among smokers. For example, among the 11 participants in their sample who indicated that they purchased a different brand prior to the intercept, Carter and colleagues found that none identified the display as a factor leading them to switch when unprompted, and that six did so when specifically asked about whether or not the display influenced their brand choice. Similarly, in Hickling and Carter's telephone survey of South Australian adults, they found that less than ten percent of adult smokers made brand choice decisions at the point-of-sale, and that fewer than five percent either 'sometimes' or 'always' made their brand choice based on point-of-sale displays.

Germain and colleagues (2010)<sup>73</sup> assessed the impact of 'sensitivity to retail tobacco displays' on the likelihood of smoking cessation in a cohort of 222 adult smokers in Victoria, Australia. They defined 'sensitivity' to point-of-sale displays based on the frequency of noticing displays, impulse purchases, and making brand choices based on displays. Seventeen percent of smokers surveyed 18 months after baseline reported successfully quitting. After controlling for age, gender, socioeconomic status, and cigarette consumption, they found that those who were more sensitive to point-of-sale displays were significantly less likely to have quit smoking.

A few recent studies have surveyed smokers about their support for policies addressing point-of-sale displays, finding that many smokers support a ban on these displays. Carter and colleagues (2009), for example, found that almost half of smokers in their intercept sample (49%) were supportive of removing displays, with most others ambivalent (39%). Among the reasons smokers provided for supporting such a policy were that removing displays would help people quit, might stop youth from buying, and would reduce impulse purchases. Similar rationales were provided in Hoek and colleagues' (2010)<sup>74</sup> in-depth interviews of twenty New Zealand smokers. Not surprisingly, support for a ban on point-of-sale displays is higher in the general population. Hickling and Miller (2008), for example, found that 63% of South Australian adults supported a complete ban on cigarette displays at the point-of-sale in 2005. Similar support for a

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<sup>71</sup> Wakefield M, Germain D (2006). Adult smokers' use of point-of-sale displays to select cigarette brands. *Australian and New Zealand Journal of Public Health* 30(5):483-484.

<sup>72</sup> Hickling JA, Miller CL (2008). Cigarette pack and advertising displays at point of purchase: community demand for restrictions. *International Journal of Consumer Studies* 32:574-578.

<sup>73</sup> Germain D, McCarthy M, Wakefield M (2010). Smoker sensitivity to retail tobacco displays and quitting: a cohort study. *Addiction* 105(1):159-163.

<sup>74</sup> Hoek J, Gifford H, Pirikahu G, Thomson G, Edwards R (2010). How do tobacco retail displays affect cessation attempts? findings from a qualitative study. *Tobacco Control* 19(4):334-337.

display ban is seen among New York City residents, with 59 percent (including 41 percent of smokers) supporting a policy to keep tobacco products out of sight.<sup>75</sup>

Support for point-of-sale display bans among smokers is higher in countries where such policies have been implemented or adopted than it is in countries where display bans have not been given serious consideration. Using data from waves 5 (October 2006-February 2007) through 7 (October 2008-July 2009) of the International Tobacco Control Policy Evaluation Study's longitudinal surveys of smokers, Brown and colleagues (2011)<sup>76</sup> find that stable to increasing majorities of smokers in Australia (64.4%-65.6%) and Canada (57.9%-70.6%) supported a point-of-sale display ban, with support lower in the U.K. (50.0%-45.7%) and still lower in the U.S. (37.1%-42.8%). As in the studies described above, smokers more interested in quitting were more likely to support a display ban. In an analysis focused on the Canadian data only, Brown and colleagues (2011)<sup>77</sup> found strong support for point-of-sale displays bans in both provinces that had implemented such policies and in those that had not. Canadian smokers noticing displays and in-store signage were less likely to support a ban than other smokers, while smokers intending to quit were more likely to support the ban.

Given the recent adoption of most point-of-sale display bans, fewer studies have assessed the impact of the implementation of a ban on tobacco use and related outcomes. Most of these studies have looked at national-level measures of aggregate tobacco use such as smoking prevalence rates. Not surprisingly, these analyses produce mixed evidence on the impact of a point-of-sale display ban on aggregate tobacco use given the short time period considered in most studies, the highly aggregated measure being examined, and the difficulty in sorting out the impact of a display ban from underlying trends in and the many other factors that influence tobacco use.

For example, in his analysis of the display ban implemented in Iceland in 2001 that was commissioned by Philip Morris International, Padilla (2010)<sup>78</sup> used data on population level daily smoking prevalence rates for individuals ages 15 through 79 years over the period from 1987 through 2007 and on daily smoking prevalence rates for those ages 15 through 24 years for 1989 through 2007, and comparable data for Sweden and Norway. His multiple regression

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<sup>75</sup> Unpublished data from waves 1-3 of the 2012 Tobacco Behavior and Public Opinion Survey, provided by the New York City Department of Health and Mental Hygiene.

<sup>76</sup> Brown A, Moodie C, Boudreau C, et al. (2011). Support for removal of tobacco advertising and displays at point-of-purchase: findings from the International Tobacco Control (ITC) Four Country Survey. Presented at the 2011 European Conference on Tobacco or Health, March 29, 2011, Amsterdam, The Netherlands. <http://ectoh.org/documents/4D.2>. Brown Support for removal of point of purchase tobacco advertising and displays - finding from the ITC.pdf

<sup>77</sup> Brown A, Boudreau C, Moodie C, Fong GT, Li GY, McNeill A, Thompson ME, Hassan LM, Hyland A, Thrasher JF, Yong HH, Borland R, Hastings G, Hammond D (2011). Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey. *Tobacco Control*. doi:10.1136/tobaccocontrol-2011-050153.

<sup>78</sup> Padilla J (2010). The effectiveness of display bans: the case of Iceland. Expert Report, LECG Europe.

models included measures of tobacco prices and a variety of other tobacco control policies including bans on smoking in various venues, implementation of strong health warning labels, and a ban on brand sharing. Padilla finds no evidence that Iceland's display ban had a statistically significant effect on smoking prevalence, but his estimates are subject to several problems. Particularly problematic is the inclusion of the ban on brand sharing which Padilla codes as having taken effect at the same time as the display ban as well as the significant cigarette excise tax increase that occurred around the same time. Hammond (2010, 2011a<sup>79</sup>) notes several other problems with the Padilla analysis. For example, Padilla's models employ annual data that do not account for the effects of Iceland's display ban in the year that the ban goes into effect. That is, while the ban took effect in August 2001, Padilla models the ban as going into effect in January 2002, missing the first 5 months of the potential impact of the ban. He uses a similar approach to modeling other tobacco control policies, with any policy taking effect in the second half of a given year modeled as not in effect in that year, but effective in the following year, while those taking effect in the first half of a given year are modeled as having been in effect for the full year. Additionally, the implementation years for some of the modeled policies are incorrect; for example, Padilla models the 30/40 health warning label policy as implemented in 2004 in Iceland, 2003 in Norway, and 2002 in Sweden, while Hammond states that the implementation date was January 1, 2004 in Iceland and Norway, and October 1, 2003 in Sweden. Thus, Padilla's models almost certainly have significant colinearity and errors-in-variables problems that make it difficult to assess the impact of the display ban and likely contribute to the statistical insignificance of estimates for the display ban indicator.

In his unpublished work done as a doctoral student at the Norwegian School of Economics and Business Administration, Grønnevet (2007)<sup>80</sup> similarly uses aggregate smoking prevalence rates in his efforts to assess the impact of display bans in the Canadian provinces of Saskatchewan and Manitoba, and Iceland, as well as limits on advertising and displays in Victoria, Australia. He uses semi-annual, provincial data on smoking prevalence among 15 through 19 year olds over the period from 1999 through the first half of 2006 in a very simple trend analysis that did not account for other provincial level factors that potentially impact on youth smoking rates (most notably the adoption of bans on smoking in public places). He excludes Canadian territories from the analysis, stating that none have a ban, despite indicating in his table documenting provincial display bans that there was a ban in place in Nunavut territory. Moreover, his data cover a very limited time period during which the display ban was in effect in Saskatchewan (March 2001 through October 2003 and January 2005 on) and Manitoba (from August 2005). Given the short time period covered, the aggregate nature of his data, the exclusion of a territory with a display ban, and the failure to account for other provincial level factors that influence youth smoking prevalence, his conclusion that the display ban had no impact is not compelling. His even simpler analysis for Iceland suffers from the same problems as well as from the lack of a control

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<sup>79</sup> Hammond D (2010). *Judicial Review Challenges Against Legislation Prohibiting the Display of Tobacco Products in the United Kingdom*. Expert Report, December 19th, 2010. Hammond D (2011a). *Judicial Review Challenges Against Legislation Prohibiting the Display of Tobacco Products in the United Kingdom*. Supplemental Report, January 30, 2011.

<sup>80</sup> Grønnevet G (2007). Trends in smoking habits as a consequence of a ban on visible display of tobacco products. Manuscript, Norwegian School of Economics and Business Administration.



group, while his analysis of Victoria is even cruder and less relevant given that the policy being assessed in Victoria did not ban the display of tobacco products at the point-of-sale.

Lilico's (2008, 2009)<sup>81</sup> analyses of display bans in Canada, Iceland, and Thailand conducted for Europe Economics on behalf of JT International and Gallaher (both part of the Japan Tobacco Group) suffers from many of the same problems. In his 2009 analysis for Canada, for example, Lilico uses annual provincial level data from 1999 through 2008 on overall smoking prevalence among those ages 15 and older and prevalence among 15 through 19 year olds, as well as cigarette consumption for each age group. He does control for some provincial level factors, including cigarette prices and income, but fails to account for changes in other tobacco control policies at the provincial level. Lilico produces mixed evidence for the impact of provincial level display bans in Canada, with some models indicating that the bans or their introduction reduced smoking while others indicate the opposite, with most estimates statistically insignificant. Rather than estimating similar multivariate models using the ESPAD prevalence data for Iceland, other EU member states, Norway and Switzerland, Lilico conducts a largely descriptive analysis to argue that what appear to be more rapid declines in lifetime and past month smoking prevalence in Iceland around the time of the ban are not the result of the ban. This simple analysis does not attempt to account for tobacco control policies and other factors that would also affect tobacco use in the various countries that are being examined. Finally, his analysis for Thailand was an even cruder visual inspection of prevalence data that showed a continuation of the downward trend in smoking prevalence in Thailand following the ban, but did not attempt to account for how the display ban contributed to this trend.

Hammond and Ahmed (2011)<sup>82</sup> followed a similar approach in their analysis of the impact of point-of-sale display bans using monthly Canadian provincial data on smoking prevalence for young people and adults, average daily cigarette consumption for both age groups, and age of smoking initiation. They used three alternative approaches in his analysis: a simple pre-post comparison of the alternative measures; a pooled analysis that did not control for other provincial-level factors; and a pooled analysis that controlled for provincial-level cigarette prices, but not other tobacco control policies or other determinants of tobacco use. Hammond and Ahmed's analysis has the advantage of including more recent data than was employed in previous analyses of Canadian display bans, including post-ban data for nine of the provinces that have adopted display bans. They consistently found that the display bans were associated with statistically significant reductions in smoking prevalence among youth ages 15 through 19 years, reduced cigarette consumption among both youth and adult smokers, and delayed smoking initiation among youth. In general, they found that the older bans showed stronger associations with these outcomes, consistent with the hypothesis that the effects of display bans will

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<sup>81</sup> Lilico A (2008). Economic analysis of a display ban and/or a plain packs requirement in the UK. A report from Europe Economics. London: Europe Economics. Lilico A (2009). The impacts of restrictions on the display of tobacco products. A supplemental report by Europe Economics. London: Europe Economics.

<sup>82</sup> Hammond D, Ahmed R (2011). Cigarette display bans in Canada: smoking prevalence, consumption, and age of initiation. Presented at the 2011 European Conference on Tobacco or Health, March 28, 2011, Amsterdam, The Netherlands. <http://ectoh.org/documents/2D.Hammond.pdf>

accumulate over time given a greater impact on tobacco use among young people and the effect of a display ban in changing norms about tobacco use. Hammond and Ahmed are more forthcoming than the others about the limitations of their analyses, noting that their findings should be interpreted cautiously given that they have not controlled for other tobacco control policies.

Hammond expands upon this work in his expert and supplemental reports produced for the U.K. Department of Health (2010, 2011a, 2011b)<sup>83</sup>. In this work, Hammond highlights a number of differences between his analyses for Canada and those produced by Lilico (2008, 2009).<sup>84</sup> One notable difference is that Hammond's use of the monthly Canadian Tobacco Use Monitoring Survey (CTUMS) data allows him to more clearly differentiate the effects of the provincial display bans on smoking by more accurately modeling the implementation of the display ban. In contrast, Lilico uses the annual CTUMS data and introduces some measurement error in his indicator for the display bans, which he defines as "one if the display ban is in place" and "zero otherwise", leaving it unclear how display bans that take effect other than on January 1 are coded (e.g. the June 2006 ban in Prince Edward Island, the March 2007 ban in Nova Scotia, the March 2008 ban in British Columbia, the May 2008 bans in Ontario and Quebec, and the July 2008 ban in Alberta). A second important difference is Hammond's use of more recent data (e.g. through 2010 in his 2011 second supplemental report), in contrast to Lilico's (2009) use of data through 2008, allowing Hammond a longer post-policy period during which to observe the effects of the bans, particularly important given that most of the provincial bans were implemented beginning in 2008. Hammond's province-specific models provide some evidence that the display bans were associated with reductions in smoking prevalence and cigarette consumption and increases in the age of initiation in some provinces, while no significant associations were found in others. In general, the pattern of results was consistent with the bans that were implemented earlier having a greater impact on smoking behavior. Hammond's models that pooled data across provinces provide much stronger support for the effectiveness of the display bans in reducing smoking in Canada. In these models, Hammond finds a statistically significant negative association between the provincial display bans and smoking prevalence among youth (ages 15-19), youth and young adults (ages 15-24), and adults (ages 18 and older). He estimates a similar statistically significant, negative association between the display bans and average daily cigarette consumption among smokers in each of the three age groups. Finally, Hammond finds a positive and statistically significant association between the display bans and average age of smoking initiation among 15-19 year olds.

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<sup>83</sup> Hammond D (2010). *Judicial Review Challenges Against Legislation Prohibiting the Display of Tobacco Products in the United Kingdom*. Expert Report, December 19th, 2010. Hammond D (2011a). *Judicial Review Challenges Against Legislation Prohibiting the Display of Tobacco Products in the United Kingdom*. Supplemental Report, January 30, 2011. Hammond D (2011b). *Judicial Review Challenges Against Legislation Prohibiting the Display of Tobacco Products in the United Kingdom*. Second Supplemental Report, December 12, 2011.

<sup>84</sup> Lilico A (2008). Economic analysis of a display ban and/or a plain packs requirement in the UK. A report from Europe Economics. London: Europe Economics. Lilico A (2009). The impacts of restrictions on the display of tobacco products. A supplemental report by Europe Economics. London: Europe Economics.

Two recent peer-reviewed, published studies assessed the early impact of Ireland's display ban. McNeill and colleagues (2011)<sup>85</sup> used audit surveys of stores selling tobacco products to assess compliance with the point-of-sale display ban, and concluded that compliance was nearly universal following the implementation of the ban in mid-2009. In addition, based on survey data for 1000 adults and 180 youth ages 13 through 15 years collected before and after the ban, they found that recall of seeing point-of-sale displays dropped sharply and that there was early evidence that the ban contributed to the denormalization of smoking. In particular, they found that 14% of adults thought that the removal of the point-of-sale displays would make it easier for adult smokers to quit, while 38% of youth thought it would make it less likely that children would initiate.

Quinn and colleagues (2011)<sup>86</sup>, used weekly scanner-based cigarette sales data from January 2006 through June 2010 and bimonthly audit-based cigarette sales from November 2007 through June 2010 to assess the impact of the Irish display ban. Based on their visual inspection of the data, they concluded that the downward trend in cigarette sales in Ireland continued following the ban, as did the seasonal patterns in sales observed in the years prior to the ban. In their time-series regression models, they found a negative, but statistically insignificant impact of the ban on sales in the year following the implementation of the ban. They concluded that the ban would be likely to have an impact in the long run, however, by denormalizing smoking and discouraging initiation.

Melberg (2012)<sup>87</sup> used a similar approach to assess the impact of Norway's ban on point-of-sale displays that took effect in January 2010, using monthly sales of tobacco products to retailers from 1994 through 2011 and four-week aggregates of cigarette sales to consumers for January 2008 through December 2011. Visual inspection of that data on cigarette sales to retailers shows that monthly sales in 2010 and 2011 were below their levels in previous years (more than 7% and 10% lower, respectively), while data on cigarette sales to consumers were also lower in 2010 and 2011 than in previous years (more than 4% and 5%, respectively) suggesting that the display ban and price increase contributed to reductions in smoking. Melberg estimated time-series demand models that controlled for price, seasonality and underlying trends using the 2008-2011 cigarette sales data. In the model reported in his paper, Melberg estimates a negative but statistically insignificant effect of the display ban on cigarette sales, as well as for most of the other explanatory variables included in the model, including price. This suggests that there is a high degree of colinearity in the model, particularly between the display ban indicator and price, making it difficult to estimate their separate effects on cigarette sales. This is less of a problem in Melberg's models based on the sales data from 1994 through 2011, given the multiple tax and price changes that took place in Norway during this period that allow him to disentangle the effects of price on tobacco use from the effect of the display ban. In these models, he also

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<sup>85</sup> McNeill A, Lewis S, Quinn C, Mulcahy M, Clancy L, Hastings G, Edwards R (2011). Evaluation of the removal of point-of-sale tobacco displays in Ireland. *Tobacco Control* 20(2): 137-143.

<sup>86</sup> Quinn C, Lewis S, Edwards R, McNeill A (2011). Economic evaluation of the removal of tobacco promotional displays in Ireland. *Tobacco Control* 2011(2):151-155.

<sup>87</sup> Melber HO (2012). The display ban sales of tobacco: Comments to arguments and a statistical analysis. Manuscript, University of Oslo, 20 March 2012.

controls for other tobacco control policies implemented in Norway, including the ban on smoking in restaurants and the introduction of health warnings on tobacco products. In these models, Melberg estimates a negative statistically significant effect of the display ban on tobacco sales, as well as a negative and significant effect of price.

Finally, research that has looked more broadly at the influence of the retail environment on tobacco use has consistently found that tobacco product marketing at the point-of-sale contributes to tobacco use. In their systematic review, Paynter and Edwards (2009)<sup>88</sup> identified 12 peer-reviewed studies (including some of those discussed above) using a variety of experimental and analytic methods that assessed the impact of different aspects of point-of-sale marketing on tobacco use, with ten of these focused on children. While noting that longitudinal studies were needed to fully understand the impact of point-of-sale marketing on tobacco use, they concluded that there was consistent evidence that point-of-sale advertising and displays increased smoking among children and that this evidence provided "ample justification for banning PoS (point-of-sale) advertising and displays of smoked tobacco products."

A recent longitudinal study confirms Paynter and Edwards' (2009) conclusion that retail tobacco marketing influences tobacco use among young people. Henriksen and colleagues (2010)<sup>89</sup> followed youth ages 11 through 14 years in Tracy California over a two and one-half year period to assess the impact of point-of-sale marketing on youth smoking initiation. Youth were surveyed at baseline, after 12 months, and after 30 months; each survey collected a variety of information, including measures of smoking behaviors, frequency of shopping in local stores, and exposure to point-of-sale cigarette advertising. At baseline, the researchers collected observational data on point-of-sale marketing in local retail establishments, including information on cigarette advertising, functional items, and product facings. Henriksen and colleagues found that youth who more frequently visited stores with more cigarette marketing were significantly more likely to initiate smoking by the 12 month follow up survey. They also found that this association persisted over time, with the likelihood of initiation between baseline and the 30 month follow up significantly higher among youth more exposed to point-of-sale marketing at baseline.

#### **IV. Summary**

Given the evidence discussed above and given my own experiences researching the impact of tobacco company marketing on tobacco use, I conclude that the marketing of tobacco products significantly influences tobacco use and that stronger restriction on tobacco marketing will reduce tobacco use, particularly among young people. Tobacco product displays are a key component of tobacco company marketing strategies, particularly in markets where other types of tobacco marketing have already been banned. Banning tobacco product displays at the point-of-sale will almost certainly add to the effectiveness of existing restrictions on marketing in

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<sup>88</sup> Paynter J, Edwards R (2009). The impact of tobacco promotion at the point of sale: a systematic review. *Nicotine & Tobacco Research* 11(1):25-35.

<sup>89</sup> Henriksen L, Schleicher NC, Feighery EC, Fortmann SP (2010). A longitudinal study of exposure to retail cigarette advertising and smoking initiation. *Pediatrics* 126(2):232-238.

reducing tobacco use, with the impact of a display ban likely to grow over time as tobacco use is denormalized.

A display ban is expected to have a greater impact on youth uptake of tobacco use by eliminating one source of the branding and imagery that appeal to potential users and by changing perceptions that tobacco use is normative. Given that youth tobacco use accounts for a very small share of overall tobacco consumption, reductions in youth uptake that follow a display ban will be difficult to identify shortly after the removal of point-of-sale displays. Similarly, a display ban is expected to help recent quitters avoid relapse by removing the branding and imagery that provide cues for tobacco use. While there are considerable numbers of tobacco users who are trying to quit at any point in time, the vast majority of these will relapse for a variety of reasons, making it difficult to detect the short run impact of a display ban on their tobacco use. Over time, however, as increasing numbers of those trying to quit do not face the ubiquitous reminders provided by point-of-sale displays, the impact on aggregate use will become more apparent.

April 29, 2013

Honorable Maria del Carmen Arroyo

Chair, Health Committee

New York City Council

City Hall

New York, NY 10007

Re: T2013-6007, T2013-6008;

Dear Councilwomen Arroyo:

My name is Howard Chernick. My colleague Professor David Merriman and I are writing in support of the proposed changes in New York City's laws regarding the sale of tobacco products. We both specialize in the public finances of state and local governments, and have studied cigarette tax evasion in NYC and other cities. A copy of our study is attached.

Cigarettes are among the most harmful consumer products which can be legally sold. To counter the harm which cigarette consumption causes, both to the individual smoker and to those in proximity to the person smoking, the City and state of New York have enacted a number of policies designed to reduce smoking. One of the most important of these policies has been through the taxation of cigarettes. The current tax rate in NYC consists of a \$4.35 cent New York State tax, plus a separate \$1.50 NYC tax. That tax rate is the highest in the nation.

We have conducted studies of the effect of raising the cigarette tax on the prevalence of smoking among NYC residents, the extent to which tax increases lead to increased tax avoidance, and the loss of revenue to the New York City and New York State from cigarette tax avoidance. We use an innovative method to study cigarette tax avoidance, which consists of collecting littered packs of cigarettes from a randomly selected set of census tracts, and recording the tax stamps on the collected packs. This method has been used in a subsequent study that compared cigarette tax evasion in New York City, Philadelphia, Boston, Providence, and Washington DC.

We found that before the New York state tax increase of \$1.25 per pack in June 2008 55 percent of packs had NYC tax stamps, and 9 percent had NYS stamps. Fifteen percent had no tax paid. After the tax increase, the share of packs with no tax stamp increased from 15 to 24 percent, while the share with NYC stamps went down to 48 percent. The proportion with other types of stamps was unchanged. For every three to four packs with a NYC stamp, one had a stamp from another state, many from low tax states such as

Florida and Virginia. The multi-city study found that in 2011 39 percent of packs had a valid New York City stamp. In 2011, most of the low-taxed cigarettes came from Virginia.

We found that smoking declined after the June 08 tax increase, and tax revenue went up. We estimate that consumption fell by almost 1.7 million packs per month (about 7.5 percent) three months after the tax increase. One year later consumption was down 2.3 million packs per month (about 10.4 percent). Tax revenues from sales of joint NYC-NYS stamps went from \$439 to \$500 million (an increase of 14 percent) despite the drop in sales. Revenue losses to NYC and NYS from packs purchased without a stamp were estimated to be between \$183 and \$251 million per year, which is as much as half of the total revenue collected by the state and city from cigarette taxation in NYC in that year.

We also found that avoidance rates were higher in poorer census tracts. In a census tract with a poverty rate of 31 percent, compared to the median of 18 percent – the percentage of packs with no tax paid went from 22 percent to 27 percent. This suggests that high cigarette tax rates are less effective at curbing smoking in poorer neighborhoods.

Our finding of high overall rate of tax avoidance , and even higher rates in poor neighborhoods, provides strong support for the current proposals, which would make it more difficult to obtain low-tax cigarettes. Requiring the posting of the minimum price per pack, preventing the public display of cigarettes, raising the fines for selling packs with out-of-state stamps, and raising the legal smoking age to 21, would all make it harder to buy low-tax cigarettes in NYC. This would lead to a reduction in cigarette smoking in New York City, particularly among young people and those with low incomes. The proposals would also lead to an increase in city and state tax revenues.

Howard Chernick

Prof. of Economics, Hunter College and the Graduate Center, CUNY

David Merriman

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Professor, Department of Public Administration

University of Illinois at Chicago



# ***USING LITTERED PACK DATA TO ESTIMATE CIGARETTE TAX AVOIDANCE IN NYC***

Howard Chernick and David Merriman

*Using data about tax stamps obtained from random samples of littered packs of cigarettes, collected once before and three times after a June 2008 NYS tax increase, we find that baseline NYC tax avoidance is high relative to national estimates, that rates of avoidance are particularly high in neighborhoods with high levels of poverty, and in closer proximity to a nearby Native American reservation. The share of littered packs with no tax stamp increased from 15 to 24 percent after the tax increase. We find that in addition to the large increase in avoidance, consumption declined.*

*Keywords: tax avoidance, interjurisdictional differentials, excise taxation, health and smoking  
JEL Codes: H26, H73, H27, I18*

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## I. Introduction

In recent years, state and local governments have enacted large increases in cigarette taxes, with the dual aims of increasing tax revenue and discouraging smoking. The effect of tax increases depends on the behavioral response of smokers. There is considerable evidence that many smokers are able to avoid state and local cigarette taxes, by purchasing cigarettes from lower tax jurisdictions, or from untaxed sources such as the Internet or Native American reservations. Avoidance opportunities may be enhanced by organized smuggling of cigarettes from low tax states.

In June 2008 New York State (NYS) raised its cigarette tax rate from \$1.50 to \$2.75, bringing the combined New York City (NYC) and NYS rate to \$4.25 per pack, the highest in the United States. The increase raised the minimum retail price of a typical pack of cigarettes in NYC from \$6.82 to more than \$8.00 per pack<sup>1</sup>. In 2009, per pack cigarette taxes in the adjoining states of New Jersey, Connecticut, and Pennsylvania were respectively \$2.70, \$3.00, and \$1.35, while the average rate for all U.S. states was \$1.34.

Cigarettes are among the most heavily taxed of all commodities in the U.S. Despite the fact that states tend to cluster in their cigarette tax rates—due to tax mimicking (Chernick, 2008)—very large differentials occur in places where local governments levy additional cigarette taxes. It is useful to focus on behavioral responses in high tax jurisdictions, because they provide information about maximum potential rates. If the principal behavioral effect of a tax change is

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<sup>1</sup> NYS regulates the minimum price at which cigarettes can be sold at retail. This is explained in greater detail in footnote 31.

to increase avoidance then the health benefits from reduced smoking may be attenuated, and there will be little gain in tax revenues, as some critics charge.<sup>2</sup>

A methodological difficulty with studying the behavioral impact of tax changes is that we do not usually have direct high quality measures of tax avoidance and evasion. Previous literature on cigarette tax avoidance has generally relied either on econometrically inferred measures of avoidance or self-reports of avoidance rather than direct observation of behavior. Measures of tax avoidance, like other measures of economic phenomena, are most useful for predicting behavioral responses to policy change when they are based on direct observations of behavior. In this paper, we draw on an innovative method of data collection to obtain direct estimates of avoidance behavior. The method, first used to study cigarette taxation in Chicago (Merriman 2010), involves the collection of a random sample of littered cigarette packs from a representative sample of sub-areas. By examining the tax stamps on collected packs, we can determine whether NYC and/or NYS cigarette taxes have been paid. Packs without a city or state stamp are considered to have avoided the tax, and the results can be used to estimate tax avoidance in the population.

The behavioral effects of a particular policy change may be difficult to identify, because other factors, such as economic conditions, may change at the same time as the policy. A particular strength of our experimental design, a significant improvement over Merriman's (2010) method is that, because we had notice of the tax increase before it took effect we were able to collect data immediately before and just after the tax increase. This sequence limits the

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<sup>2</sup> "If history is any guide, most cigarettes sold will actually be trucked up from Virginia or shipped in from China." Wall Street Journal, 2008. Also see New York Times, 2008. "Arrest of Cigarette Seller is a Coup, Brooklyn Officials Say." April 10. 2010-07-26. URL:<http://www.nytimes.com/2008/04/10/nyregion/10stamps.html>.

potential influence of unrelated factors. Using data collected 15 months after the tax increase, we also estimate longer run effects.

We believe that our work makes three distinct contributions to the literature on tax avoidance. First, we extend the methodology of Merriman (2010) to a different city and therefore gain insight about the generalizability of those findings<sup>3</sup>. Secondly, we improve upon the methodology of Merriman 2010 by employing a before and after structure that both helps us learn about the impact of a tax increase and mitigates potential bias if litterers are in some way unrepresentative of the general population of smokers. Merriman (2010) measured the relationship between proximity to a low tax source of cigarettes and tax avoidance. In addition to proximity we measure the change in avoidance after a tax increase. Finally, we display data from several rounds (after the tax increase) and therefore provide information about the stability of this measure of tax avoidance over time.

We find that the share of littered packs that had an appropriate NYC tax stamp fell from 55 percent prior to the tax increase to 49 percent immediately after the tax increase. In subsequent rounds of data collection three months and one year and three months after the tax increase the share with an appropriate stamp was essentially unchanged. In addition to the tax we find some empirical evidence that the level of avoidance is influenced by the share of residents in poverty in a Census tract and the distance to low tax sources of cigarettes. We find a relatively small elasticity of taxable sales so that tax revenue increased substantially after the tax increase. Our point estimate suggests that the tax increase caused cigarette consumption to fall from about 22.1 million to between 20.5 and 19.8 million packs per month and we reject the null hypothesis of no change in cigarette consumption at a 70 percent or greater level of confidence.

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<sup>3</sup> In particular we wanted to know if there would be a sufficient density of littered packs in NYC to be sure that we would get useable data and we also wondered if littered pack collections would obtain results that were reasonably consistent over time and across space.

The paper has five additional sections. The first is a brief literature review. The empirical analysis in Section III is divided into four sections: general methodology, data collection, results, and comparison to survey findings. Section IV decomposes the response to the tax increases into changes in consumption versus changes in avoidance. Section V gives estimated revenues losses from cigarette tax avoidance in NYC. Section VI concludes.

## II. Literature Review on Cigarette Tax Avoidance.

Despite a relatively small share of consumer expenditures on cigarettes there has been a relatively large literature on tobacco tax avoidance both because of its potential importance to public health and public finance and because it may serve as a prominent case to help us better understand more general principles of tax avoidance<sup>4</sup>. We offer only a brief summary of the most relevant research methodologies and empirical results about cigarette tax avoidance. Merriman (2009) contains additional detail.

A major problem in studying tax avoidance is that it is inherently difficult to observe. Early literature on cigarette demand functions (Baltagi and Levin 1986, Chaloupka 1991, Becker, Grossman Murphy 1994, Saba et. al. 1995, Thursby and Thursby 2000) econometrically estimated tax avoidance based on the residual correlation between tax paid sales or survey-reported consumption and measures of access to low tax (or price) sources of cigarettes after controlling for other factors that might affect the demand for cigarettes<sup>5</sup>. These studies may

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<sup>4</sup> The 2009 Consumer Expenditure Survey from the US Department of Labor reported that only 0.8 percent of consumer expenditures went to “Tobacco products and smoking supplies”. See <http://www.bls.gov/cex/#tables>. Farrelly, Nonnemaker and Watson (2012) however report that low income smokers in NY spent almost one quarter of their annual household income on cigarettes.

<sup>5</sup> Lovenheim (2008) uses a similar methodology but his dependent variable measures survey-reported-consumption. Other papers measure tax paid sales.

provide unsatisfying analyses of tax avoidance since they do not rely on direct observation of the key behavior.

Several papers do attempt to directly estimate tax avoidance. In a novel paper, Galbraith and Kaiserman (1997) note that during the particular historical period they studied Canadian cigarette exports to the US were sometimes (illegally) diverted back to Canada and sold tax free. They use data on exports of Canadian blend cigarettes to the US as a direct (though inferred) measure of untaxed Canadian consumption. Stehr (2005) and Goolsbee, Lovenheim and Slemrod (2010) measure tax avoidance as the difference between tax paid sales (as reported in administrative data) and consumption as reported in survey data. These studies then analyze the sensitivity of inferred tax avoidance to some measure of access to low or no tax cigarettes (geographic proximity and internet connectivity, respectively). However, survey-reported-cigarette consumption apparently greatly under represents actual cigarette consumption. Stehr (2005 p.280) finds that, “reported consumption as a percentage of tax paid sales averaged 57.1% from 1985 to 2001. Using the correction for tax avoidance, this figure drops to 52.1%.” The under-reporting of cigarette consumption greatly complicates our ability to obtain a straightforward measure of tax avoidance by comparing reported consumption with administrative data measuring sales.

Hyland et al. (2005) and Chiou and Muehlegger (2008) use responses to surveys in which smokers were directly asked about the location of purchase and in which the location of residence was known. These studies develop measures of avoidance by comparing the tax rate at respondents’ residence with the tax regime at the purchase location. Both studies find significant tax avoidance and Chiou and Muehlegger’s (2008) simulations suggest that cross-border shopping may increase significantly in response to cigarette tax increases. However, since

smokers greatly understate even the degree to which they consume cigarettes one might be skeptical of the information they provide about the degree to which they avoid or evade taxation to obtain cigarettes.

Recent studies find quite a bit of variance in the amount of tax avoidance and its responsiveness to tax changes and proximity to lower-priced cigarettes. Stehr (2005) finds that between 59 and 85 percent of the taxable sales elasticity in the U.S. is due to changes in the locality of purchase. He estimates that almost 13 percent of cigarettes in 2001 were purchased without paying the home state tax. Goolsbee, Lovenheim and Slemrod (2010) find that the price elasticity of taxable sales of cigarettes has almost doubled in recent years because avoidance has been facilitated through purchases on the Internet<sup>6</sup>.

Lovenheim (2008) finds a zero elasticity with respect to home state price, suggesting the very strong conclusion that state tax increases have no impact on consumption. Lovenheim's estimates imply that about 20 percent of NYS's cigarettes evade the tax and that the percentage of smokers consuming smuggled cigarettes declines sharply with distance to a lower price border<sup>7</sup>. Chiou and Muehlegger (2008) find that consumers are willing to travel three miles to save one dollar on a pack of cigarettes and estimate the rate of casual smuggling (cross border shopping) at only four percent.

The Lovenheim (2008) and Chiou-Muehlegger (2008) results are national in scope. Because car travel is the dominant mode of travel in the United States, their estimates of the relationship between tax avoidance and distance are based implicitly on national rates of

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<sup>6</sup> See Ribisl, Kim and Williams 2007 for more detailed information about Internet cigarette purchases. We note that, with respect to our specific study NYS has among the most severe restrictions on internet sales of cigarettes. There is a ban on direct sales to New Yorkers on the internet; in place for several years. Only four or five states have such a ban at present. NY has vigorously enforced the ban (see for example, Business Review 2003). Conversation with Kurt Ribisl, University of North Carolina, October 10, 2008.

<sup>7</sup> Because Lovenheim's estimates imply both that consumption is unchanged with tax increases and that consumption declines as distances to the border increase they imply that tax increases results in increased consumption among those close to the border.



automobile ownership and cost of travel. Estimates of casual avoidance by distance are likely to be different in NYC, since rates of automobile ownership are lower than the nation, and the cost of travel to the closest state cigarette tax border is greater because of the presence of tolls for bridges and tunnels between NYS and New Jersey<sup>8</sup>.

Hyland et. al. (2005) conducted telephone interviews with more than 900 randomly selected smokers in upstate New York counties that are close to Native American Reservations. About two-thirds of respondents said that they regularly purchased cigarettes from Native American reservations where state taxes may be evaded.

Recently Lakhdar (2008) has reported on a study of tobacco tax avoidance in France using various methodologies. One methodology was to extract cigarette packs from a waste collection plant in the Paris suburb of Nanterre in November 2005 and December 2006. About 19 percent of the packs were of foreign (usually lower priced) origin in 2005 and about 16 percent were of foreign origin in 2006. This level of tax avoidance was generally consistent with the estimates found using other methods. In the study that is most similar to ours, Merriman (2010) collected a random sample of littered cigarette packs from 135 sub-areas in and around the city of Chicago. The study identified the share of packs for which the city, county, and state taxes were paid. It found that only about one-quarter of littered cigarettes packs had paid the city cigarette tax, which is more than three dollars per pack higher than taxes in the neighboring state of Indiana. The study also found that the probability of tax avoidance rose significantly with proximity to the Indiana border.

In summary recent studies find an implied level of cigarette tax avoidance ranging from about four percent at a national level (Chiou and Muehlegger 2008) to as high as 75 percent at a

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<sup>8</sup> There is an extensive public transportation network of buses and trains linking NJ and NYC. However, public transportation is slow, inflexible and expensive compared to car traffic in uncongested areas and is a poor substitute for auto travel for the purpose of cross-border shopping.

local level (Merriman 2010). Study of specific local areas such as NYC can contribute to a better understanding of the reasons that avoidance levels vary across time and over space.

### III. Empirical Analysis

#### A. Background and methodological considerations

On April 11, 2008 the NYS legislature approved a cigarette tax increase of \$1.25 per pack, to be implemented on June 3, 2008. (State of New York, Department of Public Health, 2008). Within a few days of the law's passage we drew up plans to conduct a before and after study of its effect using the littered pack method. We believed that this data collection strategy had the potential to make an important improvement in the methodology employed in Merriman (2010) by mitigating potential bias arising from the fact that littered packs may misrepresent the degree of tax avoidance among the population of all cigarettes consumed because individuals who litter may be more (or less) likely to avoid local cigarette taxes<sup>9</sup>. So long as the relative bias in the littered pack sample is the same before and after the tax increase our methodology can yield an unbiased estimate of the impact of the tax increase on avoidance.

In the US cigarette packs are enclosed in cellophane wrapping at the conclusion of the manufacturing process. After production cigarettes are shipped to regional wholesalers' warehouses. When the location of retail sales is established a tax stamp is affixed to the outside

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<sup>9</sup> Merriman (2010) reports on several procedures he used to infer the representativeness of the littered packs he collected. He finds for example that the brand distribution of the tax paid packs in his litter sample is broadly similar to the brand distribution of tax paid packs in scanner data. Merriman also compared littered packs to packs appropriately discarded in public garbage cans in three areas of the city and found no consistent differences between the litter samples and the garbage samples. Procedural and health obstacles prevented us from performing an analogous check in NYC. Williams, Curnow and Streker's (1997) study of littering in Australia found little evidence of consistent demographic or economic differences between litterers and non-litterers.

of the cellophane in all but three US states<sup>10</sup>. Since the tax stamps are on the cellophane, if the cellophane has been separated from the pack it is not possible to determine whether the tax was paid. We used the packs with cellophane to study tax stamps but also collected and coded packs without cellophane to determine whether there was a systematic difference in the distribution of brands with and without cellophane.

Our data collectors gathered littered cigarette packs in a random sample of Census tracts in NYC. Collectors were instructed to pick up all packs. The Census tracts completely cover NYC so that, with appropriate weighting, sampled locations provide a representative sample. Within a Census tract, we weighted each littered pack equally and calculated the share of packs that avoided taxation<sup>11</sup>.

## B. Data Collection Strategy

We designed a study with a sample of 30 of NYC's 2,216 census tracts. We first did a pre-test in four randomly selected census tracts, to determine the amount of time data collectors would need to spend in each tract to collect a sufficient number of littered packs. In the pre-test we collected an average of seven packs with cellophane from each tract. We then proceeded to the full study.

In the full study data collectors were given precise maps, and were instructed to walk the periphery of each census tract, picking up all littered packs. The data collectors were told to stop the data collection after they had found nine packs with cellophane, or after 45 minutes, whichever came first. Two collectors were assigned to each census tract. Each Census tract was

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<sup>10</sup> Every state except North and South Carolina and North Dakota require tax stamps. Many localities also require tax stamps. The process of transporting unstamped cigarettes is tightly regulated in the US.

<sup>11</sup> Note that our method weights each pack equally. In contrast, surveys of smokers generally weight each respondent equally. Chiou and Muehlegger (2008) find that heavier smokers are more likely to avoid taxes so that equal weighting of survey respondents will understate avoidance. By weighting each pack equally our method has the potential to remedy this potential defect of survey studies. If heavier smokers are equally likely to litter, but more likely to avoid the tax, then the littered pack method will appropriately show more avoidance than the survey method.

surveyed (walked) once in each round of data collection. No collections were done on days with rain or on subsequent days if the ground was still wet. In subsequent rounds collectors were instructed to walk exactly the same route as in the first round. Collected packs were returned to the research office, and coded there.

The relatively arbitrary decisions to collect a maximum of nine packs per track and to collect data in 30 census tracts were made in light of time and budget constraints—we had a short period to collect data and a relatively small budget to fund data collection. Despite the relatively small sample sizes we can conduct surprisingly informative tests about population parameters and changes in the population parameters as we demonstrate later in the paper.

The mean population per census tract in NYC in the 2005 data used to select sample tracts was 3,698, and mean employment was 1,695. We randomly selected sample census tracts using the probability proportional to size method so that the probability each census tract was in the sample was proportional to its weighted residential population and employment. Residential population was assigned a weight of three, and employment a weight of one. This weighting rule was based on the assumption that, with a five-day work week, the typical smoker smokes roughly three times as much in the census tract of residence as in the census tract of employment. Under this assumption our sample of littered packs should be representative of packs smoked by NYC residents and workers<sup>12</sup>.

Figure 1 shows a map of NYC, with sample tracts indicated in red. The largest number of selected tracts in any of the five boroughs was in Queens, with 11 tracts. There were eight tracts in Brooklyn, five in Manhattan, and three each in the Bronx and Staten Island. Figure 2

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<sup>12</sup> This weighting scheme neglects tourists and other visitors to the city because we lack data on their locations and frequency and duration of visits. It seems reasonable to believe that tourists and non-employee business travelers are most heavily concentrated in Manhattan and that our weighting scheme might thus underweight Manhattan. Merriman (2010) discusses the effect of tourists and other visitors on estimates of tax avoidance. Also, see footnote 13.

shows a map of the region surrounding NYC and shows the tax borders for New Jersey, NYS and Connecticut. The map also indicates the Poospatuck Indian Reservation on Long Island which is allegedly the source of many of the untaxed cigarette packs that find their way to NYC (Caruso 2008).

Data were collected in four rounds. The first round was done between May 15 and May 30 of 2008, just before the state tax increase on June 3. The second round, between June 16<sup>th</sup> and July 3<sup>rd</sup>, was designed to measure the immediate effect of the tax increase. To deal with potential problems of hoarding prior to a tax increase, and to allow more time for behavioral adjustments to the tax increase, a third round was implemented between September 8<sup>th</sup> and October 13<sup>th</sup>.of 2008. Finally, a fourth round of data was collected 15 months after the tax increase, in Sept-Oct of 2009.

The three months of elapsed time from the date of the tax increase to the third round of data collection is short enough that it is reasonable to assume that many other factors that may affect the purchasing and consumption behavior of smokers are essentially unchanged. Hence, the before-and-after comparison provides a relatively clean measure of the effect of increased cigarette taxes. The fourth round tests whether the immediate adjustments persist over time, as other factors change.

As shown in Table 1, 223 packs with cellophane were collected in the first round, 262 packs were collected in both the second and third rounds, and 269 packs in the fourth round. The average number of packs with cellophane collected per census tract was 7.4 packs in the first round, and 8.8 packs in subsequent rounds. In 58 percent of survey attempts, collectors were able to reach the goal of nine packs with cellophane within the 45 minute limit<sup>13</sup>.

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<sup>13</sup> One possible issue regarding our before and after comparison method is hoarding behavior by vendors or consumers. Despite the fact that vendors are assessed a “floor tax”, equal to the amount of the tax increase on old

## C. Results

### 1. Basic Tables

The basic results for the four rounds of data collection are shown in Table 2. We present statistics for five categories of packs: 1) no tax paid; 2) NYC tax stamps; 3) only NYS tax paid; 4) other state tax paid. 5) foreign tax paid or unknown . In general, we assume that the tax stamp found on a littered pack reveals the location of its purchase. A pack with a NYC stamp has paid both the NYS tax and the NYC tax. Packs with only a NYS stamp have not paid the NYC tax. Packs with no tax stamp may have been purchased on a Native American Reservation or in one of the three low tax states (N. Carolina, S. Carolina, N. Dakota) that do not require tax stamps. The table gives our point estimate for the proportion with each type of stamp in each round, the standard error on the point estimate, and tests of equality of proportions between the various rounds<sup>14</sup>.

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stamps that they have in inventory at the time of the tax increase, they may have incentive to hoard, because they are allowed to delay payment for several months, with no interest due. Cigarette stamps are identified both by their color and the name of the jurisdiction. When the tax rate is changed, the color of the stamp is changed. We found that the color of the stamp was largely unchanged in the collection round immediately following the tax increase indicating that many packs with older stamps were being littered after the tax increase. Presence of an “old” stamp after the tax increase does not necessarily imply tax avoidance since retailers are required to charge (and pay) the new tax on any packs sold after the tax increase regardless of the color of the stamp. The predominance of older stamps in our second (June 16<sup>th</sup> to July 3<sup>rd</sup>) round of collection is consistent with both the hypothesis that consumers or vendors hoarded cigarette packs prior to the tax increase and the hypothesis that it takes time for the new stamps to be introduced into the cigarette distribution system. By our third data collection in September of 2008 we found almost none of the old stamps which suggests that any stockpiling (by retailers or consumers) was irrelevant to the third round of collection.

<sup>14</sup> We treat the proportions of each type of stamp as a random variable about which we have sample data. Our point estimates of the proportions weight each Census tract (rather than each pack) equally since our tract sampling procedures are designed to produce a representative sample of cigarettes smoked in NYC. Since tracts were weighted in the sample selection algorithm the unweighted mean of the tract means is an unbiased estimated of the population mean . For more detail on statistical issues see Merriman (2009). Because data on propensity to smoke by Census tract are not available our procedure implicitly assumes smoking propensity is constant across tracts. Alternatively we could weight by number of littered packs found (i.e. raw percentages) which would implicitly assume that the density of littered packs varied with smoking propensity. We note that this procedure results in only minor changes in table 2.

In round one (May 2008), 15 percent of packs had no tax paid, 55 percent had NYC tax stamps, nine percent had NYS stamps and 14 percent had stamps from other states<sup>15</sup>. In round two (June 2008) the proportion with no tax paid increased to 24 percent, while the proportion with NYC stamps went down to 49 percent. The proportion with NYS only stamps was basically unchanged. Results from round three (Sept.-Oct. 2008) were very similar to round two. Twenty four percent of packs had no stamp, and 48 percent had a NYC stamp. The percentage with a NYS stamp was basically unchanged, going from nine to eight percent in the two rounds after the increase. In the fourth round (Sept-Oct 2009) 24 percent of the packs we found again had no tax stamp. The total number of packs with a NYC stamp was very similar to rounds two and three. There was little change in the proportion of NYS, other state or foreign tax stamps in round four.

The similarity in the proportions across all four rounds of data collection supports the overall validity of the littered pack method. The direction of change in the pattern of stamps is consistent with the hypothesis that tax avoidance increased when the tax increased. Regarding timing, the similarity of results in the three post-increase rounds of data collection suggests that much of the adjustment to the tax increase was immediate, and led to a permanent increase in avoidance. Despite the relatively small number of Census tracts sampled, the hypothesis that

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<sup>15</sup> Some readers may wonder whether stamps from NY state, and out-of-state stamps are likely to result from “incidental” littering by those who regularly commute into and out of the area for work. Only a small percentage of NYC potential smoker population regularly commutes to or from NYC for work. Population census data show that about 76 percent of the 3.7 million people who work in NYC, also live there. According to the same data, about 88 percent of the 2.9 million employed people who live in NYC also work in NYC. In the absence of tax avoidance (purposeful action to lower tax burdens) people who work in NYC but live elsewhere would purchase a significant share of their cigarettes in NYC as would those who live in NYC but work elsewhere. The combined impact of these factors, using methods illustrated in Merriman (2010), would predict little incidental littering in the absence of tax avoidance. If commuters greatly changed their behavior to avoid the higher taxes in response to the tax increase we would expect to find increased out-of-state stamps in the post-tax-increase litter collections.



the proportion of packs without tax stamps was constant before and after the tax increase has little support (p value of almost .05).

It is notable that almost all of the increase in tax avoidance comes from an increase in packs without stamps, rather than an increase in packs with stamps from other states. One source of untaxed cigarettes is purchases from Native American reservations. Such purchases could be done via the Internet, through direct purchases by consumers at reservations, or by illegal purchases from smugglers who transport cigarettes from reservations to the streets of NYC. Surveys, anthropological evidence on illegal street purchases, and court cases brought by the city of NY all suggest that purchases from reservations are important (Shelley et al, 2007, United States District Court, 2009).

At the time of our study, the street cost of smuggled cigarettes from Virginia/North Carolina was likely to be higher than the street cost of untaxed cigarettes from nearby native-American reservations, because of the tax in those states and the greater distance the illegal packs must be transported. As discussed by Merriman (2002) the supply cost of smuggled cigarettes is likely to be increasing in the amount of smuggled cigarettes. The supply cost will depend on the cost at the source, and the distance from source to destination. This is because transport costs are likely to depend on distance, both directly because of the cost of shipping and because the probability of detection is likely to increase with distance traveled.

The expected higher cost of long-distance smuggled cigarettes is supported by our littered pack data, which show untaxed packs to be more important than low-tax long-distance states as a source of tax avoidance. After the tax increase, we found that untaxed cigarettes went up as a share of littered packs, while long-distance low-tax cigarette shares remained unchanged. This result is consistent with administrative data showing a large increase in the number of packs

imported onto nearby reservations from which they are likely to be resold without the state tax being paid. Anecdotal evidence suggests that most untaxed cigarettes from nearby reservations are brought into NYC by smugglers. The profits from tax avoidance are divided between the wholesaler (the reservation), the retailer (the smuggler), and the consumer. However, we lack data on the change in the price of smuggled cigarettes after the tax increase, hence are unable to determine the shares of the tax savings that went to various participants. The share of littered packs with a NYC stamp, or no tax stamp at all, are broken out by Census tract before and after the tax increase in Figures 3 and 4. We might expect that the share of packs with a NYC stamp would go down after the tax increase. If geographic proximity to unstamped cigarettes is a key determinant of post-tax increase tax avoidance we might expect to see larger declines in NYC stamps in Queens than in Brooklyn. Brooklyn tracts 5, 8 and 10 (see figure 1) do show increases or no decreases in NYC tax stamps after the tax increase. Brooklyn tracts 4 and 6 however, show declines in NYC tax stamps. In Queens, which is much closer to the Poospatuck reservation tracts which already had low shares of packs with NYC stamps do not show declines (tracts 27 and 21). Queens tracts 25 and 26 do however, show large declines in NYC stamps after the tax increase. The story is clearly complicated and, at the tract level, location alone does not fully predict either the share of packs with NYC stamps or the change in the share after the tax increase. Figure 4 is similar to Figure 3 but shows the share of packs with no tax stamp by tract before and after the tax increase. Once again, locational proximity by itself cannot fully explain the observed patterns with some tracts that are relatively remote from Poospatuck (e.g. tract 10 in Brooklyn) having relatively high shares of untaxed stamps.

As shown in Table 2, in rounds 1 and 2, 14 percent of packs had stamps from other states. The percentage increased to 17 percent in round 3, but dropped back to 14 percent in

round 4. Thus, for every three to four packs with a NYC stamp, we found one with a stamp from another state. While this represents a significant proportion of cigarettes smoked in NYC, there was no significant change in the proportion from other states after the tax increase<sup>16</sup>.

Table 3 shows the distribution by state of packs with stamps from states other than New York. This table is based on small and un-weighted numbers so we caution readers that changes between rounds and differences across states should be interpreted carefully. Column 1 of the table shows the relevant state tax rate. The most important source is Virginia, with 40 percent or more of the other-state stamps in the post-increase rounds. Other important sources are New Jersey and Florida. Virginia and Florida had the fourth and fifth lowest cigarette tax rates in the country, respectively<sup>17</sup>. While the NJ rate of \$2.58 per pack was only 17 cents less than the NYS rate, the New Jersey-NYC difference was \$1.67. Thus, our data indicate that about 15 percent of littered packs in NYC were purchased in other states. Almost half of the out-of-state purchases were from distant but very low-tax states, suggesting that tax differentials play an important role in consumption choices.

Our estimated rates of avoidance in NYC are lower than those found in the city of Chicago (see Merriman 2010) where about three-quarters of littered packs lacked a local tax stamp. A number of factors might explain this difference. In Chicago, a significant portion of the cigarette tax can be avoided by leaving the city, the county and the state. The two dollar per pack county tax can be avoided at many locations in three separate directions (North, West or South). In Chicago, city, county and some state taxes can be avoided by travel to Indiana saving

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<sup>16</sup> Another potential source of information about the impact of the tax increase on tax avoidance is the annual NYC Community Health Survey (<http://www.nyc.gov/html/doh/html/survey/survey.shtml>). Our analysis of this data shows a jump in non-taxed sales of similar order of magnitude to that found in the littered pack data after the tax increase. See Merriman and Chernick 2011 for details.

<sup>17</sup> See the data from the Taxpayer's Foundation <http://www.taxfoundation.org/publications/show/245.html>. The most popular brands were Marlboro (47%), Newport (27%) and Parliament (10%). Roughly, two percent of packs (1.7 percent of packs with cellophane) were Native American brands. We found only 2 packs with Native American brands in round 1 but 7,8, and 16 packs respectively in rounds 2,3 and 4.

\$3.36 per pack. In NYC cross-border shopping will not save consumers as much money since the tax differential with the closest neighboring state, New Jersey, is lower than the differential with neighboring areas in Chicago. Travel to Pennsylvania is quite lengthy and may require car travel. Travel to Poospatuck will save consumers about \$4.25 per pack but Poospatuck is a single, probably unfamiliar location to most individuals. Thus, individual tax avoidance in NYC is probably more difficult than in Chicago. Large scale tax avoidance by smugglers may be discouraged by potential exposure to civil and criminal penalties.

## 2. Regression analysis: Geographic Variation in Avoidance Patterns.

To investigate whether patterns of tax avoidance differed systematically by population characteristics and location of the sample census tracts, we aggregated avoidance data to the tract-round level, and merged this data with demographic variables from the 2005-2010 American Community Survey (ACS) 5-year estimates<sup>18</sup>, and as-the-crow-flies measures of distance from the census tract to the nearest borders with New York state, New Jersey, and the Poospatuck Native American Reservation (located in Suffolk County of NYS). We expect that our dependent variable—the share of packs without a tax stamp—will fall with distance from Poospatuck but will rise with distance to the NJ and NYS borders since packs with these stamps are potential substitutes for unstamped packs. ACS data included percent of each tract's population below the poverty line, median income, and a set of racial and ethnic variables<sup>19</sup>. With 30 tracts in the sample, and four rounds of data collection, there are 120 observations.

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<sup>18</sup> ACS 5 year estimates use 5 years of survey data to create estimates of selected economic and demographic characteristics of tracts. See US Bureau of the Census 2011.

<sup>19</sup> In earlier versions of this paper we did similar analyses with US Census data and also looked at percent of households in rental units. None of the substantive results were substantially different with these data.

In Table 4 we report estimates from a set of ordinary least squares regressions in which the dependent variable is the proportion of packs without a tax stamp and the independent variables include the percent of individuals in the tract in poverty, a dummy variable indicating whether the data was collected before the tax increase (round 1) or after the tax increase (rounds 2,3 and 4) and various indicators of the census tract's location<sup>20</sup>. All regressions are unweighted and standard errors are estimated clustering at the tract level and bootstrapped.

In the first column of Table 4, the coefficient on the round 1 dummy is statistically significant and indicates that, on average, the share of packs that avoided the tax increased about nine percentage points after the tax increase. The poverty rate has a statistically and quantitatively significant effect on avoidance. A coefficient of .004 (specification 1) on the poverty rate implies that a one standard deviation (13.1 percent) increase above the mean poverty rate (17.8 percent), would lead to a five percentage point increase in no tax paid, from 22 percent to 27 percent. In regressions that are not reported here we also included as independent variables (in place of the poverty rate) the ratio of employment to population, median family income, share of non-white households. Other measures of economic circumstances also indicated that areas with higher economic deprivation had increased tax avoidance<sup>21</sup>.

Model 2 adds a term that interacts the poverty rate with a dummy variable equaling one for round 1 and zero for rounds (2, 3 and 4) occurring after the tax increase. The coefficient is positive and has a large magnitude, but we do not estimate it precisely enough to reject the

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<sup>20</sup> If stringency of tax enforcement differed across locations it might be important to include such measures in our specification. When questioned NYC and NYS tax authorities did not indicate there was any differential in tax enforcement resources across NYC, while an official with the Department of Finance said they had no information on this issue.

<sup>21</sup> Substantive conclusions about the other independent variables and interaction terms are essentially unchanged when we substitute a different measure of economic conditions for the poverty rate.

hypothesis that higher poverty tracts had the same increase in tax avoidance as those with low poverty.

Model 3 adds dummy variables for the boroughs of NYC. Despite the fact that census tract poverty rates are correlated within a borough we find an independent effect of borough. The results indicate that avoidance rates in the Bronx are highest followed by Brooklyn, Manhattan and Queens. Staten Island, the (omitted) reference borough has the lowest avoidance rates. Model four replaces borough dummies with as-the-crow-flies distance variables, to the New Jersey and New York State borders and to the Poospatuck native American reservation. Model 5 includes the all of the variables used in any of the first four specifications. Model 6 includes distances to tax borders interacted with a round 1 dummy.

In model 4 the coefficients on the distance variables are statistically insignificant but have the signs we might expect if consumers went to Poospatuck to purchase unstamped cigarettes and if crossing the city border (to NYS) or the state border (to NJ) were a substitute for going to Poospatuck to buy unstamped cigarettes. Somewhat surprisingly in models 5 and 6 the point estimates of all the coefficients except some of the variables interacted with the round 1 are statistically significant. In both specification 5 and 6 all of the distance variables have the theoretically expected signs and are statistically significant. In model 5 the point estimate of our coefficient on distance to Poospatuck implies that the share of packs without a tax stamp falls 2.5 percent for each mile of distance to Poospatuck (min 46.7 max 72.7). These results are even stronger than Merriman (2010) who found that a one mile increase in distance to the lower-tax state border increases the probability of a local stamp by about one percent. Although our results have a rather large confidence interval it seems plausible that distance could be even more important in NYC—where cigarettes bought on a Native American reservation can avoid all

state and local taxes—than in Chicago, where travel makes it possible only to avoid some state or local taxes.

Model 6 interacts the distance to tax border variables with a dummy variable that equals one after the tax increase (rounds 2,3 and 4) and zero in round 1. The coefficients on these interacted variables allow us to ask whether distance to lower tax sources of cigarettes became a more important determinant of tax avoidance after the tax increase than it was before the increase. We might expect the avoidance gradient to become flatter after the tax increase so that the sign on interacted distance to NJ or NYS should be negative while the sign on interacted distance to Poospatuck should be positive. The coefficients on both interacted distance to NYS (positive sign) and interacted distance to Poospatuck (negative sign) are statistically insignificant but have counter-intuitive signs<sup>22</sup>. The statistical insignificance of the coefficients is perhaps not too surprising; with only 120 observations our regressions have limited power. The interacted coefficient on distance to NJ is more than twice as large as its standard error and has an intuitive negative sign. Take together these results might suggest that smokers' propensity to evade taxes is responsive to distance but that the tax evasion gradient changes little when the size of the price difference increases without a change in sign.

The empirical results also suggest that tax avoidance may be higher in poorer NYC neighborhoods.<sup>23</sup> Merriman (2010) found that higher poverty rates were associated with less, rather than more tax avoidance in Chicago. We believe that this difference between the NYC and Chicago might be attributable to difference in the costs and mechanisms of avoidance in the

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<sup>22</sup> Readers are cautioned that the insignificance of some distance variables in specification 6 does not cast doubt on the tax evasion gradients we found in specification 5. To determine the impact of distance in specification 6 we must calculate the joint impact of the distance variable and the distance variable interacted with the relevant post tax increase dummy.

<sup>23</sup> Kurti 2011 presents evidence of substantial tax avoidance in one of the poorest areas of NYC, the South Bronx, also using the littered pack method of data collection.



two locations. The incentive to avoid cigarette taxes depends on the potential savings from obtaining untaxed or lower tax cigarettes, relative to income. All other things equal, the lower the income level, the greater the relative economic burden of taxes at any level of cigarette consumption. Therefore, one might expect that poor smokers would have a greater incentive to avoid taxes. This income-related pattern of incentives will be reinforced if avoidance costs are lower for poor smokers, but offset if avoidance costs vary inversely with income.

Because the poor are less likely to own a car, the marginal cost of traveling to border states to avoid cigarette taxes—the main source of avoidance in Chicago—is likely to be greater relative to income for poor smokers. By contrast, in NYC, untaxed or lower taxed cigarettes are more likely to be sold illegally by vendors who bring them to poor neighborhoods. This difference is related to the proximity of Native American reservations in NYC, and the greater density of population in NYC than Chicago. Proximity makes it cheaper for bootleggers to obtain untaxed cigarettes, while the higher density in NYC makes it more profitable to sell illegal cigarettes at street level because a supplier of untaxed cigarettes is more likely to have sufficient demand to cover his or her fixed costs at any particular location<sup>24</sup>.

#### IV. Decomposing Changes in Taxed Sales into Change in Consumption and Change in Avoidance.

A crucial question in evaluating the social benefits and costs of cigarette tax increases is the effect of such increases on cigarette consumption. In this section we combine the littered

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<sup>24</sup> Discussion with attorneys in the NYC legal department suggested that they believe that the latter method, i.e. larger scale bootlegging is the main way in which cigarettes from Poospatuck reach NYC. See also City of New York 2009. Smokers in NYC or Chicago could theoretically also obtain low or no tax cigarettes through the internet. In practice, however this does not seem to be a popular option. As discussed above NYS has made vigorous efforts to make internet cigarette sales inconvenient. Illinois has done less enforcement but has demanded payment from internet cigarette buyers on occasion (Jones 2005). Also, at the time Merriman's (2010) study was done taxes were so low in Indiana (95 cents) relative to Chicago (\$4.05) that the incentive to purchase packs on the internet and wait for delivery was small.

pack data with data on the sale of NYC tax stamps, to estimate the effect of the June 2008 tax increase on cigarette consumption. We calculate confidence intervals around our point estimates<sup>25</sup>.

The total number of packs consumed in NYC (Consumption), which is unobserved is by definition:

$$(1) C \equiv \frac{1}{\left(\frac{\text{Taxed}_{\text{NYC}}}{C}\right)} * \text{Taxed}_{\text{NYC}} \text{ Where } C = \text{Consumption} \text{ and } \text{TAXED}_{\text{NYC}} \text{ is the number of}$$

packs on which NYC (and NYS) taxes were paid

Our litter data (reported in Table 2) provide consistent and unbiased estimates of the ratio

$$\left(\frac{\text{Taxed}_{\text{NYC}}}{C}\right). \text{ We use this data to estimate } Z = \left(\frac{1}{\left(\frac{\text{Taxed}_{\text{NYC}}}{C}\right)}\right)^{26} \text{ and its variance as } V(Z) = \sigma_Z^2.$$

We use observed cigarette tax stamp sales to measure  $\text{TAXED}_{\text{NYC}}$  in each period. Using this framework in appendix 1 we derive standard errors for our estimates of consumption, the change in consumption, avoidance, the change in avoidance and the price elasticities of consumption and avoidance.

Although equation (1) is conceptually straight-forward, aligning the timing of data collection, and hence our estimate of  $Z$ , with taxed retail sales presents practical difficulties. NYS collects and reports monthly data on sale of cigarette tax stamps to cigarette wholesalers. The wholesalers affix the stamps to cigarette packs and transfer the stamped packs to retailers.

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<sup>25</sup> Chernick and Merriman 2011 also compares our estimates of consumption changes with those derived using data from the annual NYC Community Health Survey (<http://www.nyc.gov/html/doh/html/survey/survey.shtml>) and finds generally consistent results.

<sup>26</sup> We estimate  $E(Z)$  and  $\sigma_Z$  using our littered data sample and the Stata command “ratio” with data weighted by Census tract.

Because there is a strong financial incentive for wholesalers to minimize the time between their stamp purchases and transfer to retailers, and because cigarettes lose freshness rapidly, the lag between wholesalers' tax stamp purchases and retail sale, consumption and subsequent littering by smokers is normally brief. However, there is compelling empirical and anecdotal evidence that, immediately prior to a tax increase wholesalers stockpile tax stamps and that immediately after a tax increase tax stamp sales fall<sup>27</sup>. This pattern is illustrated for the four most recent tax increases in NYC in Figure 5. In each case we see a jump in tax stamp sales in the period immediately prior to the tax increase and a sharp decline immediately after the tax increase.

Table 5 presents monthly data on sales of NYC tax stamps January of 2007 through March of 2010. As can be seen in figure 5 there is a clearly discernible surge in sales in April and May of 2008, immediately before the tax increase, and clear downturn in sales immediately after the tax increase (June 2008). By July of 2008 it seems that sales of tax stamps were relatively unaffected by the pre-tax surge.

In order to measure retail sales of legally stamped cigarette packs for the months corresponding to each of our data collections we use average monthly sales in the two months prior to the data collections in September 2008 (round 3) and September 2009 (round 4). We believe these measures of stamp sales are relatively “uncontaminated” by stockpiling related to the 2008 tax increase. However, because of stamp stockpiling there seems to be no uncontaminated measures of legal NYC retail sales near the period of our round 1 and 2 data collections in May and June of 2008. We estimate May 2008 retail sales using the average value of NYC tax stamp sales in March and April 2007<sup>28</sup>. We do not attempt to estimate June 2008

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<sup>27</sup> As discussed in footnote 11 wholesalers cannot evade the tax increase by stockpiling but still may have an incentive to stockpile since they are normally given several months interest-free grace to pay for the tax increase.

<sup>28</sup> We regressed monthly wholesale sales of NYC tax stamps from January 1999 to March 2010 on a series of monthly dummies a set of four dummy variables representing the four state and local taxes increases in the period

legal retail sales because we have no clear methodology to disentangle the effects of wholesale stamp stockpiling and behavioral changes in response to the tax increase.

Some of our calculations are summarized in Table 6. As shown in row 1 of Table 6,  $TAXED_{NYC}$  fell from 12.2 million stamps per month prior to the tax increase to about 9.8 million shortly after the tax increase (the time period corresponding to round 3) and to about 9.5 million after one year and three months (the time period corresponding to round 4), declines of 20 and 22 percent, respectively. Sales with a NYC tax stamp fell from 55 percent in round 1 to 48 percent in rounds 3 and 4 (Table 2). The net effect of these two changes implies a decline in total consumption. The point estimates imply a decrease in consumption of 1.66 million (7.5 percent) between round 1 and 3 and a decrease in consumption of 2.3 million (10.4 percent) between rounds 1 and 4.

The standard errors on the change in consumption are rather wide however and the estimates of the ratio of consumption to taxed sales ( $Z$ ) are sufficiently imprecise that the highest level of confidence at which we can reject the hypothesis that consumption is the same for the first and third rounds is 70 percent, and 77 percent for the first and fourth rounds.

Avoidance is calculated as estimated consumption minus taxable sales. As shown in Table 6, we estimate that monthly avoidance went from about 9.98 million to 10.70 million packs from round 1 to round 3, but fell to 10.32 million in round 4. As is the case for consumption, our estimates are imprecise and the highest level of confidence at which we can reject the hypothesis of no increase in avoidance between rounds 1 and 3 is 59 percent and the

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and a monthly time trend. Each of the tax increase dummies was set equal to zero prior to the relevant tax increase and one for all months after the tax increase. The coefficient on the monthly time trend was -0.014 (se 0.013) suggesting that, after controlling for seasonal effects and tax changes, there is no time trend in wholesale sales of NYC excise tax stamps.

highest level of confidence at which we can reject the hypothesis of no increase in avoidance between rounds 1 and 4 is 54 percent.

In order to compare our results to others in the literature it is helpful to express our findings as implied price elasticities of taxed sales, consumption and avoidance. These elasticities can be calculated based on the data displayed in Table 6 combined with data on retail cigarette prices. The NYS Department of Taxation and Finance regulates minimum retail cigarette prices. The minimum price of a typical cigarette pack sold in NYC increased from \$6.82 at the time round 1 data was collected to approximately \$8.21 at the time round 3 data was collected. Price rose to \$8.63 at the time round 4 data was collected because of a 38 cent per pack increase in the federal cigarette excise tax that took effect on April 1, 2009<sup>29</sup>. The implied price elasticity of taxable sales is therefore -0.96 from round 1 to round 3, while the elasticity from round 1 to round 4 is -0.82. The first elasticity estimate is substantially smaller than the most recent estimates of the price elasticity of taxable sales. (Goolsbee et al, 2010, Chernick, 2008). The round 1 to round 4 calculation is even smaller than the round 1 to 3 estimate. This is probably due to the fact that the price increase between round 3 and round 4 was due to an increase in the federal cigarette tax and hence more difficult to avoid than a state or city-specific increase.

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<sup>29</sup> Minimum retail cigarette prices are published in New York State Department of Taxation and Finance Publication 509 at various dates (<http://www.tax.ny.gov/pdf/publications/cigarette/pub509.pdf>). We obtained the pre-round one typical retail price from the May 2008 version of Publication 509 for a carton of cigarettes with a manufacturer's list price of \$31.14. The round three price was based on the Publication 509 document in force at time of that collection (June 2008) and also used a carton of cigarettes with a manufacturer's list price of \$31.14. Because of the way in which NYS regulates minimum cigarette prices the \$1.25 NYS cigarette tax translates into an increase in minimum retail prices of \$1.39 per pack. The change in minimum retail price from round 3 to round 4 is due to a 38 cent increase in the federal excise tax which translates into a \$3.80 increase per carton in manufacturer's list prices. Because of the way in which NYS regulates minimum cigarette prices this 38 cent tax increase translates into a 42 cent increase in minimum retail prices. We thank William Raleigh and Camille Gourdet for helping us understand NYS minimum pricing regulations.

The point estimates of price elasticities of consumption are .37 (sd=0.52) (round 1 to round 3) and .39 (sd=0.44) (round 1 to round 4) , which are reasonably similar to recent national estimates of the price elasticity of cigarette consumption. The point estimates of avoidance elasticity—the percentage change in avoidance as a result of a one percent change in price—is 0.35 (sd=0.95) in the short run and is substantially lower than estimates by Lovenheim (2008). The long run avoidance elasticity estimate of 0.13 (sd=0.75) is even lower but this may be explained by the fact that prices increased due to a difficult-to-avoid increase in federal cigarette taxes.

#### V. Revenue Loss from Tax Avoidance in NYC.

The most direct way to calculate revenue losses from cigarette tax avoidance is to use survey estimates of total smoking among NYC residents, and compare the implied tax revenue to actual revenue collections. Using this method, the NYC Independent Budget Office (2007) estimates that the total loss to the city and the state from cigarette tax avoidance is about \$66 million per year. However, if cigarette consumption is underreported in the NYC survey, the IBO method will understate revenue losses<sup>30</sup>.

Even if consumption is reported accurately, the difference between consumption and taxable sales gives an upper bound on losses from tax avoidance, since consumption is likely to be reduced if avoidance becomes more difficult. We provide two estimates of revenue loss from tax avoidance. The first estimate assumes no behavioral response to the elimination of tax avoidance, while the second incorporates an estimated consumption response. We calculate the

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<sup>30</sup> . Stehr (2005) notes that nationwide, cigarette consumption as reported in the Current Population Survey supplement, is only a little more than half of taxable sales. Therefore, it is notable that, in contrast to the national pattern, reported consumption in NYC exceeds taxable sales. Thus even if consumption is somewhat underreported on the NYC survey, the results still imply substantial amounts of tax avoidance.

revenue losses for a measure of tax avoidance based only on packs with no stamp. We assume that NYS is unable to collect any taxes on packs purchased from other states.

Actual revenue before and after the tax increase is computed using the average monthly stamp sale amounts from Table 5. The first approach is simply to multiply consumption levels, as estimated in the previous section of this paper, by the share of littered packs without a tax stamp, and apply the relevant tax rate.

Method 1. Assumes no consumption response to eliminating untaxed cigarettes<sup>31</sup>.

1. Before June, 2008 Tax Increase.

$$\text{Revenue}_{\text{NYC+NYS}} = 12.2 \text{ mil} \times \$3.00 = \$36.6 \text{ mil/month} \approx \$439.2 \text{ mil/year}.$$

$$\begin{aligned} \text{Foregone Revenue}_{\text{NYC+NYS}} &= \text{Total Consumption} \times [\text{Share Unstamped}] \times [\text{Tax Rate}] = \\ 22.14 \text{ mil} \times 0.15 \times 3.00 &= \$9.96 \text{ mil/month} \approx \$119.5 \text{ mil/year} \end{aligned}$$

Note that our estimate of revenue losses is almost double that computed by the IBO.

2. After June, 2008 Tax Increase

$$\text{Revenue}_{\text{NYC+NYS}} = 9.8 \text{ mil} \times \$4.25 = \$41.7 \text{ mil/month} \approx \$500 \text{ mil/year}$$

$$\text{Foregone Revenue}_{\text{NYC+NYS}} = 20.5 \text{ mil} \times 0.24 \times \$4.25 = \$20.9 \text{ mil/month} \approx \$251 \text{ mil/year}$$

Hence, revenue lost to tax avoidance is estimated to increase by \$131(=251-119.5)

million/year. This amount is more than twice as high as the \$61 (=500-439) million increase in tax revenue.

Method 2. Assumes a consumption response to eliminating untaxed cigarettes.

If increased enforcement made it difficult or impossible to purchase unstamped cigarettes, the price increase on previously unstamped cigarettes could curtail consumption

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<sup>31</sup> These calculations assume that the 12.2 million stamps per month sold in March and April 2008 were typical of monthly sales before the tax increase and that the 9.8 million stamps per month sold in July and August 2008 were typical of monthly sales after the tax increase. While these assumptions may not be strictly true because they do not take account of seasonality in sales of tax stamps, they provide reasonable approximation of average monthly sales over the year and are consistent with the consumption analysis in the previous section.



among those who avoided the tax. If all cigarettes in NYC were purchased at the legal price, the price for previously untaxed cigarettes would rise about 64 percent<sup>32</sup>. Assuming a price elasticity of demand of .45 (typical of those estimated in the literature) we would expect a 29 percent decline in demand for (previously) untaxed cigarettes after the tax increase. Assuming that untaxed packs were 5.94 mil/month (29 percent of 20.5 million), consumption among this group of smokers would drop to 4.2 million packs per month. Hence, the revenue that would be realized by total elimination of untaxed cigarettes would equal

Foregone rev (with consumption response) = 4.2 mil X \$4.25 = \$17.9 mil/month  $\approx$  \$214 mil/year.

Thus, taking account of the potential consumption response to elimination of untaxed cigarettes reduces the revenue gain from eliminating consumption of untaxed cigarettes by about 15 percent. (\$214 mil versus \$251 mil).

## VI. Conclusion.

We use data from littered packs collected in the streets of NYC to analyze the response to a \$1.25 cents per pack increase in the NYS cigarette tax in June 2008. This increase brought the combined NYC NYS tax to \$4.25, the highest in the nation. We randomly selected 30 census tracts, and collected data on tax stamps on a total of packs 1,016 packs in four rounds – once before, once immediately after the tax increase, once three months later, and once a year and three months later.

In the first round, 55 percent of packs had NYC tax stamps, and 9 percent had NYS stamps. Fifteen percent had no tax paid, 14 percent had stamps from other states. Results from

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<sup>32</sup> Assuming the tax increase was fully forward shifted, the price of a pack of cigarettes with a NYC stamp would have increased by about 20 percent, from \$6.82 to \$8.21. Under our counterfactual of no unstamped cigarette sales, assume that the retail price of previously untaxed packs would rise from the \$5.00 average street level retail price (Shelley et al, 2007) to the legal price \$6.82 before the tax increase and \$8.21 after the tax increase. This would represent an increase of 36 percent before the tax increase and 64 percent after the tax increase.

the second, third and fourth rounds of data collection were remarkably similar to each other and quite different from the first round. Data collection more than one year after the increase indicates that the change in behavior was long-lasting, with patterns of avoidance almost identical to the third round.

As expected, avoidance rates went up after the tax increase. However, the source of this increase was entirely from an increase in packs with no tax stamp, whose share went from 15 to 24 percent, while the share with NYC stamps went down to 49 percent in round 2, and 48 percent in rounds 3 and 4. Our samples are large enough to make us confident that these changes are not the result of random statistical variation. The proportion with other types of stamps was basically unchanged after the tax increase. For every three to four packs with a NYC stamp, we found one with a stamp from another state in all rounds of data collection. Many of the out-of-state stamps came from low tax states such as Florida and Virginia.

Our estimated rates of avoidance are much higher than estimated national rates but lower than those found by Merriman (2010). Merriman (2010) found that proximity to lower tax sources of cigarettes (from other states) was associated with increased avoidance in Chicago. We find abundant empirical evidence, consistent with conventional wisdom, that packs without state tax stamps, which could have been sold from a Native American reservation, frequently make their way into NYC. We find some statistical evidence to support the hypothesis that proximity to the nearest Native American reservation is associated with more avoidance. We find that avoidance rates were significantly higher in poorer census tracts, with a one standard deviation increase in poverty rates implying a five percentage point increase in avoidance rates.

Combining the littered pack data with data on taxable sales, we estimate that three months after the tax increase, 68 percent of the decline in sales was due to a decline in

consumption. By 15 months after the tax increase, we estimate that about 88 percent of the drop in taxed sales was due to a decline in consumption. However, our estimates are imprecise and cannot rule out no decline in consumption with a high degree of confidence.

Our results are at odds with Lovenheim's 2008 national estimates. Lovenheim finds that tax increases do not diminish consumption and thus suggests that the decline in taxable sales following a tax increase is due to avoidance. Our estimate of the change in avoidance in NYC was much lower than recent national estimates. We speculate that, because avoidance rates were already so high in NYC relative to the rest of the country, the opportunities for **increased** avoidance/evasion in response to a tax increase are more limited than in other states.

Compared to other US cities NYC is admittedly something of an extreme case because it has very high tax rates and a source of untaxed cigarettes in close proximity. Economics as a field has demonstrated the ability to learn a lot from polar cases (e.g. pure competition or pure monopoly) and we think that a lot can be learned from NYC's experience. Even with the highest rates of cigarette taxation in the nation before June of 2008, the cigarette tax increase resulted in an increase in revenue and a decline in consumption. However, our results also suggest that untaxed smoking results in a substantial revenue loss to NYC and NYS. After the June, 2008 tax increase, annual losses to the city and the state from untaxed cigarettes in NYC are between \$214 and \$251 million per year. These amounts, which range from 43 to 50 percent of revenue collected, exceed prior estimates of revenue losses by a substantial amount, and suggest that there may be a considerable fiscal return to increased enforcement efforts.

Using family expenditure data, Gruber et al (2003) find that the elasticity of demand for cigarettes is substantially greater for low than for higher income smokers. Though our results are only for one city, and differ from a similar study in Chicago, they suggest at least the possibility

that the higher elasticity among the poor is reflective of a differentially greater tax avoidance response, as opposed to a greater reduction in consumption. The health effects of higher cigarette taxation for low-income populations are quite different under the two alternative interpretations. Given the importance of this question and the contrast between our results and Merriman's (2010) results from Chicago, extending the littered pack methodology to other cities would be a useful area for future research.

# Tables

Table 1  
Number of littered packs collected by round

Packs Found			
	with cellophane	without cellophane	total
Round			
1	223	169	392
2	262	156	418
3	262	162	424
4	269	159	428

<p>Table 2</p> <p>Basic Findings rounds 1, 2,3 and 4</p> <p>Share of packs in each tax payment category</p>								
					Test of equality			
	(1)	(2)	(3)	(4)	round 1 vs 2@	round 1 vs 3@	round 1 vs 4@	round 1 vs 2, 3 & 4@#
Round	round 1	round 2	round 3	round 4				
Period	May 15 to May 30,2008	June 16 to July 3, 2008	Sept. 8 to Oct. 13, 2008	Sept. 11 to Oct. 7, 2009				
No tax paid	0.15 (0.04)	0.24 (0.03)	0.24 (0.03)	0.24 (0.04)	0.052	0.066	0.095	0.032
NYC stamp*	0.55 (0.04)	0.49 (0.04)	0.48 (0.03)	0.48 (0.04)	0.2308	0.165	0.165	0.120
only NYS tax paid	0.09 (0.02)	0.08 (0.02)	0.08 (0.02)	0.08 (0.02)	0.711	0.702	0.587	0.605
Other state tax paid	0.14 (0.02)	0.14 (0.03)	0.17 (0.03)	0.14 (0.02)	0.948	0.996	0.996	0.747
Foreign tax paid or unknown	0.07 (0.02)	0.05 (0.01)	0.04 (0.01)	0.07 (0.01)	0.335	0.120	0.978	0.339
NYS or NYC stamp					0.170	0.113	0.111	0.069
N	223	262	262	269				
standard errors in parentheses								
Calculations appropriately weight packs to give each census tract equal weight.								
*Presence of a NYC stamp implies that the NYS as well as the NYC cigarette tax has been paid.								
@ P value for test of hypothesis that mean in a given round equals mean in round 1.								



Table 3  
Number of packs with Non-NYS stamps by state and round of data collection

Issuing state	State Tax Rate <b>January 1, 2008</b>	Pre-tax Round 1 May 15 to May 30, 2008 (n=36)	Post-tax Round 2 June 16 to July 3, 2008 (n=32)	Post-tax Round 3 Sept. 8 to Oct. 13, 2008 (n=43)	Post-tax Round 4 Sept. 11 to Oct. 7, 2009 (n=40)
	<b>\$ per pack</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
California	\$0.87	0	0	0	2.5
Connecticut	\$2.00	0	0	2.3	2.5
Delaware	\$1.15	2.8	9.4	4.6	2.5
Florida*	\$0.34	19.4	25	9.3	5
Georgia	\$0.37	0	0	2.3	2.5
Illinois	\$0.98	0	0	0	2.5
Massachusetts	\$1.51	0	3.1	0	2.5
Missouri	\$0.17	2.8	3.1	2.3	0
New Hampshire	\$1.08	0	0	4.6	0
New Jersey	\$2.58	22.2	9.4	14	30
Pennsylvania	\$1.35	8.3	6.3	7	2.5
Virginia	\$0.30	36.1	40.6	40	47.5
Washington, DC	\$1.00	2.8	3.1	0	0
Don't Know		5.6	0	14	0

\*Florida's cigarette tax increased to \$1.34 in 2009.



Table 4 Regressions of share no tax paid on census tract characteristics						
	(1)	(2)	(3)	(4)	(5)	(6)
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Round 1 dummy	-0.088** (0.040)	-0.133* (0.071)	-0.088** (0.042)	-0.088** (0.041)	-0.133* (0.075)	-1.969 (1.677)
Percent poverty	0.004*** (0.002)	0.006 (0.005)	0.003* (0.001)	0.005*** (0.002)	0.007 (0.005)	0.010 (0.006)
Percent poverty * Post tax increase dummy		-0.003 (0.005)			-0.003 (0.005)	-0.006 (0.007)
Bronx			0.224*** (0.057)		0.557*** (0.139)	0.557*** (0.148)
Brooklyn			0.173*** (0.033)		0.290*** (0.060)	0.290*** (0.062)
Queens			0.149*** (0.031)		0.280** (0.111)	0.280** (0.115)
Manhattan			0.170*** (0.041)		0.480*** (0.111)	0.480*** (0.117)
Dist. to NJ border (miles)				0.005 (0.008)	0.029*** (0.009)	0.055*** (0.017)
Dist. to NYS border (miles)				0.008 (0.011)	0.051*** (0.016)	0.035 (0.035)
Dist. to Poospatuck (miles)				-0.011 (0.011)	-0.025* (0.014)	-0.002 (0.028)
Dist. to NJ border (miles) * Post tax increase dummy						-0.036* (0.019)
Dist. to NYS border (miles) * Post tax increase dummy						0.022 (0.039)
Dist. to Poospatuck (miles) * Post tax increase dummy						-0.031 (0.034)
Constant	0.166*** (0.031)	0.178*** (0.029)	0.038 (0.033)	0.686 (0.554)	0.695 (0.731)	1.154 (0.861)
Observations	120	120	120	120	120	120
Adjusted R-squared	0.083	0.079	0.115	0.091	0.164	0.165
Notes: Standard errors in parentheses. *p<0.10, **p<0.05, ***p<0.01. Dependent variable is share of littered packs with no stamp. Data on census tract means are pooled over four rounds of data collection. Standard errors are block bootstrapped at the census tract level using 50 replications. Staten Island is the omitted borough dummy in models 3, 5 and 6.						

Table 5 Monthly wholesale sales of NYC cigarette excise tax stamps (millions)*				
	Year			
Month	2007	2008	2009	2010
Jan	10.7	10.4	8.1	7.3
Feb	10.5	11.5	8.8	8.0
Mar	9.9	9.9	8.1	9.3
Apr	14.5	<b>16.6</b>	11.2	
May	13.2	<b>16.9</b>	9.5	
Jun	13.5	<b>7.9</b>	9.7	
Jul	13.7	10.1	10.3	
Aug	13.7	9.4	10.7	
Sep	11.5	10.3	8.7	
Oct	14.1	10.9	9.8	
Nov	12.7	9.4	9.0	
Dec	13.8	11.9	10.5	
Total	151.7	135.1	114.3	
* On April 11,2008 legislation was approved that raised the price of stamp from \$3.00 to \$4.25 effective				
Source: Office of Tax Policy Analysis of the NYS Department of Taxation.				

Table 6 Taxed sales, estimated consumption and avoidance in NYC cigarette market before and after June 3, 2008 tax increase						
	Before tax increase	After tax Increase <sup>1</sup>			Change	
	Round 1	Round 3	Round 4		Round 1 to round 3	Round 1 to round 4
	May 15 to May 30, 2008	Sept. 8 to Oct. 13, 2008	Sept. 11 to Oct. 7, 2009		elapsed time about 3 months	elapsed time about 15 months
Taxed sales (observed) (millions per month) <sup>2</sup>	12.17	9.79	9.53		-2.38	-2.64
Point estimate of ratio consumption to taxed sales <sup>3</sup>	1.82	2.09	2.08		0.27	0.26
Standard deviation of ratio consumption to taxed sales <sup>3</sup>	0.13	0.15	0.16			
Implied Consumption (millions of packs per month) <sup>4</sup>	22.14	20.48	19.84		-1.66	-2.30
Standard deviation of implied consumption (millions of packs per month)	1.57	1.46	1.52		3.03	3.09
Implied Avoidance (millions of packs per month) <sup>5</sup>	9.98	10.70	10.32		0.72	0.34
Standard deviation of avoidance (millions of packs per month)	1.57	1.46	1.52		3.03	3.09
<sup>1</sup> We omit round 2 data since, as explained in the text we are unable to derive reliable data on taxed sales for that round. <sup>2</sup> Round 1 taxed sales are assumed to be average NYC tax stamp sales in March and April 2007. Round 3 taxed sales are assumed to be average in July and August 2008. Round 4 sales are assumed to be average January to December 2009. <sup>3</sup> Ratio of consumption to taxed sales and the standard deviation of this ratio are estimated using the littered pack sample in Table 2. <sup>4</sup> Implied consumption= taxed sales * (consumption/taxed sales). <sup>5</sup> Implied avoidance is consumption minus taxed sales. Sources: Taxed sales (Retail NYC tax stamp sales) were obtained from Office of Tax Policy Analysis of the NYS Department of Taxation.						

Figure 1  
Map of NYC Census Tracts

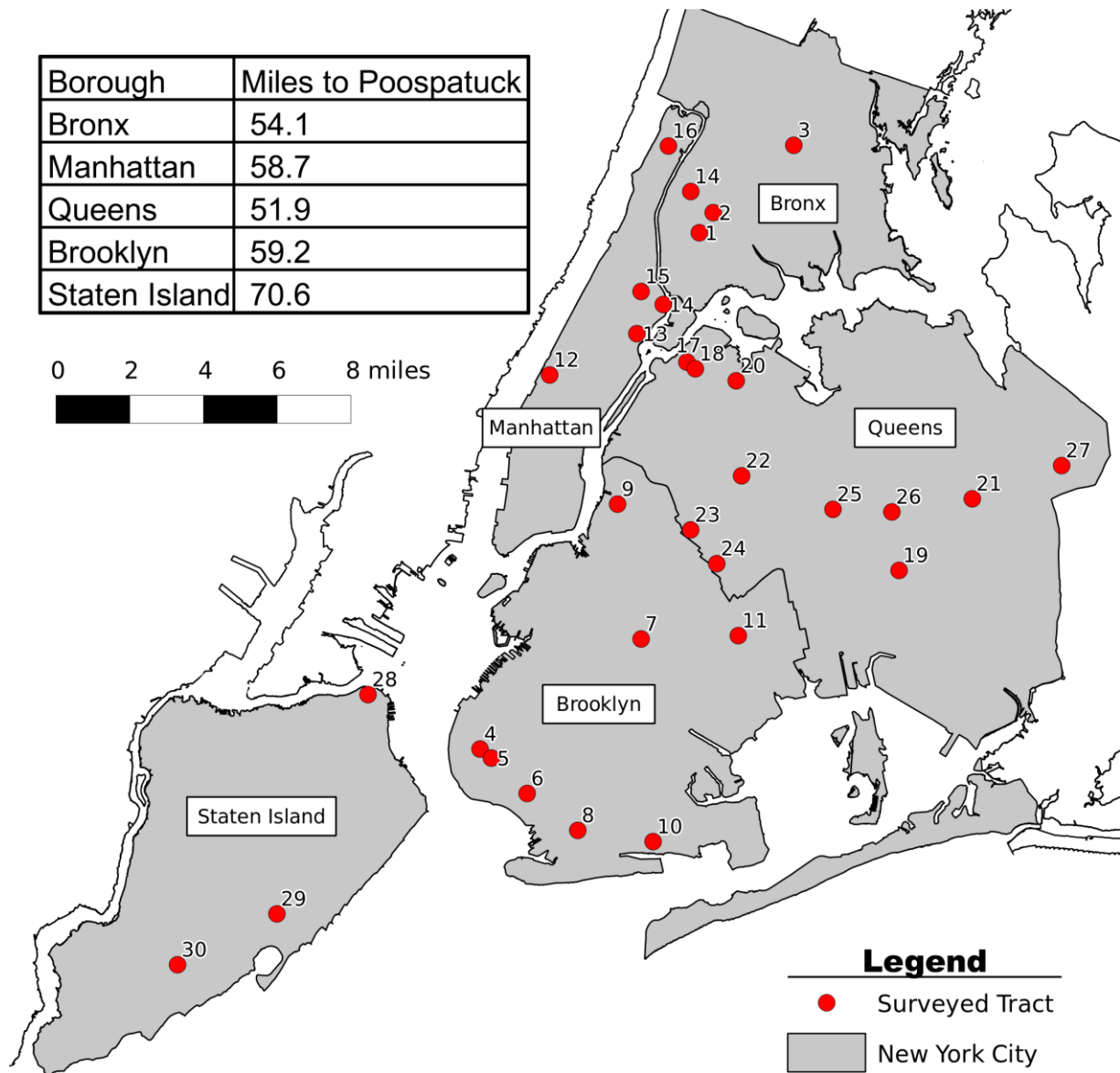
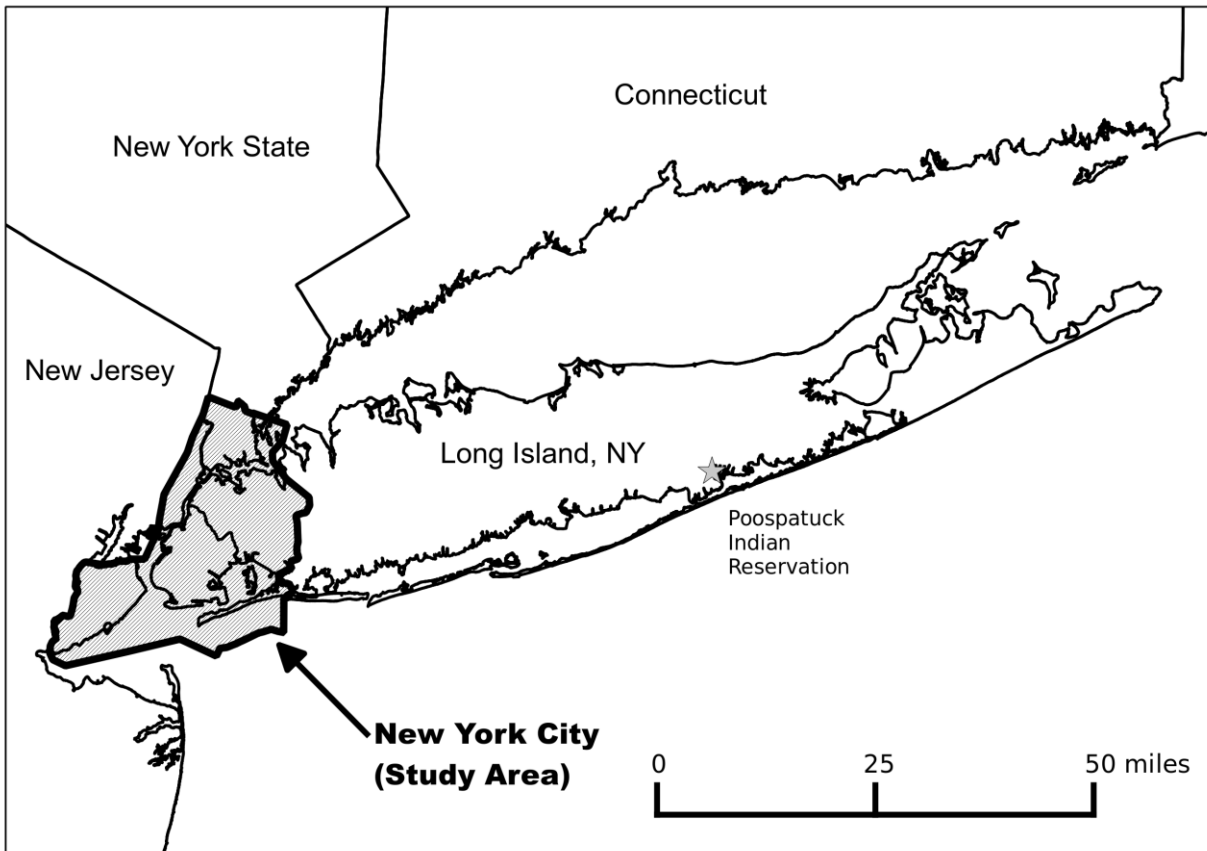


Figure 2  
Map of the study area showing tax boundaries and Poospatuck Indian Reservation





# Figure 3

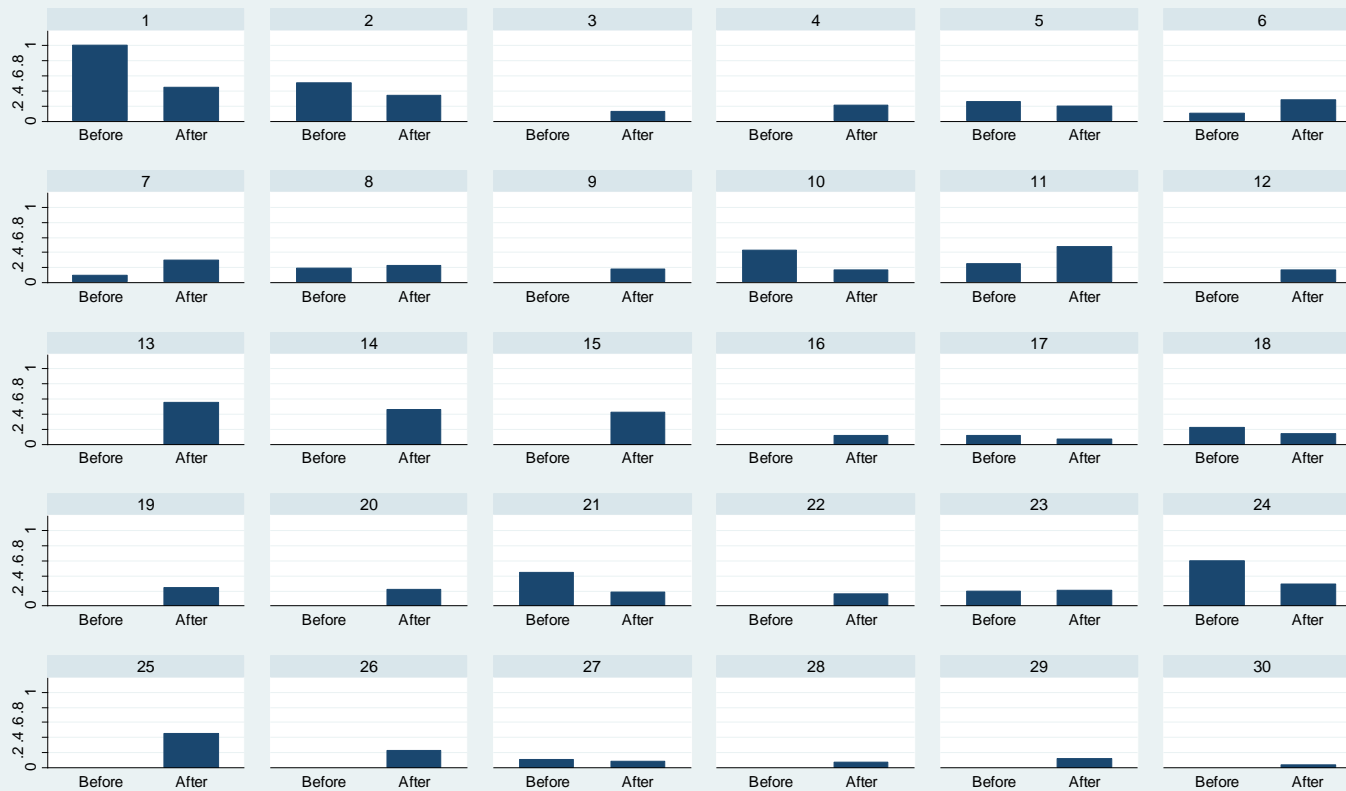
## Share NYC Tax Paid Before and After Tax Increase by Tract



Note: 'Before' is percentage in round 1. 'After' is mean percentage in rounds 2 to 4.  
Tract numbers correspond to map in Figure 1

# Figure 4

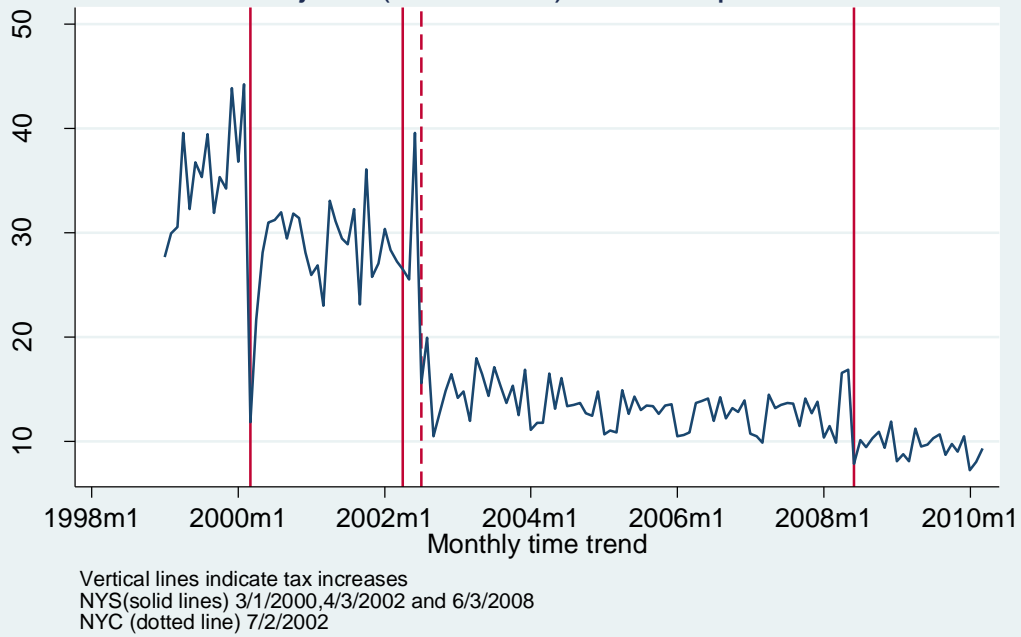
## Share No Tax Stamp Before and After Tax Increase by Tract



Note: 'Before' is percentage in round 1. 'After' is mean percentage in rounds 2 to 4.  
 Tract numbers correspond to map in Figure 1



Figure 5  
Sales of joint (NYS/NYC) tax stamps over time



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## Appendix

### Statistical basis for the calculation of some standard deviations

We derive standard deviations displayed in Table 6 and standard deviations for the elasticities discussed in the text using first principles of statistical theory about the variance of a function of a random variable.

To estimate the standard error of consumption (C) we note that:

$V(C) = V(Z * \text{TAXED}_{NYC}) = (\text{TAXED}_{NYC})^2 V(Z)$ . Because the quantity  $\text{TAXED}_{NYC}$  comes from administrative data we treat it as a known parameter (i.e. we assume  $V(\text{TAXED}_{NYC}) = 0$ ).

Also  $V(\Delta C) = V(C^{t+1} - C^t) = V(C^{t+1}) + V(C^t) - 2\text{Cov}(C^{t+1}, C^t)$ .

Since our estimates of consumption are derived from independent random samples of littered packs at a point in time the covariance between the estimates is zero<sup>33</sup> so the variance of the change is simply the sum of the variances.

Similarly, avoidance (A) is

$$A = C - \text{Taxed}_{NYC} \equiv (Z * \text{Taxed}_{NYC}) - \text{Taxed}_{NYC} = \text{Taxed}_{NYC} (Z - 1)$$

and the variance of our estimate of avoidance will be

$$V(A) = V(\text{Taxed}_{NYC} (Z - 1)) = (\text{Taxed}_{NYC})^2 V(Z)$$

---

<sup>33</sup> Technically,

$$\text{Cov}(C^{t+1}, C^t) = \text{Cov}(Z^{t+1} * \text{TAXED}_{NYC}^{t+1}, Z^t * \text{TAXED}_{NYC}^t) = (\text{TAXED}_{NYC}^{t+1} * \text{TAXED}_{NYC}^t) \text{Cov}(Z^{t+1}, Z^t)$$

The covariance of Z between different rounds is zero for reasons stated in the text. Empirically the covariance of Z between different rounds is also very close to zero.

The price elasticity of consumption is  $\varepsilon = \frac{\Delta C}{C} \left( \frac{P}{\Delta P} \right)$ . We treat the price and the change

in price as known (non-random) variables and calculate the variance in our elasticity estimate using the delta method (Patterson 2010).

$$\text{Var} \left( \frac{\Delta C}{C} \right) = \left( \frac{\mu_{\Delta C}^2}{\mu_C^4} \right) \sigma_C^2 + \left( \frac{1}{\mu_C^2} \right) \sigma_{\Delta C}^2 - 2 \left( \frac{\mu_{\Delta C}}{\mu_C^3} \right) \text{Cov}(C, \Delta C)$$

$$\text{Cov}(C, \Delta C) = \text{Cov}(C^t, C^t - C^{t+1}) = \sigma_C^2 + \text{Cov}(C^t, C^{t+1}) = \sigma_C^2 \quad \text{so in our application}$$

$$\text{Var} \left( \frac{\Delta C}{C} \right) = \left( \frac{\mu_{\Delta C}^2}{\mu_C^4} \right) \sigma_C^2 + \left( \frac{1}{\mu_C^2} \right) \sigma_{\Delta C}^2 - 2 \left( \frac{\mu_{\Delta C}}{\mu_C^3} \right) \sigma_C^2$$

The price elasticity of avoidance is  $\varepsilon = \frac{\Delta A}{A} \left( \frac{P}{\Delta P} \right)$  and calculation of its variance is identical.

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

April 29, 2013

Honorable Ms. Arroyo,

I am writing to support the comprehensive approach that New York City has taken to combat the tobacco epidemic. I am especially supportive of the Sensible Tobacco Enforcement Bill because this bill would prohibit discounts for tobacco products. The bill represents New York City's continuing exemplary effort to combat the tobacco epidemic. Research has shown that higher cigarette prices prevent young people from starting to use tobacco and help adults quit smoking.<sup>1</sup> Public health researchers have also called upon the government to implement strategies to minimize tobacco prices, such as prohibiting price discounting through coupons and promotions for all tobacco products,<sup>2</sup> as is proposed in this bill. Therefore, passing this bill into law is likely to keep cigarette prices high and thus prevent future tobacco use initiation and promote tobacco use cessation.

**Higher prices are one of the most effective strategies to combat the tobacco epidemic, but tobacco companies are actively undermining price controls for tobacco products.**

Tobacco use remains an important public health problem in the United States, where 1 in 4 adults reported using any tobacco product in 2011.<sup>3</sup> Most alarming, tobacco use is more common among young people (ages 18-24 years), with 1 in 3 reported currently using any tobacco products in 2011.<sup>3</sup> The International Agency for Research on Cancer (IARC) systematically reviewed existing scientific evidence on tobacco tax and pricing policies, and concluded that higher cigarette prices prevent initiation of tobacco use among young people, promote cessation of tobacco use among adult tobacco users, and reduce morbidity, mortality, and the economic burden associated with tobacco use.<sup>1</sup> Knowing this fact, tobacco companies use marketing strategies to manipulate the price of tobacco products.<sup>4</sup> For example, in 2010 alone, tobacco companies spent over \$8 billion on advertising and promoting their products, and 87% of that budget was spent on discounting tobacco product prices, using strategies such as disseminating coupons.<sup>5,6</sup>

**Cigarette coupons or promotions are commonly used by smokers to erode high cigarette prices, especially among younger, socio-economically disadvantaged and heavier smokers.**

Data from the 2010 National Adult Tobacco Survey (NATS) found that 55% of U.S. adult smokers used at least one of five strategies to minimize their cigarette expenditure: (1) purchase by the carton instead of by the pack, (2) use of cigarette coupons, (3) purchase of cigarettes over the Internet, (4) purchase of cigarettes on Indian reservations, and (5) smoking generic (or discounted) brands of cigarettes.<sup>7</sup> In New York State, 50% of adult smokers use at least one of these strategies.<sup>7</sup> The study also found that 20% of U.S. adult smokers used coupons in their last cigarette purchase. This estimate is higher when considering the use of coupons and promotions in the past year instead of just the last purchase. Analyzing the data collected through the Minnesota Adult Tobacco Survey (MATS) Cohort Study, we found that about 49% of surveyed smokers reported using coupons or promotions in the past year to save money on cigarettes.<sup>8</sup> Younger smokers (aged 18-29 years) and lower income smokers in this study were more likely to use coupons or promotions to reduce their cigarette expenditures, when compared to older smokers (aged 30 or above) and higher income smokers (annual income >\$75,000). Heavier smokers (those who smoked every day) were also more likely than non-daily smokers to have used cigarette coupons or promotions.

**Tobacco companies target specific populations with cigarette coupons.**

The finding that the some populations are more likely than the general population to use cigarette coupons is not a coincidence. Using the data collected from the MATS Cohort Study, we found that female smokers, younger smokers (aged 20-29 years), and heavier smokers (those who smoked >150 cigarettes per months) were more likely than male smokers, older smokers (aged 30 or above) and lighter smokers (those who smoked 150 cigarettes or less per month) to have received cigarette coupons. These findings show that tobacco companies are using these price discount tactics to target women, foster the development of nicotine addiction among younger smokers, and sustain nicotine addiction among heavier smokers.

**Cigarette coupons and promotions significantly undermine minimum cigarette price policies.**

Researchers have estimated the cigarette price reduction when price minimizing strategies are used. Using the data collected through NATS, researchers found that smokers in New York State who used cigarette price minimizing strategies lowered the price for a pack of cigarettes by 33% on average.<sup>7</sup> To investigate the specific impact of cigarette coupons and promotions, research staff at Association for Nonsmokers – MN (ANSR) used coupons to purchase cigarettes in Minnesota. In Minnesota, there is a minimum legal cigarette price law. According to this law, a pack of American Spirit cigarettes should be sold at \$6.32.<sup>9</sup> However, the law has an exception for price discounting strategies such as coupons. ANSR staff found that, after using a \$5 off coupon provided by the cigarette manufacturer, the final sale price became \$1.16 for a pack, representing an 82% discount from state minimum legal price.<sup>8</sup> The Sensible Tobacco Enforcement Bill will close this kind of loophole in New York City by prohibiting coupon redemption (and other price discounting strategies), so that smokers will pay full price for their cigarettes.

**Smokers who received coupons are more likely to think positively about cigarette companies, mitigating the public health effort to denormalize the tobacco industry.**

Tobacco industry denormalization is defined as efforts (e.g., media campaigns) to reveal and reverse tobacco industry's tactics to normalize smoking to the public.<sup>10</sup> A recent systematic review found that tobacco industry denormalization is associated with a lower prevalence of smoking, less smoking initiation, and more smoking cessation.<sup>10</sup> It is possible that cigarette companies are using coupons to maintain a positive image among smokers. In the MATS Cohort Study, we found that receiving cigarette coupons was associated with perceiving cigarette companies as caring about their health, doing the best to make cigarettes safe, and being honest.<sup>11</sup> This suggests that tobacco companies may be disseminating coupons to counteract our tobacco industry denormalization effort and its benefits to public health.

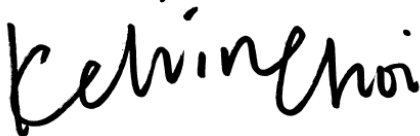
**Smokers who redeem cigarette coupons are less likely to quit smoking.**

In the MATS Cohort Study, we asked smokers if they had redeemed cigarette coupons, and if they had stopped smoking (for at least 30 days). We found that those who redeemed cigarette coupons were much less likely than those who did not redeem cigarette coupons to report stopping smoking.<sup>11</sup> This finding suggests that cigarette coupons hinder smokers from quitting smoking. Therefore, prohibiting price discounts through coupons could promote smoking cessation in New York City.

**Conclusion: Prohibiting tobacco price discounts could save lives.**

Tobacco use is still the leading cause of preventable death in the United States, as well as in New York City. Every year, over 430,000 people in the United States and several thousand New Yorkers die from tobacco related diseases.<sup>12, 13</sup> Increasing the price of tobacco products is an important and effective strategy to combat the tobacco epidemic, and New York City has done a tremendous job in this regard. It is now time to close the loopholes in cigarette pricing legislation to prohibit activities that discount high tobacco prices. This will continue the success that New York City has seen in the battle against the tobacco epidemic, and prevent thousands of cases of tobacco use related diseases and deaths. I sincerely urge the committee to pass this important life-saving policy.

Yours sincerely,

A handwritten signature in black ink that reads "Kelvin Choi". The signature is fluid and cursive, with the first name "Kelvin" and last name "Choi" clearly distinguishable.

Kelvin Choi, Ph.D., M.P.H.

Assistant Professor  
Division of Epidemiology and Community Health  
School of Public Health  
University of Minnesota

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**Testimony to the New York City Council  
Committee on Health  
The Honorable Maria del Carmen Arroyo, Chair  
May 2, 2013**

**Submitted for the record by:**

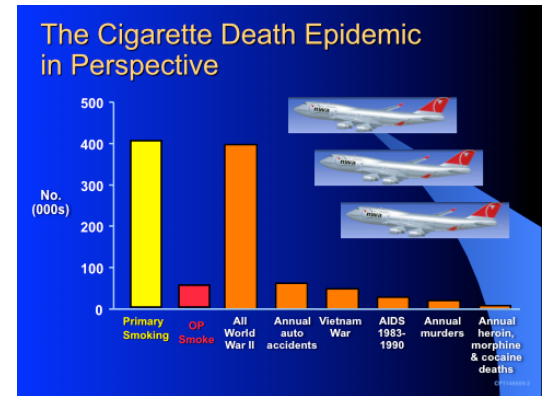
**Rob Crane, MD  
Clinical Associate Professor  
Department of Family Medicine  
The Ohio State University Wexner Medical Center  
Columbus, Ohio**

**President  
Preventing Tobacco Addiction Foundation  
5600 Dublin Road  
Dublin, OH 43017**

**Tobacco to 21: Will it work? Rob Crane, MD, Ohio State University College of Medicine**  
*Written Testimony to the New York City Council, Committee on Health: May 2, 2013*

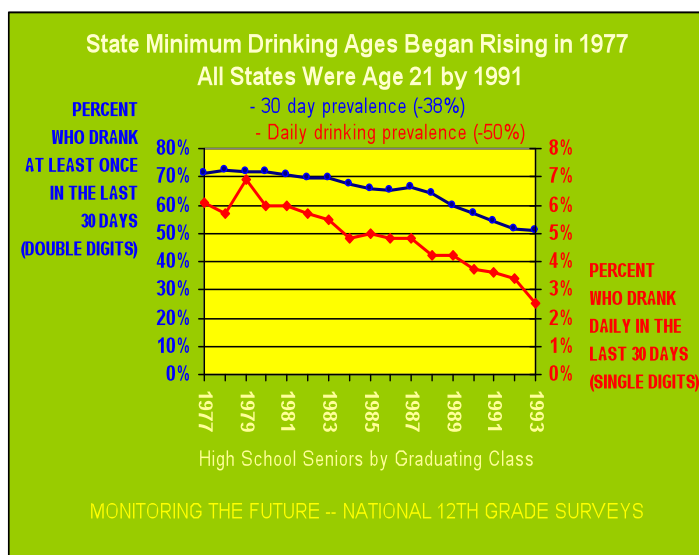
Today many will testify to the prevalence and perils of youth smoking. Others still will remind us that tobacco use in the US is responsible for deaths equivalent to three fully loaded 747s crashing every single day, killing all aboard. Instead I will focus on the “*why 21 will work*” question and the equally important issue of why age 18 or 19 has not.

**An example of dramatic impact:** Needham, Mass., has had 21 since 2008 (table below). Even with age 18 in adjacent suburbs Needham achieved a **48% decrease** in “current smoking” (any youth smoking in the previous 30 days), and whopping **62% drop** in “frequent” smoking, compared to modest drops in the surrounding region.



<b>MetroWest Foundation Youth Tobacco Survey</b>						
Needham enacted age 21 for tobacco in 2005 – with full implementation in 2008						
<b>THE NEEDHAM EXPERIENCE</b>	Needham %			MetroWest Region %		
	2006	2008	2010	2006	2008	2010
Lifetime cigarette smoking	29.1	28.3	17.9	35.3	33.3	25.9
Current (30 day) use	<b>12.9</b>	10.3	<b>6.7</b>	<b>14.7</b>	13.9	<b>12.1</b>
Frequent (20/30 days) use	<b>5.0</b>	2.7	<b>1.9</b>	<b>5.6</b>	4.6	<b>4.0</b>

**A Perspective on the Drinking Age Debacle:** There is also a lesson hard-won with another troublesome drug, alcohol. The aftermath of the Vietnam War and the unpopular, forcible draft of millions of disenfranchised teenagers brought about the 26<sup>th</sup> Amendment giving 18 year-olds the vote. Twenty-five states decided that voting rights and drinking privileges went together and lowered their drinking age to 18. The almost immediate effect was disaster on the highways and a surge in teen alcohol use, alcoholism and other drug use.



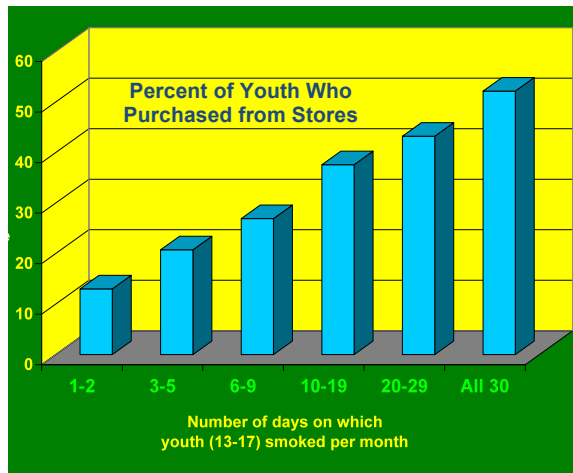
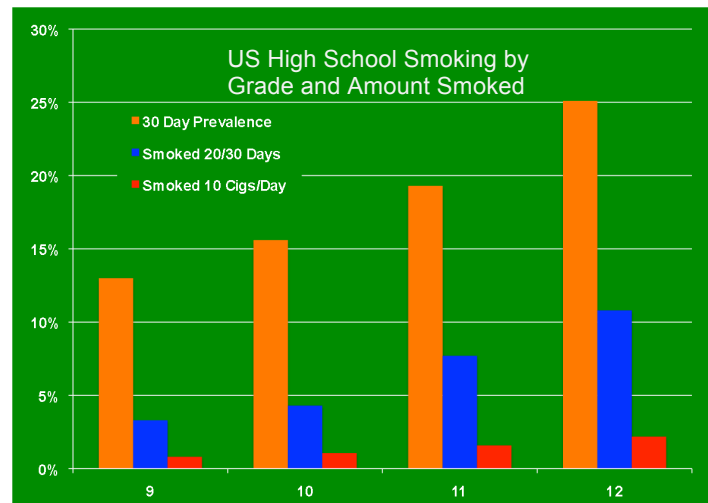
After much consternation and hand wringing, Congress at the behest of both Presidents Carter and Reagan passed legislation requiring that all states return to a drinking age of 21. Despite little attention to enforcement there followed a rapid and persistent drop in highway deaths (1000 lives saved per year) and a sustained decrease in high school drinking, alcoholism and other drug use. The problem of teen drinking was not solved but it was clearly and substantially ameliorated. That major improvement due to taking alcohol to age 21 persists today.

*The top line in this graph tracks high-school seniors who had at least one drink in the previous 30-day period and reflects a drop from 70% to 50%. The bottom line more relevant to the daily addiction of cigarettes shows a drop in daily use from 6% to 2.5% -- down more than 50% – similar to Needham.*



### **Ages 18 & 19 Target the Wrong Group:**

This chart taken from CDC's Youth Risk Behavioral Survey (YRBS) 2011, shows that even by 12<sup>th</sup> grade less than 2% are smoking at a rate of ½ pack (10 cigarettes) per day – probably the threshold for addictive smoking. This and other data indicate that progression to addiction takes time, and most importantly that consolidation of the habit occurs after high school. Through age 18, adolescents are still in an experimental or occasional use pattern. Raising the bar to age 21 not only better protects kids 13-17; it also interrupts the deadly transition from sometime use to daily addiction that occurs from ages 18-21.



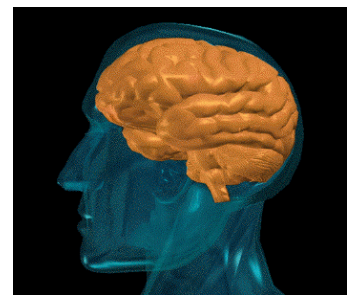
### **Occasional Users Find Social Sources, While Daily Smokers Buy From Stores:**

It doesn't take a social scientist to know that adults often have an incentive to purchase alcohol for teenagers: often to initiate a party atmosphere or encourage sexual compliance. Yet, taking the drinking age back to age 21 dramatically dropped high school usage. Despite poor enforcement the law made a difference in youth access and it also influenced social norms.

Taking tobacco to age 21 is likely to have a more profound effect. Whereas someone might buy a six-pack of beer for a teenager, very few adults will have interest in purchasing several packs of cigarettes

every week for an adolescent trying to consolidate his or her habit. The chart above, from more than 14 years ago when merchants more readily sold to kids, shows that only a small minority of kids who used occasionally were buying from stores. Instead they obtained cigarettes from friends and family members. But, with a move toward daily use, social sources dried up and retail purchase became the norm. Thus, prohibiting sales to those under 21 will have a powerful effect inhibiting the transition from sometime user to everyday nicotine addict.

**Adolescents have plastic brains:** A tsunami of neurologic data now underscores the vulnerability of the youthful brain. Kids' astonishing cognitive gains parallel the rapid modulation of neuro-receptors that can then be reset for life. The nicotinic-cholinergic receptors that affect dopamine transport are a case in point. Early high-level nicotine exposure ramps up these receptors resulting in a brain that feels perpetually starved for the powerful neuro-transmitter dopamine. This leaves kids and the adults they will grow into at risk for depression, anxiety, irritability and multi-drug use, as scores of studies indicate.



**The American Medical Association, the American Academy of Pediatrics, the Campaign for Tobacco Free Kids and many others support age 21 for tobacco.** Please better protect younger kids and help keep older adolescents from moving to establish this lethal habit.

**Advancing Public Health:  
Prohibiting Tobacco Displays at Retail**

**A Submission to New York City Council**



Canadian Cancer Society  
Société canadienne  
du cancer

**May 1, 2013**

**Advancing Public Health:  
Prohibiting Tobacco Displays at Retail  
A Submission to New York City Council**

**Canadian Cancer Society  
May 1, 2013**

**Introduction**

In Canada, all 10 provinces and 3 territories have adopted legislation to prohibit the visible display of tobacco products at retail. Worldwide, an increasing number of countries are adopting legislation to ban retail displays including Australia (at the state level), New Zealand, Thailand, Iceland, Ireland, Great Britain, Norway, Finland, Mauritius and Panama.

This short brief includes part of the rationale as to why the Canadian Cancer Society has long been supportive of retail tobacco display bans. There is in fact an international consensus in the public health community in support of retail tobacco display bans. If retail tobacco display bans were not an effective strategy, then the Canadian Cancer Society and other health organizations would not be working towards implementation.

**Tobacco displays increase overall consumption of tobacco products**

Retail promotion works 24/7 – everyone is exposed: smokers and non-smokers, youth and adults. Retail promotion is completely inconsistent with the tobacco industry's claim that tobacco promotion only targets adult smokers. Retail displays encourage impulse purchases, including among youth, among occasional (non-daily) smokers, and among ex-smokers struggling to resist cravings and stay tobacco-free. I

Underage youth should simply not be exposed to tobacco promotion.

That retail displays increase overall tobacco consumption is supported by a large number of studies, by expert opinion, by reviews of the evidence by governments and others, and by other evidence. Moreover, it must be noted that retail displays work to increase overall product category sales for many other product categories. There is no reason why displays would work for so many other product categories, but not for tobacco products.

If retail displays did not increase overall tobacco consumption, then there would not be opposition by the tobacco industry.

In Canada, smoking prevalence among adults and youth has decreased following implementation of display bans. However, with many interventions in place concurrently, it would be difficult to separate out and quantify the proportion of these declines attributable to display bans.

### **Successful Implementation and high levels of compliance**

There has been a high level of compliance by retailers with display ban legislation in Canada. Implementation has been feasible and successful. (On many First Nations reserves in some provinces, compliance has been an issue, often associated with the illegal sale of contraband).

The predictions of dire job losses and a massive reduction in the number of tobacco retailers simply did not occur in Canada with implementation of display bans.

Saskatchewan implemented its display ban March 11, 2002. As illustrated in Appendix 1, tobacco industry payments to retailers remained substantial after the display ban was implemented. Tobacco companies continued to find a way to make promotional payments. (The data in Appendix 1 is taken from tobacco industry reports provided to the Canadian Department of Health pursuant to the *Tobacco Reporting Regulations*.)

In Canada, despite display bans, tobacco companies have still made promotional payments to retailers including for slotting fees, for bonuses if sales volume targets are met, and for payments for prominent shelf locations when cupboard doors are opened.

In 2008, each of the three major tobacco manufacturers changed the way they chose to report promotional expenditures to Health Canada – thus expenditure data for 2008 and subsequent years is not directly comparable for data for 2007 and earlier.

### **Display bans have not led to increased contraband**

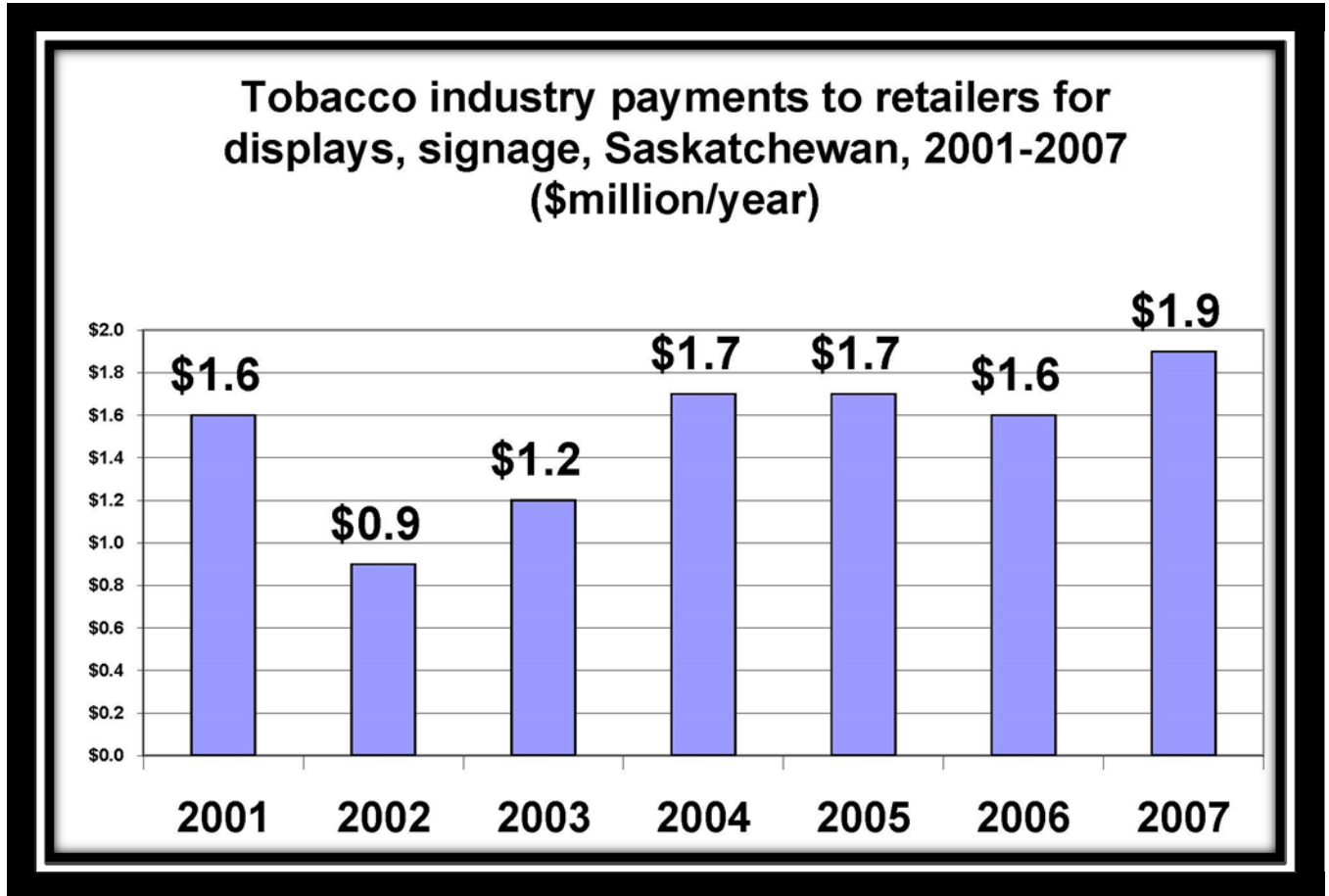
Canada's four most populous provinces, Ontario, Quebec, British Columbia and Alberta collectively have about 80% of Canada's population. These four provinces implemented display bans in 2008. According to British American Tobacco, the market share of contraband had been rising, but then decreased substantially subsequent to 2008: 17% in 2006, 22% in 2007, 33% in 2008 and 19% in 2010.

Thus contraband volumes actually decreased substantially following implementation of display bans.

### **Minimum age for tobacco sales to minors**

A New York City bill proposes to increase the minimum tobacco sales age to 21, which is the same as the minimum alcohol sales age as in New York state.

In Canada, the minimum tobacco age is either 18 or 19, depending on the province or territory. The 7 provinces/territories that have a minimum age of 19 (British Columbia, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and Nunavut) all also have a minimum alcohol age of 19.

Appendix 1

Canadian Cancer Society  
116 Albert Street, Suite 1010  
Ottawa, Ontario, Canada  
613-565-2522



Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

May 1, 2013

Dear Chairwoman Arroyo:

I write today in strong support of T2013-6007 and T2013-6008, which together would reduce the availability of tobacco products to youth and decrease exposure to tobacco advertisements for all consumers in New York City.

City health departments have long been leaders in the tobacco control movement and have been places where tobacco control strategies could be tested prior to full-scale implementation at the state and national level. Thanks to pioneers at the local level, tobacco taxes, indoor smoking laws and outdoor smoking restrictions have taken root across the country and reduced the tobacco-related disease burden. The amendments before you carry on this tradition and would continue to build our knowledge of effective strategies to curb the use of tobacco products among youth.

While we have made significant strides in reducing the use of cigarettes among adults and youth in the US, we must be careful that our laws keep pace with trends in tobacco marketing. In Boston, our board of health has revisited the city's tobacco regulations several times in the last decade to respond to emerging threats, including indoor workplace smoking, smoking in outdoor workplaces, and the sale of blunt wraps to youth.

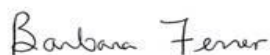
Most recently, the board of health enacted regulations in December 2011 to tighten a number of our tobacco laws in response to feedback from neighborhood youth groups and data from our Youth Risk Behavior Survey (YRBS). In particular, we heard from youth that small cigars were becoming popular among their peers, because they were less expensive than cigarettes, and because they came in a variety of fruit and candy flavors. Our data showed that small cigar consumption had increased 154 percent in the preceding decade, while use of large cigars had only risen by 45 percent and use of cigarettes had decreased. Retailer surveys showed that single cigars could be purchased for as little as \$.50 and in some cases were not even being taxed. We also heard that non-FDA-approved nicotine delivery devices (NDDs), such as electronic cigarettes, were readily available to youth, because there were no age restrictions on who could purchase these NDDs.

Relying on this data and community feedback, the Board of Health passed regulations to require small cigars to be sold in packs of no fewer than 4 or, if sold as singles, to be priced at no less than \$2.50 per cigar. They also voted to restrict sales of non-FDA-approved NDDs to those 18 and older and to prohibit the use of these devices in workplaces.

The regulations went into effect in April 2012, so we are still waiting for data that confirms the impact of these new laws. We have been working hard to improve retailer compliance by investing in outreach and education so retailers understand how to adjust their practices.

I appreciate the opportunity to provide testimony on these amendments and hope that you will act favorably on them. Please do not hesitate to reach out to me if we can be of any assistance.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Ferrer".

Barbara Ferrer, PhD, MPH, MEd  
Executive Director

April 28, 2013

To Whom It May Concern,

I am writing in regards to the Sensible Tobacco Enforcement bill (T2013-6008) and the Tobacco Products Display bill (T2013-6007) that will be considered by the New York City Council.

I am a professor in the School of Public Health at the University of Waterloo and an expert in tobacco control policy. I recently served as an Expert Witness on behalf of the Department of Health in the United Kingdom in a judicial review challenge initiated by the tobacco industry against legislation prohibiting the display of tobacco products.

As you may be aware, Canada was among the first jurisdictions in the world in which displays of tobacco products at the point-of-sale were prohibited. Display bans were implemented in Canada at the provincial level, and all ten Canadian provinces implemented display bans between 2004 and 2010. As an Expert Witness in the UK case, I was asked to analyze data from Statistics Canada to examine trends in smoking prevalence in Canada before and after the implementation of display bans. The evidence clearly indicates that smoking prevalence was significantly lower following the implementation of bans in Canadian provinces, particularly among youth and young adults. Decreases in smoking were also largest in provinces in which display bans had been implemented earlier. The reductions in smoking among youth and young adults remained statistically significant after adjusting for the price of cigarettes and general economic measures, such as GDP.

The smoking prevalence data in Canada is consistent with the large number of independent studies which indicate that product displays are a highly effective form of tobacco marketing. Retail displays are among the most visible and reliable marketing channel available to the tobacco industry and have very high visibility among children and youth. The evidence suggests that exposure to product displays may increase the risk of smoking among young people and can serve as a potential cue for relapse among smokers trying to quit.

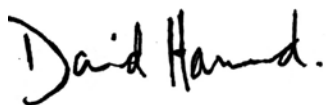


As you may be aware, the tobacco industry was unsuccessful in its judicial challenge in the UK (the companies dropped the challenge only weeks before the verdict was to be announced), and display bans have been upheld by courts in other jurisdictions upon examination of the evidence.

Overall, if the Council were to approve a tobacco product display ban in New York City, I have no doubt that it would help to reduce smoking, particularly among youth and young adults, and would make an important contribution to public health.

Thank you for considering this letter. I would be pleased to answer any questions you might have.

Sincerely,

A handwritten signature in black ink that reads "David Hammond." The signature is written in a cursive, slightly slanted style.

David Hammond, PhD  
School of Public Health & Health Systems  
University of Waterloo  
Tel: 519 888 4567 ext.36462  
Email: [dhammond@uwaterloo.ca](mailto:dhammond@uwaterloo.ca)



## TOURO COLLEGE OF PHARMACY

230 West 125th Street  
New York, NY 10027

**FOR THE RECORD**

Phone (212) 851-1192 x2577  
Email: mary.choy@touro.edu

April 16, 2013

Re: Support for Sensible Tobacco Enforcement and Pricing (STEP) and Policy on Tobacco Product Display

Dear Committee Members,

As an academician and health care provider, I play an active role in promoting the health of patients and discouraging the use of all tobacco products in the community. During my residency in the New York Harbor Healthcare System--Veterans Affairs Manhattan, I managed a smoking cessation clinic for veterans and there have been many instances when their quit plans fail due to the effects of tobacco advertisements. This proposal may help to reduce impulse buys of tobacco products, especially when people are trying to quit smoking.

Recent research has shown that kids exposed to tobacco marketing are more likely to start smoking earlier. An astounding number — 28,000 NYC public high school students tried smoking for the first time in 2011. Keeping the product displays out of sight will protect youth from being bombarded by tobacco advertisements at all NYC retail outlets. As a panelist at a smoking cessation forum, I heard firsthand from a youth on the panel of how easy it is to buy cigarettes from retail outlets without having their identification checked. Additional experiences that she recounted included being able to buy illegal cigarettes off the streets. She was 16 when she first tried smoking and had access to tobacco easily when she felt the need to smoke. Through my public health work of promoting smoking cessation in health fairs, I counseled adults with asthma who have started smoking since youth. Many recounted experiences where they stopped smoking too late and it already had an impact on their health. This proposal works towards lowering smoking rates with youth smoking in NYC declining from 17.6% to 8.5% in 2007, but it has remained level since then.

The recent report by the Surgeon General showed that extensive use of price-reducing promotions led to higher rates of tobacco use among young people. The Sensible Tobacco Enforcement and Pricing (STEP) will help to reduce youth access to tobacco products, curtail illegal and discounted tobacco products and prohibit discounts for tobacco products.

Therefore, I urge the committees to support this proposal in an effort to protect our youth.

Regards,

A handwritten signature in cursive script that reads 'Mary Choy'.

Mary Choy, Pharm.D., CGP  
Assistant Professor, Touro College of Pharmacy  
Clinical Pharmacist, Metropolitan Hospital  
President-elect, New York City Society of Health-System Pharmacists



**Testimony of Michael Seilback**  
**Re: Tobacco Product Display, Sensible**  
**Tobacco Enforcement and Tobacco 21**

May 2, 2013

Good afternoon, my name is Michael Seilback and I am the Vice President, Public Policy & Communications for the American Lung Association of the Northeast. Thank you Chairwoman Arroyo and members of the committee. The Lung Association's mission is to save lives by preventing lung disease and improving lung health.

One of our key goals is to eliminate tobacco use and tobacco-related lung diseases. A major way we accomplish this goal is through advocacy. Lung cancer remains the number one cancer killer among both men and women in New York. In fact 80% of lung cancer cases afflict people who are current or former smokers. No one deserves lung cancer, but we must continue to push policies that will reduce smoking rates and the amount of New Yorkers who get lung cancer.

We know that 85% of American smokers start before they turn 21. New York City has seen smoking rates plummet through groundbreaking tobacco control policies- including strong smokefree air laws both indoors and outdoors, we have a strong tobacco control & cessation program, a high tobacco tax, hard-hitting media campaigns to name a few. By continuing to pass innovative tobacco control policies, we not only will decrease lung cancer, but we will reduce the amount of kids who face a lifetime of addiction to this deadly product which will kill 1/3 of the people who use the product as directed.

The American Lung Association thanks the City Council for considering these innovative tobacco control policies. Through pricing and display restrictions, increased enforcement capabilities and the increase in the purchase age, this suite of bills will help prevent New York kids from succumbing to a deadly addiction. The science is clear: this legislation will save lives and help counteract Big Tobacco's never-ending efforts to find "replacement smokers" for the thousands who die from tobacco use each year. We urge the City Council to quickly pass these bills and to solidify New York City's legacy as an innovative global public health leader.

I was hoping to veer a little off and tell a story of a major reason I do the work I do. My grandpa, Sy Beckerman, like most people born in the 1930s, was a smoker.. He smoked regularly as a young adult and through his 20s—as he got older and raised his family; he drastically cut back but still spent his 40s and 50s sneaking a cigarette here-and-there.

I remember when I was a child, visiting their apartment in Forest Hills, we'd sometimes discover a hidden pack of cigarettes while we played hide and seek, which we'd quickly show my grandma and then break them and throw them out. My grandpa finally quit for good when he was in his late 50's.

When I was 13 years old, my parents sat my brothers and I down and told that us that our Grandpa had been diagnosed with stage IV lung cancer. At that age, I had a lot of questions and had trouble understanding exactly what that diagnosis meant for my grandpa who I was so close with.

I distinctly remember sitting next to my grandpa, as his body had already begun to be ravaged by the cancer, he looked me in the eyes and he said "don't worry about me; I am going to beat this". I gave him a hug and kiss and went to play outside.

Unfortunately, my grandpa's battle with lung cancer was short. From the time of his diagnosis, through chemo and radiation, and his untimely death at the age of 62 -- it was just 6 months.

This story, my grandpa's story, is far too common... too many people start smoking at a young age and then face a lifetime of addiction, which ends up not only affecting them but the many people who love them. While we have made great progress in the 20 years since my grandpa died, I implore you to pass this suite of bills, so that we have less stories like this and more kids, parents, grandparents and great-grandparents, who could live longer, healthier lives together.

Thank you, I will submit longer testimony on the bills, for the record.

#### **Intro 1020: (tobacco product display restriction)**

This legislation would make New York City the first major city in the nation to restrict the display of tobacco products. We know that Big Tobacco spends millions of dollars marketing their products in our stores. The point-of-sale is the location where much of the advertising occurs. This legislation would remove from site the products that Big Tobacco strategically place and market in an effort to lure kids to begin smoking and will also remove a trigger for smokers and former smokers.

Studies show that 2/3 of youth who go to convenience stores at least once a week. The tobacco industry spends over \$8 billion in New York State marketing their deadly products. This legislation will help counter their attempts to find new "replacement smokers".

#### **Intro 1021: (sensible tobacco enforcement)**

This comprehensive legislation increases tax enforcement; sets minimum pricing and package size requirements and; prohibits the use of coupons and discounting. The bottom line for this legislation is that it deals with keeping the price of tobacco products in New York City high. We know that price is the biggest deterrent from kids starting to smoke and is an influencer in getting adults to quit.

Minimum pricing and prohibiting the use of coupons and discounts will make it harder for tobacco companies to intentionally take economic losses on their products so that they could get users hooked on their products at a more affordable price. Similarly, requiring a minimum package size for cigars will also make users pay more money to purchase the product, which will likely deter their use. Lastly, this legislation will give New York City Department of Consumer Affairs increased ability to enforce the collection of New York City's tobacco tax. In recent years, there has been a proliferation of cigarettes being smuggled into New York City up the I-95 corridor through states with low tobacco taxes. This smuggling allows for retailers to circumvent New York City's tax and potentially gives them the ability to make a bigger profit or charge consumers less. This provision would remove any

economic incentive that may have existed for a retailer to choose to intentionally sell untaxed cigarettes and deal with the small fine and / or penalty.

The Campaign for Tobacco-Free Kids has written up a summary of the various provisions of this legislation as follows:

- Prohibiting tobacco product discounts
  - Prohibiting the redemption of coupons
  - Prohibiting multi-pack discounts (i.e., buy-one-get-one free offers)
  - Prohibiting sales or offers of other products with the purchase of cigarettes or other tobacco products (OTPs)
  - Prohibiting sales or offers of cigarettes or OTPs for less than the listed price
- Setting a minimum price on cigarettes and little cigars
  - Cigarettes and little cigars cannot be sold at retail for less than \$10.50 per 20-pack. The price floor can be modified due to inflation or tax rate changes.
- Setting minimum package sizes for certain cigars and little cigars
  - Cigars that cost less than \$3.00 per cigar at retail must be sold in packs of 4 or more
  - Little cigars must be sold in packs of 20
- Enhanced tobacco tax enforcement efforts
  - Retailers must post signs at the point of sale, display, or offer that states that "cigarettes sold in the city of New York must be in packages bearing valid tax stamps"
  - Retailers cannot hide nor sell unstamped or illegally stamped cigarettes, or illegal tax stamps
  - Higher penalties for violating retailer licensing provisions

### **Intro 250-a: (Tobacco 21)**

85% of US smokers start smoking before they turn 21. The fact is that the tobacco industry has a long and disturbing history of luring youth to their addictive products. Prior to the Master Settlement Agreement in 1998, the tobacco industry promoted their products directly to kids through advertising and marketing. While the tobacco settlement put in place tough restrictions to stop tobacco companies from directing advertising and marketing to kids, the tobacco companies drastically increased their advertising and marketing budgets and shifted their focus to college kids, the 18-24 year old age group.

Studies show that as much as 60% of underage smokers do not purchase their cigarettes from retailers but instead get their cigarettes from "social sources" such as older friends who smoke. Raising the purchase age to 21 will further limit such social sources for our children.

Studies have shown that raising the age for the sale of tobacco could lead to up to 50% reductions in the amount of underage smokers.

Here in New York City, strong tobacco control policies have helped reduce smoking rates to record levels. But, tobacco companies continue to look for new "replacement smokers." This legislation, along with the tobacco product display restriction and the Sensible Tobacco Enforcement bills, will help solidify the City of New York's place as a global leader on tobacco control and public health.

For more information contact: Michael Seilback, Vice President, Public Policy & Communications for the American Lung Association of the Northeast, 631.415.0946 or [mseilback@lungne.org](mailto:mseilback@lungne.org).



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**Testimony of Michele Bonan, Regional Director of Advocacy,  
American Cancer Society Cancer Action Network  
to the  
New York City Council, Committee on Health  
May 2, 2013 • New York, NY**

**Re: Statement in support of Intros. No. 1020 – In relation to the display of tobacco and No. 1021 – In relation to tobacco enforcement and pricing, and Proposed Int. No. 250-A - In relation to raising the legal age to purchase tobacco.**

Chair Arroyo, members of the health committee, thank you for the opportunity to testify today. My name is Michele Bonan and I represent the American Cancer Society Cancer Action Network, the nonprofit, nonpartisan, advocacy affiliate of the American Cancer Society. We are so pleased to be able to speak in support of a package of legislation that once again places New York City at the cutting edge in curbing tobacco use. Tobacco is the leading cause of cancer death in New York, and it is estimated that more than 11,000 New Yorkers will die from cancers caused by smoking this year<sup>1</sup>.

New York City has been a national leader in its commitment to protecting youth and adults from the deadly impact of tobacco use and has laid a strong policy foundation on which to build. In late March, we celebrated the 10 year anniversary of the passage of the Smoke Free Air Act, a bold act of leadership which had tremendous positive effects on the health of New Yorkers and an impact around the globe by influencing other locales to go smoke-free. Further, we continue to boast the highest tobacco tax in the nation, and numerous research studies show it to be one of the most impactful ways to keep youth from smoking and help adults quit.<sup>2</sup> Lastly, New York City has one of the finest Tobacco Control programs in the country offering support to residents who want to quit and engineering powerful public health interventions. In fact, the NYC Bureau of Tobacco Control has been cited by the US Centers for Disease Control and Prevention (CDC) for its comprehensive program, and the CDC notes the bureau's media

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<sup>1</sup> American Cancer Society, Cancer Facts & Figures 2013.

<sup>2</sup> HHS, *Reducing Tobacco Use: A Report of the Surgeon General*, 2000.  
[http://profiles.nlm.nih.gov/NN/B/B/L/Q/\\_/nnbbla.pdf](http://profiles.nlm.nih.gov/NN/B/B/L/Q/_/nnbbla.pdf)

campaign implementation as a best practice.<sup>3</sup> Additionally, New York City has passed numerous laws to protect the public from the hazards of secondhand smoke (*Smoke Free Parks and Beaches, and Smoke-Free Hospital Grounds*) and to prohibit the sale of flavored tobacco products, which are attractive to youth. These conditions make New York City the ideal environment to adopt the proposals before you today.

### ***Support for Restricting Tobacco Product Display –Intro. 1020***

Despite these successful efforts to discourage tobacco use, the tobacco industry still spends \$196 million a year on marketing in New York encouraging adults and children to buy more of its products.<sup>4</sup>

Tobacco companies, appropriately, face multiple restrictions on how they can promote their products, limiting their ability to reach consumers. Federal law prohibits advertising on TV, radio and the internet, and the Master Settlement Agreement keeps tobacco ads off billboards and out of most magazines.

Because of these limitations, tobacco manufacturers have poured resources into the retail environment. Tobacco companies spend more than 90% of their annual marketing dollars (\$10.49 billion) in the retail environment.<sup>5</sup> Tobacco companies place most of their advertising where young people shop – in convenience stores. Youth are frequent customers of convenience stores; as many as 70 percent frequent such a store each week.<sup>6</sup>

A growing body of evidence indicates that tobacco advertising in stores is influencing children to become smokers. Research suggests that greater density of tobacco retailers, particularly near schools, is associated with increased access to tobacco products for young people and an increased likelihood that young people will try tobacco products.<sup>7 8 9</sup> Stores popular with middle school students contained twice as much shelf space for Marlboro, Camel, and Newport

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<sup>3</sup> “Best Practices for Comprehensive Tobacco Control Programs” U.S. Department of Health and Human Services Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, October 2007.

[http://www.cdc.gov/tobacco/tobacco\\_control\\_programs/stateandcommunity/best\\_practices/00\\_pdfs/2007/BestPractices\\_Complete.pdf](http://www.cdc.gov/tobacco/tobacco_control_programs/stateandcommunity/best_practices/00_pdfs/2007/BestPractices_Complete.pdf)

<sup>4</sup> Campaign for Tobacco Free Kids. Fact Sheet: *Spending vs. Tobacco Company Marketing*.

[http://www.tobaccofreekids.org/content/what\\_we\\_do/state\\_local\\_issues/settlement/FY2013/10.%20State%20Tobacco%20Prevention%20Spending%20vs.%20Tob.%20Co.%20Marketing%2011-27-12.pdf](http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2013/10.%20State%20Tobacco%20Prevention%20Spending%20vs.%20Tob.%20Co.%20Marketing%2011-27-12.pdf)

<sup>5</sup> U.S. Federal Trade Commission. Cigarette Report for 2007 and 2008 (2011).

<http://ftc.gov/os/2011/07/110729cigarettereport.pdf>

<sup>6</sup> United States Department of Health and Human Services, Office of the Surgeon General, “Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,” (2012), available at

[http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/consumer\\_booklet/pdfs/consumer.pdf](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf).

<sup>7</sup> McCarthy WJ, Mistry R, Lu Y, et al. “Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students.” *Am J Public Health* 2009; 99(11): 2006-13.

<sup>8</sup> Chan WC and Leatherdale ST. “Tobacco Retailer Density Surrounding Schools and Youth Smoking Behaviour: A Multi-Level Analysis.” *Tobacco Induced Diseases* 2011; 9:9.

<sup>9</sup> Henriksen L, Feighery EC, Schleicher NC, et al. “Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Prev Med* 2008; 47(2): 210-4.



cigarettes – the cigarette brands most popular with teens – in comparison to other stores in the same community.<sup>10</sup>

Right now, this retail marketing consists of large eye-catching displays of tobacco products called “power walls” usually located directly behind the cash register and in proximity to snack foods and candy. They are practically ubiquitous in convenience stores and small groceries around the city and are designed to promote tobacco purchases. Tobacco manufacturers pay for this space, and compete for the most visible locations.

Tobacco companies pay retailers “promotional allowances” in exchange for which retailers are required to display their products on “power walls.”<sup>11</sup> Retailers were paid a combined \$411 million by the tobacco industry in 2010 to sell and display tobacco products in accordance with tobacco industry design.<sup>12</sup>

And this marketing strategy is successful. There is a clear association between youth exposure to retail tobacco promotions and the risk of taking up smoking. Research shows that the odds of smoking initiation are notably higher for youth who regularly visit stores where point-of-sale marketing is prevalent.<sup>13</sup> Youth who shop at convenience stores filled with tobacco advertisements are “twice as likely to start smoking.”<sup>14</sup> Furthermore, youth are almost twice as likely as adults to recall tobacco advertising.<sup>15</sup> Tobacco messaging is often placed at eye level for young children (at or below three feet high).<sup>16</sup> One research study found that 18.8 percent of stores have tobacco advertisements at or below three feet.<sup>17</sup>

The good news is that there is something we can do about this problem.

Intro. 1020 will reduce or eliminate the visibility – not the availability – of tobacco products in retail stores, and help reduce youth exposure to tobacco. The bill would require tobacco products be stored out of sight, except during purchase (by an adult consumer) or while restocking. Products may be kept in a concealed location (behind the counter, behind a curtain,

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<sup>10</sup> Henriksen, L., et al., “Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent in Stores Where Adolescents Shop Frequently,” 13 TOBACCO CONTROL 315, 316 (2004), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1747887/pdf/v013p00315.pdf> (evaluating California retailers).

<sup>11</sup> Ribisl, K., Presentation at the Triennial Meeting of the National Association of Attorneys General, “Retail Tobacco Advertising: Significance and Solutions,” Oct. 16, 2007, presentation available at [http://www.naag.org/backpages/naag/tobacco/naag\\_tobacco/Presentations/Ribisl%20Triennial.pdf](http://www.naag.org/backpages/naag/tobacco/naag_tobacco/Presentations/Ribisl%20Triennial.pdf).

<sup>12</sup> United States Federal Trade Commission, “Cigarette Report For 2009 And 2010,” At 4 (2012); Federal Trade Commission, “Smokeless Tobacco Report For 2009 And 2010,” At 3 (2012).

<sup>13</sup> Henrikson, L., et al., “A Longitudinal Study of Exposure to Retail Cigarette Advertising and Smoking Initiation,” 126 PEDIATRICS 232, 236 (2010), available at <http://pediatrics.aappublications.org/content/126/2/232.full.html>, (finding youth between 11 and 14 years old who regularly visited stores with point-of-sale tobacco ads were at least twice as likely to try smoking as those who made less frequent visits).

<sup>14</sup> Center for Tobacco-Free Kids, “Point of Sale Advertising,” January 2011, available at [http://tobaccofreecenter.org/files/pdfs/en/APS\\_point\\_of\\_sale\\_en.pdf](http://tobaccofreecenter.org/files/pdfs/en/APS_point_of_sale_en.pdf).

<sup>15</sup> Feighery et al. The 1999 Annual Report of the Promotion Industry, a PROMO Magazine Special Report.

<sup>16</sup> Evans, N., et al., “Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking,” 87 J. NATL. CANCER INST. 1538-1545 (1995).

<sup>17</sup> Wakefield, M., et al., “The Effect of Retail Cigarette Pack Displays on Impulse Purchase,” 103 ADDICTION, 322, 322-23 (2008).

in cabinets, under the counter, etc.) and stores may still communicate product pricing and information to consumers.

A recent poll shows this proposal is popular with New York City Residents; 68% of NYC voters support keeping cigarettes out of site to discourage youth from smoking.<sup>18</sup>

While NYC has done terrific work in reducing youth smoking rates, they have remained stagnant at 8.5% since 2007<sup>19</sup>. Restricting visibility of tobacco product displays has been done in more than a dozen countries, including Canada, Australia, Ireland, and England. In fact, the World Health Organization's "Framework Convention on Tobacco Control" recommends restricting the display of tobacco products at point-of-sale to reduce youth exposure.<sup>20</sup> Given the evidence, and strong tobacco control foundation here, New York City is an appropriate venue to implement this policy change.

### ***Support for Enforcement and Tobacco Pricing—Intro. 1021***

Intro. 1021 contains several components that are likely to improve public health, and boost the city's budget. First, this bill proposes to increase penalties and fines for selling untaxed tobacco. Tax evasion makes it easier for cheap tobacco to get in the hands of youth and is costing the city and the state hundreds of millions of dollars. In 2009, New York State lost in excess of \$500 million because of cigarette tax evasion.<sup>21</sup> Recent estimates are that New York City loses approximately \$250 million in revenue from untaxed cigarette sales.<sup>22</sup>

In addition to lost revenues, cigarette tax evasion effectively lowers the price of tobacco products, one of the most powerful ways to reduce tobacco consumption.<sup>23</sup> New York's high cigarette tax has been a successful element in reducing smoking rates. According to the New York City Department of Health and Mental Hygiene's Community Health Survey data, smoking rates among adults have gone down 31%, from 21.5% in 2002, to 14.8% in 2011. Youth smoking rates also declined from 17.6% in 2001 to 8.5% in 2007. However, when retailers sell tobacco products without paying the appropriate taxes, the price is effectively lowered, making tobacco use more affordable. Increasing fines and penalties for these violations will help ensure the high price is maintained and ensures that law-abiding retailers are not undercut by competitors who skirt the law.

High cost tobacco means fewer users, and fewer users mean less illness and premature death from diseases like cancer. But the high price of tobacco is further undermined when retail

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<sup>18</sup> Quinnipiac University Poll, April 11, 2013. Accessed 4/30/13 at <http://www.quinnipiac.edu/institutes--centers/polling-institute/new-york-city/release-detail?ReleaseID=1880>

<sup>19</sup> New York City Department of Health and Mental Hygiene. Youth Risk Behavior Survey 2007, 2011.

<sup>20</sup> World Health Organization. WHO Framework Convention on Tobacco Control: Elaboration of guidelines for implementation of Article 13 of the Convention. (Countries enacting tobacco product display bans include: Finland, Iceland, Ireland, Kenya, Namibia, Nepal, New Zealand, Norway, Panama, Thailand, Trinidad and Tobago, the United Kingdom, Canada and Australia)

<sup>21</sup> Brett Loomis, et al., RTI Int'l, *Implications of the June 2008 \$1.25 Cigarette Tax Increase* at 3-7, 4-1 (Nov. 2010).

<sup>22</sup> Howard Chernick and David Merriman. "USING LITTERED PACK DATA TO ESTIMATE CIGARETTE TAX AVOIDANCE IN NYC"

National Tax Journal, forthcoming, Sept. 2013.

<sup>23</sup> HHS, *Reducing Tobacco Use: A Report of the Surgeon General*, 2000. [http://profiles.nlm.nih.gov/NN/B/B/L/O/\\_/nnbblg.pdf](http://profiles.nlm.nih.gov/NN/B/B/L/O/_/nnbblg.pdf)

establishments honor coupons and other price discounts on tobacco products. Intro. 1021 also proposes to restrict retail establishments from offering price discounts, and would set a minimum price for all cigarettes and little cigars of no less than \$10.50 per pack. Again, setting the minimum price of tobacco will also ensure that one of the most powerful tools to help adults quit and keeps kids from starting—a high tobacco tax—remains impactful.

Tobacco companies are keenly aware of the impact of price, and spend \$8 billion nationally on marketing. According to the Federal Trade Commission, the largest single category of the \$8 billion in marketing expenditures in 2009 and 2010 were price discounts in order to reduce the price of cigarettes to consumers (80%).<sup>24</sup> Lowering pricing through discounts is an established way for the tobacco industry to keep their customers and lure additional ones.

Intro 1021 will also enact restrictions on packaging for cigars, which often come at price points that are attractive to youth. Cigars, which are often sold individually for under \$3, would be required to be sold in packs of 4 or more and little cigars (which look like cigarettes but are wrapped in tobacco leaf instead of paper) would be required to be sold in a pack of 20 and sold for \$10.50.

The lower price point on cigars and little cigars is attractive to youth. Alarming, New York City data shows that the number of youth smoking cigars and cigarillos has tripled since 2001 (from 4.8% in 2001 to 13.3% in 2009).<sup>25</sup> The lower price point for cigars is very likely having an effect on consumption. Cigar consumption has increased by 124 percent nationally, even as cigarette consumption declined.<sup>26</sup>

Little cigars are about the same size and shape as cigarettes, and come in packs of 20. In most states, they cost much less than cigarettes, making them affordable to youth. A 2011 CDC survey found that about 24% of 12th grade boys and about 10% of the 12th grade girls nationwide had smoked cigars in the past 30 days.<sup>27</sup>

As stated in the 2012 Surgeon General's report "Because there is strong evidence that as the price of tobacco products increases, tobacco use decreases, especially among young people, then any actions that mitigate the impact of increased price and thus reduce the purchase price of tobacco can increase the initiation and level of use of tobacco products among young people."<sup>28</sup> Setting a minimum price for cigarettes and cigars, prohibiting price discounts, and reforming cigar packaging will keep the prices of tobacco high, which will offset efforts by the tobacco industry to attract youth, and help New York City reverse the stagnation in youth smoking rate declines.

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<sup>24</sup> Federal Trade Commission reports for cigarette marketing for the years 2009 and 2010.  
<http://www.ftc.gov/os/2012/09/120921cigarettereport.pdf>

<sup>25</sup> New York City Department of Health, Youth Risk Behavior Survey.

<sup>26</sup> U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), Tobacco Statistics

<sup>27</sup> Cancer Facts & Figures 2011; CDC Youth Risk Behavior Surveillance, United States, 2011. Accessed on 4/30/13 at <http://www.cancer.org/cancer/cancercauses/tobaccocancer/tobacco-related-cancer-fact-sheet>

<sup>28</sup> HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012, pg. 599.

### ***Support for Proposed Intro. 250-A***

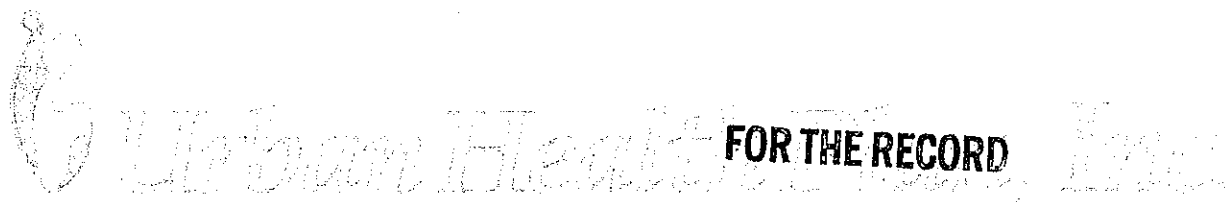
Proposed Intro. 250-A would increase the legal age to purchase tobacco in New York City from 18 to 21 years old. Research has shown that nearly 90% of adult smokers began smoking before the age of 18. According to the FDA, each day more than 3,500 kids under the age of 18 try their first cigarette, and more than 900 become established smokers. There is strong research to support the many successful public health interventions aimed at curtailing youth access to tobacco. Evidence suggests that delaying the age at which youth have access to tobacco can affect whether they become regular smokers. "The earlier a kid first tries smoking, the higher his or her chances of ultimately becoming a regular smoker, and the less likely he or she is to quit."<sup>29</sup>

Additionally, according to the Surgeon General's latest report, "prevention efforts must focus on young adults ages 18 through 25, too. Nearly 9 out of 10 smokers started smoking by age 18, and 99% started by age 26. Progression from occasional to daily smoking almost always occurs by age 26."<sup>30</sup> This evidence, coupled with the fact that New York City has very strong measures in place to curb tobacco use and support quitting, makes New York City the appropriate place to test Intro. 250-A. This measure is made even stronger when coupled with Intros. 1020 and 1021. Together, this package of legislation has the potential to decrease lives lost to cancer as a result of tobacco use. The American Cancer Society Cancer Action Network urges swift passage of this package of legislation, and looks forward to working with the City Council and the Department of Health to implement the bills and monitor their impact on rates of tobacco use and other public health outcomes.

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<sup>29</sup> Campaign for Tobacco Free Kids, *The Path To Tobacco Addiction Starts At Very Young Ages*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0127.pdf>

<sup>30</sup> CDC Fact sheet, *Preventing Tobacco Use Among Youth and Young Adults*, Accessed 4/30/13 at <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.html>



Good afternoon. My name is Jacalyn Bitterman and I am the director of the Adolescent Health and Wellness Center at Urban Health Plan. Urban Health Plan is a network of community health centers that provides primary and specialty care to over 54,000 Bronx and Queens residents.

I appreciate the opportunity to speak today because although many of the serious health effects of tobacco use occur in older adults the problem begins when young people start smoking and in that way tobacco use is a pediatric problem. We know that 80-90% of adult smokers began smoking as adolescents. Two thirds become regular daily smokers before they are 19 years old. Every year more than 1.4 million Americans under the age of 18 start smoking. More than 2000 American teenagers become regular smokers each day. The 2006 Monitoring the Future Survey conducted by the University of Michigan found that 8.7% of 8<sup>th</sup> graders, 14.5% of 10<sup>th</sup> graders and 21.6% of 12<sup>th</sup> graders are current smokers and rates are believed to be higher in young people who are not in school. Tobacco is the leading cause of preventable illnesses and deaths in the United States. Adolescents report more symptoms of tobacco dependence earlier in their use, even before they become daily smokers.

Tobacco is often called a gateway drug because adolescents who smoke cigarettes are three times more likely to use alcohol, eight times more likely to use marijuana and twenty-two times more likely to use cocaine than non-smokers. Adolescents who smoke daily show memory impairment that can affect school performance. Smoking is also associated with other high risk behaviors including multiple sex partners, having unprotected sex and teenage violence. We also know that it is very difficult to quit smoking once a person has started so it makes sense that the best strategy is to prevent young people from ever starting to smoke. There is literature to suggest that the proposed legislation to ban tobacco displays may be effective.

Jacalyn Bitterman, MD  
Urban Health Plan, Inc.  
May 2, 2013

A recent study published in the journal "Pediatrics" looked at adolescents shopping in a "virtual" convenience store. They studied 1216 youth 13-17 years old who were smokers or non smokers susceptible to smoking. The virtual store could either display or not display both tobacco products and tobacco ads. Compared to youth who were virtual shoppers in stores that displayed tobacco products, youth who shopped in stores that did not display tobacco products were less likely to be aware that tobacco products were sold in the store and significantly less likely to try to purchase tobacco. Banning ads did not have as much of an impact as banning visible displays of tobacco products. They concluded that banning tobacco product displays may help reduce youth smoking by deterring youth from purchasing tobacco at retail stores.

In London where tobacco displays have been banned in large stores and supermarkets for about 1 year, 1 in 4 young people who quit smoking, when surveyed said they felt the ban on displays helped them quit.

Pediatricians look at adolescent tobacco use from a biopsychosocial developmental perspective, which means there are developmental reasons why teens may use tobacco and the tobacco companies take advantage of this knowledge. The tasks of adolescence includes establishing independence and autonomy, forging peer relationships, accepting the physical changes of puberty and establishing a self identity. Teens may look at smoking as a way to seem mature as smoking is a legal adult behavior. Tobacco use may also be for social reasons such as fitting in with a peer group. They are influenced by smoking in movies, which is portrayed as "cool" a desirable attribute to teens.

From personal experience with the adolescents I work with in the South Bronx, many young people do not have enough money to buy a pack of cigarettes and raising the price will further help with this deterrent as we know that significant price increases lead to a decrease in adolescent tobacco use. Many teens buy single cigarettes or "loosies". If these are not available for sale this will also discourage smoking. Often, because teens start out smoking only a few cigarettes or less per day, they do not think they are likely to become addicted to nicotine.

And because many of the health problems occur later in life it is difficult for teens to think ahead and change behavior now to decrease the risk of a possible future outcome. This is not because they do not understand the idea but because developmentally, this is how their brains function.

Overall the current and future health problems caused by tobacco use are of great concern to pediatricians. Measures such as those proposed to ban the display of tobacco products and keep tobacco prices high use strategies that have shown to be successful in decreasing adolescent tobacco use. We support them wholeheartedly.

Written statement of Lisa Henriksen, PhD  
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for the New York City Council Committee on Health  
regarding

“Int 1020-2013 – Display of cigarettes and tobacco products by retail dealers of cigarettes and  
age restrictions on entry to retail tobacco stores”

May 2, 2013



This written statement has been submitted to the New York City Council in support of proposed legislation Int 1020-2013, prohibiting the display of cigarettes and tobacco products by retailers licensed to sell cigarette products.

I am a Senior Research Scientist at the Stanford Prevention Research Center and a senior editor of the journal, *Tobacco Control*. I earned a PhD in communication from Stanford University and I have more than 15 years of experience studying the retail availability and marketing of tobacco products and their impact on tobacco use by adolescents and adults. I am an appointee to expert and advisory panels for the National Institutes of Health, the Centers for Disease Prevention, and other leading scientific and public health organizations. My research is also published widely in the peer-reviewed, scientific literature.

The tobacco industry challenges the removal of point-of-sale displays everywhere such legislation is introduced. My research has been cited in support of display bans in other countries, and for this reason I am writing to direct your attention to several studies. The findings provide supporting evidence for two rationales to prohibit the display of cigarettes and tobacco products, briefly summarized below.

Rationale #1: Visibility of tobacco products at the point of sale increases the likelihood that youth will try smoking. The Appendix includes two peer-reviewed publications about retail tobacco marketing and its impact on adolescent smoking (1-2). We visited all stores that sold cigarettes in a California community and measured tobacco displays by counting the front-facing cigarette packs. We also surveyed the students at all public middle schools in the community to determine which of the stores they visited and how often. Stores that were popular with students contained significantly larger cigarette displays than other stores in the same community (1). The average tobacco display showed 124 cigarette packs (1), slightly more than half of the typical display size in New York (3). Approximately 1,500 students who had never smoked at the start of the study were surveyed over time to determine whether exposure to retail ads and displays predicted change in behavior (2). The more frequently students visited convenience, liquor, and corner stores at the start of the study, the more likely they were to try smoking within one year. Overall, 18% tried smoking within 12 months, but this rate was 29% among students who visited stores at least twice a week and 9% among those who visited less than twice per month. This association persisted at 30 months and was independent of many other risk factors for trying smoking, such as have a friend or parent who smoked.

Because cigarette ads and pack displays are both visible in U.S. stores, this study could not estimate the unique effect of displays, separate from other forms of marketing. However, the results are supported by similar studies in the United Kingdom and New Zealand, where point-of-sale displays were present and advertising was not (4-5). These findings support the conclusion that exposure to displays promotes adolescent smoking.

The proposed legislation also remedies a concern that point-of-sale displays distort adolescents' perceptions about tobacco products, making their use seem more popular than it really is. Within months after Ireland banned pack displays, fewer adolescents overestimated the percent of their peers who smoked (6). This short-term effect predicts long-term benefits for tobacco use prevention because erroneous beliefs about peer tobacco use predispose adolescents to take up the habit (7).

Rationale #2: *Visibility of tobacco products at the point of sale decreases the likelihood that smokers will quit.* The peer-reviewed publication titled "The effect of retail cigarette pack displays on impulse purchase" (see Appendix) describes a telephone survey of approximately 3,000 adults, including 526 smokers and 67 recent quitters (8). The survey was conducted in Victoria, Australia, where tobacco displays were permitted at the point of sale but advertising was prohibited. When shopping for items other than cigarettes, 25% of smokers at least sometimes purchased cigarettes as a result of seeing the cigarette display; 34% of recent quitters experienced an urge to buy cigarettes as result of seeing the cigarette display. In a follow-up survey of 222 smokers (see Appendix), those who were more sensitive to pack displays at the start of the study were much less likely to quit after 18 months (9). For example, the quit rate was 10% among smokers with high sensitivity to pack displays compared to 28% among smokers with low sensitivity. This association was independent of age, gender, socioeconomic status, and cigarettes smoked per day. These findings suggest that tobacco displays likely deter and derail quitting.

Tobacco companies pay incentives for retailers to display tobacco products in prime locations—especially near the cash register—making exposure to point-of-sale displays unavoidable (8). The industry's expectation that displays stimulate urges to purchase and use tobacco is supported by other research. When smokers were interviewed immediately after buying cigarettes, those who made unplanned purchases were more likely to mention the tobacco

product display as a precipitating factor than were smokers who made planned purchases (10-11). Another study compared the chance of smoking and purchasing cigarettes when smokers either saw or did not see tobacco product displays in the previous few hours: Those who saw displays were more likely to smoke, and smoked more cigarettes, even if they did not buy cigarettes in the same time period (12). In a laboratory setting, pictures of cigarette packs induced craving among adult smokers (13), which is important because such responses predict a greater chance of relapse when smokers try to quit.

In sum, prohibiting tobacco product displays would benefit prevention and cessation efforts by reducing environmental cues to smoke and by denormalizing tobacco use. The available evidence predicts that the proposed legislation would serve to reduce smoking uptake among youth, and result in more quit attempts and higher cessation rates among adult smokers.

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## **Appendix**

Henriksen L, Feighery EC, Schleicher NC, Haladjian HH, Fortmann SP. Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently. *Tob Control*. 2004;**13**(3):315-8. doi: 10.1136/tc.2003.006577

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## RESEARCH PAPER

## Reaching youth at the point of sale: cigarette marketing is more prevalent in stores where adolescents shop frequently

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**Objective:** Although numerous studies describe the quantity and nature of tobacco marketing in stores, fewer studies examine the industry's attempts to reach youth at the point of sale. This study examines whether cigarette marketing is more prevalent in stores where adolescents shop frequently.

**Design, setting, and participants:** Trained coders counted cigarette ads, products, and other marketing materials in a census of stores that sell tobacco in Tracy, California ( $n = 50$ ). A combination of data from focus groups and in-class surveys of middle school students ( $n = 2125$ ) determined which of the stores adolescents visited most frequently.

**Main outcome measures:** Amount of marketing materials and shelf space measured separately for the three cigarette brands most popular with adolescent smokers and for other brands combined.

**Results:** Compared to other stores in the same community, stores where adolescents shopped frequently contained almost three times more marketing materials for Marlboro, Camel, and Newport, and significantly more shelf space devoted to these brands.

**Conclusions:** Regardless of whether tobacco companies intentionally target youth at the point of sale, these findings underscore the importance of strategies to reduce the quantity and impact of cigarette marketing materials in this venue.

Since the Master Settlement Agreement (MSA), concern about tobacco marketing targeting youth has focused on magazines.<sup>1–3</sup> Less is known about the industry's attempt to reach youth at the point of sale. In 2001, US cigarette companies spent \$173 million on magazine advertising compared to \$9.5 billion on retail marketing.<sup>4</sup> These expenditures pay for traditional signs and functional items (such as branded clocks, hand baskets, and counter mats), price reductions for consumers ("Buy two, get one free") and incentives for retailers to display cigarettes in prime locations, especially around the counter.<sup>5</sup> A US survey of approximately 3000 stores in 163 school neighbourhoods found some form of tobacco advertising at 84% of stores and at least one branded functional item in 69%.<sup>6</sup> The amount of money US tobacco companies spend on retail marketing has more than doubled since the 1998 MSA.<sup>4</sup> One effect of this spending has been observed in California's stores, where the average number of cigarette marketing materials increased 31% from 2000 to 2002.<sup>7</sup>

With a preponderance of tobacco ads and products located near candy and around the counter area,<sup>8–10</sup> it stands to reason that retail tobacco marketing makes a clear impression on young consumers. In a survey of teens from northeast England, all of the 629 15 and 16 year olds reported seeing point-of-purchase marketing for cigarettes.<sup>11</sup> In the USA, adolescents who reported at least weekly exposure to retail tobacco marketing were more likely to have experimented with smoking,<sup>12–13</sup> and teen smokers preferred whichever brand (Camel or Marlboro) was advertised most heavily in the convenience store closest to school.<sup>14</sup>

The problem of widespread ads and promotions for cigarettes is not unique to US stores.<sup>15–18</sup> For example, after countries such as Australia, Canada, Ireland, and New Zealand banned point-of-sale ads for cigarettes, traditional signs were replaced by "power walls" of cigarette packs in quantities greater than necessary to supply consumers.<sup>19</sup> Exposure to such displays may distort adolescents' perceptions about the availability, use, and popularity of cigarettes.<sup>20</sup>

Whether or not tobacco companies intentionally target adolescents at the point of sale, some studies suggest they may be disproportionately exposed to this form of cigarette marketing. In metropolitan settings such as Boston, Massachusetts and San Jose, California, significantly more cigarette advertising was found on store windows within 300 metres of schools than on stores farther away from school.<sup>8–10</sup> Combining data from store observations and school based surveys, this study is the first to examine whether cigarette marketing materials are more prevalent in stores where adolescents frequently shop.

## METHODS

In February, 2002, observations were conducted in a census of stores that sold cigarettes in Tracy, California—a central valley community (population 62 500) approximately 100 km east of San Francisco. In 2000, the Tracy population was 65% white, 8% Asian, 6% African American, 1% American Indian, 20% other or multiple categories, and 28% of all residents were of Hispanic origin—quite comparable to the state population.<sup>21</sup> An address list for all Tracy businesses that paid tobacco taxes was obtained from the California Tobacco Control Section and verified with telephone directories and neighbourhood canvassing. Two tobacco-only stores that neither sold snack foods nor permitted entrance to youth under 18 were excluded from the store population, yielding a total of 50 stores.

Two young adults with substantial experience conducting observations of retail marketing were trained to use an established protocol for counting and categorising tobacco marketing materials in stores.<sup>22</sup> Given concern about the role of cigarette packaging as a vehicle for advertising,<sup>23–24</sup> the protocol was expanded to measure shelf space allocated to cigarettes, as well. Branded signs, shelving units, product

**Abbreviations:** FCTC, Framework Convention on Tobacco Control; ICC, intraclass correlation coefficient; MSA, Master Settlement Agreement; STORE, Survey of Teen Opinions about Retail Environments

displays, and functional items such as counter mats and shopping baskets were counted separately for the three cigarette brands most popular with youth in the USA (Marlboro, Camel, and Newport)<sup>25</sup> and for other cigarette brands combined. Shelf space for cigarettes was measured by counting product facings, defined as space allocated to cigarette packs on the front row of shelves and displays.<sup>26</sup> Cigarette cartons stacked with the longest side facing front were counted as five; cartons stacked with the shortest side facing front were counted as two.

For comparison, coders also counted branded signs, shelving units, product displays, and functional items for three of the most heavily advertised beer brands in the USA (Budweiser, Miller, and Heineken).<sup>27</sup> Marketing materials for other beer brands were not counted because the sheer volume made it impossible for coders to complete the protocol in a reasonable amount of time.

Coders counted signs indicating that identification is required to purchase tobacco products that are supplied by the tobacco industry, such as the "We Card" sign from Philip Morris. Coders also rated the visual impact of cigarette advertising inside and outside each store using a four point scale adapted from Wakefield and colleagues.<sup>28</sup> The scale values ranged from 0 = no advertising to 3 = everywhere/ "in your face". Store observations were completed before determining which stores were popular among adolescents, thus, the coders were blind to the assignment of stores to this category.

Stores were categorised by type: convenience, drug store/pharmacy, grocery/deli, liquor, supermarket.<sup>22</sup> Retail and/or gross square footage was not available from the County Tax Assessor's Office for all stores in the sample. Instead, cash register total was used as a proxy for store size because it was highly correlated with gross square footage in the stores where this figure was available ( $n = 39$ ,  $r = 0.98$ ,  $p < 0.001$ ).

Only two of the 50 stores (4%) refused a coder's request to spend 20 minutes counting and categorising signs for a study about point-of-purchase advertising. Six randomly selected stores were observed by the two coders independently and intercoder reliability for all measures was excellent. The highest intraclass correlation coefficients (ICCs) were obtained for counting cash registers (1.0) and age-of-sale signs (0.97), and for rating the visual impact of advertising (0.96); lower intercoder reliability was obtained for counting youth brand marketing materials and product facings (ICCs were 0.86 and 0.74, respectively).

To determine which of the 48 stores were popular with teens, focus groups were conducted with one class from each of the three middle schools in Tracy. Students were asked to nominate 12 stores from the list of all retail tobacco outlets in the school catchment area (the area from which each school drew its student population). Some of the same stores were nominated at different schools, resulting in a total of 27 stores. The selections were confirmed by data from the Survey of Teen Opinions about Retail Environments (STORE) study—an in-class survey of 2125 students in grades 6–8 (ages 11–14 years) whose sample and procedures are described elsewhere.<sup>12</sup> Each school's survey depicted photographs and addresses of the 12 nominated stores and measured the frequency with which students visited each store in the past month. More than one third of students (38%) visited at least one of the 12 stores every day, 28% visited at least one of the 12 stores 2–3 times per week, and 14% visited at least one of the 12 stores weekly. Two of the 27 stores that the focus groups identified as popular were reclassified because more than 80% of surveyed students reported never shopping there.

Independent-sample  $t$  tests compared the quantity of marketing materials and shelf space for cigarettes and the visual impact of cigarette advertising in stores popular with teens and other stores in the same community. The quantity of marketing materials and shelf space for "youth brands" (Marlboro, Camel, Newport) and other brands were also compared between the two groups of stores. To adjust for varying store size, such counts are typically divided by the number of cash registers.<sup>28</sup> We report unadjusted means because the average size of stores popular among teens and other stores was not significantly different ( $p = 0.63$ ), the unadjusted numbers are easier to interpret, and the conclusions from tests of adjusted and unadjusted means were essentially the same. Given the skewed distribution of some measures, we also conducted Mann-Whitney  $U$  tests, but results did not differ from the parametric tests reported.

## RESULTS

The 48 stores contained an average (SD) of 22.6 (21.5) branded cigarette marketing materials and 123.8 (98.9) product facings per store. In the stores popular among adolescents, these numbers increased to 31.0 (24.5) and 153.1 (102.3) per store, respectively (table 1). Combining all brand impressions from marketing materials and products, adolescents were exposed to an average of 184.1 (109.2) cigarette brand impressions per store visit.

There were 3.4 times as many ads for cigarettes on windows of stores popular among adolescents than on other stores in the same community (table 1). Coders' impressions of the quantity of cigarette marketing materials confirmed a disparity between the two groups of stores, as well. Cigarette advertising had significantly greater visual impact in the popular than in the other stores (table 1).

The three brands most popular with adolescents (Marlboro, Camel, and Newport) accounted for 45% of all cigarette marketing materials and 45% of all shelf space for cigarettes in the 48 stores. Stores popular among adolescents contained almost three times more marketing materials and twice as much shelf space for Marlboro, Camel, and Newport than other stores in the same community (table 2). One possible explanation for this difference is that stores popular among adolescents were more likely to be the types of stores (convenience, liquor, and small grocery stores) which typically contain the most tobacco marketing.<sup>6, 22</sup> However, a  $\chi^2$  test yielded no significant difference in the distribution of store types between the popular and other stores.

Another plausible explanation is that stores popular among adolescents were also popular among adults and therefore contain more advertising for the top selling brands (Marlboro, Camel, and Newport) and more advertising overall. However, we found no differences between popular and other stores in the quantity of marketing materials and

**Table 1** Mean (SD) number of cigarette marketing materials and their visual impact by store popularity (Tracy, California)

	Stores popular among youth		p Value
	No (n = 24)	Yes (n = 24)	
Marketing materials by location			
Exterior* mean (SD)	1.7 (2.6)	5.8 (6.4)	0.03
Interior*	12.6 (13.5)	25.2 (23.6)	0.12
Shelf space (facings)*	94.4 (87.8)	153.1 (102.3)	0.16
Overall visual impact (0–3)†	0.9 (0.6)	1.4 (0.7)	0.01

\* $t$  Tests compared means adjusted for store size; cell means are unadjusted.

†Average rating for interior and exterior.



**Table 2** Mean (SD) quantity of cigarette marketing materials and shelf space by brand and store popularity (Tracy, California)

	Stores popular among youth		p Value
	No (n = 24)	Yes (n = 24)	
Cigarette marketing materials			
Youth brands	5.3 (5.8)	14.8 (11.4)	0.01
Other brands	9.0 (9.5)	16.1 (14.1)	0.15
Cigarette shelf space (facings)			
Youth brands	36.3 (36.7)	75.5 (53.4)	0.02
Other brands	58.1 (55.2)	77.6 (54.5)	0.60

\*† Tests compared means adjusted for store size; cell means are unadjusted.

shelf space for cigarette brands other than Marlboro, Camel, and Newport (table 1). Nor did we find a significant difference between the quantity of marketing materials for three top selling beer brands (Budweiser, Miller, and Heineken) in stores popular among adolescents (mean (SD) 25.5 (25.0)) and the other stores (23.5 (24.2)).

Finally, we tested whether the tobacco industry's signs about identification required for tobacco purchase were more numerous in the stores popular among teens than in the other stores. California law requires a sign at every cash register warning against illegal tobacco sales to minors, but no law governs the number or placement of such warnings provided to retailers by the tobacco industry. Ironically, stores popular among teens displayed more of the industry's signs and shelving to promote Marlboro, Camel, and Newport, but did not display more of the industry's signs to discourage minors from purchasing these products illegally (mean (SD) 3.9 (2.4)) than did other stores (3.7 (3.2)).

## DISCUSSION

According to this study, cigarettes are marketed more heavily in stores where adolescents shop—particularly the cigarette brands most popular with adolescent smokers. Compared to other stores in the same community, stores popular among adolescents displayed more than three times as many cigarette marketing materials outside, and contained almost three times more marketing materials and twice as much shelf space for Marlboro, Camel, and Newport. These three brands account for more than 80% of the cigarettes bought by US adolescents.<sup>29</sup> The four brands advertised most heavily in US stores (Marlboro, Camel, Winston, and Newport)<sup>30</sup> are three of the four brands with the largest sales revenue (Marlboro, Newport, Doral, Camel).<sup>31</sup> The relation between market share and the prevalence of marketing materials and product facings in stores warrants further research, particularly since advertising is related more strongly to cigarette brand choice among adolescents than adults.<sup>32</sup>

This study is the first we are aware of to measure shelf space for cigarettes as an indicator of retail tobacco marketing. The fact that Marlboro, Camel, and Newport accounted for 45% of all marketing materials and 45% of all shelf space for cigarettes in the 48 stores may be purely coincidental. It may also suggest that tobacco companies consider self space devoted to their brands as important as other forms of in-store marketing.

## Study limitations

The school based survey did not assess the frequency with which adolescents visited all retail tobacco outlets in the school catchment area. Thus, we cannot confirm that unpopular stores were visited less frequently than the stores nominated by the focus groups. However, incorrect

## What this paper adds

Two previous studies found more cigarette ads on store windows within 300 metres of schools than on stores farther away from school, but lacked information about where adolescents shop. This study combined school based surveys with retail observations to determine whether cigarettes are promoted more heavily in stores where adolescents shop frequently. Such stores contained more marketing materials and shelf space for Marlboro, Camel, and Newport than did other stores in the same community. Simply eliminating ads may be insufficient to substantially reduce adolescents' exposure to cigarette brand impressions in stores because the preponderance of these come from product displays. Future restrictions on retail tobacco marketing should consider the potential impact of cigarette packaging as well as advertising.

classification would likely decrease the observed differences between the two groups of stores. Future research should use other means to determine which stores are most popular with adolescents, such as merchant interviews or consumer marketing data.

The current study classified marketing materials and product facings into only four brand categories—Marlboro, Camel, Newport, or other. Although "other brands" is a potentially crude comparison for "youth brands", it is unlikely that one or two brand names accounted for most of the marketing materials recorded in the "other" category. In a survey of 1565 US stores, Marlboro, Camel, and Newport accounted for 46% of all cigarette marketing materials, seven of the remaining top 10 brands accounted for 42%, and innumerable other brands accounted for the remaining 12%.<sup>33</sup> The absence of reliable information about the total number of cigarette brands advertised in stores makes it difficult to appreciate the extent to which brands favoured by teen smokers dominate the retail environment. Indeed, it would be helpful if the Federal Trade Commission or other organisations maintained a list of cigarette brands sold.

Although this study examined a small sample of stores in a single California community, observations about the quantity of cigarette marketing materials are quite similar to those from larger, more representative samples. For example, the average number of cigarette marketing materials was slightly lower than the average for a California sample of 569 stores (22.7 v 25, respectively),<sup>7</sup> and the proportion of marketing materials for Marlboro, Camel, and Newport in this sample was comparable to the California sample<sup>7</sup> and to a US sample of 1565 stores (45%, 42%, and 46%, respectively).<sup>30</sup> Using a standardised protocol to quantify marketing materials and shelf space for cigarettes, future research should compare the quantity of marketing materials in countries with varying regulations at the point of sale, and determine whether adolescents are disproportionately exposed to cigarette marketing materials, particularly to brands favoured by young smokers.

## Implications for tobacco control

Several examples serve to illustrate how successfully US tobacco companies have avoided restrictions on advertising at the point of sale. The MSA, which bans cigarette ads on billboards and limits such ads in magazines and at sponsored events, contains only two provisions that affect ads in stores.<sup>34</sup> One provision limits the size of exterior ads to 14 square feet and another prohibits using cartoons to advertise cigarettes in stores or elsewhere. More stringent regulations proposed by the US Food and Drug Administration—mandating

black-and-white, text only advertisements and banning self service displays—did not survive judicial review.<sup>35</sup> The US Supreme Court also struck down a Massachusetts law that prohibited placing cigarette ads within 5 feet of the store floor—at children's eye level.<sup>36</sup>

The Framework Convention on Tobacco Control (FCTC) does not specify point of sale in its recommendation to ban tobacco advertising, promotion, and sponsorship.<sup>37</sup> However, the FCTC endorses larger, more vivid warning labels on cigarette packs, like those in Canada and Brazil, which are clearly visible in stores and may serve as important cues to reduce tobacco use.<sup>38</sup> Countries such as Ireland, New Zealand, and Thailand, and several Canadian provinces and Australian states reduce young people's exposure to tobacco marketing by banning tobacco ads at the point of sale. Requiring merchants to stock cigarette packs out of sight, in overhead bins or beneath the counter, is also recommended to prevent smoking.<sup>39</sup> According to this study, that practice could reduce US adolescents' exposure to cigarette brand impressions in stores by as much as 83%.

This study is unique in pairing adolescent self reports with in-store observations to demonstrate that stores popular among adolescents contain more marketing materials and shelf space for Marlboro, Camel, and Newport than other stores in the same community. A replication with larger samples in other jurisdictions is clearly warranted to determine whether this is a pervasive pattern or isolated incident. Whether tobacco companies intentionally target youth at the point of sale also warrants further investigation. Indeed, the strategic use of this venue to reach youth would not be surprising in environments that increasingly restrict tobacco companies' access to traditional advertising venues, such as billboards, magazines, and other media. At a time when cigarette packaging is an increasingly important component of tobacco marketing,<sup>24 40 41</sup> this study underscores the need for strategies that would reduce the quantity and impact of adolescents' exposure to cigarette brand impressions in stores.

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# PEDIATRICS®

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## **A Longitudinal Study of Exposure to Retail Cigarette Advertising and Smoking Initiation**

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# A Longitudinal Study of Exposure to Retail Cigarette Advertising and Smoking Initiation



**WHAT'S KNOWN ON THIS SUBJECT:** Point of sale is the dominant channel for advertising cigarettes, and adolescents are routinely exposed to these messages.



**WHAT THIS STUDY ADDS:** This is the first longitudinal study to provide evidence that adolescents' exposure to widespread cigarette advertising at the point of sale is a risk factor for smoking initiation.

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## KEY WORDS

adolescence, advertising, cohort studies, smoking

## ABBREVIATION

FDA—Food and Drug Administration

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## abstract

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**OBJECTIVES:** Accumulating evidence suggests that widespread advertising for cigarettes at the point of sale encourages adolescents to smoke; however, no longitudinal study of exposure to retail tobacco advertising and smoking behavior has been reported.

**METHODS:** A school-based survey included 1681 adolescents (aged 11–14 years) who had never smoked. One measure of exposure assessed the frequency of visiting types of stores that contain the most cigarette advertising. A more detailed measure combined data about visiting stores near school with observations of cigarette advertisements and pack displays in those stores. Follow-up surveys 12 and 30 months after baseline (retention rate: 81%) documented the transition from never to ever smoking, even just a puff.

**RESULTS:** After 12 months, 18% of adolescents initiated smoking, but the incidence was 29% among students who visited convenience, liquor, or small grocery stores at least twice per week and 9% among those who reported the lowest visit frequency (less than twice per month). Adjusting for multiple risk factors, the odds of initiation remained significantly higher (odds ratio: 1.64 [95% confidence interval: 1.06–2.55]) for adolescents who reported moderate visit frequency (0.5–1.9 visits per week), and the odds of initiation more than doubled for those who visited  $\geq 2$  times per week (odds ratio: 2.58 [95% confidence interval: 1.68–3.97]). Similar associations were observed for the more detailed exposure measure and persisted at 30 months.

**CONCLUSIONS:** Exposure to retail cigarette advertising is a risk factor for smoking initiation. Policies and parenting practices that limit adolescents' exposure to retail cigarette advertising could improve smoking prevention efforts. *Pediatrics* 2010;126:232–238

Tobacco use among adolescents has declined since 2000, but 21% of eighth-graders and 45% of high school seniors still report experimenting with smoking.<sup>1</sup> Because this behavior increases the risk for adult smoking,<sup>2,3</sup> it is important for pediatricians to be aware of environmental factors that promote smoking experimentation and initiation in childhood and adolescence.

Point of sale has become the dominant channel for tobacco advertising in the United States, representing 90% of the tobacco industry's \$12.5 billion marketing budget in 2006.<sup>4</sup> The quantity of cigarette ads in stores has increased over time,<sup>5,6</sup> and tobacco companies provide more ads and shelf space for cigarettes in stores where adolescents shop frequently.<sup>7</sup> Not surprising, 63.7% of US adolescents reported seeing ads for cigarettes all or most of the time when they visit convenience stores, supermarkets, and gas stations.<sup>8</sup>

Two population-based surveys of adolescents examined the impact of retail tobacco marketing on smoking initiation. A US study correlated data from the Monitoring the Future school surveys with the prevalence of tobacco advertising in convenience stores near the surveyed schools.<sup>9</sup> Higher scores on a measure of retail tobacco advertising were correlated with higher odds of "puffing" (only), but the study could not determine whether surveyed adolescents visited any of those stores. A national survey of students (aged 14–15) in New Zealand observed a graded, cross-sectional relationship between the frequency of visiting stores that sell cigarettes and the odds of experimenting with smoking<sup>10</sup>; however, in New Zealand, tobacco advertising is banned at the point of sale and pack displays are the only form of retail promotion. Thus, previous studies were cross-sectional, and neither measured exposure to retail tobacco

advertising per se. A longitudinal survey of California adolescents revealed that perceived exposure to cigarette advertising in stores and to actors who smoke on television were associated with greater susceptibility to smoking at follow-up,<sup>11</sup> but the study did not examine the unique influence of retail cigarette advertising on smoking behavior. To address these important gaps in the literature, this study examined whether exposure to retail cigarette advertising is a risk factor for smoking initiation, by using longitudinal data from a sample of adolescents for whom cross-sectional findings have been reported.<sup>12,13</sup> A secondary objective was to examine which of 3 exposure measures that were correlated with trying smoking at baseline predict initiation at follow-up.

## METHODS

The Survey of Teen Opinions about Retail Environments (STORE) combined data from a longitudinal, school-based survey with observations of retail tobacco marketing in Tracy, California (population 56 929), a Central Valley city with a similar ethnic/racial composition to the state of California and a higher median household income. Active parental consent and student assent were obtained by using a protocol that was approved by Stanford University's Administrative Panel on Human Subjects. The baseline survey was administered at all 3 middle schools in grades 6 to 8 (February through April 2003) by using a procedure described elsewhere (78% participation rate).<sup>12</sup> Follow-up surveys were administered ~12 months after baseline, when students were in grades 7 to 9, and ~30 months after baseline, when students were in grades 9 to 11.

## Measures

Two items assessed adolescents' smoking status at baseline and follow-ups: ever smoking, even just a puff, and

number of days smoked in the past month. The primary outcome was smoking initiation, defined as the transition from never smoking to ever smoking at either follow-up. This study did not examine current smoking as a separate outcome because the incidence of smoking in the previous 30 days was quite low: 4.1% at 12 months and 7.9% at 30 months.

We compared 3 measures of exposure to retail cigarette advertising reported in a previous cross-sectional study.<sup>13</sup> A 3-item measure of shopping frequency asked students to report how often they visited any convenience stores, small markets, and liquor stores, 3 types of stores that typically contain the most cigarette advertising.<sup>14–16</sup> A more detailed measure combined information about where and how often students shopped in stores near school and assessed the quantity of advertising and shelf space (product facings) for cigarettes in those stores. Specifically, we multiplied the frequency of visits to each store near school by the number of cigarette-branded ads, functional items (eg, ash cans, clocks, counter mats), and product facings in each store and then summed scores for each student to compute cigarette brand impressions per week. A measure of perceived exposure, adapted from the National Youth Tobacco Survey, was a single item that asked students to estimate how often they see cigarette ads when they visit stores.<sup>8</sup>

Measurements of other baseline characteristics that could confound associations between exposure to retail cigarette advertising and smoking initiation are described in more detail elsewhere.<sup>12</sup> Briefly, exposure to social influences to smoke was measured by asking about current smoking by a parent or other household member, the number of 4 best friends who smoke, and perceived ex-

posure to people who smoke in movies or on television. Other covariates were risk-taking propensity,<sup>17</sup> unsupervised time after school (days per week), self-reported grades in school, and demographics (gender, grade level, race, and ethnicity).

Analyses

Of the 2110 students who completed a baseline survey, 1681 reported never having tried smoking, and 1356 of these provided data about smoking behavior at either or both follow-ups (retention rate: 81%). Attrition analyses compared all covariates for this analysis sample with the 325 who were lost to follow-up, by using  $\chi^2$  and *t* tests.

Tests of the primary hypothesis about exposure to retail cigarette advertising and smoking initiation used multilevel modeling to account for clustering of students within schools. Although exposure to retail cigarette advertising varied significantly among schools, the relationships between exposure and smoking initiation did not vary. In the final models, all covariates were also treated as fixed effects, and the intercept randomly varied across schools. Separate multilevel models examined smoking

shopping frequency and cigarette brand impressions per week with smoking initiation at 12-month and 30-month follow-ups. Because these 2 exposure variables were quite skewed, we compared groups according to tertiles. All models included perceived exposure as a covariate because it was not highly correlated with other exposure measures at baseline,<sup>13</sup> and a previous study observed independent associations of perceived exposure and shopping frequency with adolescent smoking.<sup>10</sup> All models also adjusted for demographics, exposure to smoking by parents and peers, risk-taking behavior, exposure to smoking on television or in movies, self-reported grades in school, and unsupervised time after school. The last 2 variables were dichotomized at the median value because the distributions were quite skewed. Race and ethnicity were treated as separate variables. Race was coded to compare any minority with Hispanic and non-Hispanic white students because the last 2 groups have the highest smoking rates among California adolescents. Ethnicity was coded to compare any Hispanic with non-Hispanic students regardless of race.

RESULTS

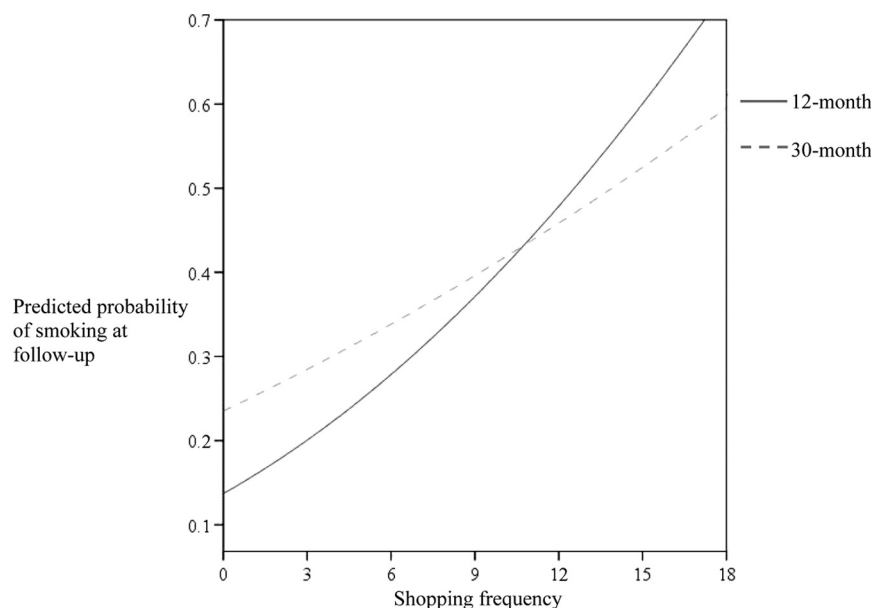
Attrition was ~30% between each assessment and was consistent across grades. No greater attrition occurred during the transition to high school. The baseline never smokers who were lost to follow-up were more likely than the analysis sample to be boys (56.0% vs 44.2%; *P* < .001), to live with a smoker (47.2% vs 38.0%; *P* < .01), to earn mostly Bs or lower (58.3% vs 38.8%; *P* < .001), and to score higher on risk-taking behavior (2.6 vs 2.4; *P* < .001). Students who were lost to follow-up did not differ from the analysis sample on shopping frequency (*P* = .27); however, students who were lost to follow-up were more likely than the analysis sample to rank in the highest tertile of cigarette brand impressions per week (42.8% vs 31.1%; *P* < .001). No differences between the 2 groups were observed for other covariates, including exposure to peer smoking and unsupervised time after school.

The analysis sample (aged 11–14 at baseline) included slightly more girls than boys (Table 1). The sample was both racially and ethnically diverse: 5.3% black, 14.9% Asian/Pacific Islander, 23.0% multiracial, 53.4% white,

TABLE 1 Characteristics of Never Smokers at Baseline and Association With Exposure to Retail Tobacco Marketing

Characteristics at Baseline	n	Value	Shopping Frequency, visits/wk			P
			Low	Moderate	High	
Grade level, %	1356					.120
6	504	37.2	33.0	38.5	40.2	
7	410	30.2	32.5	27.7	30.5	
8	442	32.6	34.5	33.8	29.4	
Male gender, %	1354	44.2	42.2	43.4	46.8	.355
Hispanic ethnicity, %	1342	40.2	30.6	38.5	51.1	<.001
Racial minority	1351	46.0	46.4	48.2	43.2	.317
Self-reported grades (mostly Bs or below), %	1351	38.8	31.3	37.9	46.9	<.001
Unsupervised after school (>2 d/wk), %	1342	50.2	42.3	55.0	53.8	<.001
Risk-taking propensity (4 = max), mean ± SD	1355	2.4 ± 0.9	2.3 ± 0.9	2.5 ± 0.8	2.6 ± 1.0	<.001
At least 1 parent/household smoker, %	1353	38.0	27.3	39.7	47.1	<.001
At least 1 friend smokes, %	1354	9.7	8.2	9.2	11.7	.180
Perceived exposure, mean ± SD						
See smoking in movies/television (4 = often)	1352	2.8 ± 0.9	2.6 ± 0.9	2.9 ± 0.9	2.3 ± 1.0	<.001
See cigarette ads in stores (4 = often)	1354	3.2 ± 0.8	3.1 ± 0.8	3.3 ± 0.8	3.4 ± 0.8	<.001
Cigarette brand impressions/wk, mean ± SD	1354	324.7 ± 501.2	113.9 ± 266.8	226.9 ± 304.9	633.4 ± 663.6	<.001

P values derived from  $\chi^2$  or analysis of variance. All proportions are column percentages unless otherwise noted. For example, 33% of students who reported low shopping frequency were sixth-graders.

**FIGURE 1**

Predicted probability of smoking initiation at follow-up on the basis of shopping frequency (visits per week) measured at baseline.

and 3.5% other or unknown; 40.2% were Hispanic.

At baseline, adolescents who had never smoked reported visiting convenience stores, liquor stores, or small markets an average of 2.1 times per week (SD: 2.8; maximum: 18.0). Visits to stores near school yielded an average of 325 cigarette brand impressions per week (SD: 501; maximum: 5987). These cues were noticeable to never smokers: 82.1% of the sample reported seeing cigarette ads in stores sometimes or often. As shown in Table 1, shopping frequency was positively correlated with other measures of exposure to retail cigarette advertising and with several risk factors for smoking initiation. Shopping frequency was unrelated to gender, age (grade level), being a racial minority, and having at least 1 friend who smokes.

The incidence of smoking initiation was 18% after 12 months and 27% after 30 months. The unadjusted associations between store visits at baseline and the probability of smoking at 12- and 30-month follow-ups illustrate a graded relationship (Fig 1). A signifi-

cant quadratic term indicates an accelerated probability of smoking with more frequent store visits. Table 2 summarizes the odds ratios and confidence intervals from the multilevel model, adjusted for all covariates in the table. Compared with students who reported the lowest shopping fre-

quency (fewer than 0.5 visits per week), the odds of initiation after 12 months increased 64% for students who reported moderate visits (0.6–1.9 visits per week) and more than doubled for those who reported  $\geq 2$  visits per week (see Table 2). This association persisted at the 30-month follow-up: the odds of smoking increased 19% for moderate visits and 42% for the most frequent visits. Although Hispanic adolescents were more likely than others to report trying smoking at the 12-month follow-up, there was no significant interaction of ethnicity with shopping frequency on smoking initiation (data not shown).

Perceived exposure predicted a small but significant increase in the odds of initiating, but only at the 30-month follow-up (see Table 2). Tests of an interaction examined whether the impact of shopping frequency on smoking initiation was greater for students who perceived more exposure to cigarette ads in stores, but it was not significant (data not shown).

The most detailed measure of exposure, cigarette brand impressions per

**TABLE 2** Predictors of Smoking Initiation After 12 and 30 Months

Baseline Characteristics	Smoking at 12 mo (n = 1182), OR (95% CI)	Smoking at 30 mo (n = 895), OR (95% CI)
Constant	0.02 (0.01–0.06)	0.03 (0.02–0.04)
Grade level		
6	1.00	1.00
7	0.88 (0.58–1.32)	1.41 (1.19–1.67)
8	1.44 (0.99–2.10)	1.26 (1.07–1.49)
Male gender	0.94 (0.68–1.30)	0.86 (0.75–0.99)
Ethnicity (Hispanic vs all others)	1.59 (1.15–2.22)	1.43 (1.25–1.65)
Racial minority (any vs all others)	1.01 (0.73–1.40)	0.88 (0.77–1.01)
Self-reported grades (mostly Bs or below)	1.51 (1.10–2.09)	1.61 (1.40–1.86)
Unsupervised after school ( $>2$ d/wk)	1.36 (0.98–1.88)	0.83 (0.73–0.96)
Risk-taking propensity (1–4)	1.51 (1.25–1.81)	1.41 (1.30–1.53)
At least 1 parent/household smoker	1.54 (1.12–2.12)	1.25 (1.09–1.44)
At least 1 friend smokes	1.67 (1.06–2.64)	1.91 (1.56–2.36)
Perceived exposure		
See smoking in movies/television (4 = often)	1.10 (0.91–1.31)	1.26 (1.17–1.36)
See cigarette ads in stores (4 = often)	0.90 (0.74–1.10)	1.11 (1.02–1.22)
Shopping frequency (visits/wk)		
Low ( $<0.5$ )	1.00	1.00
Moderate (0.5–1.9)	1.64 (1.06–2.55)	1.19 (1.00–1.41)
High (2.0–18.0)	2.58 (1.68–3.97)	1.42 (1.19–1.69)

Odds ratios (ORs) are adjusted for all other variables in the table. CI indicates confidence interval.



**TABLE 3** Cigarette Brand Impressions as Predictor of Smoking Initiation After 12 and 30 Months

Baseline Characteristics	Smoking at 12 mo ( <i>n</i> = 1182), OR (95% CI)	Smoking at 30 mo ( <i>n</i> = 895), OR (95% CI)
Constant	0.03 (0.01–0.07)	0.03 (0.01–0.09)
Grade level		
6	1.00	1.00
7	0.88 (0.58–1.32)	1.39 (0.94–2.07)
8	1.52 (1.04–2.22)	1.26 (0.85–1.86)
Male gender	0.94 (0.68–1.30)	0.87 (0.62–1.20)
Ethnicity (Hispanic vs all others)	1.56 (1.12–2.17)	1.38 (0.99–1.93)
Racial minority (any vs all others)	1.01 (0.73–1.39)	0.88 (0.63–1.22)
Self-reported grades (mostly Bs or below)	1.55 (1.13–2.14)	1.61 (1.15–2.25)
Unsupervised after school (>2 d/wk)	1.31 (0.95–1.82)	0.82 (0.59–1.13)
Risk-taking propensity (1–4)	1.50 (1.25–1.80)	1.40 (1.16–1.70)
At least 1 parent/household smoker	1.61 (1.17–2.21)	1.27 (0.91–1.76)
At least 1 friend smokes	1.61 (1.02–2.54)	1.88 (1.15–3.06)
Perceived exposure		
See smoking in movies/television (4 = often)	1.08 (0.90–1.30)	1.26 (1.05–1.51)
See cigarette ads in stores (4 = often)	0.90 (0.73–1.10)	1.10 (0.89–1.36)
Cigarette brand impressions per week		
Low (<60)	1.00	1.00
Moderate (60–259)	1.22 (0.79–1.89)	1.20 (0.81–1.79)
High (≥260)	2.36 (1.55–3.61)	1.58 (1.05–2.37)

Odds ratios (ORs) are adjusted for all other variables in the table. CI indicates confidence interval.

week, predicted similar increases in the odds of smoking initiation at both follow-ups. After 12 months, the odds of smoking were 2.36 times greater for students who ranked in the highest category of exposure (≥260 brand impressions per week) than for students who ranked in the lowest category of exposure (<60 brand impressions per week); after 30 months, the odds of smoking were 58% greater (Table 3). The difference between moderate and low tertiles of cigarette brand impressions was not significant at either time point.

## DISCUSSION

This is the first longitudinal study to provide evidence that adolescents' exposure to widespread cigarette advertising at the point of sale is a risk factor for smoking initiation. Two measures of exposure were developed by (1) assessing self-reported frequency of visits to the types of stores that contain the most cigarette advertising and (2) eliciting information about where and how often adolescents shopped near school and observing the quantity of ads and pack

facings in those stores. Adjusting for multiple other risk factors, both measures predicted significant increases in the odds of initiating smoking among adolescents who had never smoked at baseline. A graded relationship was also observed: the more store visits adolescents reported at baseline, the greater their chances of initiating smoking at follow-up.

Contrary to expectation, the most detailed exposure measure, cigarette brand impressions per week, was not a substantially better predictor of smoking initiation than the 3-item measure of shopping frequency. Because the combination of in-store observations with student survey data are costly and impractical for population-based surveys, we recommend shopping frequency as an appropriate and useful indicator of exposure to retail tobacco advertising.<sup>13</sup> An alternative is to infer exposure from geographic area measures, such as the density of stores that sell cigarettes in specified neighborhoods or the quantity of cigarette ads that those stores contain. Imputing environmental data to individuals

assumes that exposure is constant for individuals in the same area, but this study observed substantial individual differences in adolescents' exposure to retail cigarette advertising within school neighborhoods. This does not invalidate area measures of exposure but indicates that such predictors will have limited power.

Perceived exposure (noticing cigarette ads) was not as strong a predictor of smoking initiation as the other measures of exposure. This result is consistent with our cross-sectional report and our conclusion that perceived exposure measures a different underlying construct.<sup>13</sup> Additional research is needed to examine whether perceived exposure measures a cognitive bias for cigarette advertising and whether it predicts other aspects of adolescent smoking. Such inquiry is important because perceived exposure is typically the only item about the retail environment that appears on state and national surveys about adolescent smoking.

Strengths of this study are its longitudinal design, the inclusion of multiple measures of exposure to retail cigarette advertising, and the assessment of behavioral outcomes at 2 follow-ups. Surveying students in a single California community is the primary weakness of this study and limits the ability to generalize findings to other adolescents and stores; however, it seems unlikely that adolescents' exposure to retail tobacco advertising and its relationship with smoking behavior would be different for adolescents who live in other areas where cigarette packs and advertising are displayed prominently at the point of sale. California has the longest running anti-tobacco media campaign in the United States but does not advertise anti-tobacco messages at the point of sale. Exposure to anti-tobacco ed-

ucation in the media and in school might make California adolescents more resistant than others to retail cigarette advertising, but that would make it more difficult to detect its effect on smoking behavior in this sample.

The response and retention rates in this study are comparable to other school-based surveys that use active parental consent<sup>18,19</sup>; however, students who were lost to follow-up reported more frequent exposure to retail cigarette advertising at baseline. Consequently, this study may underestimate its impact on smoking behavior at follow-up. By focusing exclusively on exposure measured at baseline, this study cannot assess the impact of cumulative exposure to retail cigarette advertising on smoking.

Previous research has shown that adolescents' exposure to pack displays alone, in the absence of cigarette advertising at the point of sale, is associated with increased intentions to smoke.<sup>10,20</sup> This study cannot disentangle the relative importance of advertising and pack displays in encouraging youth smoking.

Shopping frequency may be a proxy for access to cigarettes or for other unmeasured confounders; however, this study controlled for a large number of potential confounders, including unsupervised time and risk-taking propensity. It is highly plausible that retail cigarette advertising would influence smoking initiation because it is ubiquitous at the point of sale and salient to

adolescents. Thus, it seems unlikely that an unmeasured risk factor confounded our results. Moreover, because randomized trials of the influence of retail cigarette advertising are not possible, longitudinal studies such as this one provide the strongest guidance available to establish relevant policies.

In 2009, the Family Smoking Prevention and Tobacco Control Act granted the Food and Drug Administration (FDA) authority to regulate the manufacturing, marketing, and sale of tobacco products.<sup>21</sup> Three provisions that could reduce the impact of pro-smoking cues at the point of sale are restricting tobacco advertising to black-and-white, text-only ("tombstone") format, eliminating misleading terms such as "light" and "mild," and mandating stronger warning labels on advertising and packaging. Even with expanded authority, the FDA's restrictions must be consistent with the first amendment, a requirement that tobacco companies are contesting in court.<sup>22</sup> Indeed, a previous FDA ruling mandating tombstone advertisements did not survive judicial review.<sup>23</sup> Results of this study provide empirical evidence for the argument that restricting advertising at the point of sale could reduce adolescent smoking.

## CONCLUSIONS

A growing body of evidence suggests that stores that are saturated with cigarette advertising and product displays constitute a significant public health concern, particularly for

youth.<sup>24</sup> Results from this longitudinal study complement and extend previous findings from cross-sectional surveys<sup>9,10</sup> and experiments.<sup>20,25</sup> Additional longitudinal studies are needed to assess the impact of retail cigarette advertising on other behavioral outcomes, such as established smoking and brand choice.<sup>26</sup>

The steady decline in smoking rates among US adolescents that has been observed since 2000 is unlikely to continue without addressing the proliferation of cigarette advertising at the point of sale. Both US and international agencies identify regulations of retail advertising and promotions as a priority for tobacco control.<sup>27,28</sup> Smoking initiation by children and adolescents remains significant, and health professionals need to maintain their vigilance. Until and unless public health efforts to curtail tobacco advertising and promotion further in retail settings succeed, those who care for adolescent patients should warn them and their parents about the potential effects of exposure to such advertising. Widespread adoption is needed for current clinical guidelines that call for medical care providers to assess smoking status and provide support for cessation. Pediatricians and other health care practitioners could also advocate for anti-tobacco education that addresses retail promotion.

## ACKNOWLEDGMENTS

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**Helmets Are Not Just for Children:** A recent article in The New York Times (Alderman L, May 22, 2010) noted that 90 percent of the 714 bicyclists killed in 2008 were not wearing helmets. This data compiled by the Insurance Institute for Highway Safety called for adults over 30 being strongly encouraged to wear helmets because their gray matter is not packed as tightly as it used to be. According to Dr Angela F. Gardner, president of the American College of Emergency Physicians, “As you age, your brain shrinks, but your skull does not. That extra space means that the brain can bounce around inside the skull and may be more easily damaged from a blow.” Despite this, while half of our states have laws requiring children and teens to wear helmets, no state requires people of all ages to do so. Perhaps we can encourage our parents to do what our kids do when they ride their bikes—wear a helmet!

Noted by JFL, MD



## A Longitudinal Study of Exposure to Retail Cigarette Advertising and Smoking Initiation

Lisa Henriksen, Nina C. Schleicher, Ellen C. Feighery and Stephen P. Fortmann  
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# The effect of retail cigarette pack displays on impulse purchase

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## ABSTRACT

**Aims** To assess the extent to which point-of purchase (POP) cigarette displays stimulate impulse purchases. **Design** Telephone-administered population survey. **Setting** Victoria, Australia. **Participants** A total of 2996 adults, among whom 526 smoked factory-made cigarettes and 67 were recent quitters (quit in the past 12 months). **Measurements** Reported cigarette purchase behaviour; perceived effect on smoking of removing cigarettes from view in retail outlets; reported urges to buy cigarettes as a result of seeing the cigarette display. **Findings** When shopping for items other than cigarettes, 25.2% of smokers purchased cigarettes at least sometimes on impulse as a result of seeing the cigarette display. Thirty-eight per cent of smokers who had tried to quit in the past 12 months and 33.9% of recent quitters experienced an urge to buy cigarettes as a result of seeing the retail cigarette display. One in five smokers trying to quit and one in eight recent quitters avoided stores where they usually bought cigarettes in case they might be tempted to purchase them. Many smokers (31.4%) thought the removal of cigarette displays from stores would make it easier for them to quit. **Conclusions** POP cigarette displays act as cues to smoke, even among those not explicitly intending to buy cigarettes, and those trying to avoid smoking. Effective POP marketing restrictions should encompass cigarette displays.

**Keywords** Cues, marketing, point of purchase, retail, smoking.

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## INTRODUCTION

As avenues for traditional electronic, billboard and print forms of tobacco marketing are restricted, tobacco companies have relied increasingly upon point-of-purchase (POP) marketing to promote their products [1–3]. A comprehensive POP marketing strategy for cigarette brands includes advertising, pricing and promotions (e.g. 'buy one get one free') [4]. While evidence linking POP marketing to youth smoking is of concern [4–9], to date relatively little research has focused upon the extent to which adult smokers might be influenced by POP marketing. POP marketing may influence smokers who are trying to quit or cut back by reminding them of smoking every time they visit a store [10]. In addition, POP marketing may also tempt recent quitters to relapse [10].

Cigarette pack displays are a key component of POP marketing: tobacco companies pay a premium to ensure prime placement within stores and superior positioning

of their brands relative to others [11]. Regulations on retail tobacco marketing primarily restrict or eliminate advertising or promotions for cigarette brands. In countries with such restrictions, POP cigarette pack displays have evolved into prominent 'power walls' of carefully coordinated colourful packs [12–14]. According to industry documents, tobacco companies use cigarette pack displays in order to maintain prominence for their brands in the face of restrictions on retail marketing [15–17]. For example, US tobacco companies circumvented self-service display bans by furnishing enclosed acrylic displays to showcase their products [18].

The tobacco industry's increasing reliance on POP marketing means that there is a profusion of smoking cues in most convenience stores, petrol stations and supermarkets, with cigarette pack displays positioned near the cash register for maximum salience [11]. Increasing environmental cues to smoke is one explanation for observations of higher smoking prevalence and

smoking frequency in neighbourhoods with a higher concentration of stores that sell cigarettes [19,20]. Another explanation for the potential impact of cigarette pack displays on smoking behaviour comes from research on cue reactivity, which demonstrates that drug-dependent individuals react strongly to cues associated with past or current drug use, including nicotine [21]. Cue reactivity studies typically observe strong subjective reports of craving and modest physiological changes in response to smoking cues, such as viewing other people smoking or pictures of smoking paraphernalia (i.e. cigarettes, packs, matches and ashtrays) [22]. Evidence from ecological momentary assessments also indicates the importance of situational cues in eliciting craving [23,24].

Knowing whether cigarette pack displays are as powerful cues to smoke as the cigarette advertisements they either complement or replace is essential to develop effective regulations for retail tobacco marketing. We sought to ask adult smokers about the extent to which they notice POP cigarette pack displays, experience impulses to purchase cigarettes when confronted by a cigarette display and perceive cigarette displays to be a factor preventing smoking cessation. To our knowledge, this is the first study to ask smokers systematically about these issues.

## METHOD

Study participants aged 18 years and over in the state of Victoria, Australia, completed a 12–16-minute telephone survey on health issues in November 2006. The sample was selected using a random digit dialling method, yielding 2996 completed interviews, for a response rate of 43%. Respondents who indicated they smoked daily, weekly or less than weekly were defined as smokers [25]. Recent quitters were defined as those who had smoked more than 100 cigarettes in their life-time, but had quit within the past 12 months. Smokers were asked whether they smoked factory-made cigarettes (FMC), roll-your-own cigarettes or some other form of tobacco.

All respondents were asked how often they go to a supermarket, milk bar/convenience store or petrol station, with response options being almost every day, two to three times a week, once a week, about two to three times a month, once a month, less often and never. Respondents who visited at least one of these stores more often than never were then asked: 'When you are in a supermarket, milk bar/convenience store or petrol station, how often do you notice the cigarette pack display near the cash register?', with options being coded as never/rarely; sometimes; often/always.

FMC smokers were asked: 'thinking about you personally, do you agree or disagree that removing cigarette

packs from view in stores would make it easier for you to quit smoking?', with respondents being able to answer strongly agree, agree, neither agree nor disagree, disagree, strongly disagree. FMC smokers were also asked: 'when shopping for something other than cigarettes, how often do you decide to buy cigarettes as a result of seeing the cigarette pack display in the store—would that be always, often, sometimes, rarely or never?'

We further asked FMC smokers who had made a quit attempt in the past 12 months: 'when you tried to quit smoking, did you ever avoid going to places where you used to buy cigarettes in case you might be tempted to buy them?' and 'when you tried to quit smoking, was there ever a time when seeing the cigarette pack display in the store gave you an urge to buy cigarettes?'. Among those who indicated that they had experienced such an urge, we then asked: 'as a result, did you ever buy cigarettes even though you were trying to quit?'

Recent quitters were asked: 'thinking about where cigarettes are sold, since you quit smoking, was there ever a time that seeing the cigarette pack display near the cash register gave you an urge to buy cigarettes?' and also: 'since you quit smoking, did you ever avoid going to places where you used to buy cigarettes in case you might be tempted to buy them?'

For all respondents, we collected information on age and sex, and measured socio-economic status (SES) using the Socio-Economic Index for Areas (SEIFA) [26]. This index ranks residential postcodes on a continuum of advantage to disadvantage, taking into consideration factors such as income, education, occupation and housing, which may influence socio-economic conditions of the area. For the purpose of analysis, we grouped these areas into four quartiles, from lowest (quartile 1) to highest (quartile 4) SES.

Daily FMC smokers were asked to indicate the average number of cigarettes smoked per day, and we grouped these into three categories of light (one to 10 cigarettes per day), medium (11–20) and high (over 20 per day). All less than weekly FMC smokers were assigned to the light consumption category. FMC smokers were asked if they had tried to quit in the past 12 months and if so, the maximum length of time quit in the last 12 months. To gauge intentions to quit, FMC smokers were asked if they were seriously considering quitting in the next 6 months.

## Statistical analysis

Survey data were weighted by age and sex according to the Victorian population distribution at the 2001 Census [27]. There were two primary outcomes of interest: (i) purchase behaviour, i.e. an indication that smokers buy cigarettes on impulse at least sometimes as a result of seeing the cigarette pack display; and (ii) policy support,

i.e. agreement that removing cigarettes from view would make it easier for respondents to quit smoking. A secondary outcome was the extent to which those trying to avoid smoking indicate that they experience urges to buy cigarettes when faced with a retail cigarette display. To examine variables associated with outcomes of interest, we used multivariate logistic regression analysis.

## RESULTS

### Sample characteristics

Of the total sample of 2996 adults, 17.6% ( $n = 526$ ) were smokers of FMC cigarettes. Overall, 53.2% smoked 10 cigarettes or less per day on average, 31.9% smoked 11–20 cigarettes and 14.9% smoked more than 20 cigarettes per day. A total of 40.7% had tried to quit in the past 12 months and 59.0% were considering quitting in the next 6 months. Among smokers, 34.0% indicated that they visited either a supermarket, milk bar/convenience store and/or petrol station almost every day, with medium (38.4%) and heavy smokers (46.1%) more likely to do so than light smokers (28.2%) [medium versus light odds ratio (OR) 1.58, confidence interval (CI) 1.05–2.39,  $P < 0.05$ ; heavy versus light OR 2.21, CI 1.31–3.73,  $P < 0.01$ ], and with females (29.6%) less likely to do so than males (37.9%) (OR 0.69, CI 0.48–1.00,  $P < 0.05$ ). Age was unrelated to daily store visits.

### Noticing cigarette displays at the point of purchase

When in a supermarket, milk bar/convenience store or petrol station, 55.3% of FMC smokers indicated that they often or always noticed the cigarette pack display near the cash register, 19.2% said they sometimes noticed it and 25.5% said they rarely or never noticed it. Multivariate analysis indicated that smokers who visit stores daily were significantly more likely to notice cigarette displays at least sometimes (81.6%) compared with those who visit stores less often (70.9%) (OR 1.90, CI 1.14–3.17,  $P < 0.05$ ), and younger smokers were also more likely to notice these displays than older smokers (OR 0.97, CI 0.96–0.99,  $P < 0.001$ ). However, there was no difference by sex, SES, cigarette consumption, recent quit attempts or quitting intentions.

### Impulse purchase of cigarettes among smokers

When shopping for something other than cigarettes, a total of 25.2% FMC smokers at least sometimes decided to buy cigarettes as a result of seeing the cigarette pack display in the store (15.2% sometimes, 7.2% often, and 2.9% always). Table 1 shows that, in multivariate analysis, the likelihood of purchasing cigarettes on impulse at least sometimes was significantly greater among those

who noticed cigarette displays at least sometimes (compared to rarely/never), among those considering quitting in the next 6 months, and among females. There was also a trend ( $P = 0.068$ ) towards younger smokers being more likely to purchase on impulse.

### Urge to buy cigarettes among those trying to avoid smoking

Among the 209 FMC smokers who had tried to quit in the past 12 months, 37.7% said that seeing the cigarette pack display in a store had given them an urge to buy cigarettes. Table 2 indicates that this was significantly more likely among smokers who notice cigarette displays in stores at least sometimes, among those who visit stores daily, and among those who are considering quitting in the next 6 months.

Of all FMC smokers who tried to quit in the past 12 months, 19.4% ( $n = 41$ ) said that they avoided stores where they usually bought cigarettes in case they might be tempted to buy. Among the 79 FMC smokers who had tried to quit in the past 12 months and experienced an urge to buy cigarettes when seeing the cigarette display, 60.9% bought cigarettes, even though they were trying to quit.

Finally, of the 67 people who had quit smoking in the past 12 months, 33.9% said that seeing the cigarette pack display near the cash register gave them an urge to buy cigarettes and 12.2% said they had avoided stores where they usually bought cigarettes.

### Perception that removal of pack displays would assist quitting

Among all FMC smokers, 31.4% agreed or strongly agreed that removing cigarette pack displays from view in stores would make it easier for them to quit. In multivariate analysis, this perception was more likely among smokers who said that they noticed cigarette displays at least sometimes, compared to rarely/never (35.4% versus 20.0%, OR = 2.38, CI 1.35–4.17,  $P = 0.003$ ), those considering quitting in the next 6 months (40.0% versus 19.2%, OR = 2.61, CI 1.57–4.34,  $P < 0.001$ ) and females (37.8%) than males (25.6%) (OR = 1.71, CI 1.11–2.64,  $P = 0.016$ ). This view was less likely among those who were medium (23.9%) or heavy (14.5%) smokers compared to light smokers (40.6%) (medium versus light OR = 0.41, CI 0.25–0.68,  $P < 0.001$ ; heavy versus light OR = 0.24, CI 0.11–0.51,  $P < 0.001$ ) and among the highest than the lowest SES group (28.9% versus 35.4%, OR = 0.50, CI 0.26–0.97,  $P = 0.04$ ). There was no association with frequency of store visits, quit attempts or age.

**Table 1** Variables associated with impulse purchase of cigarettes among factory-made cigarette smokers.\*

	<i>At least sometimes</i>		<i>Adjusted OR</i>	<i>95% CI</i>	<i>P</i>
	<i>n</i> <sup>†</sup>	<i>%</i>			
Notice displays					
Rarely/never	121	11.6	1		
At least sometimes	353	30.3	2.49	1.29–4.80	0.006
Store visits <sup>‡</sup>					
Not daily	313	22.0	1		
Daily	170	31.2	1.39	0.86–2.24	0.178
Cigarette consumption					
Light (10 cigarettes per day or less)	247	23.9	1		
Medium (11–20 cigarettes)	153	26.8	1.39	0.82–2.36	0.229
Heavy (21+ cigarettes)	72	25.0	1.36	0.67–2.73	0.393
Attempted to quit within last 12 months					
No	285	21.1	1		
Yes	194	32.0	1.52	0.91–2.52	0.108
Considering quitting in next 6 months					
No	170	17.6	1		
Yes	286	30.8	1.82	1.06–3.13	0.029
Age (years) <sup>§</sup>			0.98	0.96–1.00	0.068
18–29	164	29.9			
30+	320	22.8			
Sex					
Males	253	20.9	1		
Females	231	29.9	1.96	1.22–3.14	0.005
SES					
SEIFA 1 (lowest advantage)	78	29.5	1		
SEIFA 2	77	24.7	0.61	0.28–1.35	0.227
SEIFA 3	147	24.5	0.60	0.30–1.19	0.145
SEIFA 4 (highest advantage)	170	24.1	0.61	0.31–1.19	0.149

\*Includes only those who purchase cigarettes at a milk bar/convenience store, petrol station, supermarket or tobacconist. <sup>†</sup>Frequencies, sample sizes and analyses exclude 'don't know/can't say' respondents. <sup>‡</sup>'Store visits' include visiting a supermarket, petrol station and/or milk bar/convenience store. <sup>§</sup>Age was entered as a continuous variable within the multivariate logistic model. OR: odds ratio; CI: confidence interval; SES: socio-economic status; SEIFA: socio-economic index for areas.

## DISCUSSION

Far from being a benign source of influence at the point of purchase, cigarette pack displays stimulate impulse purchases among smokers. Those trying to avoid smoking commonly experience urges to purchase cigarettes when confronted with cigarette displays. Some smokers seem aware that they are prone to experiencing cigarette display-stimulated urges to purchase, to the extent that they avoid particular stores when they are trying to quit or have recently quit.

In-store displays increase sales of other consumer products [28–32]. A study of purchase choices made by approximately 4000 shoppers in 14 US cities found that product displays were associated with a greater likelihood of unplanned (rather than planned) purchases [33]. Furthermore, unplanned purchases were more likely when displays were located near the cash register, or at the end of shopping aisles, than in the middle of an aisle.

Research suggests that the overall presence of tobacco marketing in stores, alongside items such as confectionery, milk, soft drinks and magazines, helps to create a sense of familiarity with tobacco products, contributing to pro-smoking social norms [6,9,34]. Our study suggests that cigarette pack displays may also function to undermine quitting intentions and behaviour among established smokers. A study of magazine content is one of the few to test whether tobacco advertising might aim to undermine cessation attempts. Between 1984 and 1989, the number of tobacco advertisements in popular magazines was greater in January and February compared to the rest of the year [35]. A second study of national magazines from 1980 to 1995 also supported the researchers' hypothesis that the advertising placement intends to frustrate New Years' resolutions to quit by cueing smoking.

Our study demonstrated that younger smokers were more likely to notice cigarette displays and tended to be more likely to purchase on impulse. This pattern of find-

**Table 2** Variables associated with urge to purchase cigarettes among smokers who had tried to quit in the past 12 months.\*

	<i>Urge to buy</i>		<i>Adjusted OR</i>	<i>95% CI</i>	<i>P</i>
	<i>n</i> <sup>†</sup>	<i>%</i>			
Notice displays					
Rarely/never	39	15.4	1		
At least sometimes	167	43.7	3.88	1.36–11.03	0.011
Store visits <sup>‡</sup>					
Not daily	137	32.8	1		
Daily	73	46.6	2.11	1.05–4.25	0.037
Cigarette consumption					
Light (10 cigarettes per day or less)	124	42.7	1		
Medium (11–20 cigarettes)	55	32.7	0.74	0.34–1.64	0.459
Heavy (21+ cigarettes)	27	25.9	0.41	0.14–1.19	0.100
Max. length of time quit in last 12 months					
More than 3 months	50	44.0	1		
3 months or less	158	36.1	0.93	0.43–2.00	0.850
Considering quitting in next 6 months					
No	34	20.6	1		
Yes	165	43.6	3.54	1.28–9.78	0.015
Age (years) <sup>§</sup>			0.98	0.95–1.01	0.177
18–29	96	43.8			
30+	112	32.1			
Sex					
Males	112	34.8	1		
Females	98	40.8	0.95	0.48–1.88	0.885
SES					
SEIFA 1 (lowest advantage)	29	44.8	1		
SEIFA 2	35	34.3	0.41	0.12–1.37	0.148
SEIFA 3	61	41.0	0.56	0.19–1.65	0.289
SEIFA 4 (highest advantage)	77	33.8	0.43	0.15–1.22	0.111

\*Includes only those who purchase cigarettes at a milk bar/convenience store, petrol station, supermarket or tobacconist and had tried to quit in the last 12 months. <sup>†</sup>Frequencies, sample sizes and analyses exclude 'don't know/can't say' respondents. <sup>‡</sup>'Store visits' include visiting a supermarket, petrol station and/or milk bar/convenience store. <sup>§</sup>Age was entered as a continuous variable within the multivariate logistic model. OR: odds ratio; CI: confidence interval; SES: socio-economic status; SEIFA: socio-economic index for areas.

ings is consistent with research showing that young adults are price-sensitive [36–38], more likely than other smokers to take advantage of cigarette promotions [28] and may be particularly vulnerable to tobacco marketing [39,40]. Smoking prevalence has remained stable in young adults aged 18–29 years in Victoria Australia, despite declining in other adult age groups [41]. Similarly, between 1993 and 2003, US smoking rates declined among all age groups except young adults aged 18–25 years [42]. The role of POP cigarette displays in perpetuating tobacco use among this age group is a cause for concern. On the basis of this study and others [9,43], we conclude that effective POP marketing restrictions must address cigarette pack displays.

A limitation of our study included a relatively low response rate, although this is typical for present-day telephone surveys that compete with direct telephone marketing efforts [44]. Our study used a retrospective self-report of impulse purchasing. By definition, unplanned

or impulse purchases are not mindful, and may therefore be under-reported using this method. Observational or store exit interview methods close to the time of actual purchase might enable greater insight into the frequency of impulse tobacco purchases and the circumstances under which they occur. It is possible that the reporting of recent quit attempts may have been subject to recall bias, resulting in an underestimation of smokers who said that they had tried to quit in the past 12 months. However, this would have simply reduced the size of this subgroup, rather than changed substantively its composition and the associations with urge to purchase. Finally, generalization of the results to other countries would be important. However, the fact that these results were observed in Australia, where shoppers are exposed only to cigarette pack displays and not to tobacco advertising or promotions in stores, suggest that POP marketing may exert even greater effects in most other countries where it remains largely unrestricted. In conclusion, these find-



ings strengthen the evidence base for placing tobacco out of the line of sight in retail stores, as has been already implemented in Iceland, Ireland and several jurisdictions in Canada [14].

### Acknowledgements

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# Smoker sensitivity to retail tobacco displays and quitting: a cohort study

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## ABSTRACT

**Aims** To assess whether sensitivity to point of sale (POS) cigarette displays influences quitting behaviour. **Design** Prospective cohort study. **Setting** Victoria, Australia. **Participants** A total of 222 adult smokers were surveyed at baseline in 2006 and followed-up 18 months later. **Measurements** Baseline sensitivity to POS displays, which included the frequency of 'noticing displays', 'impulse purchasing behaviour' and 'deciding on brand based on POS displays'; smoking status at follow-up. **Findings** At follow-up, 17.0% were no longer smokers. After adjusting for covariates, compared to those with low POS display sensitivity, smokers who had a medium or high level of sensitivity to POS displays were significantly less likely to have quit at follow-up [odds ratio (OR) = 0.32, 95% confidence interval (CI) = 0.14–0.74; OR = 0.27, 95% CI = 0.08–0.91, respectively]. **Conclusions** The presence of cigarette pack displays in stores may make it more difficult for smokers to quit smoking successfully.

**Keywords** Adults, cohort study, marketing, retail, smoking cessation.

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## INTRODUCTION

Over the past decade in Australia, the marketing of tobacco products has become increasingly restricted, with the banning of traditional in-store advertising and limitations on the size of point-of-sale (POS) displays. The tobacco industry has managed to overcome these obstacles successfully by designing tobacco displays and attractive cigarette packs to attract the attention of shoppers. Previous research has demonstrated that in-store tobacco displays help to normalize smoking behaviour as well as to create a perception among adolescents that it is easy to purchase tobacco [1–3].

Although the literature examining the influence of POS advertising and promotion on adolescent smoking behaviour is well established [1,3–5], the effect of POS tobacco displays on adult tobacco purchasing and smoking behaviour is relatively unexplored. Survey research has shown that product displays are associated with a greater likelihood of unplanned purchases, and are more likely to occur when they are located near the cash register or at the end of shopping aisles [6]. Early store exit interview research conducted for the tobacco

industry in 1986 suggested that more than half of cigarette purchases were unplanned, and that this was more likely when cigarette displays were present [7]. A recent store exit interview study conducted in Western Australia demonstrated that more than one-fifth of smokers had made an unplanned tobacco purchase. In this study, POS displays were four times more likely to be cited by smokers as being a factor driving their unplanned tobacco purchases, compared to planned tobacco purchases [8].

A study of the influence of POS displays on adult tobacco purchasing behaviour by our group in 2006, using a cross-sectional survey design, found that one-quarter of smokers perceived that the presence of in-store cigarette displays had prompted them to purchase cigarettes on impulse, and one-third of recent quitters said they had experienced an urge to buy cigarettes as a result of seeing the retail cigarette display [9]. The retrospective nature of this study meant that people were asked to make inferences about factors that may have influenced their past quitting behaviour. To examine more rigorously the impact of POS displays on smoking behaviour, the current study used a prospective design, following-up smokers who had provided baseline information about

their sensitivity to POS displays, in order to assess the influence of POS display sensitivity on subsequent quitting behaviour.

## METHOD

A prospective cohort study design was used, in which smokers who were interviewed at baseline as part of a representative population survey in the state of Victoria, Australia, were followed-up 18 months later to examine their subsequent quitting behaviour. The baseline survey was conducted by telephone in November/December 2006 and included 2996 adults, 457 of whom were smokers of factory-made cigarettes and who purchased their cigarettes from a supermarket, convenience store, petrol station and/or tobacconist. In this baseline survey, smokers were asked about their cigarette purchasing behaviour and opinions about in-store cigarette displays. This baseline sample was used originally to examine the influence of POS displays in a cross-sectional study reported by Wakefield *et al.* [9]. Within this baseline sample, 402 smokers (88%) agreed in principle to be involved in future research. These respondents were then re-contacted by telephone in June 2008, and a total of 222 respondents completed a follow-up interview: 49% of the original sample eligible for follow-up surveyed in 2006.

### Baseline survey

A standard tobacco use question [10] was used to determine smoking status at baseline. Respondents were considered to be smokers of manufactured cigarettes if they reported smoking manufactured cigarettes daily, weekly or less than weekly. Cigarette consumption was also measured at this stage by asking smokers: 'On average, how many manufactured cigarettes do you smoke per day or each week?'.

As part of the baseline survey conducted in 2006, sensitivity to POS cigarette displays was measured by asking smokers: (i) 'when you are in a supermarket, convenience store, petrol station or tobacconist, how often do you notice the cigarette pack display near the cash register?'; (ii) 'when shopping for something other than cigarettes, how often do you decide to buy cigarettes as a result of seeing the cigarette pack display in the store?'; and (iii) 'when buying cigarettes, how often do you decide what brand or type of cigarettes to buy, based on the cigarette pack display in the store?', with response options ranging from 1 = always, 2 = often, 3 = sometimes, 4 = rarely or 5 = never. A small number ( $n = 10$ ) of respondents answered 'don't know/can't say' to either one of the above questions. 'Don't know/can't say' responses were coded further as 'never', as the data indi-

cated these participants were more likely to respond 'never' to the other outcome measures. For each question, the above responses were collapsed into three categories: 'always/often' = 2; 'sometimes/rarely' = 1; and 'never' = 0, with scores reflecting level of sensitivity to POS displays. For the purpose of analysis, responses from the above three outcome variables were combined to create an overall POS sensitivity variable, with scores of 0 and 1 indicating 'low sensitivity', 2 and 3 indicating 'medium sensitivity', and 4, 5 and 6, indicating 'high sensitivity'.

Respondents' demographic information was also collected at baseline, including age, sex and socio-economic status (SES). Socio-Economic Index for Areas (SEIFA) indices classify respondents into socio-economic groups based on 2006 Census data of the area in which they live [11]. The Index of Socio-Economic Disadvantage (one of five SEIFA indices) was used, which is based on respondents' residential postcodes. This index ranks areas on a continuum of disadvantage (from most disadvantaged to least disadvantaged), taking into consideration characteristics that may enhance or reduce socio-economic conditions of the area, such as income, education, occupation and housing. For the purpose of analysis we classified respondents into two groups based on this scale: (1) the lower SES group (1st and 2nd SEIFA quintiles) comprises people who live in areas with a SEIFA score in the bottom 40% of Victoria's distribution (this represents a higher level of disadvantage relative to others); and (2) the higher SES group (3rd, 4th and 5th SEIFA quintiles) includes those whose SEIFA score is 41% or above (reflecting the lowest level of disadvantage relative to others).

### Follow-up survey

In March 2008, 18 months after the baseline interview, participants were asked whether they currently smoked manufactured cigarettes, roll-your-own cigarettes, cigars, pipes or any other tobacco products either daily, at least weekly, less than weekly or not at all. Respondents were considered to have quit if they reported 'not at all' to smoking each of the tobacco products mentioned. Those still smoking were asked whether they had made a quit attempt in the 18 months since they were surveyed originally.

### Statistical analyses

Preliminary multivariate logistic regression analyses examined demographic differences between baseline smokers who were followed-up, compared with those lost to follow-up. Results indicated that participants who were followed-up were significantly older (mean = 42.6 years) than those lost to follow-up (mean = 36.9 years) ( $P < 0.001$ ). However, those lost to follow-up did not

differ from participants in terms of sex (49% of dropouts versus 46% of respondents were male,  $P > 0.05$ ), SES (38% versus 36% were low SES, respectively,  $P > 0.05$ ), cigarettes per day (mean of 12.0 cigarettes for dropouts versus 12.5 cigarettes for respondents,  $P > 0.05$ ) and POS sensitivity (26% of dropouts had low sensitivity versus 32% of respondents,  $P > 0.05$ ).

Multivariate logistic regression analyses were conducted to examine the strength of association between baseline sensitivity to POS displays and quitting behaviour. Baseline measures of age, sex, SES and cigarette consumption were included as covariates in the logistic regression models. Cigarette consumption data were missing for 24 respondents, and these respondents were subsequently assigned the mean cigarette consumption for the total sample (13.9 cigarettes per day).

## RESULTS

### Sample characteristics

The majority (55%) of the 222 respondents were female and the mean age of the sample was 42.6 years. Just over one-third of respondents (36%) lived in areas of low SES. All 222 respondents were smokers of factory-made cigarettes at baseline, with 81% being daily smokers, 12% being weekly smokers and 7% smoking less than weekly.

At baseline, just under one-third (32%) of respondents had a low level of sensitivity to POS displays, while 50% had medium sensitivity and 18% had high sensitivity. Analyses of variance (ANOVAs) and  $\chi^2$  analyses indicated no difference in baseline POS sensitivity between males and females, by SES or by average daily cigarette consumption. However, baseline sensitivity levels varied

by age ( $\beta = -0.008$ ,  $P = 0.014$ ), with younger respondents more POS-sensitive than older respondents.

### Quitting behaviour at follow-up

At the 18-month follow-up, 17.0% were no longer smokers. As displayed in Table 1, multivariate logistic regression analyses indicated that, compared with those who had low sensitivity to displays, respondents with a medium [odds ratio (OR) = 0.32, 95% confidence interval (CI) = 0.14–0.74] or high level (OR = 0.27, 95% CI = 0.08–0.91) of POS sensitivity at baseline were significantly less likely to be quit at follow-up. Higher cigarette consumption at baseline also reduced significantly the likelihood of being quit at follow-up, with each additional cigarette smoked decreasing the odds of quitting by approximately 7% (OR = 0.93). Quitting was unrelated to other covariates.

Although age was a significant predictor of POS sensitivity at baseline, there was no interaction between age and POS sensitivity in predicting quitting at follow-up. Among respondents who were still smoking at follow-up ( $n = 184$ ), 50% had made at least one quit attempt in the previous 18 months. No association was found between POS display sensitivity and quit attempts made in the past 18 months.

## DISCUSSION

Our study suggests that the presence of cigarette pack displays in stores may make it more difficult for smokers to quit smoking successfully. Smokers who were more sensitive to POS cigarette displays were less likely not to be smoking at follow-up. These results extend the findings of

**Table 1** Predictors of quitting at follow-up: multivariate logistic regression analysis.

	Quitting status at follow-up			Adjusted OR	95% CI	P
	n	Quit	Not quit			
POS sensitivity						
Low	72	27.8	72.2	1		
Medium	111	12.6	87.4	0.32	0.14–0.74	0.007
High	39	10.3	89.7	0.27	0.08–0.91	0.035
Sex						
Male	101	13.9%	86.1%	1		
Female	121	19.8%	80.2%	1.47	0.68–3.15	0.329
Socio-economic status (SES)						
Low SES	79	13.9%	86.1%	1		
High SES	143	18.9%	81.1%	1.54	0.69–3.46	0.295
Mean age in years (SD)		41.6 (15.0)	42.8 (13.8)	0.99	0.97–1.02	0.588
Mean cigarette consumption per day (SD)		9.8 (8.3)	14.6 (9.2)	0.93	0.89–0.98	0.011

OR: odds ratio; CI: confidence interval; POS: point-of-sale; SD: standard deviation.

cross-sectional surveys [8,9] and meet the call for cohort studies [4] in demonstrating that POS displays may undermine the success of smoking cessation attempts. The effect of tobacco displays is not insubstantial, with the odds of quitting among medium to highly sensitive respondents being more than three times less likely in the 18-month follow-up period than among respondents who had low sensitivity to displays.

Outside the actual retail environment, laboratory-based cue-exposure studies suggest that individual differences between smokers can influence responsiveness to smoking-related cues such as those introduced by POS cigarette displays. For example, an association between impulsivity and difficulty in quitting smoking has been suggested by several cue-exposure studies. Smokers who scored highly on an impulsivity scale experienced greater difficulty refraining from smoking immediately after being exposed to smoking cues [12,13]. More generally, however, when smokers are exposed experimentally to smoking stimuli, including pictures of rows of cigarette packs, their craving for cigarettes increases [14]. This indicates that craving-related reactions to the sight of cigarette packs are relatively common. These types of study provide an understanding of the pathway by which cigarette displays might be expected to influence purchasing behaviour and, ultimately, quitting success. Cross-sectional studies from Australia where retail stores have cigarette displays at the POS but no POS advertising suggest that the occurrence of unplanned cigarette purchase is relatively high, with at least one-fifth of purchases being attributed by smokers to have been prompted by the cigarette display [8,9]. The findings from our cohort study, along with this wider body of research, suggest that removal of POS cigarette displays from the line of sight would benefit those trying to quit smoking.

A number of study limitations should be mentioned. First, our follow-up rate from baseline of 49% was less than ideal, with respondents who completed follow-up being significantly older than those who did not. However, this follow-up rate is not unexpected for an 18-month period, and we found no differences between the two groups in terms of display sensitivity or other demographic differences. None the less, the power of the study was reduced by the smaller sample available for analysis, increasing the possibility of missing real effects (i.e. a Type 2 error). A second limitation was that a retrospective self-report measure of display sensitivity was used. Because unplanned purchases are not mindful, use of this method may have resulted in an underestimate of unplanned purchases. In addition, we had no measure of test-retest reliability of our POS sensitivity measure and future studies could assess usefully the reliability of POS sensitivity over time. Finally, there may have been other unmeasured differences between those who were and

were not sensitive to POS displays that could have accounted for differences in quitting over time, and additional longitudinal research studies might investigate this possibility further. However, we noted that the rate of *attempts* to quit over the 18-month period of follow-up did not differ by POS sensitivity.

Despite the limitations of the study, the pattern of findings emerged from a relatively small sample size. In addition, our study was conducted in Australia, where in-store tobacco marketing is limited to POS displays. In countries where traditional forms of advertising still remain in stores, our findings suggest that unrestricted POS environments could present an even greater obstacle to successful quitting. We encourage the use of further cohort studies in countries yet to ban tobacco displays to examine the relationship between tobacco POS displays and quitting behaviour.

A number of countries, such as Canada, Ireland and Thailand, have taken the lead in removing POS cigarette displays, with some Australian states, and most recently Scotland and England, passing similar legislation to restrict further the promotion of tobacco products. Our study suggests that these countries will remove an important and frequently encountered barrier for smokers trying to quit.

#### Declaration of interest

None.

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26 April, 2013

Honourable Maria del Carmen Arroyo  
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Dear Chairwoman Arroyo

I understand that the New York City Council will shortly be considering two tobacco bills: the Sensible Tobacco Enforcement bill, which curtails illegal and discounted tobacco products, and the Tobacco Product Display bill, which restricts the display of tobacco products in retail stores. I am a member of a research team in New Zealand (the ASPIRE2025 collaboration, which is a University of Otago research theme: [www.aspire2025.org.nz](http://www.aspire2025.org.nz)) and have undertaken research into tobacco retailing. New Zealand has recently required the removal of tobacco point-of-sale (POS) displays and I was involved in the research that supported this measure. I write in support of the measures the City Council is proposing and comment in particular on the Product Display bill, where I have greater expertise. I comment first on the evidence that tobacco retail displays have harmful effects on children and young people, and then on what I regard as the fallacious arguments that tobacco companies have raised when opposing retail display restrictions.

#### **Effect of Tobacco POS Displays on Children, Young People and Smokers**

I understand that the Tobacco Product Display bill will prohibit the display of tobacco products in retail outlets (requiring these to be stored out of customers' sight) but would still allow the display of product and price information. The research evidence shows clearly that children who are exposed to in-store displays of tobacco products are more likely to experiment with smoking; indeed, there is a dose-response relationship between exposure to in-store tobacco marketing and likelihood of smoking experimentation.<sup>1,2</sup> This relationship is hardly surprising, given marketing practice is predicated on making products highly visible and accessible.

Tobacco "powerwalls" have many adverse effects. Not only do they predispose children to smoking experimentation,<sup>3</sup> but they also undermine quit attempts as smokers attempting to become smokefree report being tempted by the large and unavoidable visual cues they see when they shop at dairies and service stations, and many supermarkets.<sup>4</sup> In summary, children more frequently exposed to tobacco retail displays are more susceptible to smoking and have a greater risk of smoking initiation.<sup>1,2,5</sup> Among adults over the legal purchase age of 18, exposure to tobacco retail displays stimulates impulse purchase,<sup>6,7</sup> creates cravings,<sup>4</sup> and promotes lapsing among quitters.<sup>4,8</sup>

#### **Evaluation of Tobacco Industry Claims**

In New Zealand, tobacco companies and their front groups have strongly opposed any restrictions on retail marketing, which they claim will confuse smokers, increase transaction times, and impose unfair costs on retailers, who, they argue, will also be at greater risk of theft and assault.<sup>9-11</sup> Contrary to these claims, smokers in jurisdictions where tobacco is no longer on open display have shown little sign of

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confusion.<sup>12</sup> Since smokers are typically highly brand loyal, with only a small proportion ever using POS displays to decide which brand to purchase,<sup>13</sup> these findings are unsurprising.

Reductions in smoking prevalence require comprehensive regulation that effectively addresses loopholes in existing statutes. For example, the fact New Zealand has disallowed tobacco advertising and sponsorship is important, but the effectiveness of this measure is undermined by the residual marketing that occurs through tobacco retail displays and branded packaging. Because tobacco retail displays continue to promote smoking as an aspirational and desirable behaviour, restrictions on this form of marketing are vital, and even more pivotal in environments where mass media advertising continues apace.

Opponents of regulation have also argued that existing regulations are sufficient to protect young people and that further regulation may result in some businesses becoming uneconomic and closing. Putting to one side the question of retailer compliance, the evidence clearly shows that young people are adversely affected by exposure to tobacco retail displays.<sup>13</sup> I am not aware of robust evidence that supports claims retailers' businesses will be adversely affected by the removal of retail displays; by contrast, the available evidence does not support these claims.<sup>9 14</sup> Even taking these unsupported arguments at face value, they amount to a claim that in-store tobacco advertising should continue so that new generations of smokers can be recruited and quitters deterred from becoming smokefree to ensure small businesses thrive. Such an argument lacks logic and moral suasion.

### **Comments on Implementation**

To simplify sales of tobacco products, I suggest these should be available from one sales register only within each store. In New Zealand, some supermarket chains have voluntarily adopted this approach, which suggests it is simple to implement and manage. This measure would physically remove tobacco products from "normal" consumer goods, further reduce the potential for young people to be exposed to tobacco products, and make storage requirements for retailers more straightforward as they could then limit in-store changes to one specific area (as opposed to modifying each till).

Although the Bill provides retailers with the flexibility to implement their own storage options, I suggest it instead require drawers fitted beneath store counters to be used. This measure would remove visual cues (such as cupboards or curtains) from sight, reduce opportunities for inadvertent exposure of tobacco products (as would occur when cupboards and curtains were opened to retrieve tobacco products), and provide retailers with an option that enabled them to face their consumers at all times. From retailers' perspective, use of drawers would also free up valuable display space behind their counters, enabling this to be sold to other manufacturers, for example, of NRT products, and providing them with additional revenue streams. Allowing retailers to implement their own storage options could result in uneven implementation of the Bill's provisions and thus fail to provide the level of protection the Bill sets out to achieve.

The Bill should remove the any provision that allows trade rebates of any kind to be used by the tobacco industry or supply-chain members used to distribute tobacco products. Rebates provide sales incentives by rewarding volume and, while this practice might be appropriate for other consumer goods, tobacco is not a normal consumer good. Removing trade discounts, rewards and incentives would also ensure tobacco companies can no longer negotiate 'exclusive distribution deals' that have enabled tobacco to be sold at special events, such as music and fashion events, that young people frequent<sup>15</sup>.

Although the Bill currently allows for provision of product and price information, I suggest this should be available on request only, to avoid situations where tobacco companies may induce retailers to display the information on counters where it will be easily visible to children, quitters and those who are struggling to remain smokefree. Further, measures should be taken to prevent manipulation of the information provided on price boards.<sup>16</sup>

I hope these comments are useful to you and your committee; please feel free to contact me should you wish to discuss any of my remarks.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Janet Hoek', with a horizontal line drawn underneath the name.

Janet Hoek  
**Professor of Marketing**  
**Deputy Director: ASPIRE2025**



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Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Re: Amendment to Admin. Code §17-704 -- Sale or Distribution of Cigars in a Package of at Least Four

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Dear Chairwoman Arroyo:

On Behalf of the Legal Resource Center for Maryland Public Health Law & Policy (LRC) at the University of Maryland Francis King Carey School of Law, we write in strong support of the "Sensible Tobacco Enforcement" bill (Int. 1021-2013). The bill addresses several important tobacco control and public health issues, including the proliferation of inexpensive, single cigars. We thank you for your leadership in introducing this bill and working to protect the public from the tobacco use epidemic

As cigarette smoking rates continue to decline, the use of other tobacco products such as cigars, cigarillos and little cigars has steadily increased. From 1997 to 2010 total cigar sales increased by more than 250% (5.2 billion to 13.3 billion). Moreover, a lower tax rate and lack of minimum packaging requirements enable cigars to be sold individually at a fraction of the price of a "pack." This makes the product more accessible to all users, but especially appealing to price sensitive youth. Nationwide, 14% of high school students have smoked a cigar in the last thirty days and nearly half admit to smoking a cigar at some point.

The Family Smoking Prevention and Tobacco Control Act gave the U.S. Food and Drug Administration (FDA) broad regulatory authority over all tobacco products; yet, agency regulations related to tobacco sales and distribution do not cover all tobacco products. The sale and distribution of cigars is currently not regulated by FDA. The failure to include cigars in the sales and distribution regulations creates confusion for tobacco retailers, consumers and enforcement officials, misleads the public with regard to the health effects of cigars relative to cigarettes and smokeless tobacco, and fails to reduce youth access to popular and dangerous tobacco products.

FDA has indicated that it intends to propose a rule in the near future that deems all tobacco products, including cigars, subject to Chapter IX of the Food, Drug and Cosmetic Act (FDCA), but it has not indicated which provisions will apply to cigars. On behalf of myriad public health officials and advocates in Maryland, we filed a Citizens' Petition with FDA requesting that they take swift action to regulate cigars; a copy of that Petition is attached. But states and cities cannot and should not await federal action. The City of New York should act now and take the lead nationally to address the growing public health problem of increased cigar use among America's youth. The Sensible Tobacco Enforcement bill seeks to achieve this by prohibiting price discounts on cigars, establishing a minimum price for little cigars of \$10.50 per pack and requiring cheap cigars and cigarillos be sold in packages of at least four and little cigars be sold in packages of at least twenty.

Your success in this endeavor will not only improve the health of New York youth but will serve as a template and impetus for other jurisdictions to take action.

For these reasons, we strongly urge you to support the Sensible Tobacco Enforcement bill. Thank you again for your ongoing commitment to decreasing tobacco use

Sincerely,



Kathleen S. Hoke, JD  
Director, Legal Resource Center for Maryland Public Health Law & Policy  
University of Maryland Francis King Carey School of Law



UNIVERSITY OF MARYLAND  
SCHOOL OF LAW

2011 MAY 10 A 11: 38

Dr. Margaret A. Hamburg  
Commissioner, Food and Drug Administration  
c/o Division of Dockets Management  
5630 Fishers Lane, Room 1061  
Rockville, Maryland 20852

May 9, 2011

Re: Citizens' Petition Pursuant to 21 C.F.R. 10.20 & 10.30

Dear Dr. Hamburg:

Enclosed please find four copies of a Citizens' Petition filed in accordance with 21 C.F.R. 10.20 and 10.30. Pursuant to the Petition, we request that the Food and Drug Administration assert jurisdiction over cigars and subject cigars to certain sales and distribution regulations that apply to cigarettes and smokeless tobacco. Specific recommendations for change are made within the Petition.

This Petition is being submitted by the Center for Tobacco Regulation, Litigation and Advocacy, Maryland Department of Health and Mental Hygiene, Maryland Association of County Health Officers, Maryland Delegate Samuel Rosenberg, Maryland Resource Center for Quitting Use and Initiation of Tobacco, American Heart Association Mid-Atlantic Affiliate, University of Maryland-College Park Colleges Against Cancer, Maryland Group Against Smoking Pollution, Baltimore County Tobacco-Free Community Coalition, Lee Bone, Adam Milam, Soula Lambropoulos, Marlene Spruiel, and Michael Dark.

Please direct any questions about the Petition to me at the address above or (410)706-1294, or [kdachille@law.umaryland.edu](mailto:kdachille@law.umaryland.edu).

Very truly yours,

  
Kathleen Hoke Dachille

FDA-2011-P-0356

CP

The undersigned submit this petition pursuant to Title 21, Chapter 9, Subchapter V, Part A of the Federal Food, Drug, and Cosmetic Act and 21 C.F.R. 10.30 to request that the Commissioner of the Food and Drug Administration (FDA) assert jurisdiction over cigars and subject cigars to certain sales and distribution regulations that apply to cigarettes and smokeless tobacco. We also request that the FDA take additional action to regulate cigars to reduce cigar consumption, particularly among young people. The authority to assert jurisdiction and to regulate cigars is found in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).<sup>1</sup>

## I. PRELIMINARY STATEMENT

Under the Tobacco Control Act, the FDA was given broad regulatory authority over all tobacco products.<sup>2</sup> Cigarettes and smokeless tobacco products are explicitly subject to FDA regulation; however, the Act requires that the FDA affirmatively assert jurisdiction over cigars before subjecting cigars to regulation.<sup>3</sup> On April 26, 2010, the FDA issued public notice of intention to deem cigars subject to the Act;<sup>4</sup> a similar notice was posted on December 20, 2010.<sup>5</sup> This is an important and necessary step to the relief sought in this Petition; but aside from these vague notices, the agency has taken no public steps to include cigars within its purview.<sup>6</sup> As a result of this failure to assert jurisdiction over cigars, the FDA's regulations related to tobacco sales and distribution, designed to reduce youth access to tobacco products at retail establishments,<sup>7</sup> do not cover cigars, which have become increasingly popular among young people. Additionally, cigars may still be sold in youth-enticing flavors, by the single, without health warnings, and with no marketing restrictions; indeed, cigars may be given away for free.

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<sup>1</sup> Pub. L. No. 111-31, 123 Stat. 1776 (2009).

<sup>2</sup> *Id.* at § 901.

<sup>3</sup> *Id.* at § 901 (b), (d).

<sup>4</sup> *See* Cigars Subject to the Family Smoking Prevention and Tobacco Control Act, 75 Fed. Reg. 21794 (Apr. 26, 2010).

<sup>5</sup> *See* Cigars Subject to the Family Smoking Prevention and Tobacco Control Act, 75 Fed. Reg. 79774 (Dec. 20, 2010).

<sup>6</sup> The agency's lack of action has allowed the cigar industry time to secure introduction of legislation to exclude certain cigars from the Agency's jurisdiction. *See* H.R. 1639 Traditional Cigar Manufacturing and Small Business Jobs Preservation Act of 2011 (proposing to eliminate the FDA's power to regulate so-called premium cigars). This buttresses the position that the FDA must act now, while power to regulate all cigars clearly exists.

<sup>7</sup> 21 C.F.R. 1140 Preamble Sections I, II III; 21 C.F.R. 1140.10-16; *see also* 21 C.F.R. 1140.30-34 (relaying that the advertising, sale, and distribution regulations apply only to cigarettes and smokeless tobacco).

By this Petition, the undersigned respectfully request that the FDA assert jurisdiction over cigars and impose certain sales and distribution regulations on cigars as quickly as possible and that the agency take swift action to prohibit the sale of flavored cigars, mandate a minimum pack size for cigars, impose textual and graphic health warnings on cigar packages and advertisements, and restrict cigar marketing to reduce youth cigar smoking. While the FDA must rigorously regulate cigars in these and any other reasonable ways, this Petition presses specifically for immediate action on the sales and distribution regulations. The failure to include cigars in the sales and distribution regulations creates confusion for tobacco retailers, consumers, and enforcement officials, misleads the public with regard to the health effects of cigars relative to cigarettes and smokeless tobacco, and fails to reduce youth access to popular and dangerous tobacco products.

We specifically request that cigars be subject to the regulatory provisions mandating that tobacco products be stored behind the counter, out of the reach of the consumer (excepting certain establishments); and that sales clerks must request identification of any customer attempting to buy tobacco products, excepting those who are 27 or older.<sup>8</sup> In addition, we request that the civil penalties for selling tobacco to a minor apply to the sale of cigars to minors<sup>9</sup> and that the giving away of cigars be prohibited.<sup>10</sup> There is no justification for not applying these common sense provisions, which are designed to reduce the sale of dangerous and addictive products to minors, to the dangerous and addictive cigars that are becoming increasingly popular among young people. Leaving cigars out of the sales and distribution regulations clearly contradicts the stated goals of the Act *and* regulations.

## II. ACTION REQUESTED

Petitioners urge the FDA to assert jurisdiction over cigars and include cigars within its sales and distributions regulations. The FDA must be wary of the potential confusion that can arise from creating federal mandates that cover certain tobacco products but not others. This can blur not only the message sent to the public about the dangers of the different products, it can create mistaken compliance by retailers with regard to state and local laws prohibiting sales to minors, restricting product placement, and imposing identification requirements with respect to all tobacco products.<sup>11</sup> Given the emphasis of the new federal regulations combined with FDA's

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<sup>8</sup> 21 C.F.R. 1140.14.

<sup>9</sup> *Id.*

<sup>10</sup> 21 C.F.R. 1140.16. Under current law, cigarettes may not be given away in any venue at any time; smokeless tobacco may be given away in certain adult-only establishments. Cigars should be subject to the more rigorous regulation applicable to cigarettes.

<sup>11</sup> State and local sales and distribution regulations typically apply to all tobacco products, not just cigarettes and smokeless tobacco. *See, e.g.,* New York Public Health Code, 1399-bb (restricting the

recent training sessions for retailers,<sup>12</sup> tobacco sellers may believe that they need only abide by federal law. While this belief is inaccurate because the Act does not preempt state and local sales and distribution laws, it is realistic to assume that many retailers are acting under this understandably misguided premise. Further, the severe health risks of cigar use combined with an increased popularity of the product among the youth population warrant immediate action on the part of the FDA.

Specifically, Petitioners request the following actions be taken. Support for these actions and further explanation is provided in the body of the Petition.

***Assert jurisdiction over cigars pursuant to the Family Smoking Prevention and Tobacco Control Act.***

***Add cigars to the tobacco products covered in the sales and distribution regulations so that cigars will not be permitted in self-service displays, cigar sellers will be required to request identification from customers, retailers who sell cigars to a minor are subject to a civil citation and fine, and the giving away of cigars will be prohibited.*** This will be accomplished by amendments to 21 C.F.R. 1140.10–14 and -16, a draft of which is provided in Attachment A.

***Draft and publish regulations that would prohibit the sale of flavored cigars, mandate textual and graphic warnings on cigar packages and advertisements, impose a minimum pack size for cigars, and impose marketing restrictions on cigars.*** The regulations imposed on cigarettes should serve as models for similar regulations on cigars.

### **III. STATEMENT OF GROUNDS**

While the health risks of cigar smoking have been known for some time, many people – consumers, policymakers, researchers, and advocates alike – have underestimated the depth and breadth of the cigar smoking dynamic by focusing exclusively on large, premium cigars used occasionally by adults. Current use of small and little cigars by adults, and with increasing

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giving away of all tobacco products); 1399-cc (prohibiting the sale of any tobacco product to a minor and imposing identification check for the sale of any tobacco product); Howard County Code Title 12, Subtitle 12 (imposing placement restrictions on all tobacco products); Subtitle 13 (imposing civil sanctions for the sale of any tobacco product to a minor); and Subtitle 14 (prohibiting the giving away of all tobacco products).

<sup>12</sup> FOOD & DRUG ADMIN., *Tobacco Retailer Compliance Training*, <http://www.fda.gov/TobaccoProducts/ResourcesforYou/ForIndustry/Retailer/ucm217770.htm> (providing archived sessions of training sessions for retailers on federal tobacco regulations).

frequency by youth, changes the picture of the health consequences of cigar use and demands regulatory action.

The term cigar includes a variety of products that differ in size, price, quality of fill tobacco, presence of filters, and available flavors. Small cigars are increasingly the tobacco product of choice for young people.<sup>13</sup> These cigars are narrow in circumference, wrapped in paper-tobacco mulch, often contain pipe or other cheap types of tobacco, and may contain a plastic or wooden filter tip.<sup>14</sup> Popular brands include Black and Mild, Swisher Sweets, and Phillie Blunt.<sup>15</sup> Many cigars in this grouping also come in a variety of flavors, such as grape, apple, cherry, wine, chocolate, cream, and peach.<sup>16</sup> These cigars contain more nicotine than a typical cigarette.<sup>17</sup> In addition, small cigars are lawfully sold individually, which means they are available at a low price, and are not required to carry health warnings when sold singly.<sup>18</sup>

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<sup>13</sup> For example, in Maryland, cigar use among young people increased from 6.5% in 2006 to 10.6% in 2008. *See* 2000–2008 Monitoring Changing Tobacco Use Behaviors, Maryland Department of Health and Mental Hygiene, Appendix A at page 30, *available at* [http://crf.maryland.gov/pdf/2009crf\\_biennial\\_tobacco\\_legis\\_rpt\\_AppendixA.pdf](http://crf.maryland.gov/pdf/2009crf_biennial_tobacco_legis_rpt_AppendixA.pdf) (last visited Apr. 21, 2011). *See also* National Survey on Drug Use and Health Report, Cigar Use Among Young Adults Age 18 to 25, Substance Abuse and Mental Health Services Administration (Jan. 15, 2009), *available at* <http://www.oas.samhsa.gov/2k8/cigars/cigars.htm> (last visited Apr. 21, 2011).

<sup>14</sup> National Cancer Institute, Factsheet on Cigar Smoking and Cancer, *available at* <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars> (last visited Apr. 21, 2011); *see also* Maryland Resource Ctr. for Quitting Use & Initiation of Tobacco, Tobacco Information, <http://www.mdquit.org/index.php/tobaccoinfo> (last visited Apr. 21, 2011).

<sup>15</sup> Black and Mild, [http://www.johnmiddletonco.com/en/cms/Products/Our\\_Products\\_and\\_Brands/default.aspx](http://www.johnmiddletonco.com/en/cms/Products/Our_Products_and_Brands/default.aspx); Swisher Sweets, <http://www.bnbtobacco.com/productlist.aspx?BID=98>; Phillies Blunts, <http://altadisusadomesticcigars.com/cigar/phillies-blunts.asp>.

<sup>16</sup> *See* website links in preceding footnote. Examples: Black and Mild–Wine, Cream, and Apple; Swisher Sweets–Grape, Peach, Strawberry, Wine, and Tequila; Phillies Blunts–Chocolate, Grape, and Sour Apple. Of course, the FDA warns parents about the enticing nature of flavored cigars vis-à-vis children. *See* FDA Parental Advisory on Flavored Tobacco Products—What You Need to Know, *available at* <http://www.fda.gov/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/ucm183196.htm> (last visited Apr. 21, 2011). Of course, per the Tobacco Control Act, cigarettes may not be sold in these youth-enticing flavors. 74 Fed. Reg. 48974 (September 25, 2009).

<sup>17</sup> *See* NCI, Factsheet on Cigar Smoking and Cancer, *supra* note 14.

<sup>18</sup> In 2000, the seven largest cigar manufacturers, importers and marketers agreed to comply with several FTC-issued consent agreements requiring them to list health warning statements on all cigar packaging and advertising, but this federal mandate, unfortunately, does not apply to single cigars. For packages and ads, only relatively benign text warnings are required (as compared to the warnings that the Agency has proposed for cigarettes). *See* Federal Trade Commission Press Release, FTC Announces Settlements Requiring Disclosure of Cigar Health Risks, June 26, 2000, *available at* <http://www.ftc.gov/opa/2000/06/cigars.shtm>.



Also becoming more popular are so-called little cigars or brown cigarettes. Little cigars are the same size as cigarettes, generally have a cellulose filter like cigarettes and are offered in a 20-pack. A 20-pack of little cigars sells at retail for much less than a package of cigarettes--in Maryland, for example, an average pack of cigarettes may cost \$5.00 whereas a pack of little cigars may cost as little as \$3.40.<sup>19</sup> Little cigars are lawfully available in sweet and sassy flavors, and may be sold singly (with singles bearing no health warnings). The little cigar is typically not considered a cigarette under the law because a small amount of tobacco is used in the paper wrapping of the product.<sup>20</sup> As the federal law currently stands, both small and little cigars do not fall under the sales and distribution regulations applicable to cigarettes.<sup>21</sup>

Premium cigars also escape the new federal regulations. However, these products do not present the same risk to young people. In comparison to small and little cigars, premium cigars are hand-rolled in whole leaf tobacco, contain more extensively fermented tobacco, are usually imported, and more expensive, ranging in price from \$2.00 to \$20.00 or more per cigar.<sup>22</sup> Additionally, premium cigars are typically sold only in specialty tobacco shops and are popular among men well over the age of 18.<sup>23</sup> There are valid reasons for allowing consumers to access premium cigars prior to purchase because the aroma and feel of the cigar are important to high-end buyers. Because most tobacconist establishments are not subject to the product placement restrictions in the sales and distribution regulation,<sup>24</sup> there is no reason to exclude premium cigars from the sales and distributions regulations. Requesting identification from consumers under age 27, prohibiting the giving away of the more expensive cigars, and being subject to penalties for sales to minors are not onerous provisions for those who sell premium cigars.

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<sup>19</sup> Federal, state and sometime local cigarette taxes far exceed taxes on cigars. *See, e.g.,* Christine D. Delnevo et al., *Trading Tobacco: Are Youths Choosing Cigars Over Cigarettes?*, 95 AM. J. PUB. HEALTH 2123, 2123 (2005).

<sup>20</sup> Most states define cigarette as a roll of tobacco made for smoking wrapped only in paper. *See, e.g.,* MD., BUSINESS REG. CODE ANN. § 16-101(b). A few jurisdictions, however, have specifically included little cigars in their definition of cigarettes for various reasons, including to impose the cigarette tax on little cigars. *See, e.g.,* VT. STAT. ANN., TIT. 32, § 7771(c); MONT. ADMIN. R. 42.31.207.

<sup>21</sup> For a comprehensive chart on the differences in cigar and cigarette regulation by the FDA, *see* Cigar Regulation: Cigarette v. Cigar Chart, Ctr. for Tobacco Regulation, *available at* [http://www.law.umaryland.edu/programs/tobacco/cigars/cigars\\_v\\_cigarettes.html](http://www.law.umaryland.edu/programs/tobacco/cigars/cigars_v_cigarettes.html) (last visited Apr. 21, 2011).

<sup>22</sup> U.S. Dep't of Health & Human Servs., Off. of Inspector General, *Youth Use of Cigars*, at 4 (1999).

<sup>23</sup> *Id.*

<sup>24</sup> 21 C.F.R. 1140.16(c)(2)(ii) (2010).

While there may be regulations appropriate for small and little cigars that may not be appropriate for premium cigars, such as minimum pack size, there is no justification for excluding premium cigars from the sales and distribution regulations pursued in this Petition.

#### **A. CIGAR USE IS A PUBLIC HEALTH PROBLEM**

The public health problems that arise from the use of tobacco products are well-established and largely unchallenged. Historically, most of the medical research and much of the governmental policy in tobacco control has focused on cigarettes and reducing youth and adult cigarette smoking prevalence. Additionally, some research has been conducted that focuses on the use and health effects of non-cigarette tobacco products, such as chew and dip. There is research that demonstrates the dangers of cigar smoking as well; but we have not seen the policy response to the cigar smoking dynamic as we have with cigarettes and smokeless tobacco. The FDA must fill this gap and act to regulate cigars.

Beginning with the first comprehensive study scientifically documenting the health risks of smoking cigars, the National Cancer Institute's *Cigars: Health Effects and Trends*, data show causal connections between regular cigar use and cancers of the lungs, larynx, oral cavity, and esophagus.<sup>25</sup> Regular cigar smokers and those who inhale deeply, both of which are more likely to occur with small and little cigars that have less harshly flavored smoke and may contain filters, are at increased risk of coronary heart disease and chronic obstructive pulmonary disease.<sup>26</sup> Further, cigar smoke is composed of the same carcinogenic and toxic elements as in cigarette smoke.<sup>27</sup>

In a large cross-sectional study, cigar smoking was found to increase cotinine levels and was associated with decreased lung function and increased odds of airflow obstruction.<sup>28</sup> Cigar smoke particles can be found in the lung regardless of how deeply the smoke is inhaled,<sup>29</sup> meaning harmful effects can be found even in those who use premium cigars and do not inhale as deeply as those who use small and little cigars. The exposure to secondhand smoke and greater capacity for nicotine absorption are specific harms that are more acute to cigar and pipe

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<sup>25</sup> *Cigars: Health Effects and Trends*, The Nat's Cancer Inst., Smoking and Tobacco Control Monograph No. 9. (February 1998).

<sup>26</sup> Gary A. Giovino, *The Tobacco Epidemic in the United States*, 33 AM J. PREV. MED. S318, S319 (2007).

<sup>27</sup> *Id.*; see also NCI Factsheet on Cigars and Cancer, *supra* note 14.

<sup>28</sup> Josanna Rodriguez, et al., *The Association of Pipe and Cigar Use with Cotinine Levels, Lung Function, and Airflow Obstruction*, 152 ANNALS INTERNAL MED. 201, 209 (2010).

<sup>29</sup> *Id.* at 208.

tobacco products.<sup>30</sup> In fact, cigars can be more harmful than cigarettes because of higher levels of tobacco-specific nitrosamines.<sup>31</sup> The tar, carbon monoxide, and ammonia levels in cigars are higher than those found in cigarettes as well.<sup>32</sup> And the tar found in cigars “contains higher concentrations of carcinogenic polycyclic aromatic hydrocarbons,” which have been linked to an increased capability of producing tumors.<sup>33</sup>

These findings are consistent with other studies that have linked cigar smoke to numerous health problems, such as a decline in lung function, increased mortality from emphysema and chronic bronchitis, and a general reduction in life expectancy of cigar smokers.<sup>34</sup> The disease free life-years lost due to cigar smoking have been estimated at 5.2 years, compared to 5.8 for cigarette smoking.<sup>35</sup> Meanwhile, cigar smokers in one study experienced an increased risk of hospitalization and death due to chronic obstructive pulmonary disease, the fourth leading cause of death in the United States.<sup>36</sup>

#### **B. CIGAR USE IS INCREASING, ESPECIALLY AMONG YOUTH POPULATION**

That the failure to include cigars in the sales and distribution regulations subverts the public health goals of the Act and the regulations is evident from research showing the health risks associated with cigar use. Recent evidence suggests adolescents are looking for alternative tobacco products, and they often turn to cigars. The 2005 Youth Risk Behavior Survey reported that current tobacco use was 28.4% and current cigar use was 14.0% among high school students.<sup>37</sup> In 2010, the current tobacco use dropped to 26%, yet, the current cigar use remained

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<sup>30</sup> See *id.* (stating that secondhand cigar and pipe smoke can be particularly harmful); Michael B. Steinberg & Cristine D. Delnevo, *Tobacco Smoke by Any Other Name is Still as Deadly*, 152 ANNALS INTERNAL MED. 259, 259 (2010) (“[T]he higher pH of cigar smoke aids absorption of nicotine.”).

<sup>31</sup> Steinberg & Delnevo, *supra* note 30, at 259.

<sup>32</sup> Frank Baker, *et al.*, *Health Risks Associated with Cigar Smoking*, 284 J. AM. MED. ASS’N 735, 737 (2000).

<sup>33</sup> *Id.*

<sup>34</sup> Rodriguez, *supra* note 28, at 208.

<sup>35</sup> Steinberg & Delnevo, *supra* note 30, at 259.

<sup>36</sup> Rodriguez, *supra* note 28, at 201.

<sup>37</sup> *Youth Risk Behavior Surveillance – United States*, Ctrs. For Disease Control & Prevention (2005), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5505a1.htm>.

steady at 14%.<sup>38</sup> Given that there was no decline in cigar use from 2000-2004, and in fact an increase over the past decade as a whole,<sup>39</sup> cigar use among minors is clearly a public health problem that must be addressed.<sup>40</sup>

Equally disconcerting, in particular, is the concurrent adolescent use of cigarettes and cigars. For instance, in northern Virginia, 45% of current cigarette smokers in ninth grade reported using at least one other tobacco product, the highest reported number being cigars.<sup>41</sup> Among California high school students, over 40% of current established smokers reported supplementing their cigarette smoking with smokeless tobacco and cigars.<sup>42</sup> In addition to the health concerns associated with cigar use in general, this growing phenomenon of youth smoking cigars with cigarettes highlights the perplexing nature of the FDA choosing to address the potential sale to youth of only one of those products.<sup>43</sup> For this reason, examining cigarette use without assessing cigar use overlooks a critical aspect of adolescent tobacco use and ignores a growing public health issue.

Cigars are no longer seen as merely another option for tobacco users, but have vaulted to the forefront as the primary tobacco product for youth in urban and suburban areas.<sup>44</sup> Studies have shown that cigars are perceived by youth populations more positively than cigarettes, as

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<sup>38</sup> *Youth Risk Behavior Surveillance – United States*, Ctrs. For Disease Control & Prevention (2010), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5905a1.htm>.

<sup>39</sup> Ashley Brooks, *et al.*, *Cigars, Cigarettes, and Adolescents*, 32 AM. J. HEALTH BEHAV. 640, 640 (2008) (finding a steady cigar use of 12.8%); see also Maryland's 2000–2008 Monitoring Changing Tobacco Use Behaviors, *supra* note 13; National Survey on Drug Use and Health Report, *supra* note 13.

<sup>40</sup> In one year, from 2006 to 2007, the cigar industry increased its sales by 9.2%, which at the time gave it eleven straight years of retail sales over a billion dollars. THE MAXWELL REPORT: YEAR END & FOURTH QUARTER 2007 SALES ESTIMATES FOR THE CIGAR INDUSTRY 1 (2008). Premium cigars accounted for less than 5% of the cigars sold during this time, and the overall increase was in spite of the fact that large cigars actually dropped 6% in dollars and 8% in units sold. *Id.*

<sup>41</sup> Kenneth P. Tercyak & Janet Audrain, *Psychosocial Correlates of Alternate Tobacco Product Use During Early Adolescence*, 35 PREVENTATIVE MED. 193, 193 (2002).

<sup>42</sup> Elizabeth A. Gilpin & John P. Pierce, *Concurrent Use of Tobacco Products by California Adolescents*, 36 PREVENTATIVE MED. 575, 577 (2003).

<sup>43</sup> In some places cigars may be even more popular than cigarettes when it comes to adolescents. One study administered to a random sample of 4335 high school students in a Midwestern county found that 17% of respondents were current cigarette smokers and 18% were current cigar smokers. Brooks, *supra* note 39, at 643.

<sup>44</sup> Brooks, *supra* note 39, at 647.

they are viewed as more natural, less harmful, cheaper, and better smelling.<sup>45</sup> This has most likely contributed to the fact that even middle school students are partaking, with 7% of middle school students reporting current use of cigars in 2005.<sup>46</sup> This is extremely troubling given the fact that most smokers become addicted to tobacco before they are actually old enough to legally purchase tobacco products.<sup>47</sup> And by failing to include cigars in the regulations, the FDA is contributing the youth's misguided notion of a healthier tobacco product,<sup>48</sup> while allowing it to be cheaper and easier to access.

Yet this trend should not be surprising in the least. Policymakers have typically focused their anti-tobacco efforts on cigarettes, rather than tobacco products in general.<sup>49</sup> The failure of the FDA to assert jurisdiction and to include cigars in the regulations created under the Tobacco Control Act reflects this neglect.<sup>50</sup> This has in fact provided incentives and loopholes for the expansion of the market for cigars.<sup>51</sup> Disproportionate tax increases is another example of cigars being overlooked. Federally, the largest single cigarette tax increase was implemented recently.<sup>52</sup> Many states have aggressively increased cigarette taxes to reduce consumption and particularly deter young people from initiating. Yet increases in taxes for cigars have not been nearly as drastic as those for cigarettes, and price disparities between cigarettes and cigars may in fact be encouraging the use of cigars, especially among low-income and youth populations.<sup>53</sup>

The tobacco industry has taken notice of these facts, and has responded accordingly. Tobacco advertising and marketing campaigns have focused on the critical youth population by marketing single cigars or small packages, which make them a cheaper alternative, as well as

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<sup>45</sup> *Id.*

<sup>46</sup> Jeanne S. Ringel, *et al.*, *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Survey*, 95 AM. J. PUB. HEALTH 995, 996 (2005).

<sup>47</sup> Vilma Cokkinides, *et al.*, *Tobacco Control in the United States Recent Progress and Opportunities*, 59 CA: A CANCER J. CLINICIANS 352, 353 (2009).

<sup>48</sup> Baker, *supra* note 32, at 647 (stating that youth perceive cigars as less harmful than cigarettes).

<sup>49</sup> Ringel, *supra* note 46, at 995.

<sup>50</sup> Steinberg & Delnevo, *supra* note 30, at 259.

<sup>51</sup> *Id.*

<sup>52</sup> Lawrence O. Gostin, *FDA Regulation of Tobacco: Politics, Law, and the Public's Health*, 302 J. AM. MED. ASS'N 1459, 1460 (2009).

<sup>53</sup> *See* Delnevo, *supra* note (finding that most states have lower taxes on cigars than cigarettes).

utilizing directed advertising of small cigars in communities in which they are most popular.<sup>54</sup> The expansion of the cigar market and the promotional efforts behind the dangerous products strike an uncanny resemblance to the methods used for the smokeless tobacco campaign, which eventually created a public health problem of its own.<sup>55</sup> The tobacco industry has also managed to increase their cigar sales by avoiding certain regulations made for cigarettes or little cigars.<sup>56</sup> For example, the weight of some cigars were increased slightly to shift the product from the “little cigar” category into the “cigar” category, enabling the product to be sold at a lower retail price and sales to increase.<sup>57</sup>

Efforts to discourage the purchasing of cigarettes need to be expanded to the increasingly popular cigar category of tobacco products. The Tobacco Control Act demands that the FDA promulgate regulations to protect public health by taking into consideration the risks and benefits to the entire population with regard to youth access to tobacco products.<sup>58</sup> Regulatory approaches that are not applied and implemented evenly across the board result in increased vulnerability in some groups, such as young adults not in college, the unemployed, the underemployed, and the economically disadvantaged.<sup>59</sup> As such, advocates have expressed concern that current FDA action does not go far enough.<sup>60</sup> One solution would be to apply the law, and the regulations generated from it, to cigars given their recent boom in usage.<sup>61</sup>

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<sup>54</sup> See Frances A. Stillman, *et al.*, *Barriers to Smoking Cessation in Inner-City African American Young Adults*, 97 AM. J. PUB. HEALTH 1405, 1407 (2007) (describing influences of increased smoking and the focused advertising of Black and Mild small cigars to African Americans, which also can be bought individually for cheap prices). Former Baltimore City Health Commissioner, Dr. Joshua Sharfstein, issued a regulation mandating a 5-pack minimum for cheap cigars. Although the regulation has been challenged in litigation, the substantive merit of the regulation is comprehensively and effectively set forth in the written justification for the regulation. Final Regulation Banning the Sale of Single, Cheap Cigars in Baltimore City, *available at* [http://www.baltimorehealth.org/info/2009\\_01\\_14.CigarRegs.pdf](http://www.baltimorehealth.org/info/2009_01_14.CigarRegs.pdf) (last visited Apr. 21, 2011).

<sup>55</sup> Baker, *supra* note 32, at 737.

<sup>56</sup> Steinberg & Delnevo, *supra* note 30, at 259.

<sup>57</sup> *Id.*

<sup>58</sup> Olga Yevtukhova, *The Food and Drug Administration Kick the Habit: The FDA's New Role in Regulation of Tobacco Products*, 35 AM. J. L. & MED. 700, 700–01 (2009).

<sup>59</sup> See Stillman, *supra* note 54, at 1405 (finding that past cigarette taxes and smoking restrictions have not been applied equally across communities, leaving some populations more vulnerable and less likely to quit smoking).

<sup>60</sup> Gostin, *supra* note 52, at 1459.

<sup>61</sup> See Cokkinides, *supra* note 47, at 360–61 (“Other tax policies to be considered are making tax rates for cigarettes and other tobacco products (smokeless products and cigars) equivalent for the purpose of

While an increase in price alone would almost certainly have the desired effect of reducing cigar sales, especially for youths,<sup>62</sup> cigars are also more convenient to purchase if retailers are not applying the sales and distribution regulations to them, which they are not required to do. Youth have consistently stated that convenience and lower costs substantially influence their decision to purchase tobacco products.<sup>63</sup> With some cigars available individually for a dollar each and no federal law mandating restrictions on their sales, it cannot be a shock they have become a convenient alternative to cigarettes.<sup>64</sup> That cigars may be given away for free only increases the risk of youth access and increased addiction across all demographics. Cigars have increased to the point of becoming a threat to public health that deserves national attention.<sup>65</sup> If the marketing of cigars remains under the radar, the amount of people switching from increasingly expensive cigarettes to cheap cigars is likely to multiply.<sup>66</sup> Assuming that a reduction in tobacco usage is the actual goal of the Tobacco Control Act and the regulations produced from it, this fact will only dampen any supposed achievement gained from decreasing cigarette use.

## CONCLUSION

Preventing adolescents from gaining access to and experimenting with tobacco of any sort, and becoming dependent on nicotine, is an important public health priority. Following the goal of curbing youth tobacco use,<sup>67</sup> the FDA should assert jurisdiction over cigars and include cigars in the products subject to the sales and distribution regulations. Given the upward trend of cigar use among youth and the risks associated with cigar smoking, there is absolutely no reason

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preventing young smokers' substituting or taking up new tobacco products in lieu of cigarettes."); Baker, *supra* note 32, at 739 ("Laws and regulations limiting the marketing of cigarettes and access to cigarettes by minors should be applied to all tobacco products."); Delnevo, *supra* note 53, at 2123 ("To prevent youths from substituting one tobacco product for another, state and federal policy should be to impose equivalent taxes on all tobacco products.").

<sup>62</sup> See Ringel, *supra* note 46, at 996 (finding that an increase in cigar prices was associated with a decrease in cigar use).

<sup>63</sup> Stillman, *supra* note 54, at 1406–07.

<sup>64</sup> *Id.*

<sup>65</sup> Delnevo, *supra* note 53, at 2123.

<sup>66</sup> Steinberg & Delnevo, *supra* note 30, at 260.

<sup>67</sup> The Centers for Disease Control includes tobacco use within the Six Winnable Battles in Public Health. See Winnable Battles, CDC, available at <http://www.cdc.gov/WinnableBattles/> (last visited Apr. 21, 2011).

for cigars not to be included. Understanding the full picture of tobacco use among youth, as well as the policies followed by the retailers providing them access, should aid public health professionals, policy makers, and the FDA in correctly organizing efforts for preventing and reducing adolescent tobacco use.

#### **IV. ENVIRONMENTAL IMPACT**

The action requested in this Petition will not have any significant effect on the quality of the human environment.

#### **V. ECONOMIC IMPACT**

No statement of economic impact of the requested action is presented as none has been requested by the Commissioner.<sup>68</sup>

#### **VI. CERTIFICATION**

The undersigned certify, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioners and which are unfavorable to the petition.



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<sup>68</sup> 21 C.F.R. 10.30 (b) (2009).



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exemption 6

4520 11 MAY 12 A9:06

Ms. Michelle Bigesby  
Food and Drug Administration  
c/o Division of Dockets Management  
5630 Fishers Lane, Room 1061  
Rockville, Maryland 20852

May 11, 2011

Re: Citizens' Petition Pursuant to 21 C.F.R. 10.20 & 10.30

Dear Ms. Bigesby:

Thank you very much for alerting me to my mistake of failing to sign the final page of the petition submitted on May 9, 2011. I have enclosed four pages with my original signature. Please let me know if I can provide you with anything else.

Best Wishes,

A handwritten signature in black ink, appearing to read 'Kathleen Hoke Dachille', written in a cursive style.

Kathleen Hoke Dachille  
Center for Tobacco Regulation  
University of Maryland School of Law  
500 W. Baltimore Street  
Baltimore, Maryland 21201  
(410) 706-1294

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**FedEx** US Airbill  
Express
FedEx  
Tracking  
Number

8696 4909 6877

## 1 From This portion can be removed for Recipient's records.

Date 11/11/11 FedEx Tracking Number 869649096877Sender's Name Kathleen Dackille Phone 410 706 1294Company UNIV OF MD SCHOOL OF LAWAddress 500 W BALTIMORE ST RM 443

Dept./Floor/Suite/Room

City BALTIMORE State MD ZIP 21201-1701

## 2 Your Internal Billing Reference

3 To Recipient's Name Donna A. ... Phone ...Company ...Recipient's Address ...

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

Address ...

To request a package be held at a specific FedEx location, print FedEx address here.

City Powder Mill State MD ZIP 20852

0403572676



8696 4909 6877

## Recipient's Copy

## 4a Express Package Service

☐ FedEx Priority Overnight  
Next business morning \* Friday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected.

☒ FedEx Standard Overnight  
Next business afternoon.\*  
Saturday Delivery NOT available.

## Packages up to 150 lbs.

☐ FedEx First Overnight  
Earliest next business morning  
delivery to select locations.\*  
Saturday Delivery NOT available.

☐ FedEx 2Day  
Second business day \* Thursday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected.

☐ FedEx Express Saver  
Third business day.\*  
Saturday Delivery NOT available.

\* To most locations

## 4b Express Freight Service

☐ FedEx 1Day Freight\*  
Next business day \*\* Friday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected.

☐ FedEx 2Day Freight  
Second business day \*\* Thursday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected.

## Packages over 150 lbs.

☐ FedEx 3Day Freight  
Third business day \*\*  
Saturday Delivery NOT available.

\* Call for Confirmation.

\*\* To most locations

## 5 Packaging

☐ FedEx Envelope\*

☐ FedEx Pak\*  
Includes FedEx Small Pak,  
FedEx Large Pak, and FedEx Sturdy Pak.

☒ FedEx Box

☐ FedEx Tube

☐ Other

\* Declared value limit \$500.

## 6 Special Handling

☐ SATURDAY Delivery  
Not available for  
FedEx Standard Overnight,  
FedEx First Overnight, FedEx Express  
Saver, or FedEx 3Day Freight.

☐ HOLD Weekday  
at FedEx Location  
Not available for  
FedEx First Overnight.

☐ HOLD Saturday  
at FedEx Location  
Available ONLY for FedEx Priority  
Overnight and FedEx 2Day  
to select locations.

## Does this shipment contain dangerous goods?

One box must be checked.

☒ No

☐ Yes
As per attached  
Shipper's Declaration
☐ Yes
Shipper's Declaration  
not required
☐ Dry Ice

Dry Ice, 9 UN 1845

x kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

☐ Cargo Aircraft Only

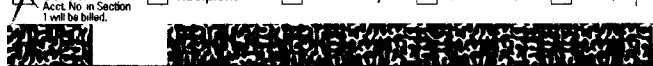
## 7 Payment Bill to:

☒ Sender  
Acct. No. in Section  
1 will be billed.

☐ Recipient

☐ Third Party

☐ Credit Card

☐ Cash/Check


Total Packages

Total Weight

Credit Card Auth.

Our liability is limited to \$100 unless you declare a higher value. See the current FedEx Service Guide for details.

## 8 Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☒ No Signature  
Required  
Package may be left  
without obtaining a  
signature for delivery.

☐ Direct Signature  
Someone at recipient's  
address may sign for  
delivery. Fee applies.

☐ Indirect Signature  
If no one is available at  
recipient's address, someone  
at a neighboring address may  
sign for delivery. Fee applies.

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Date

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Sender's  
Name

Kathleen Dachte

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UNIV OF MD SCHOOL OF LAW

Address

700 W BALTIMORE ST RM 443

Dept./Floor/Suite/Room

City

BALTIMORE

State

MD

ZIP

21201-1701

## 2 Your Internal Billing Reference

Clinic

## 3 To

Recipient's  
Name

Ms. Michaela Bigesby

Phone

Company

Food and Drug Administration

Recipient's  
Address

c/o Division of Products

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

Address

5630 E. 1st Lane Room 1061

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## 4a Express Package Service

Packages up to 150 lbs.

☒ FedEx Priority Overnight

Next business morning \* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx Standard Overnight

Next business afternoon \* Saturday Delivery NOT available.

☐ FedEx First Overnight

Earliest next business morning delivery to select locations \* Saturday Delivery NOT available.

☐ FedEx 2Day

Second business day \* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx Express Saver

Third business day \* Saturday Delivery NOT available.

\* FedEx Envelope rate not available. Minimum charge, One pound rate.

\* To most locations.

## 4b Express Freight Service

Packages over 150 lbs.

☐ FedEx 1Day Freight\*

Next business day \*\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx 2Day Freight

Second business day \*\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.

☐ FedEx 3Day Freight

Third business day \*\* Saturday Delivery NOT available.

\* Call for Confirmation

\*\* To most locations.

## 5 Packaging

☒ FedEx Envelope\*☐ FedEx Pak\*  
Includes FedEx Small Pak,  
FedEx Large Pak, and FedEx Sturdy Pak.☐ FedEx Box☐ FedEx Tube☐ Other

\* Declared value limit \$500.

## 6 Special Handling

Include FedEx address in Section 3.

☐ SATURDAY Delivery

Not available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.

☐ HOLD Weekday at FedEx Location

Not available for FedEx First Overnight.

☐ HOLD Saturday at FedEx Location

Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods?

One box must be checked

☒ No☐ Yes

As per attached Shipper's Declaration

☐ Yes

Shipper's Declaration not required

☐ Dry Ice

Dry Ice, 8, UN 1845 x kg

☐ Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

## 7 Payment Bill to:

☒ Sender  
Acct No. in Section I will be billed☐ Recipient☐ Third Party☐ Credit Card

Obtain Recip. Acct. No.

☐ Cash/Check

Total Packages

Total Weight

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## 8 Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☒ No Signature Required  
Package may be left without obtaining a signature for delivery.☐ Direct Signature  
Someone at recipient's address may sign for delivery. Fee applies.☐ Indirect Signature  
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies.

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# Tobacco Prices Should be Uniformly High For Maximum Public Health Gains

Testimony before the New York City Council Health Committee

Presented by

Andrew Hyland, PhD

Chair

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May 2, 2013

I am Chair of the Department of Health Behavior at Roswell Park Cancer Institute in Buffalo, New York. I have been actively involved in tobacco control policy research for nearly 20 years and have over 200 peer review publications and numerous grants and contracts from government sources. I am the Director of the New York State Smokers' Quitline and have helped evaluate the New York State Tobacco Control Program for the last 10 years.

Understanding the role of tobacco prices on consumer behavior has been a priority area of research for my group. The purpose of this testimony is to share with the NYC Council Health Committee the highlights of our research to help inform their deliberations as they consider bill T2013-6008.

This bill will address loopholes in current legislation that facilitate unequal pricing of tobacco products, which will promote quitting in adults and make it less likely kids will start, resulting in fewer New Yorkers suffering from the adverse health effects from tobacco use. In addition to these savings, tobacco tax revenue collection is expected to increase.

Smoking is the number one preventable cause of death in America. Over 440,000 people die each year in the United States. At least 8.6 million people suffer from a serious chronic disease like emphysema caused by smoking. Being the largest city in the country, New York City experiences a huge share of this national burden.

Higher prices for tobacco are perhaps the most effective strategy to reduce tobacco use, particularly among children, and to save lives. A pricing policy that requires tobacco products to be uniformly expensive is most effective in reducing tobacco use. New York City has been the most proactive jurisdiction in the nation to achieve this goal with \$5.85 in local and state excise taxes plus additional general sales tax. However, loopholes in current policies that allow for widely available low/untaxed products from outside jurisdictions and that allow for product

reclassification to take advantage of different tax policies for cigars severely weaken the State and City tobacco tax policy as a health promotion instrument.

Because of the large price differentials between full tax products sold in NYC and neighboring jurisdictions, there is a significant incentive, both for individual consumers as well as organized smuggling operations, to exploit those price differentials for their financial advantage. Two vehicles for this are 1) tobacco products manufactured on Indian Reservations, which don't include any state or local taxes; and 2) products purchased from states that have lower excise taxes and/or don't have excise tax stamps can easily have counterfeit stamps applied and smuggled into the NYC distribution chain.

Another aspect of the current tax policy is that cigars are taxed at a much lower rate than cigarettes. The historical distinguishing feature between cigars, little cigars, and cigarettes is that cigars are wrapped in tobacco leaf and cigarettes are wrapped in paper. For many products on the market today it is difficult to tell the two apart, yet one product experiences significantly lower taxes than the other. Consumption of these little cigars has increased in times when cigarette taxes have increased, thus serving as a less expensive substitute product for cigarettes.

The impact of this situation is that the strong tobacco tax policy New York City has on paper is comparatively weak in practice. Just 4 in 10 cigarette packs from a systematic observational study of discarded packs in New York City bore the appropriate tax stamp. This means the majority of cigarettes consumed in the City are contraband.

Because of this, tobacco products in New York City are more affordable than they would be otherwise, which leads to fewer people quitting and more young people starting. Research we've done in a large prospective study of US tobacco users shows people who engage in price minimization behavior (e.g., buying from an Indian Reservation or another state with lower



taxes) are about 20% less successful in quitting, even after controlling for other factors like how much they smoke and their educational level. These are people for whom the high price would have been a major incentive for them to quit; however, the availability of these cheaper products gives them a mechanism to afford continued smoking.

Our rough calculations indicate that efforts to require cigars and cigarettes to be comparably priced at a high minimum price will result in at least 7,000 additional quitters under conservative assumptions, and perhaps much higher, per year in New York City. The public health benefits to the City will be tremendous.

As a health professional who works in a cancer hospital, I see the toll tobacco use places on our society every day. Strategies to make these products less accessible will reduce their appeal and use in both youth and adults. Based on my scientific expertise, the measures proposed in this bill will make significant advances to this goal.



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NEW  
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May 1, 2013

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New York City Council  
250 Broadway, Suite 1768  
New York, NY 10007

**RE: Int 1020-2013 A Local Law to amend the administrative code of the city of New York, in relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores.**

Dear Chairwoman Del Carmen Arroyo:

I write on behalf of the Center for Public Health and Tobacco Policy ("Center"), a grantee of the New York State Department of Health, to provide information about the importance of policies that restrict the display of tobacco products as a component of a comprehensive tobacco control program. The Center serves as a resource for the New York State tobacco control community and provides policy support services, including the development and support of policy initiatives that reduce tobacco-related morbidity and mortality. The Center is located at New England Law | Boston and is affiliated with the Tobacco Control Legal Consortium, a national legal network assisting communities with tobacco law-related issues.

Tobacco product displays are designed by the tobacco industry specifically to recruit new [i.e., "youth"] tobacco users and retain current users likely to quit. Requiring this unique and deadly product to be kept out of sight will reduce youth initiation and increase the success of quit attempts by adults and is an appropriate component of comprehensive tobacco control program.

### **Tobacco Companies Carefully Design Product Displays to Encourage Tobacco Use, Particularly by Youth**

The tobacco industry recognizes the critical correlation between in-store product visibility and increased sales. As stated in an industry sales manual "[t]he more visible our products are to consumers the more sales we make."<sup>1</sup> To that end, tobacco companies spend significant resources researching and designing product packaging and retail displays to ensure that they will reach their primary target market: adolescents. Industry's efforts have paid off: their widespread and massive product displays, known as "powerwalls," are effective in trivializing tobacco use and insidiously capturing the interest of new users -- overwhelmingly youth. Displays of tobacco products such as these powerwalls -- separate and apart from other tobacco advertising -- increase the likelihood that youth will start smoking.<sup>2</sup>

#### *New customers are underage customers*

Although tobacco companies often assert that their marketing efforts (including packaging design and point-of-sale displays) are intended only to promote brand-switching among adult tobacco users, this assertion is belied by the companies' internal documents and by the basic economics of the tobacco industry.<sup>3</sup> Cigarette customers are extremely brand loyal, and brand switching is extremely uncommon among established smokers.<sup>4</sup> As a result, "there is a strong incentive for a

company to compete for market share among beginning smokers, since the long term prosperity of a given cigarette brand and company will depend on the percentage of new smokers than can be captured annually.”<sup>5</sup> As the U.S. Surgeon General has noted – and as tobacco companies are well aware – the average age at which smokers try their first cigarette is fifteen or sixteen.<sup>6</sup> Before reaching the age of eighteen, many already regret their decision to smoke.<sup>7</sup> And after age eighteen, it is extremely rare for people to begin smoking (nearly 90% percent of daily smokers began smoking before the age of 18; 99% start by age 26).<sup>8</sup> Tobacco companies, by necessity, model their business around recruiting “replacement smokers” to replace those who quit smoking or die from its effects.<sup>9</sup>

*“Perceived popularity” is critical*

With respect to *package design*, “tobacco companies have conducted a vast amount of consumer research on this subject in their efforts to design packs that might promote cigarette sales.”<sup>10</sup> As one tobacco document researcher summarized after reviewing packaging-related documents, “Documents repeatedly show that tobacco companies are aware that brand choices are made relatively early in the life of a smoker and that packaging is an important ingredient in positioning brands to be attractive to youth.”<sup>11</sup> Philip Morris documents, for example, have suggested that innovative packaging can be used to attract young people, and that “slick, sleek, flashy, glittery, shiny, silky, bold” packaging is particularly attractive to young women.<sup>12</sup> Tobacco companies have also experimented with a wide range of methods to make tobacco packages more attractive to youth, including the use of holograms, collectable images, and photographs on the pack face.<sup>13</sup>

Tobacco company documents disclosed as a result of litigation illustrate how central *product displays* are to the industry’s efforts to attract new – overwhelmingly underage – smokers. A recurring theme in the industry documents is that overall brand performance is tied to its perceived popularity among youth, which is, in turn, a direct result of retail visibility.<sup>14</sup> For example, an internal memo from the Senior Vice President of Marketing at Philip Morris explicitly recognized that new tobacco users try products with “continuous leadership display presence,” and advised the company to

[s]eek ways to display Marlboro [brand] continually in the convenience stores to fully capitalize on new smoker trial and reduce temporary “defection. . . .” For Marlboro, the most critical retail visibility is displayed product. . . . This should be our first priority. We are missing trial opportunities.<sup>15</sup>

Tobacco companies have mastered retail visibility with their widespread use of powerwalls – massive concentrations of cigarette packs displayed behind the cash register. A survey of New York State retailers found that on average, the display of tobacco products in retail store occupies 32 square feet and consists of more than 200 cigarette pack facings.<sup>16</sup> Eighty percent of retailers in New York City who sell tobacco products devote more than 50 percent of the space behind the counter – the most valuable space in the entire store – to tobacco products.<sup>17</sup>

Tobacco powerwalls “prompt youth toward smoking . . . providing powerful cues to begin and to continue smoking.”<sup>18</sup> This occurs through several mechanisms. For one, “[t]he widespread, conspicuous presence of tobacco displays at every corner store creates an impression of perceived popularity,” and when adolescents overestimate the prevalence of tobacco use, they are more likely to try tobacco products themselves (which quickly leads to addiction).<sup>19</sup> Secondly, “[t]he presence of tobacco in stores alongside everyday items such as [candy,] soft drinks and magazines helps to create a sense of familiarity with tobacco products.”<sup>20</sup> This sense of “friendly familiarity” helps to undermine youth perceptions of the harmfulness of tobacco by suggesting that tobacco use is socially acceptable and commonplace.<sup>21</sup>

Finally, the large powerwalls (even in the absence of any tobacco advertising) convince underage youth that they are more likely to be successful in attempting illegal tobacco purchases.<sup>22</sup> Indeed, one-quarter of underage New York City youth smokers report buying cigarettes from stores.<sup>23</sup> Youth who believe that products are easily accessible are at increased risk of taking up smoking.<sup>24</sup>

In addition to their effect on youth, tobacco powerwalls also prompt impulse purchases from adults – especially those trying to quit.<sup>25</sup> Environmental cues such tobacco product displays are instrumental in eliciting cravings among those addicted to nicotine, and research indicates that the greater one's level of exposure to these cues, the greater the likelihood of relapse.<sup>26</sup> A survey conducted in Australia found that 25% of smokers had made unplanned purchases in the last year as a result of seeing tobacco powerwalls. In another study, which interviewed smokers immediately after they purchased cigarettes, nearly half of those who made unplanned purchases said that point-of-sale product displays had influenced their decision.<sup>27</sup>

*Generated by industry, not retailer*

Securing retail visibility is imperative for tobacco companies. In the vast majority of cases, tobacco manufacturers maintain tight control over design and layout of the powerwalls through the use of retail promotional contracts. Tobacco companies spend over \$480 million annually on these contracts, which provide payments or discounts to retailers in return for control over the display of the companies' products.<sup>28</sup> The more control ceded to the tobacco manufacturer, the higher the payment.<sup>29</sup> Given the competitive nature of retail, it is reasonable for retailers to feel compelled to agree to a promotional contract with at least one tobacco company. As a result, tobacco products are conspicuously and prominently displayed in nearly every corner market, convenience store, gas station, and chain pharmacy in the most valuable real estate in the store – immediately behind the check-out counter.<sup>30</sup> Internal tobacco industry documents confirm that these displays are designed to attract new users and to increase overall sales (*not* simply to encourage brand-switching among existing users).<sup>31</sup>

Numerous other tobacco industry documents “reveal[] a strategic interest in placing youth oriented brands, promotion, and advertising in locations where young people congregate,” including locations near high schools.<sup>32</sup> Stanford researchers have shown that in California, stores popular with middle school students contained twice as much shelf space for Marlboro, Camel, and Newport cigarettes – the cigarette brands most popular with teens – in comparison to other stores in the same community.<sup>33</sup>

**Numerous countries have recognized that a product display restriction is one of the most effective measures that can be taken to reduce tobacco use, particularly among youth.**

One hundred seventy-four nations are parties to the World Health Organization Framework Convention on Tobacco Control (FCTC), an international treaty addressing tobacco in which member states commit, *inter alia*, to reducing tobacco advertising and promotion. (The U.S. is a signatory to the FCTC, but is not a party, as the Senate has not ratified the treaty.) The Guidelines for the Implementation of the FCTC state:

Display of products is a key means of promoting tobacco products and tobacco use, including by stimulating impulse purchases of tobacco products, giving the impression that tobacco use is socially acceptable and making it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.



... Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale, including fixed retail outlets and street vendors.<sup>34</sup>

This demonstrates broad international recognition that tobacco product display restrictions are an effective policy approach to reducing tobacco use.

In accordance with the FCTC's recommendation, and in recognition of the evidence demonstrating the impact of tobacco displays on youth, numerous countries across the globe have prohibited the display of tobacco products in retail establishments open to minors. Such laws have been adopted in Australia, Canada, England, Iceland, Norway, Thailand, and elsewhere. There is mounting evidence that these actions have assisted these countries in reducing their tobacco use rates.<sup>35</sup> For example:

- In Iceland, which implemented display restrictions in 2001, smoking rates among 15-16 year olds fell from 18.6% in 1999 to 11.1% in 2007.<sup>36</sup>
- In Canada, the smoking rate for 15- to 17-year-olds in Canada decreased from 13.8% in 2005 to 9.7% in 2008 (a 30% reduction), with the decrease more pronounced in provinces that had display restrictions in place for the longest time.<sup>37</sup>

While the display restrictions in these countries were not identical to the proposed measure (and other tobacco control measures were implemented concurrently), the experience of these countries supports the conclusion that restricting the display of tobacco products plays a role in reducing tobacco use, particularly among youth.

Sincerely,



Ilana M. Knopf, J.D.  
Director

Cc: Hon. Inez E. Dickens  
Hon. Mathieu Eugene  
Hon. Julissa Ferreras  
Hon. Helen D. Foster  
Hon. Rosie Mendez  
Hon. Joel Rivera  
Hon. Debora L. Rose  
Hon. Peter F. Vallone, Jr.  
Hon. James G. Van Bramer  
Hon. Albert Vann

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## Endnotes

<sup>1</sup> Philip Morris USA Sales Representative Manual (undated), available at <http://tobaccodocuments.org/ness/23239.html> (last visited Dec. 25, 2011) (emphasis original).

<sup>2</sup> Melanie Wakefield, et al, *An Experimental Study of Effects on Schoolchildren of Exposure to Point-of-Sale Cigarette Advertising and Pack Displays*, 21 HEALTH EDUC. RES. 338, 346 (2006).

<sup>3</sup> See NATIONAL CANCER INSTITUTE, MONOGRAPH 19: THE ROLE OF THE MEDIA IN PROMOTING AND REDUCING TOBACCO USE 108, 157 (2008), available at <http://cancercontrol.cancer.gov/tcrb/monographs/19/monograph19.html>. (“Despite tobacco industry claims that it does not market to youth, the corporations’ own documents reveal decades of research and development of strategic plans designed to capture the youth market.”); Becky Freeman, Simon Chapman & Matthew Rimmer, *The Case for Plain Packaging of Tobacco Products*, 103 ADDICTION 580, 581 (2008) (quoting 1992 Philip Morris document). (“Notwithstanding the commercial absurdity of any industry professing disinterest in attracting new recruits, this position has been undermined by revelations from industry documents acknowledging the importance of attracting new smokers.”). Richard W. Pollay, *More than Meets the Eye: On the Importance of Retail Cigarette Merchandising*, 16 TOBACCO CONTROL 270, 270-271 (2007).

<sup>4</sup> K.M. Cummings et al., *Marking to America’s Youth: Evidence From Corporate Documents*, 11 Tobacco Control i5, i5 (Suppl. 1 2002). See also Victoria M. White et al., *Cigarette Promotional Offers: Who Takes Advantage?*, 30 AM. J. PREV. MED. 228-229, 230 (2006); US Department of Health and Human Services, Preventing Tobacco Use Among Youth and Young Adults, a Report of the Surgeon General 516 (2012) (hereinafter “2012 Surgeon General’s Report”)(discussing youth brand loyalty); Diane S. Burrows, Younger Adult Smokers: Strategies and Opportunities, February 29, 1984, at 1, bates no. 501928462-501928550, available at <http://legacy.library.ucsf.edu/tid/fet29d00> (proposing targeting multi-pack discounts to younger adults (age 18-24) because the demographic represents “renewal of market” and their brand loyalty “far outweighs any tendency to switch with age”).

<sup>5</sup> K.M. Cummings, *supra* note 4, at i5.

<sup>6</sup> 2012 Surgeon General’s Report, *supra* note 4 at 164.

<sup>7</sup> Richard W. Pollay *Targeting Youth and Concerned Smokers: Evidence from Canadian Tobacco Industry Documents*, 9 TOBACCO CONTROL 136, 139 (2000) (citing internal tobacco industry document stating that “[h]owever intriguing smoking was at 11, 12 or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they felt unable to stop smoking when they wanted to.”).

<sup>8</sup> 2012 Surgeon General’s Report at 165.

<sup>9</sup> *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1, 561 (D.D.C. 2006), concluding “[f]rom the 1950s to the present [the tobacco industry has] intentionally marketed to young people under the age of twenty-one in order to recruit ‘replacement smokers’ to ensure the economic future of the tobacco industry.

<sup>10</sup> M. Wakefield et al., *The Cigarette Pack as Image: New Evidence from Tobacco Industry Documents*, 11 TOBACCO CONTROL i73, i74, i76 (Suppl. 1 2002). See also Pollay, *supra* note 3, at 271; *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1, 660 (D.D.C. 2006). This includes employing high-tech and costly research techniques, such as tachistoscopes (which measure how quickly a consumer can recognize a brand image), eye tracking glasses and hidden, eye tracking cameras that track the eye movements of consumers in retail stores and reveal which displays and products, package designs and colors attract consumer attention and prompt purchases. (At least one study determined that behind the counter was one of the best locations for a tobacco display.)

<sup>11</sup> M. Wakefield, *supra* note 10, at i77.

<sup>12</sup> Becky Freeman, Simon Chapman & Matthew Rimmer, *The Case for Plain Packaging of Tobacco Products*, 103 ADDICTION 580, 583 (2008) (quoting 1992 Philip Morris document); see also 2012 Surgeon General’s Report, *supra* note 4, at 599-600 (“Color, words, and images on cigarette packs, as well as container shape and packaging material of smokeless tobacco products, have all been found to suggest specific product characteristics and reduce the perception of risk.”).

<sup>13</sup> Becky Freeman, *supra* note 12, at 583. Packaging has also been used to target particular ethnic groups. For example, R.J. Reynolds’ “Kool Mixx” campaign targeted African-American youth. The campaign included “a series of limited-edition cigarette packs featuring artists’ renditions of the elements of hip-hop culture—‘MC-ing’ (rapping), ‘disc jockeying’ (DJ-ing), break dancing, and creating graffiti art[.]” NATIONAL CANCER INSTITUTE, *supra* note 3, at 108.

<sup>14</sup> See, e.g., *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 1, 2748, 3113 (D.D.C. 2006); cf. 2012 Surgeon General’s Report, *supra* note 4, at 534 (noting that powerwall displays “have high visibility among youth and help to establish brand imagery and social norms at an early age”).

<sup>15</sup> *United States v. Philip Morris USA, Inc.*, 449 F. Supp. 2d. at 2748.

<sup>16</sup> TOBACCO CONTROL PROGRAM, N.Y. DEPT. OF HEALTH, STATSHOT Vol. 5 No. 1, "POWER WALL" DISPLAY OF TOBACCO PRODUCTS BY NEW YORK STATE LICENSED TOBACCO RETAILERS (Jan. 2012). "Pack facings" refers to the packs that are visible to customers. Hundreds of other cigarette packs are typically loaded into the spring-loaded shelving, to ensure that all available brands are easily visible at all times.

<sup>17</sup> *Id.*

<sup>18</sup> Anne Marie MacKintosh, Crawford Moodie & Gerard Hastings, *The Association Between Point-of-Sale Displays and Youth Smoking Susceptibility*, Nicotine & Tobacco Res., Sept. 8, 2011, at 1 (citing numerous studies).

<sup>19</sup> J. Paynter, et al., *Point of Sale Tobacco Displays and Smoking Among 14-15 Year Olds in New Zealand: A Cross-Sectional Study*, 18 TOBACCO CONTROL 268, 273 (2009); Pollay, *supra* note 3 at 273.

<sup>20</sup> Melanie Wakefield, *supra* note 2, at 339.

<sup>21</sup> Pollay, *supra* note 3, at 274.

<sup>22</sup> Melanie Wakefield, *supra* note 2, at 342.

<sup>23</sup> New York City Department of Health and Mental Hygiene. Youth Risk Behavior Survey 2011. Internal analysis.

<sup>24</sup> *Id.* at 346. Tobacco powerwalls would still have all of these effects, even if the section of the Tobacco Control Act restricting the use of colors and graphics on tobacco packages were permitted to take effect. That portion of the TCA was challenged in court and the FDA has been barred from implementing this section. *Disc. Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509 (6th Cir. 2012).

<sup>25</sup> Wakefield M., et al., "The effect of retail cigarette pack displays on impulse purchase," *Addiction* 103: 322-328, 2008. See, also, Wakefield M & D Germain, "Adult smokers' use of point-of-sale displays to select cigarette brands," *Australia New Zealand Journal of Public Health* 30(5):483-4, 2006. Hoek, J, et al., "How do tobacco retail displays affect cessation attempts? Findings from a qualitative study," *Tobacco Control* 19(4): 334-37, August, 2010.

<sup>26</sup> 2012 Surgeon General's Report, *supra* note 4, at 123-124.

<sup>27</sup> Carter OBJ, et al., "The effect of retail cigarette pack displays on unplanned purchases: results from immediate postpurchase interviews," *Tobacco Control* 18: 218-221, 2009. See, also, Hoek, J, et al., *supra* note 25, at 334-37.

<sup>28</sup> FTC, CIGARETTE REPORT FOR 2007 AND 2008 4(2011). "[I]ndustry spent \$454.1 million in 2007 (up from \$434.2 million in 2006) and \$481.5 million in 2008 on promotional allowances paid to cigarette retailers in order to facilitate the sale or placement of cigarettes (e.g., payments for stocking, shelving, displaying, and merchandising brands, volume rebates, and incentive payments). . . ." The fact that tobacco retailers need to be paid to display tobacco products "suggests that the size and nature of the displays . . . that the tobacco firms seeks to install are more substantial than the retailers' natural inclination without this financial inducement." Pollay, *supra*, note 7, at 273.

<sup>29</sup> 2012 Surgeon General's Report, *supra* note 4, at 542.

<sup>30</sup> See 2012 Surgeon General's Report, *supra* note 4, at 543 ("Nationally, a high proportion of tobacco shelving units (85%) and displays (93%) were located in the counter zone. The concentration of these types of merchandizing fixtures around the counter area suggests the important role played by packs and product displays in promoting sales.").

<sup>31</sup> Pollay, *supra* note 3, at 270-274.

<sup>32</sup> K.M. Cummings, *supra* note 4, at i12.

<sup>33</sup> L. Henriksen et al., *Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent in Stores where Adolescents Shop Frequently*, 13 TOBACCO CONTROL 315, 316 (2004).

<sup>34</sup> WHO, Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control, ¶¶ 12-13 (paragraph numbering omitted), available at [http://www.who.int/fctc/guidelines/article\\_13.pdf](http://www.who.int/fctc/guidelines/article_13.pdf).

<sup>35</sup> As summarized by one news article, "Countries which have implemented [display restrictions] . . . have among the fastest accelerating downward trends in tobacco smoking in the world." Peter Jackson, *Smoking Ban Lessons from Abroad*, BBC News, Dec.9, 2008, [http://news.bbc.co.uk/2/hi/uk\\_news/7773232.stm](http://news.bbc.co.uk/2/hi/uk_news/7773232.stm).

<sup>36</sup> *Counter Measures: Preventing Youth Smoking in Scotland*, ASH SCOTLAND [http://www.ashscotland.org.uk/media/3760/counter\\_measures\\_webJan11.pdf](http://www.ashscotland.org.uk/media/3760/counter_measures_webJan11.pdf) (last visited July 3, 2012).

<sup>37</sup> Propel Centre for Population Health Impact, Youth: Smoking Prevalence, available at [http://www.tobaccoreport.ca/ytu\\_cs\\_sp\\_byage.html](http://www.tobaccoreport.ca/ytu_cs_sp_byage.html) (data from the Canadian Tobacco Use Monitoring Survey). This decrease remained statistically significant even after adjusting for changes in cigarette price. Sarah Boseley, *Cigarette and Tobacco Displays Banned in Supermarkets*, THE GUARDIAN, April 5, 2012.

Written Statement  
of  
Brett R. Loomis  
Research Economist  
RTI International  
to the  
New York City Council Committee on Health  
regarding

*Int 1021-2013 – Sensible Tobacco Enforcement*

May 2, 2013





This written statement has been submitted to the New York City Council in support of proposed legislation Int 1021-2013 Sensible Tobacco Enforcement. Specifically, this statement contains comments relevant to §6, which amends Title 17 of the New York City code to prohibit the sale of discounted cigarettes and tobacco products.

I am a research economist in RTI International's Public Health Policy Research Program, with 14 years of experience evaluating tobacco control policies and programs at the local, state, and national levels. Much of my recent work is focused on estimating the effect of point-of-sale tobacco advertising and tobacco outlet density on youth smoking. I am the principal investigator for three projects collecting data on tobacco advertising and price promotions at the point-of-sale in Florida, New York, and North Dakota. My work has been presented at numerous professional conferences and published in peer-reviewed journals, including the *American Journal of Public Health*, *Pediatrics*, *Preventive Medicine*, *Tobacco Control*, *Health Economics*, *Journal of Studies on Alcohol and Drugs*, and *Nicotine & Tobacco Research*.

I would like to bring to your attention two studies conducted in New York which are relevant to the provisions of Int 1021-2013 that prohibit any "price reduction instrument." First is a 2011 report for the New York State Department of Health (Loomis et al, 2011) which documented the pervasive tobacco advertising and promotion that is present in licensed tobacco retailers in New York, and reported exposure to that advertising among adults and youth. In particular, we found that almost three-quarters of licensed tobacco retailers in New York offer a price reducing promotion, with more than four such promotions per store, on average. In addition, approximately one-third of adult smokers in New York receive promotional items and special price discounts from tobacco companies. These results suggest that price reducing promotions and use of coupons and other promotional items to receive lower-price cigarettes is common among adult smokers in New York.

The second study is a peer-reviewed paper titled "Influence of Retail Cigarette Advertising, Price Promotions, and Retailer Compliance on Youth Smoking-Related Attitudes and Behaviors," which has been accepted for publication in the *Journal of Public Health Management and Practice* (Kim et al, in press). The objective of the study was to examine whether exposure to retail cigarette advertising, promotions, and retailer compliance were associated with youth smoking in a sample of 54,671 middle and high school students in New York, including over 20,600 students living and going to school in New York City, in 2004, 2006, and 2008. The data on student smoking was from the New York Youth Tobacco Survey (YTS), a large state-representative survey of students conducted in schools throughout the state. The YTS data was linked to information on retail tobacco advertising and price promotions collected from licensed tobacco retailers as part of the New York Retail Advertising of Tobacco Survey, conducted annually since 2004.

In this study, we found that New York City students who lived in counties with high levels of price reducing cigarette promotions were 57% more likely to be current cigarette smokers than students in counties with low levels of price reducing promotions (OR=1.57, 95% CI=1.01–2.44,  $P<.05$ ). This result suggests that enacting Int 1021-2013 and eliminating price reducing promotions for cigarettes could lead to lower youth smoking rates in New York City over time.

In conclusion, the results of these two studies show that price reducing promotions for cigarettes are common in New York, adult smokers frequently take advantage of such promotions to obtain lower-price cigarettes, and exposure to price reducing promotions is associated with higher rates of smoking among youth in New York City. Based on these findings, we conclude that elimination of price reducing promotions, such as would be accomplished by the provisions of Int 1021-2013, would significantly reduce the opportunities for adult smokers living in New York City to obtain low price cigarettes (which in turn may improve cessation rates and reduce the number of cigarettes smoked per day among remaining smokers) and may result in lower smoking rates among New York City youths.

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# EXPOSURE TO PRO-TOBACCO MARKETING AND PROMOTIONS AMONG NEW YORKERS



NEW YORK STATE  
DEPARTMENT OF HEALTH  
JANUARY 2011

January 2011

# Exposure to Pro-Tobacco Marketing and Promotions among New Yorkers

Prepared for

**New York State Department of Health**

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## Introduction

The tobacco industry spends more than \$12 billion per year in the United States to advertise and promote cigarettes, the bulk of which is spent on price discounts, coupons, special offers, point-of-sale advertising, and promotional allowances (Table 1) (FTC, 2009). The industry's marketing activities directly reduce the price of cigarettes to smokers and increase the amount of advertising and promotion for cigarettes that is visible in stores that sell tobacco. Exposure to tobacco advertising and promotion is an established risk factor for smoking initiation among youth (DiFranza et al., 2006; Henriksen et al., 2004, 2010; NCI, 2008; Paynter & Edwards, 2009; Slater et al., 2007) and likely contributes to continued smoking among adults (Kim et al., 2010).

**Table 1. Domestic Cigarette Advertising and Promotional Expenditures, 2002–2006 (in thousands of dollars), Federal Trade Commission**

Advertising Expenditure Category	2002	2003	2004	2005	2006
Price Discounts for Retailers and Wholesalers	\$7,873,835 (63.2%)	\$10,808,239 (71.4%)	\$10,932,199 (77.3%)	\$9,776,069 (74.6%)	\$9,205,106 (73.7%)
Coupons & Buy-One-Get-One Free Offers	\$1,607,277 (12.9%)	\$1,348,496 (8.9%)	\$1,402,325 (9.9%)	\$1,602,673 (12.2%)	\$1,458,211 (11.6%)
Retail Point-of-Sale and Promotional Allowances	\$1,593,999 (12.8%)	\$1,394,900 (9.2%)	\$705,834 (5.0%)	\$618,023 (4.7%)	\$676,864 (5.4%)
All Other Advertising Categories Not Already Listed (e.g., sampling, sponsorship)	\$790,570 (6.3%)	\$711,265 (4.7%)	\$602,672 (3.1%)	\$646,150 (4.9%)	\$627,078 (5.0%)
Promotional Allowances to Wholesalers	\$449,094 (3.6%)	\$685,853 (4.5%)	\$389,081 (2.7%)	\$411,856 (3.1%)	\$471,204 (3.8%)
Traditional Media (newspapers, magazines, outdoor)	\$156,582 (1.3%)	\$197,244 (1.3%)	\$117,748 (0.8%)	\$56,187 (0.4%)	\$51,228 (0.4%)
Total	\$12,471,357 (100%)	\$15,145,997 (100%)	\$14,149,859 (100%)	\$13,110,958 (100%)	\$12,489,691 (100%)



Because of the risks posed by exposure to tobacco advertising, wherever it appears, we used established monitoring systems and population surveys to document the extent of tobacco advertising in New York and self-reported exposure to tobacco advertising among adults and youth living in New York. This report is one in a series of reports produced for the New York State Department of Health that examine the relationship between exposure to point-of-sale advertising and smoking-related attitudes, intentions, and behaviors among adults and youth.

## Methods and Data

### *Methods*

To describe the extent of tobacco advertising and promotion activities in New York, we examined the trend in the number and types of licensed tobacco retailers (LTRs) in New York and used the Retail Advertising Tobacco Study (RATS) to describe the level of tobacco advertising and promotional activities in those stores. We present trends in the prevalence of interior and exterior cigarette advertising, price promotions, and cigarette ads or products at child's eye-level or near candy or toys. Among retailers that have any advertising, we estimated the average number of advertisements and promotions present. We tested for significant increases or decreases over time in the prevalence and number of advertisements and promotions.

To assess New Yorkers' self-reported exposure to tobacco advertisements and promotions, we analyzed the New York Adult Tobacco Survey (NY-ATS) and the New York Youth Tobacco Survey (NY-YTS). Using the NY-ATS, we estimated the trend in the prevalence of those who received promotional items in the mail or through e-mail and who used special price discounts when they purchased cigarettes. We estimated the percentage of adults who recalled seeing tobacco advertising in grocery stores, convenience stores, and pharmacies. We present trends in these outcomes and compare New York with the rest of the United States in 2009 using the National Adult Tobacco Survey (NATS). We modeled these outcomes using regression analysis to identify smokers who are more likely to receive tobacco advertising and promotions and to recall seeing advertising at the point of sale.

Using the NY-YTS, we estimated the prevalence of youth who recall seeing tobacco advertising in the past 30 days on the Internet, at events such as fairs and concerts, in newspapers or magazines, and in retail stores, and those buying or receiving any product with a tobacco company's name or picture on it. Using regression analysis, we modeled these outcomes to identify youth who are more likely to recall seeing ads and to use a product with a tobacco logo.

## ***Data***

### **Licensed Tobacco Retailers**

Any business that wants to sell tobacco in New York must obtain a license from the New York State Department of Taxation and Finance. This license is renewed annually. RTI obtained the list of LTRs from 2000 through 2009. The list provides the retailers' legal and operating names and mailing and facility addresses, including street address, zip code, and county.

RTI employed a multistage process to clean the list of LTRs, including maintaining name conformity and assigning an outlet type (e.g., pharmacy, convenience store, grocery store). From 2003, there are approximately 22,000 to 25,000 tobacco retailers each year.

### **Retail Advertising Tobacco Study**

RATS is an on-site audit of selected LTRs in New York in which trained data collectors record the number and placement of tobacco advertising and price promotions. RTI began collecting data for RATS in 2004 and has conducted the survey every year since. RATS is composed of a stratified random sample of all LTRs and includes between 4% and 13% of all LTRs in the state.

### **New York Adult Tobacco Survey**

NY-ATS is a survey of representative households, which randomly selects one adult in each responding household in New York. The sample includes list-assisted random-digit-dial and directory-listed numbers. The survey is conducted using computer-assisted telephone interviews and includes items that measure exposure to tobacco advertising and promotion, attitudes and beliefs about tobacco, and perceptions of pro- and antitobacco advertising. Starting in the third quarter of 2003, approximately 2,000 NY-ATS telephone interviews have been completed each quarter, or about 8,000 interviews per year.

## **National Adult Tobacco Survey**

Similar to the NY-ATS, NATS also uses random-digit-dialing and is fielded quarterly to adults aged 18 or older. The survey is conducted using computer-assisted telephone interviews and includes items that measure recollection of exposure to tobacco or antitobacco advertising, perception of risk related to tobacco use, purchasing behavior, and cessation attempt behavior among adult smokers. Since the fourth quarter of 2007, approximately 1,000 telephone interviews have been completed each quarter.

## **New York Youth Tobacco Survey**

NY-YTS is a biennial survey, representative of middle school and high school students in New York. The survey is conducted using a multistage probability proportional to size sampling method to select middle schools and high schools based on their size and region. Within each of these selected schools, various methods were used to randomly select certain classes to participate. Each student in these selected classes is then asked to complete the survey. From 2000 to 2006, nearly 100 schools and approximately 7,000 students participated each year. In 2008, the sample size was increased to 400 schools and more than 40,000 students.

## **The Extent of Pro-Tobacco Advertising and Promotions in New York**

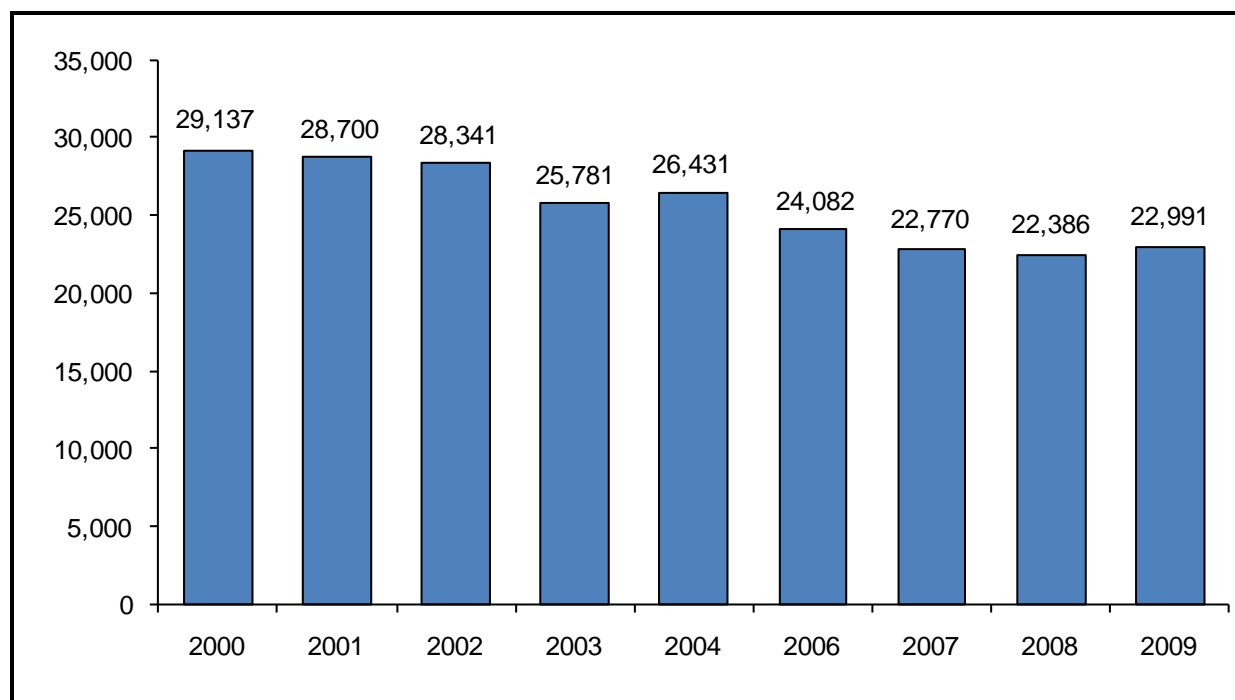
**T**he tobacco industry spends the overwhelming majority of its marketing budget on programs to reduce the price of cigarettes to smokers and to advertise at the point of sale. Stores that sell tobacco are therefore the most important channel for advertising and promotion still open to the tobacco industry in the United States. In this section, we describe the extent of pro-tobacco advertising in retail stores in New York, including the number of LTRs and the level of cigarette advertising in those stores. While declining overall, the number of LTRs in New York is large, with nearly 23,000 stores that sell tobacco in 2009, and cigarette advertising in these stores is widespread.

The number of retailers in New York has declined steadily over the past decade (Figure 1). In 2000, there were 29,137 LTRs compared with only 22,991 in 2009, a decrease of 21%. The number of LTRs has been declining steadily, on average by 682, or about 2.5%, per year.

The New York Tobacco Control Program divides the state into eight regions (Table 2). Among these regions, approximately 63% of all LTRs in New York State are located in the New York City and Long Island area, and approximately 12% are in Hudson Valley (Table 2). The decline in the number of LTRs appears to be occurring uniformly in all areas of New York, with each region of the state having very nearly the same proportion of LTRs in 2009 as it did in 2000.

In 2009, 59.1% of retailers had exterior advertising, down from 64.3% in 2008 (Figure 2). Despite the drop in 2009, there is a statistically significant upward trend for retailers with exterior cigarette advertising from 2004 to 2009. The percentage of retailers with interior cigarette advertising has remained nearly constant from 2004 to 2009 (Figure 3), with nearly 95% of all LTRs in New York having interior advertising.

**Figure 1. Number of Licensed Tobacco Retailers, 2000–2009, New York State Department of Tax and Finance**



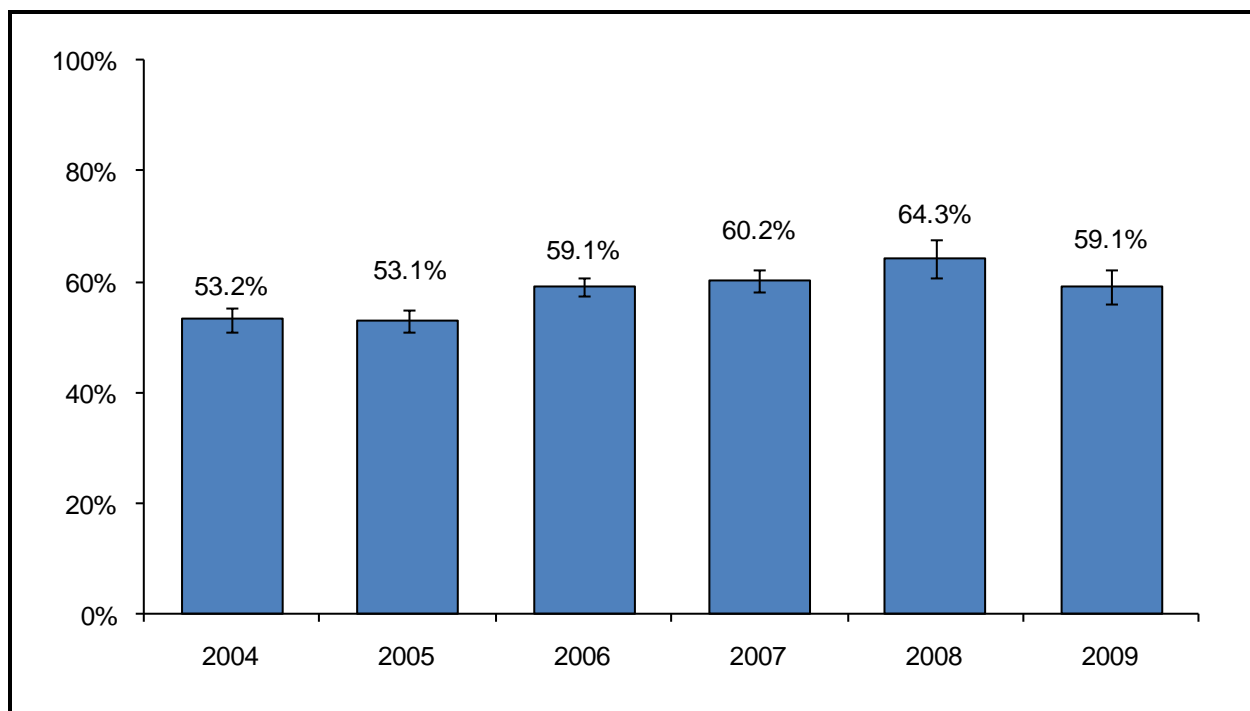
Note: Data not available for 2005.

**Table 2. Number (Percentage) of Licensed Tobacco Retailers by New York Tobacco Control Program Region, 2000–2009**

Area	2000	2001	2002	2003	2004	2006	2007	2008	2009
NYC-Long Island	18,265 (62.7%)	17,974 (62.6%)	18,020 (63.6%)	16,240 (63.0%)	16,255 (61.5%)	15,311 (63.6%)	14,434 (63.4%)	13,923 (62.1%)	14,420 (62.7%)
North Capital	877 (3.0%)	887 (3.1%)	845 (3.0%)	778 (3.0%)	868 (3.3%)	739 (3.1%)	695 (3.1%)	703 (3.1%)	699 (3.0%)
North Central	1,201 (4.1%)	1,129 (3.9%)	1,094 (3.9%)	1,010 (3.9%)	1,140 (4.3%)	951 (4.0%)	884 (3.9%)	905 (4.0%)	905 (3.9%)
South Capital	1,238 (4.2%)	1,240 (4.3%)	1,199 (4.2%)	1,124 (4.4%)	1,210 (4.6%)	1,039 (4.3%)	1,024 (4.5%)	991 (4.4%)	1,004 (4.4%)
South Central	850 (2.9%)	808 (2.8%)	781 (2.8%)	740 (2.9%)	788 (3.0%)	690 (2.9%)	653 (2.9%)	671 (3.0%)	681 (3.0%)
Rochester	1,490 (5.1%)	1,454 (5.1%)	1,407 (5.0%)	1,303 (5.0%)	1,303 (5.0%)	1,107 (4.6%)	1,042 (4.6%)	1,107 (5.0%)	1,127 (4.9%)
Buffalo	1,919 (6.6%)	1,936 (6.7%)	1,797 (6.3%)	1,688 (6.5%)	1,651 (6.2%)	1,361 (5.7%)	1,280 (5.6%)	1,372 (6.1%)	1,411 (6.1%)
Hudson Valley	3,297 (11.3%)	3,272 (11.4%)	3,198 (11.3%)	2,898 (11.2%)	3,216 (12.2%)	2,884 (12.0%)	2,758 (12.1%)	2,714 (12.1%)	2,744 (11.9%)
Total	29,137 (100%)	28,700 (100%)	28,341 (100%)	25,781 (100%)	26,431 (100%)	24,082 (100%)	22,770 (100%)	22,386 (100%)	22,991 (100%)

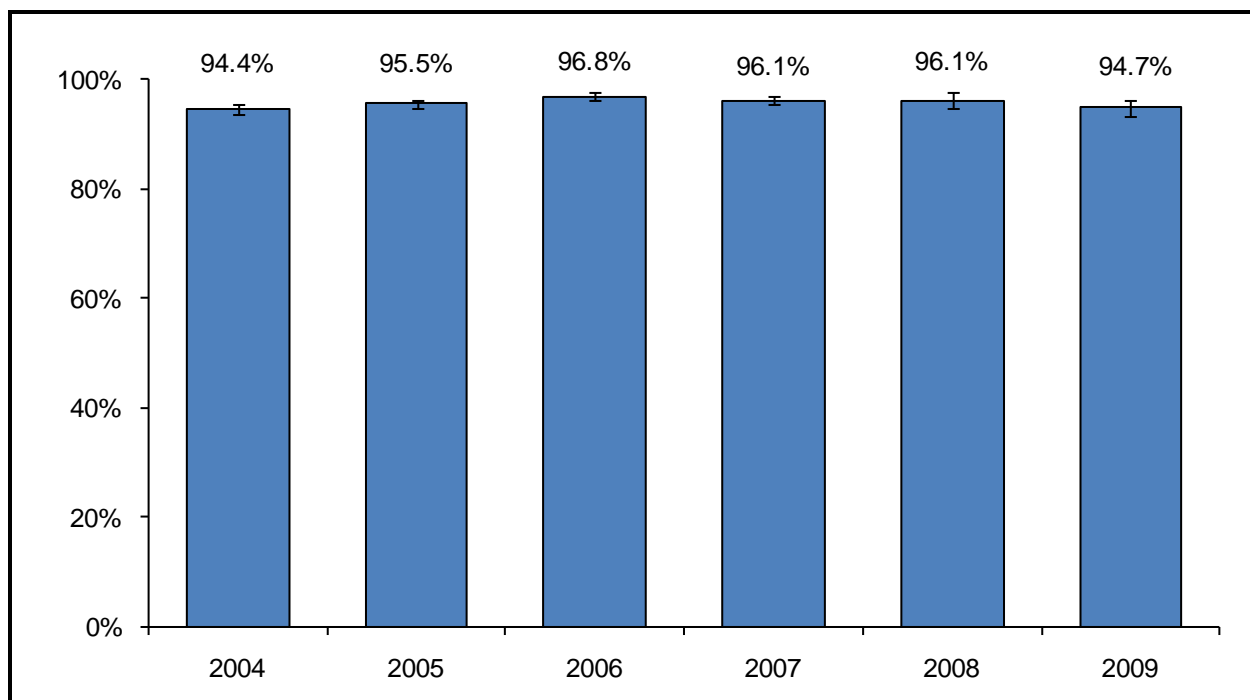
Note: Data not available for 2005.

**Figure 2. Percentage of Retailers with Any Exterior Cigarette Advertising, RATS 2004–2009**



Statistically significant upward trend from 2004 to 2009.

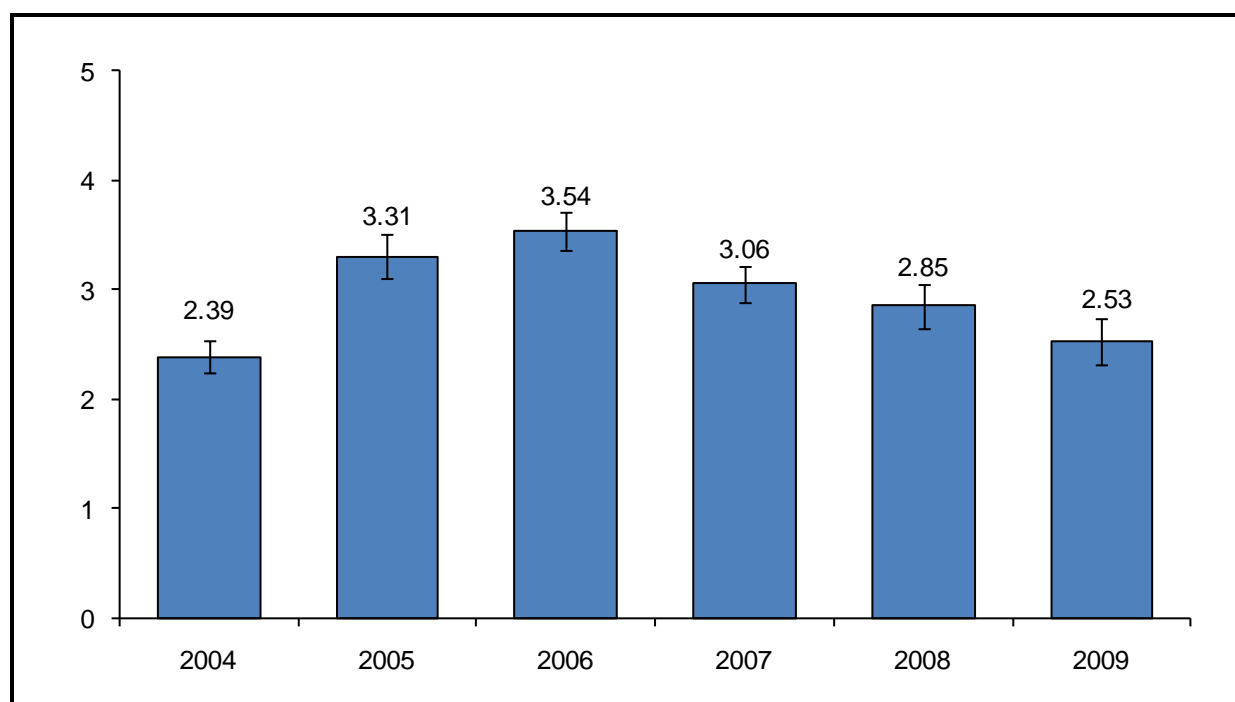
**Figure 3. Percentage of Retailers with Any Interior Cigarette Advertising, RATS 2004–2009**



In 2009, the average number of exterior cigarette advertisements was 2.5 per store, compared with 2.9 in 2008 (Figure 4). The average number of interior cigarette advertisements per store has been trending upward, from 15.5 in 2004 to 17.5 in 2009 (Figure 5).

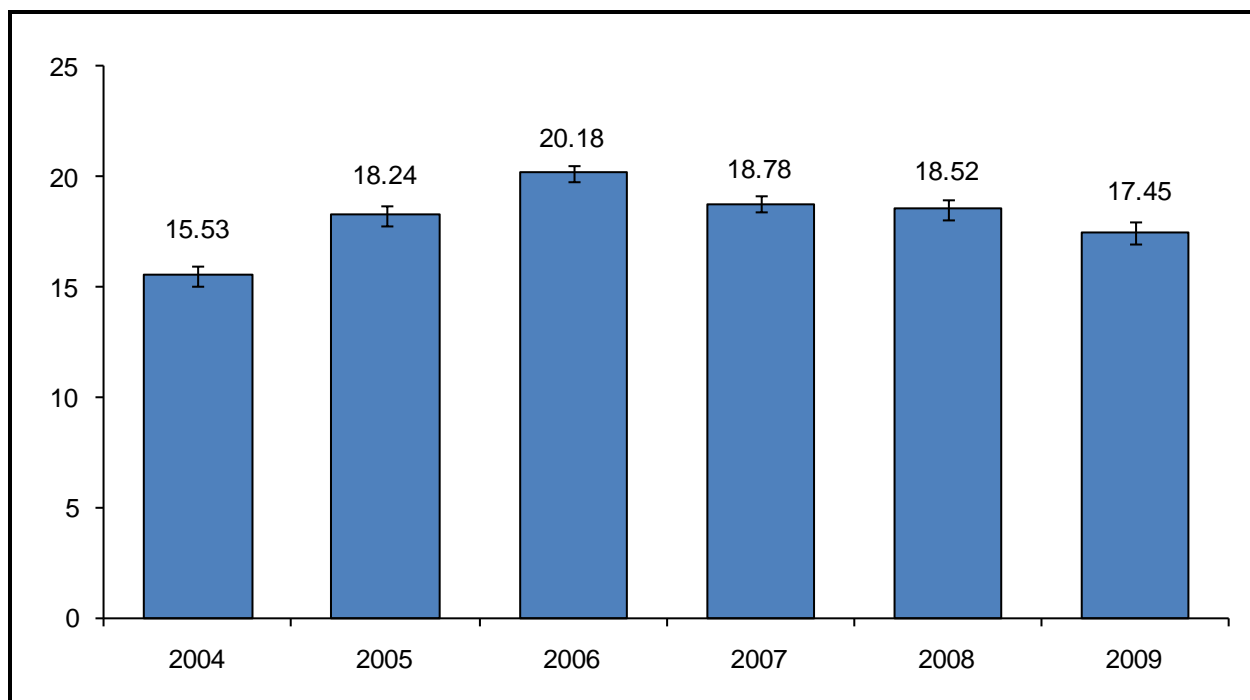
In 2009, 70.2% of LTRs in New York had promotions that reduce the price of cigarettes (Figure 6). The majority of stores (65.0%) offer sale-price, or cents-off, reductions (e.g., price reduced by 75¢ per pack), whereas a small minority of stores (5.3%) offer buy-one-get-one-free deals, mail-in rebates, coupons, and free gifts. While the trend for all types of price reducing promotions significantly decreased from 2004 to 2009, there was a significant upward trend in the percentage of retailers with sale price promotions.

**Figure 4. Average Number of Exterior Cigarette Advertisements, RATS 2004–2009**



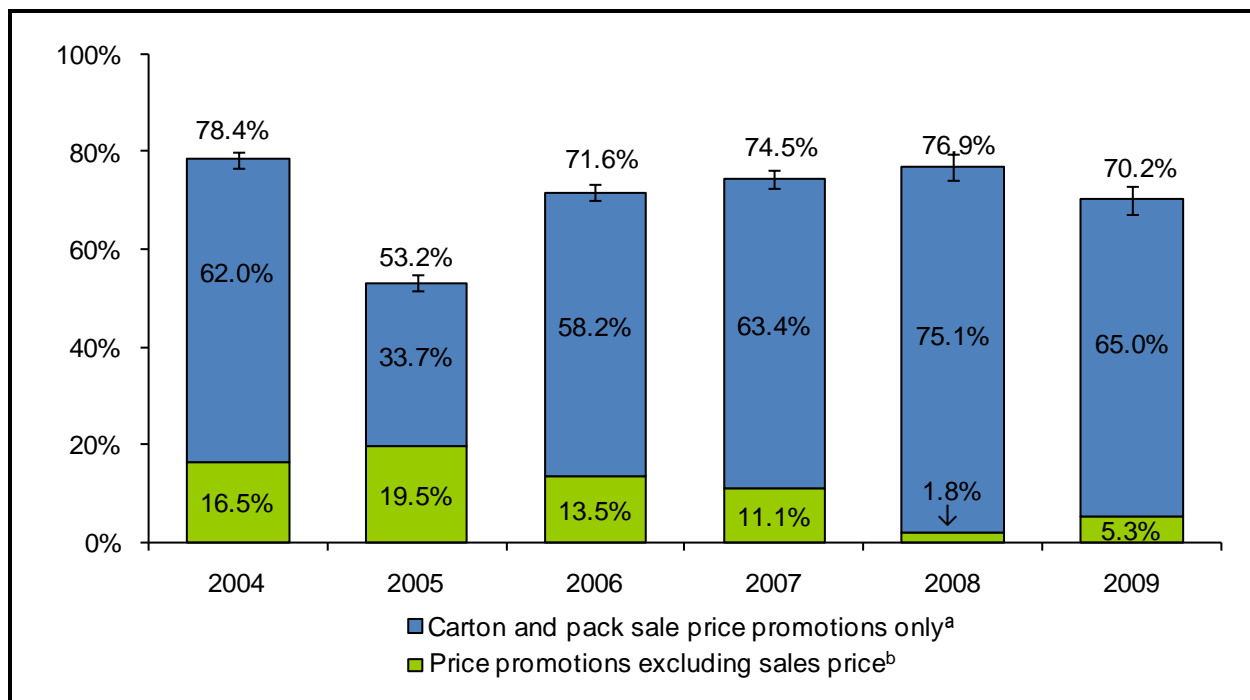


**Figure 5. Average Number of Interior Cigarette Advertisements, RATS 2004–2009**



Statistically significant upward trend from 2004 to 2009.

**Figure 6. Percentage of Retailers with Price-Reducing Promotions, RATS 2004–2009**



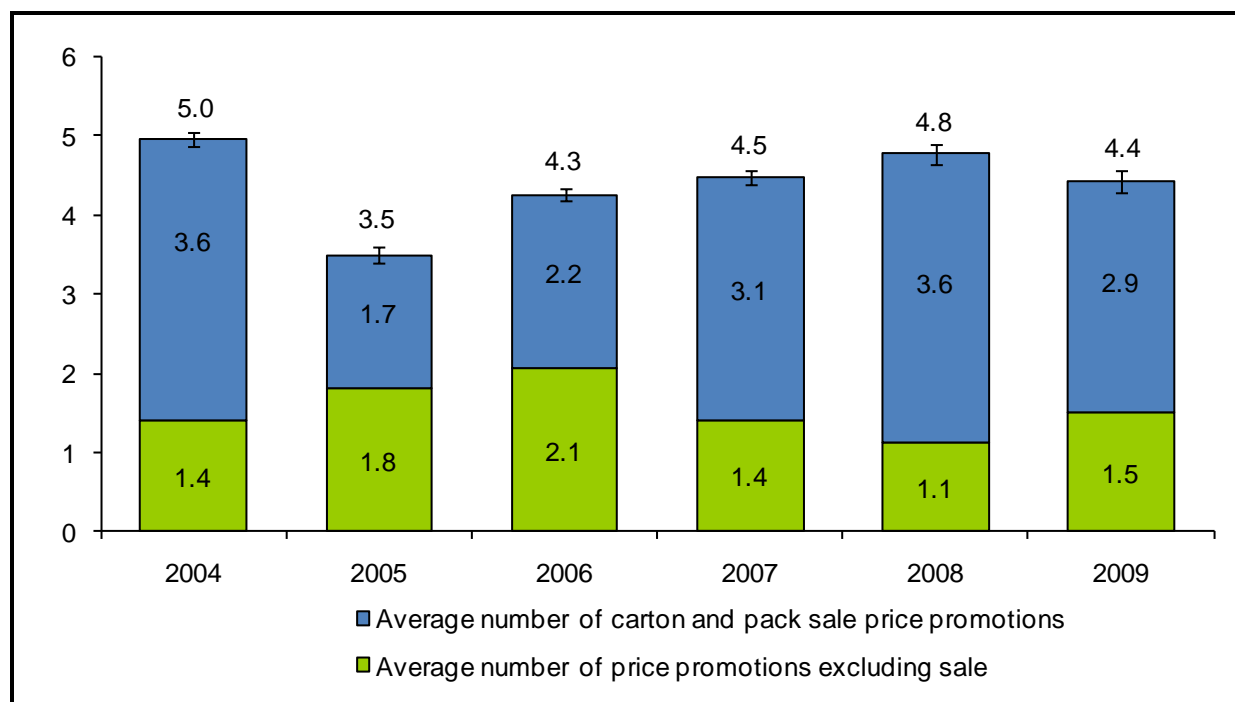
<sup>a</sup> Statistically significant upward trend from 2004 to 2009.

<sup>b</sup> Statistically significant downward trend from 2004 to 2009.

Note: Price promotions excluding carton and pack sale price include mail-in rebates; coupons; buy-one-get-one-free offers; bundles; and free gifts for Marlboro, Newport, Doral, and cheapest brands.

We estimated the average number of price promotions in stores that have price promotions including and excluding sale price (Figure 7). In 2009, there were 4.4 price-reducing promotions per store, with 2.9 sale price reductions and 1.5 non-sale price promotions, including coupons, buy-one-get-one free offers, and rebates.

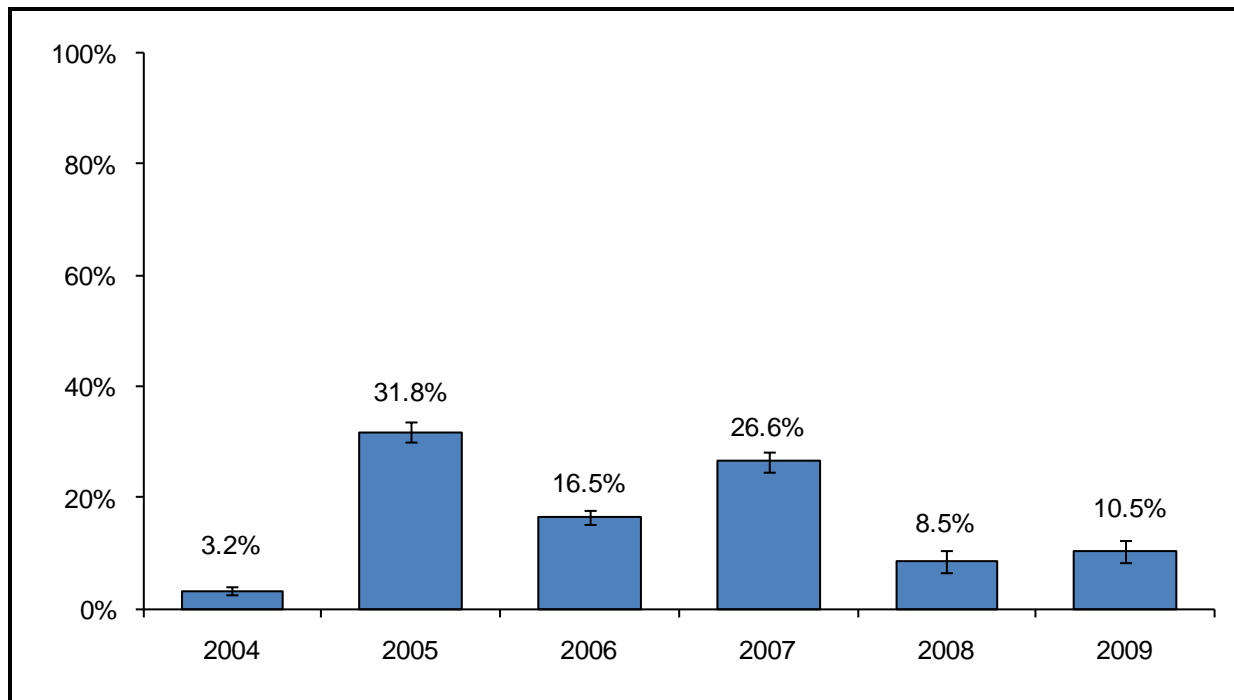
**Figure 7. Average Number of Price-Reducing Cigarette Promotions Per Store, RATS 2004–2009**



Note: Price promotions, excluding carton and pack sale price, include mail-in rebates; coupons; buy-one-get-one-free offers; bundles; and free gifts for Marlboro, Newport, Doral, and cheapest brands.

The percentage of retailers with tobacco advertisements or tobacco products at child's eye-level or near candy or toys has varied considerably in recent years, rising from a low of 3.2% in 2004 to a high of 31.8% of retailers the following year (Figure 8). In 2009, 10.5% of retailers had tobacco advertisements or products in locations where children and youth could see them easily.

**Figure 8. Percentage of Retailers with Tobacco Advertisements or Products at Children's Eye-Level or near Candy or Toys, RATS 2004–2009**



Statistically significant upward trend from 2004 to 2009.

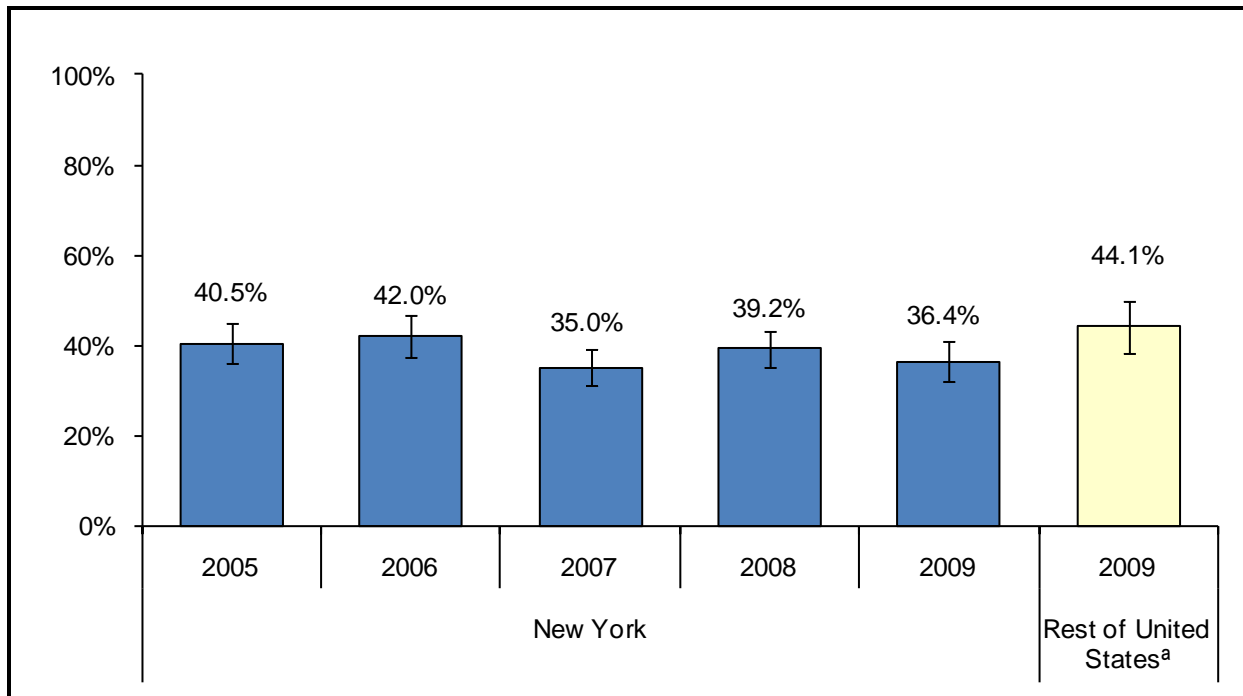
## Exposure to Tobacco Advertising and Use of Promotions among Adults and Youth

### Adults

Among current smokers and recent quitters (those who quit smoking within the past 12 months), 36.4% reported receiving promotional items in the mail from tobacco companies, compared with 44.1% in the rest of the United States in 2009, a statistically significant difference (Figure 9). In 2009, 10.9% of current smokers and recent quitters in New York and 10.6% in the rest of the United States reported receiving electronic mail from companies trying to sell cigarettes (Figure 10).

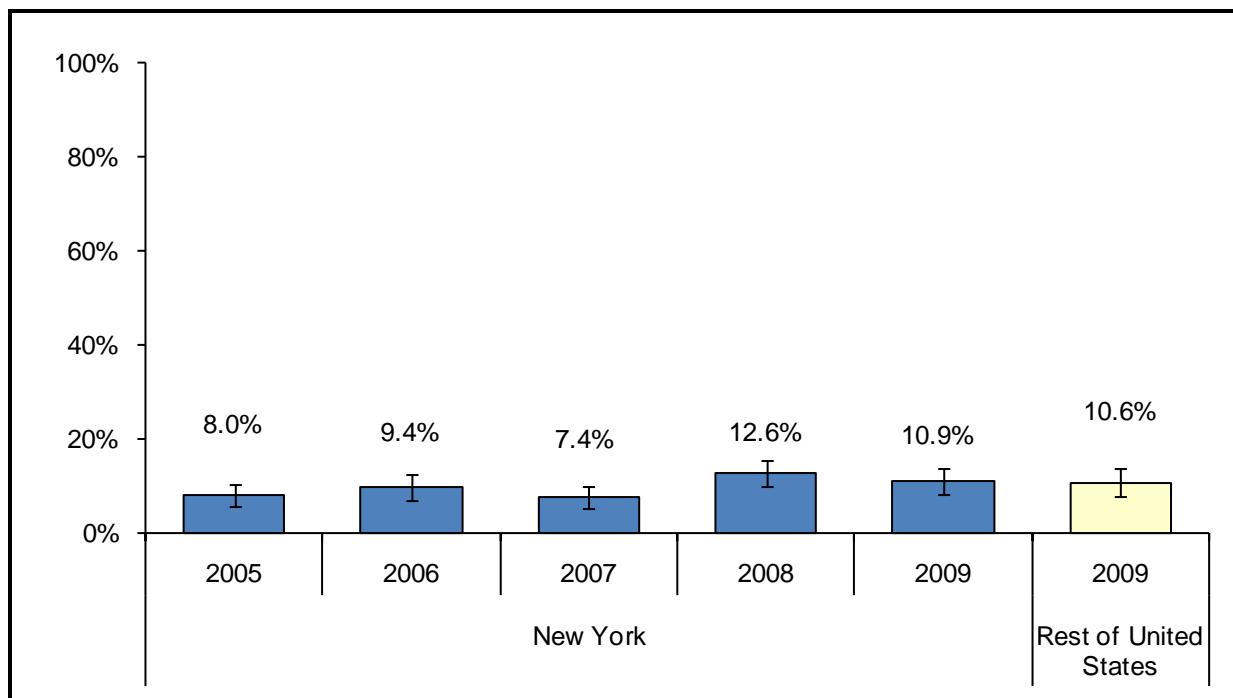
The percentage of current smokers who received special price offers for cigarettes decreased significantly from 2004 to 2009 (Figure 11). In 2009, approximately 27.9% of current smokers in New York reported receiving special price offers for cigarettes, such as discounted price or multipack discounts, compared with 36.5% in the rest of the United States.

**Figure 9. Percentage of Current Smokers and Recent Quitters Who Received Promotional Items in the Mail from Tobacco Companies, NY-ATS 2005–2009 and NATS 2009**

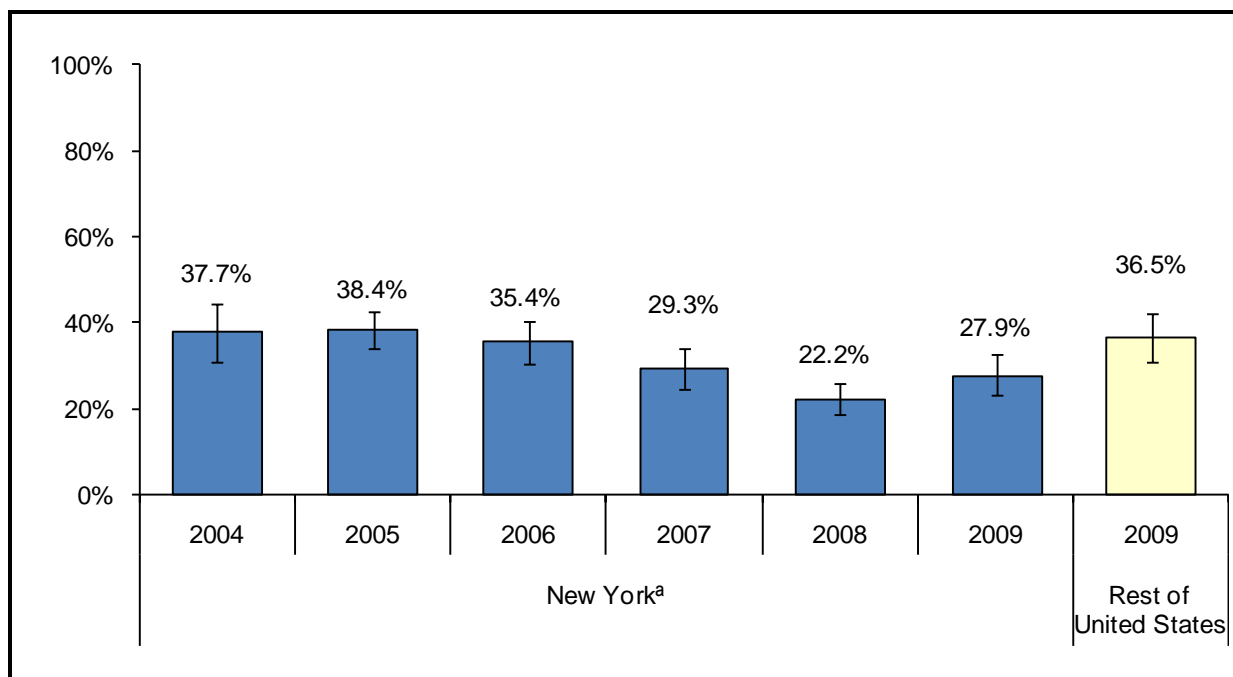


<sup>a</sup> The difference between New York and the rest of the United States in 2009 is statistically significant.

**Figure 10. Percentage of Current Smokers and Recent Quitters Who Received Electronic Mail from Companies Trying to Sell Cigarettes, NY-ATS 2005–2009 and NATS 2009**



**Figure 11. Percentage of Current Smokers Who Received Special Price Offers for Cigarettes in the Past 30 Days, NY-ATS 2004–2009 and NATS 2009**



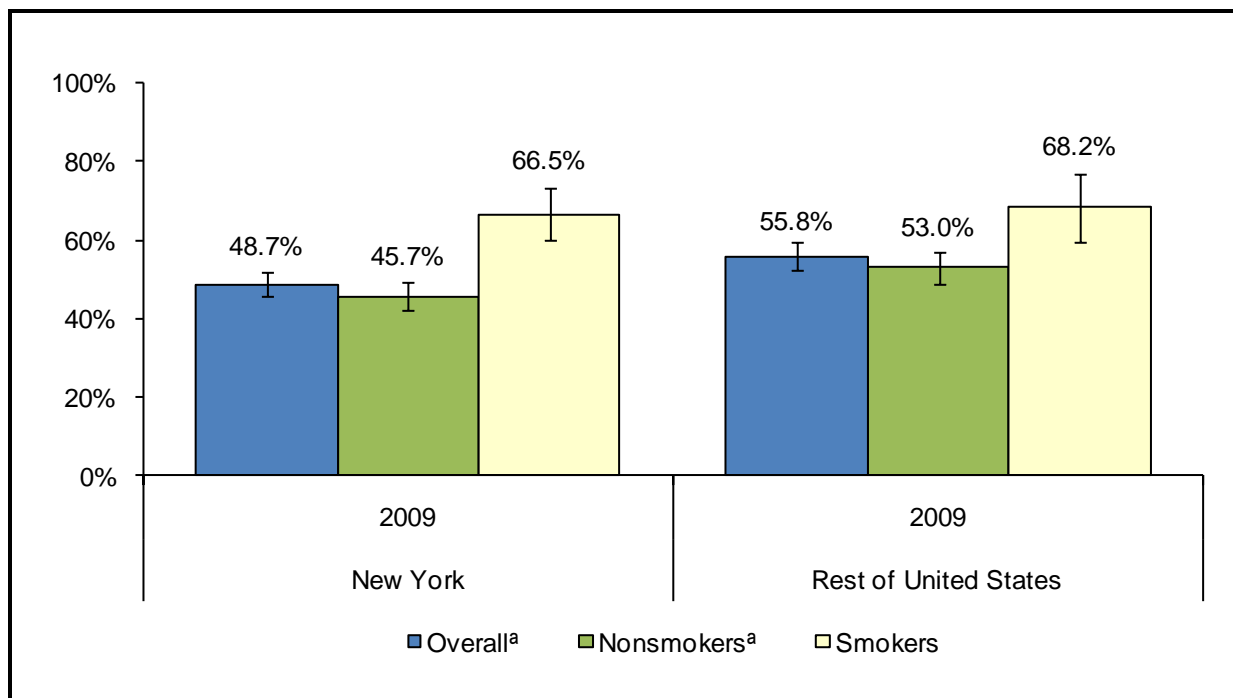
<sup>a</sup> Statistically significant downward trend in New York from 2004 to 2009.

In New York, 48.7% of adults reported seeing tobacco advertising in convenience stores in the past 30 days, compared with 55.8% in the rest of the United States in 2009, a statistically significant difference (Figure 12). Among nonsmokers, 45.7% of New Yorkers reported noticing tobacco advertising almost every time or frequently in convenience stores compared with 53.0% in the rest of the United States.

While almost half of adult New Yorkers reported seeing tobacco advertising in convenience stores in the past 30 days, less than 20% of adults in New York recalled seeing tobacco advertising in grocery stores (Figure 13). In 2009, approximately 19.4% of adults in New York and the rest of the United States recalled seeing tobacco advertising almost every time or frequently in grocery stores.

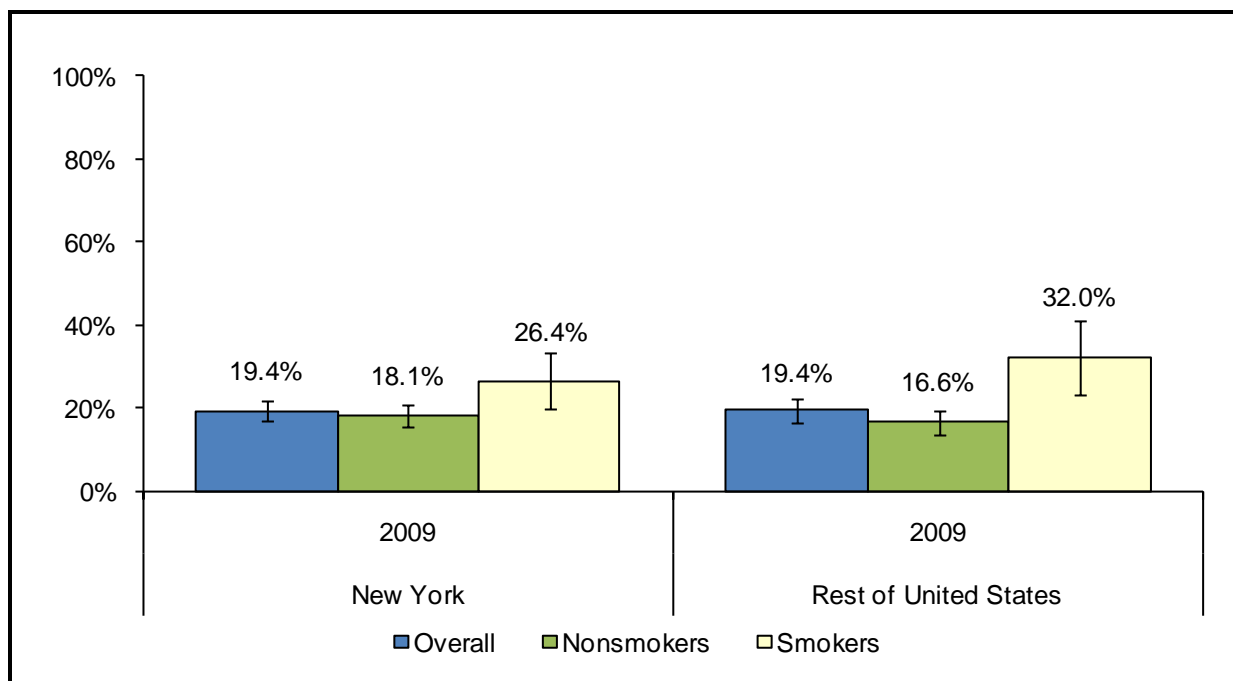
Approximately 9.0% of adult New Yorkers reported seeing tobacco advertising almost every time or frequently in pharmacies in the past 30 days, compared with 5.5% of adults in the rest of the United States, a statistically significant difference (Figure 14). Among nonsmokers in 2009, 8.0% of adults in New York reported seeing tobacco ads in pharmacies, compared with 3.7% of adults in the rest of the United States, a statistically significant difference.

**Figure 12. Percentage of Adults Who Noticed Tobacco Advertising Almost Every Time or Frequently in Convenience Stores in the Past 30 Days, NY-ATS 2009 and NATS 2009**

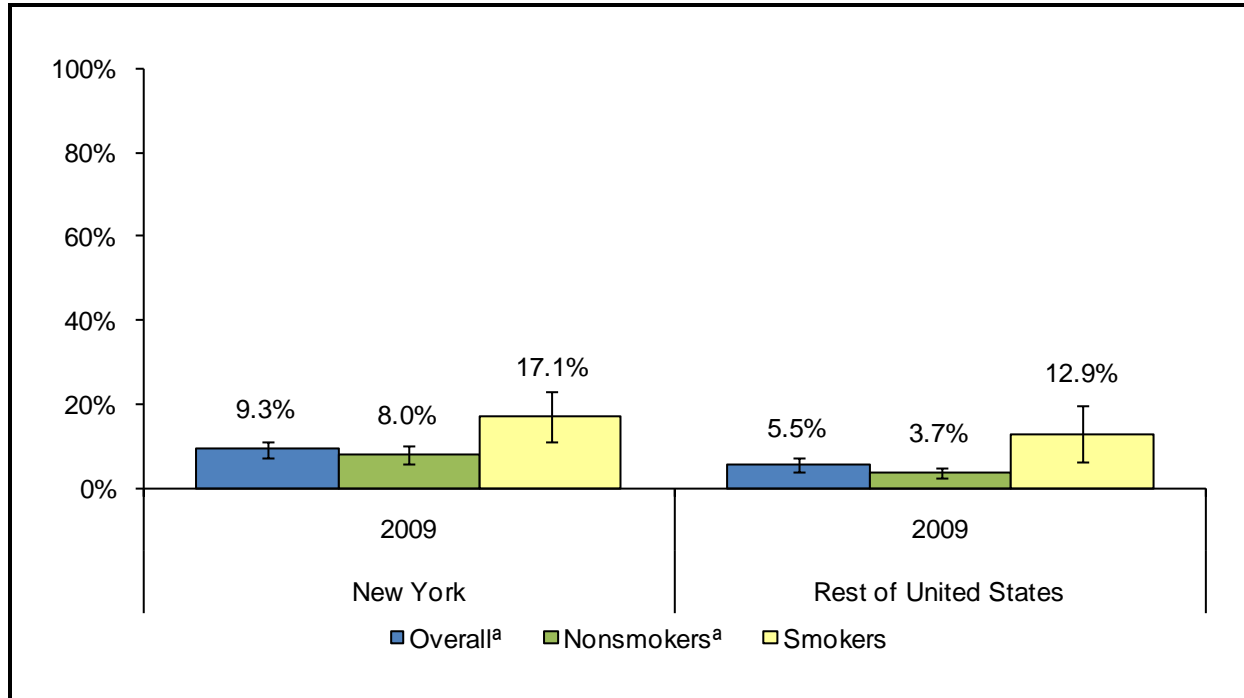


<sup>a</sup> In 2009, the difference between New York and the rest of the United States is statistically significant.

**Figure 13. Percentage of Adults Who Noticed Tobacco Advertising Almost Every Time or Frequently in Grocery Stores in the Past 30 Days, NY-ATS 2009 and NATS 2009**



**Figure 14. Percentage of Adults Who Noticed Tobacco Advertising Almost Every Time or Frequently in Pharmacies in the Past 30 Days, NY-ATS 2009 and NATS 2009**



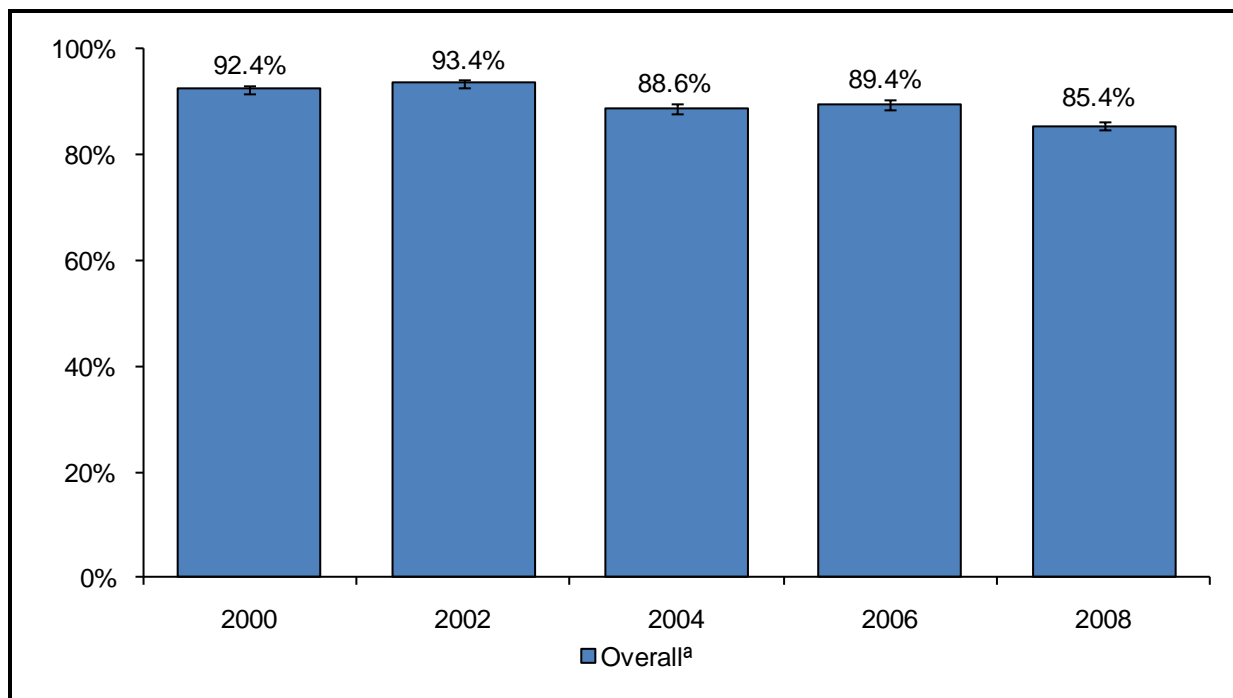
<sup>a</sup> In 2009, the difference between New York and the rest of the United States is statistically significant.

## Youth

To assess self-reported exposure to tobacco advertising and promotions among youth (those younger than 18 years old), we analyzed the NY-YTS. In 2008, 85.4% of youth in New York reported seeing tobacco advertising in retail stores in the past 30 days (Figure 15). While high, the trend in recall of tobacco advertising in stores has declined significantly from 2000. The percentage of youth who reported seeing tobacco ads on the Internet increased significantly from 57.4% in 2000 to 72.2% in 2008 (Figure 16). There were no differences between smokers and nonsmokers of recall of advertising in retail stores and on the Internet.

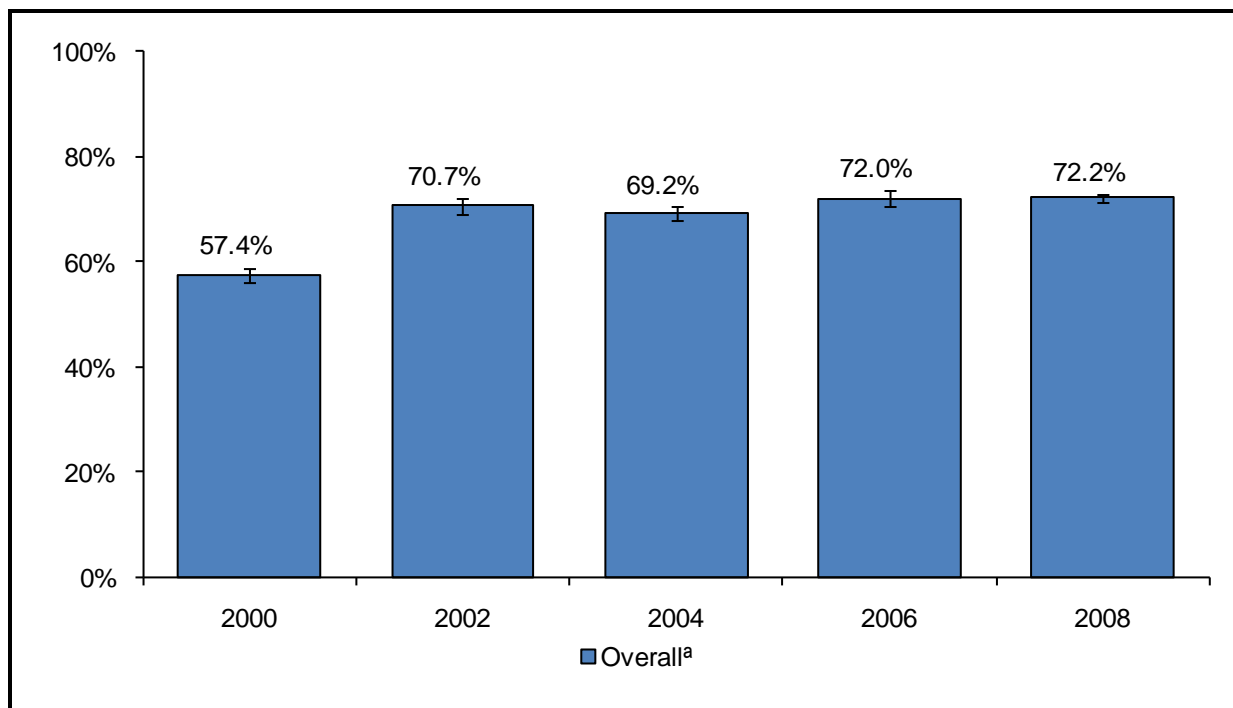


**Figure 15. Percentage of Youth Who Reported Seeing Tobacco Advertising in Retail Stores in the Past 30 Days, NY-YTS 2000–2008**



<sup>a</sup> Statistically significant downward trend from 2000 to 2008.

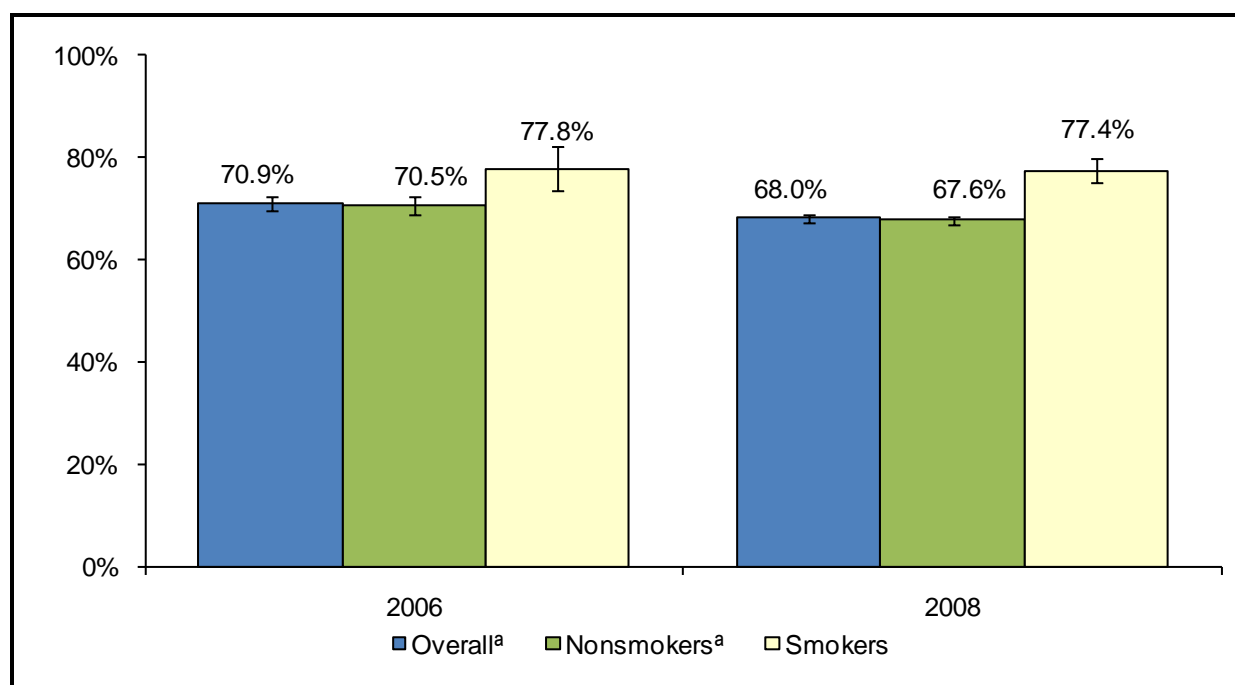
**Figure 16. Percentage of Youth Who Reported Seeing Ads for Tobacco Products When Using the Internet in the Past 30 Days, NY-YTS 2000–2008**



<sup>a</sup> Statistically significant upward trend from 2000 to 2008.

A majority of New York youth reported seeing advertisements for tobacco products at festivals, fairs, parades, or concerts (Figure 17). In 2008, 77.4% of youth smokers reported seeing ads for tobacco products at festivals and other events. The overall number of youth and nonsmokers in New York who reported seeing tobacco ads significantly decreased from 2006 to 2008.

**Figure 17. Percentage of Youth Who Reported Seeing Ads for Tobacco Products at Festivals, Fairs, Parades, or Concerts, NY-YTS 2006 and 2008**

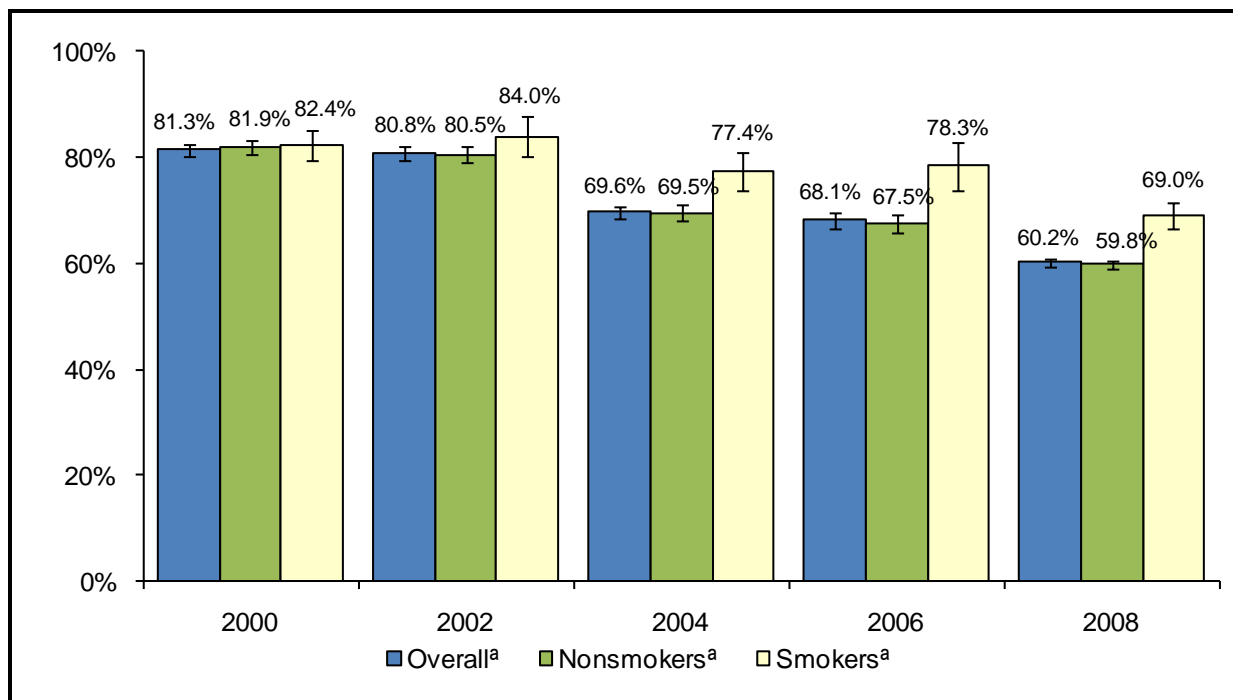


<sup>a</sup> Statistically significant downward trend from 2006 to 2008.

In New York, 60.2% of youth reported seeing tobacco ads when reading newspapers or magazines (Figure 18), down significantly from 81.3% in 2000. Recall of tobacco ads in print materials is consistently higher for youth who smoke than for youth who do not smoke. In addition, exposure to tobacco ads in print appears to be declining more slowly for smokers than for nonsmokers.

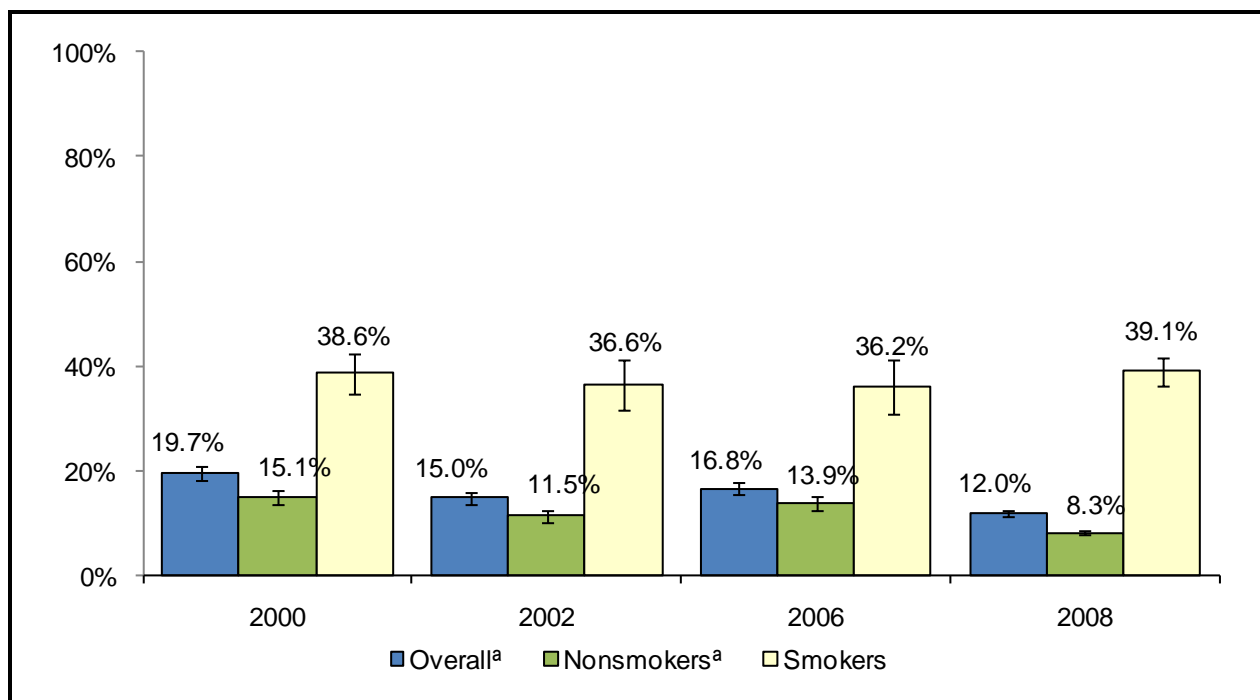
In 2008, 39.1% of youth smokers reported buying or receiving an item with a tobacco company name or picture on it (Figure 19). Owning tobacco branded gear is much more prevalent among smokers than among nonsmokers, but just over 8% of nonsmoking youth in New York own such items.

**Figure 18. Percentage of Youth Who Reported Seeing Ads for Tobacco Products When Reading Newspapers or Magazines, NY-YTS 2000–2008**



<sup>a</sup> Statistically significant downward trend from 2004 to 2008.

**Figure 19. Percentage of Youth Who Reported Buying/Receiving Anything With a Tobacco Company Name or Picture On It, NY-YTS 2000–2008**



<sup>a</sup> Statistically significant trend from 2004 to 2008.

Regression models were developed to estimate differences in self-reported exposure to pro-tobacco marketing among youth by smoking status, school level, sex, and race/ethnicity (Table 3). Nonsmoking youth are just as likely as smokers to recall seeing ads in retail stores, whereas smokers are more likely to recall seeing ads on the Internet; at festivals, fairs, and concerts; and in newspapers and magazines. Smokers are 4 times more likely than nonsmokers to own a tobacco branded object.

**Table 3. Odds Ratio (95% Confidence Interval) Regression Results for Youth Pro-Tobacco Marketing Exposure Outcomes, NY-YTS 2000–2008**

Explanatory Variable	See Ads in Retail Stores	See Ads on the Internet	See Ads at Festivals and Concerts <sup>a</sup>	See Ads in Newspapers and Magazines	Own Tobacco Branded Gear <sup>b</sup>
Smoking Status					
Nonsmoker	1.0	1.0	1.0	1.0	1.0
Current smoker	1.01 (0.90–1.14)	1.22*** (1.12–1.33)	1.61*** (1.42–1.82)	1.16*** (1.06–1.26)	4.06*** (3.66–4.51)
School Level					
Middle school	1.0	1.0	1.0	1.0	1.0
High school	1.37*** (1.28–1.46)	0.92*** (0.87–0.97)	1.23*** (1.14–1.33)	1.65*** (1.57–1.75)	1.07 (0.98–1.17)
Sex					
Female	1.0	1.0	1.0	1.0	1.0
Male	0.70 (0.66–0.75)	0.91*** (0.86–0.96)	0.93** (0.86–1.00)	0.72*** (0.69–0.76)	1.35*** (1.24–1.47)
Race/Ethnicity					
White	1.0	1.0	1.0	1.0	1.0
African American	0.50*** (0.46–0.55)	1.07* (0.99–1.15)	0.86*** (0.78–0.95)	0.90*** (0.84–0.96)	0.91 (0.81–1.02)
Hispanic	0.51 (0.47–0.55)	1.09*** (1.02–1.17)	0.98 (0.90–1.06)	0.92*** (0.86–0.98)	1.02 (0.92–1.13)
Asian	0.59*** (0.52–0.66)	1.13** (1.03–1.25)	0.77*** (0.67–0.89)	0.78*** (0.70–0.85)	0.94 (0.80–1.10)
Other	0.51*** (0.39–0.68)	1.00 (0.78–1.29)	1.05 (0.77–1.45)	0.85 (0.67–1.08)	1.32 (0.91–1.92)

<sup>a</sup> This question was asked only in 2006 and 2008.

<sup>b</sup> This question was not asked in 2004. All models also included indicators for survey year.

\*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

In general, high school students are more likely to report exposure to pro-tobacco advertising than are middle school students, with the exception of seeing ads on the Internet. Females are somewhat more likely than males to report seeing ads, but males are more likely to own a piece of tobacco branded gear. Whites are more likely to report exposure to all types of pro-tobacco advertising except for Internet ads and tobacco branded gear.

## Conclusions

**Y**outh experimentation with cigarettes and progression to established smoking is a constant concern for the tobacco control community. In addition, the number of adults who successfully quit smoking is low compared with the number who would like to quit. Extensive, persuasive tobacco advertising plays an important role in perpetuating the smoking problem in New York and nationwide. This report used several different data sources to show that tobacco advertising and promotion is widespread in New York retail stores, and a majority of New York youth and adults are exposed. While the number of stores that sell tobacco has fallen by more than 20% in the past 10 years, there were almost 23,000 LTRs in New York in 2009. The vast majority of stores that sell tobacco in New York have tobacco advertising and promotions in them:

- 59.1% of stores have exterior advertising, with an average of 2.5 ads per store.
- 94.7% of stores have interior advertising, with an average of 17.5 ads per store.
- 70.2% of stores offer a price promotion, with an average of 4.4 promotions per store.
- 10.5% of stores have tobacco advertisements or products at the eye-level of a child or near candy.

Adults and youth in New York report seeing this retail tobacco advertising in high numbers:

- 66.5% of adult smokers recall seeing tobacco ads in convenience stores, 26.4% in grocery stores, and 17.1% in pharmacies.
- 89.0% of youth smokers recall seeing tobacco ads in any store.

Other forms of tobacco advertising are also prevalent in New York and affect adults and youth:

- Among adult smokers,
  - 36.4% receive promotional items in the mail from tobacco companies,
  - 27.9% receive special price discounts, and
  - 10.9% receive e-mail from tobacco companies trying to sell cigarettes.

- Among youth,
  - 72.2% report seeing tobacco advertising on the Internet;
  - 68.0% report seeing tobacco advertising at fairs, festivals, and concerts;
  - 60.2% report seeing tobacco advertising in newspapers and magazines; and
  - 39.1% of youth smokers own a tobacco branded object.
  - Nonsmoking youth are just as likely as youth who smoke to report seeing tobacco advertising in stores.
  - Youth who smoke are more likely than nonsmoking youth to report seeing ads in newspapers and magazines, at festivals and concerts, and to own a tobacco branded object.

This report examined exposure to point-of-sale advertising and smoking-related behaviors among adults and youth. The establishment of monitoring systems and use of population surveys will allow us to document the extent of tobacco advertising in New York and to evaluate progress made by New York's Tobacco Control Program in countering the impact of ubiquitous tobacco marketing.

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Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York NY 10007

Dear Chairwoman Arroyo,

I understand that New York City Council will be soon considering three tobacco proposals. As Minister of Health and Long-Term Care for the province of Ontario, I'm pleased to submit an explanation of Ontario's tobacco reduction legislation and offer my support for the 'Tobacco Product Display Restriction.'

Tobacco is the leading cause of preventable disease and preventable death in Ontario. Tobacco-related diseases cost Ontario's health care system \$1.93 billion annually in direct health care costs and accounts for about 10 per cent of acute care hospital stays. In light of these troubling facts, Ontario has set a goal to have the lowest smoking rates in Canada. To achieve this goal, the provincial government introduced the Smoke Free Ontario (SFO) Strategy, which is legally enforced through the Smoke-Free Ontario Act 2006 (SFOA).

The Smoke Free Ontario Strategy operates through a variety of programs and initiatives under the pillars of cessation, prevention and protection.

In particular, I encourage Council to consider how tobacco products can be displayed, handled and promoted in a retail store in Ontario. As of May 31, 2008, Ontario enacted a full ban on tobacco displays whereby no person shall display or permit the display of tobacco products in any place where tobacco products are sold or offered for sale in any manner that will permit a consumer to view any tobacco product before purchasing the tobacco.

I'd like Council to know that our ban on the display of tobacco products at the point of sale is intended to decrease rates of smoking among youth, decrease rates of smoking in the general population, increase rates of successful quit attempts, and decrease relapse rates among quitters. It is also expected that youth will identify less with tobacco as a normal convenience store item.

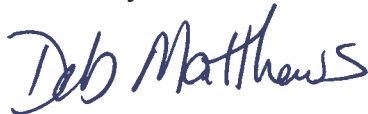
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We have achieved several positive outcomes to date, including a reduction in the rate of youth smoking. Among young adults ages 18 to 19, the rate of smoking dropped from 23.5% in 2003 to 13% in 2009. Among young adults aged 20 to 24, the rate of smoking dropped from 26% in 2005 to 20% in 2009.

I encourage Council to consider Ontario's success as an example of what could potentially be achieved through the Tobacco Product Retail Display Restriction. If you would like more information on our Smoke-Free Ontario Strategy, please visit the following web site:

<http://www.mhp.gov.on.ca/en/smoke-free/default.asp>

Sincerely,

A handwritten signature in blue ink that reads "Deb Matthews". The signature is written in a cursive, flowing style.

Deb Matthews  
Minister

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May 2, 2013

Council Member Maria del Carmen Arroyo  
Chair, Committee on Health  
Legislative Office  
250 Broadway, Suite 1768  
New York, NY 10007

Dear Councilwoman Arroyo:

***Re: Tobacco Product Display Restriction Bill***

Thank you for the opportunity to comment on the Tobacco Product Display Restriction Bill being considered for introduction into legislation. I am writing to share our experience with similar legislation in my role as Medical Officer of Health for the City of Toronto and the Executive Officer of the Toronto Board of Health. Toronto Public Health is Canada's largest local public health agency, providing public health programs and services for 2.7 million residents.

The provincial Smoke-Free Ontario Act came into effect in 2006. This province-wide act prohibits smoking in enclosed workplaces and enclosed public places in Ontario in order to protect workers and the public from the hazards of second-hand smoke. By 2008 the Smoke-Free Ontario Act had expanded to include a display ban for tobacco products at point of sale. This means that countertop displays of tobacco products are prohibited, customers aren't allowed to handle tobacco products prior to purchase and any kind of promotional material that reflects a particular brand of tobacco product is prohibited.<sup>1</sup> Toronto Public Health enforces all aspects of the Smoke-Free Ontario Act under extensive guidelines to support implementation which can be found at <http://www.mhp.gov.on.ca/en/smoke-free/default.asp>.

In Toronto we have seen overall smoking rates decline since the display ban was introduced in 2008. Throughout the province youth smoking rates are now at 5%.<sup>2</sup> The number of youth who have reported they have 'ever tried' smoking has also declined from 25% before the display ban to 20% after the ban was legislated.<sup>3</sup> Initially there was some apprehension about how the display ban would be accepted by retailers in our community but we are happy to report that during the first years following the display ban compliance

<sup>1</sup> <http://www.mhp.gov.on.ca/en/smoke-free/display-ban/default.asp>

<sup>2</sup> Canadian Community Health Survey 2012

<sup>3</sup> Youth Smoking Survey 2006-07, Youth Smoking Survey 2010-11, <http://www.yss.uwaterloo.ca/?section=5&page=273>

rates were as high as 99% and continue to be high.<sup>4</sup> Some tobacco retailers voiced concern about how this might impact their sales. The key point we emphasized was that a ban on tobacco point of sale advertising is not a ban on the sale of tobacco products. In Toronto, cigarettes can still be readily purchased from any of the approximately 4,000 tobacco retailers in the city.

The high rates of compliance with the tobacco display ban for tobacco products at point of sale is particularly important when considered in relation to community smoking rates. It has consistently been demonstrated that there is a strong correlation between tobacco visibility and availability in retail outlets and rates of tobacco use. Young people are more likely to be influenced by convenience store promotions - this is highlighted by the frequency of point of sale promotions which are more prominent in low-income neighbourhoods, in close proximity to schools and in areas frequented by youth.<sup>5</sup> The perception that tobacco is easy to obtain increases both the risk of initiating smoking among youth and the progression to regular use.

Based on the Toronto experience, I encourage Council to support the proposed legislation to implement the Tobacco Product Display Restriction Bill. A complete point of sale tobacco display ban is a critical piece of a comprehensive tobacco use reduction strategy, and an important step in improving the overall health of our cities.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. McKeown', with a stylized, cursive script.

Dr. David McKeown  
Medical Officer Of Health

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<sup>4</sup> Cohen, J., Planinac, L., Lavack, A., Robinson, D., O'Connor, S., & DiNardo, J. (2011). Changes in Retail Tobacco Promotions in a Cohort of Stores Before, During, and After a Tobacco Product Display Ban. *American Journal of Public Health*, 101 (10), 1879-1881.

<sup>5</sup> Ibid.

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May 1, 2013

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Chairwoman Arroyo:

My name is Daniel Morris. I am a scientist with a background in physics and a doctorate in public health. By profession I am an epidemiologist working for Oregon's state public health agency. I am testifying today as a concerned citizen who wants to see fewer people die from smoking-related diseases. To prevent youth initiation of tobacco use, I urge the New York City Council to raise the minimum age to buy tobacco to 21, and to set minimum pack sizes for inexpensive cigars. By reducing tobacco use these bills will save the lives of New York City residents and set a strong example for tobacco control across the country.

Most smokers initiate use as teenagers. Making it more difficult for teens to acquire tobacco will discourage use. Tobacco kills far more people than alcohol, which stores can not sell to people younger than 21. Setting the same threshold for tobacco sales makes sense.

As cigarette smoking has declined, youth smoking of inexpensive cigarillos and cigarette-sized cigars has increased. Tobacco companies can make these products affordable to kids by selling them in small packages. By requiring inexpensive cigars be sold in packages of at least four, and cigarette-sized cigars to be sold in packs of 20, the retail price of these products will be higher. Youth are especially sensitive to price, and even this small difference will effectively reduce smoking.

Sincerely yours,



Daniel Morris, MS, PhD

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April 19, 2013

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

My name is Daniel Morris. I am a scientist with a background in physics and a doctorate in public health. By profession I am an epidemiologist working for Oregon's state public health agency. I am testifying today as a concerned citizen who wants to see fewer people die from smoking-related diseases. I urge the New York City Council to pass the Sensible Tobacco Enforcement bill (T2013-6008) and the Tobacco Product Display bill (T2013-6007). By reducing tobacco use these bills will save the lives of New York City residents and set a strong example for tobacco control across the country.

Cigarettes are the only consumer product that kill when used as intended. Despite the well-known health risks, tobacco companies were able to sell over 287 billion cigarettes in the U.S. in 2012; over 45 packs for every woman, man and child living in the country.

The best way to reduce smoking and prevent youth initiation is to raise the price of tobacco products. By the same token, the best way to sell cigarettes is to keep the price low. To that end, 84% of the \$8 billion spent marketing cigarettes in 2010 went to lower retail prices through discounts and coupons. By ensuring a high price on cigarettes and little cigars, the Sensible Tobacco Enforcement bill will lower consumption and prevent death and disease.

Tobacco companies spend a great deal of money advertising their products. Most of this advertising is directed at the point of sale. With ads on TV and radio now prohibited, product packaging is the most important media for tobacco advertising. The "Power Wall" of tobacco products behind the retail counter puts these ads directly in front of customers. In 2010 tobacco companies paid retailers \$476 million for the placement of Power Walls and other ads in the retail environment. These incentives work: of the 10,000 licensed tobacco retailers in New York City, 80% devote the majority of the area behind the checkout counter to a display of tobacco products. By covering up the Power Walls, the Tobacco Product Display bill will dramatically reduce the amount of tobacco advertising in New York City.

Thank you for your leadership on this important issue.

Sincerely yours,



Daniel Morris, MS, Phd



30 April 2013

The Honorable Maria Del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Dear Madam Chair:

On behalf of the founding partners of the Ontario Campaign for Action on Tobacco (the Canadian Cancer Society – Ontario Division, the Heart and Stroke Foundation – Ontario, the Non-Smokers' Rights Association, and the Ontario Medical Association), I am pleased to submit comments in support of New York City's proposed restrictions on the display of tobacco industry products.

#### Founding Agencies

Canadian Cancer Society  
Ontario Division

Heart and Stroke  
Foundation of Ontario

Non-Smokers'  
Rights Association

Ontario Medical Association

As you may know, the province of Ontario successfully implemented a complete ban on retail displays of tobacco products in 2008, with the only exception being stores which qualified as "tobacconists" (i.e. which had sales of 50% or more of specialty tobacco products excluding cigarettes. In these latter stores, while displays of cigarettes had to be completely covered, specialty tobacco products could be openly displayed.)

#### Supporting Agencies

Association of Local  
Public Health Agencies

Cancer Care Ontario

Ontario Association of  
Children's Aid Societies

Ontario Association of  
Naturopathic Doctors

Ontario Federation of Home  
and School Associations

Ontario Physical and Health  
Education Association

Ontario Public Health  
Association

Physicians for a  
Smoke-Free Canada

Registered Nurses  
Association of Ontario

The Ontario College  
of Family Physicians

**Research carried out during the pre-ban period (2005-08) made clear that the general public in Canada and other countries understood tobacco displays to be a form of advertising, that displays increased young peoples' knowledge of tobacco products, and that bans could and did lead to reductions in youth smoking and increased quit rates.**

**I have summarized some of the key findings from this research below in order to demonstrate the high degree of understanding among both youth and adults about the purpose and effectiveness of tobacco displays, and to show that display bans have had measurable effects on smoking prevalence in all age groups:**

- Nationwide research in 2005 by Health Canada summarized the general public attitude at the time that retail tobacco displays were a form of advertising: "The typical wall of cigarettes in a retail establishment is clearly perceived to be a form of advertising. Moreover, such displays have a significantly greater influence on younger smokers compared with older smokers in terms of encouraging them to smoke more often. This is a view shared by one-half of the general public. Six in 10 Canadians think there should be some form of restriction on the retail display of cigarettes."<sup>1</sup>
- A report prepared in 2007 for the Ontario Ministry of Health Promotion by the Ontario Tobacco Research Unit, concluded that research "suggests that bans on the display of tobacco products at point-of-sale are likely to be associated with decreased rates of initiation of smoking behavior among young persons, decreased rates of smoking in the general population, higher rates of successful quit attempts, and few relapses among quitters."<sup>2</sup>

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<sup>1</sup> Corporate Research Associates Inc., 2005 National Baseline Survey on the Tobacco Retail Environment. Report prepared for Health Canada. March 2005.

<sup>2</sup> Anglin, Lise. "Evaluating the Health-Related Impact of Banning Tobacco Retail Displays: Preliminary Evidence". A report prepared for the Ministry of Health Promotion. Ontario Tobacco Research Unit, March 8, 2007.

The report went on to summarize progress in a number of jurisdictions outside Ontario, and noted that public support for tobacco retail display bans in Ontario was particularly high in 2005 during the public debate about banning displays under the province's proposed *Smoke-Free Ontario Act* (page 2).

The report provided results from Iceland showing a dramatic drop in smoking prevalence among youth following that country's display ban (page 4).

The report concluded by noting that while full-scale scientific evaluation of display bans had not yet been published in 2007, "(p)reliminary reports from jurisdictions that have such bans in effect, especially Iceland and Thailand, are positive. Indeed, these jurisdictions are celebrating the bans as a public health success of particular benefit to children" (page 7).

- A 2008 op-ed article by the CEOs of the Ontario Campaign for Action on Tobacco partners summarized additional survey research done during the 2005 debate in Ontario: over 40% of Ontario kids from non-smoking households interviewed could spontaneously name cigarette brands, and over one-quarter of the kids who didn't know any young smokers, could name cigarette brands.<sup>3</sup>
- Research from the Ontario Tobacco Research Unit published just weeks before implementation of Ontario's ban, described the omnipresence and intensity of cigarette displays in convenience stores and other retail locations. In addition to the degree of retail promotion of tobacco products, the research group found that "tobacco promotions were higher among stores close to a school, and in neighborhoods with lower median household incomes".<sup>4</sup>
- Finally, in a comprehensive research study across Canada completed between October 2006 and June 2009 (that is, before, during, and in some cases after display ban implementation in provinces across Canada) support for such bans among smokers was found to be strong: levels of support for advertising and display bans were comparable between Canadian provinces irrespective of whether displays had been banned or not.<sup>5</sup>

### **No Evidence of Negative Economic Impacts from Display Bans**

- In a December 2010 research summary, Canada's Non-Smokers' Rights Association summarized evidence showing that a number of claims of negative impacts from display bans by the retail industry, were inaccurate. Areas covered in this summary<sup>6</sup> included claims of store closures and other financial impacts, increase in contraband and theft, and irritation or inconvenience of customers.
- In an October 2008 email to a public health colleague, the Nova Scotia government manager responsible for the Act banning point-of-sale promotions in that province in 2006<sup>7</sup> stated that "the Department of Health Promotion and Protection has not received research, data, analysis, reports or statements of any kind that point to any kind of economic impact of the point-of-sale advertising provisions of the Act. In particular, no vendor association or tobacco manufacturer has made the Department aware of any adverse impact".
- Since the implementation of the Ontario ban in 2008, the Ontario Campaign for Action on Tobacco has repeatedly searched for objective evidence of negative economic impacts from the Ontario ban, without success.

### **An Industry Attempt to Undermine a Display Ban**

I would like to draw your attention to one attempt to maintain the impact of tobacco displays following implementation of a partial ban in Manitoba.

<sup>3</sup> Goodhand P, Habib G, Rossi R. "Government Acts Wisely on Stealth Tobacco Ads". Ontario Campaign for Action on Tobacco op-ed. May 27, 2008.

<sup>4</sup> Cohen J, et al. Tobacco Promotions at Point-of-Sale: The Last Hurrah. *Canadian Journal of Public Health*, May – June 2008.

<sup>5</sup> Brown A, et al. Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey. *Tobacco Control*, published online October 15, 2011.

<sup>6</sup> Non-Smokers' Rights Association. "Tobacco Display Bans in Canada: Setting the Record Straight". December 2010.

<sup>7</sup> Machat, Steven. Email correspondence with Sharon MacIntosh, October 1, 2008.



The pictures included below are displays behind curtains used in Manitoba, and create an attractive visual that can catch the eye of anyone in the vicinity, every time tobacco products are exposed for sale. Enforcement staff in Manitoba had these taken down immediately and spoke to the tobacco company representative who placed them, as under Manitoba's general legislation, tobacco products cannot be advertised or promoted in places where the products are sold. The same tactic may be attempted in New York, and if so would reduce the impact of your proposed policy.



Finally, we are attaching a letter received just prior to implementation of the display ban in Ontario from the civil servant responsible for implementation, outlining the province's proposed implementation plan. Again, while our respective display bans will differ somewhat, there may be approaches to implementation outlined in the attached letter which will be of benefit as New York prepares its own implementation plan.<sup>8</sup>

Madam Chair, we again commend you and your colleagues for this important tobacco control initiative. We would like to offer our ongoing support and encouragement to your efforts, and would be pleased to answer any questions or provide follow-up information arising from any of the above testimony.

Yours very truly,

Michael Perley  
Director

<sup>8</sup> Correspondence to Michael Perley from Denis Gertler, Acting Director, Smoke-Free Ontario. December 12, 2007.

**Ministry of Health Promotion****Smoke-Free Ontario**

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December 12, 2007

Michael Perley  
Director  
Ontario Campaign for Action on Tobacco (OCAT)  
525 University Avenue, Suite 300  
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Dear Mr. Perley:

First, let me thank you for your continued patience as we have been working toward implementation of the display ban effective May 31, 2008. The Ministry has consulted with parties that will be affected by the display ban to identify implementation concerns, and to discuss known examples of tobacco storage and dispensing systems. At that time we indicated that our objective was to develop an operational policy to provide direction to enforcement staff in public health units, and guidance to Ontario tobacco vendors. Please note that further clarification regarding the application of the display ban in wholesale outlets will be forthcoming at a later date.

The Ministry's display ban policy has now been sent to each of the public health units. We have set out directions from the policy that are applicable to tobacco vendors.

Note that the policy speaks to the display of tobacco products, which can include actual displays and their structures or a display that occurs through the actions of a clerk. Keep in mind that both intentional and unintentional actions of those working in the establishment may result in tobacco being displayed. It is the Ministry's view that properly stored tobacco products, pursuant to the principles found below, will not be considered displays for the purposes of this section. The following enforcement principles underscore the policy direction to health units:

***Enforcement Principles***

- 1) Proprietors have a responsibility to ensure their tobacco is not displayed or stored in a manner that will permit the consumer to view tobacco prior to purchase;
- 2) Proprietors must be diligent in ensuring staff understand and are compliant with this provision;
- 3) A purchase transaction that includes a brief time between opening and closing a storage device and transferring the product to a consumer does not constitute a display for the purposes of the tobacco display ban. Brief is defined to mean a minimal and momentary time as required to select a tobacco product and deliver it to the customer in a single transaction;

- 4) Any action, intentional or unintentional, by a person that demonstrates tobacco products contained in a storage device, which may otherwise be an acceptable device in order to show product availability would be considered an offence of the Act;
- 5) Proprietors continue to be responsible for ensuring compliance with all other requirements of the Act, including the prohibition on promoting or enhancing tobacco products;
- 6) Apart from #3 above, proprietors are responsible for ensuring that tobacco products are not displayed to a potential consumer while re-stocking, conducting inventory checks, or any other process that may require the storage device to be opened and tobacco products viewed.

### *Storage and Dispensing Devices*

Provided they are constructed and used in compliance with the principles as outlined above, and with all other applicable provisions of the *Smoke-Free Ontario Act*, the following are examples of acceptable storage and dispensing systems:

- Overhead containers with tobacco products that are only visible to the clerk;
- Below-the-counter drawers or cabinets with tobacco products only visible to the clerk;
- Single package dispensing, gravity-fed devices;
- Retrofit devices covering shelves with top hinge 'flip up' covers which close automatically or immediately by gravity, no larger than sections one foot (30.5cm) in length which open one at a time;
- Slim drawers that open in sections and expose only the spine of cigarette packages;
- On-the-counter devices and rotating trays of tobacco products, only visible to the clerk.

These acceptable examples reflect the requirement of the Act to ensure tobacco products are not displayed and limit the exposure to viewing tobacco products in the course of a purchase transaction. These also significantly reduce the opportunity for human error and unintentional displays. A purchase transaction begins with a customer requesting a particular tobacco product and ends with the exchange of money for the product. Each transaction must be distinct and separate (i.e., the device cannot be left open to service a succession of purchase transactions).

The Ministry notes that the range of acceptable options all limit the exposure to viewing tobacco products during a purchase transaction.

The examples of acceptable storage devices are not intended to be exhaustive.

The following are examples of unacceptable storage and dispensing systems:

- Garage door style covers which open to display the whole or large portion of the stock of tobacco products;
- Large cupboards which open to permit the consumer to view the display of larger quantities of tobacco products;
- Retrofit devices covering shelves with bottom hinge 'flip down' covers that do not close automatically and would remain open unless lifted back into a closed position;
- Curtains or blinds;
- Horizontal sliding doors (like closet doors).

The examples of unacceptable devices demonstrate the point at which the Ministry feels a storage device also facilitates a display or the act of displaying for the purposes of the display ban as set out in the SFOA. As tobacco products must not be viewed prior to purchase, it will be more difficult to comply with this provision using any device that does not self-close, and that may expose large quantities of tobacco products during a purchase transaction.

A curtain or blind is not recommended as a compliant storage method. A tobacco enforcement officer that sees an open curtain and has a view of tobacco products being displayed while entering a store would be in a position to charge a vendor with non-compliance of section 3.1(2).

Questions regarding the application of this policy to specific storage devices that are not included or addressed here should be brought forward to the tobacco inspectors in your local public health unit.

### *Obtaining Compliance*

While there is no grace period provided under any part of the SFOA to persons subject to the Act, the Ministry's approach is to seek compliance with the Act. Initial visits by health unit staff will start with education about the requirements of the Act. This initial focus on education is not intended as a relaxation of the Act's requirements but the first step in a protocol of progressive enforcement.

With respect to educating tobacco vendors, Public Health Unit staff plan to visit vendors, host workshops and communicate with all known vendors to educate them about the display ban's requirements. The Ministry of Health Promotion will be working with health units and other agencies to coordinate development of public education material.

### *Vendor's Use of Signage and Binder*

As you know, many vendors are wondering how they will communicate to a potential customer that they sell tobacco products, or what tobacco products are included in their inventory. Stores will continue to be permitted to have up to 3 signs with white background and black text indicating the availability of tobacco, which must comply with section 7 of the Regulation (O.Reg. 48/06). Methods that a vendor may use to convey availability of tobacco products include the proper use of a binder or other tool containing a list or inventory of tobacco products available for purchase. Please bear in mind that the proper use of this tool is for reference and not for distribution, promotion or display. It is expected that vendors will not promote or enhance the sale of tobacco products through the use or display of this binder. This binder could be stored beneath the counter and used by a clerk and a customer of legal age to purchase tobacco (i.e., to identify which product the customer wishes to purchase). The binder should only be taken out during a sale and then returned immediately thereafter to its storage spot (see above). The binder may not be left open on the counter.

### *Registered Tobacconists*

Tobacconists who are registered with the Ministry of Health Promotion are exempt from the display ban for the sale of specialty tobacco products. There is no exemption for the display of cigarettes for Registered Tobacconists. Tobacconists must comply with all provisions of the display ban addressing the sale of cigarettes and other non-specialty tobacco products. Public Health Units are provided with a list of Registered Tobacconists in their area by the Ministry of Health Promotion.

### *Specialty Tobacco Products*

Specialty tobacco products including cigars, cigarillos, pipe tobacco, chewing tobacco, snus, snuff etc. are included in the display ban and the same rules apply as for cigarettes. Only Registered Tobacconists as indicated above are exempt from the prohibition of displaying specialty products under the tobacco display ban.

### *Accessories*

With respect to display of pipes and other tobacco product accessories, subsection 1(1) of Ontario Regulation 48/06 includes pipes in the definition of "tobacco product accessories". Subsections

3.1(1) and (2) of the SFOA prohibit display of tobacco products in certain places but do not mention display of tobacco product accessories. Therefore pipes, like other tobacco product accessories such as cigarette tubes, cigar cutters, punches, portable humidification devices and humidors, are not covered by the display ban and may continue to be displayed when the display ban takes effect. Note, however, that subsection 3.1(3) of the Act prohibits promotion of the sale of tobacco products. Therefore, although tobacco product accessories may be displayed and offered for sale, the display must not promote the sale of tobacco products. Tobacco product accessories that identify a particular tobacco brand must not be displayed.

### *Humidors*

Where a walk-in humidor is located in a premise operated by a Registered Tobacconist (i.e., registered by the Ministry of Health Promotion), a consumer 19 years and older may view and select a specialty tobacco product. If cigarettes are stored in the humidor, these products may not be displayed to the consumer prior to purchase.

Where a walk-in or any type of humidor is located in a premise operated by a non-Registered Tobacconist, tobacco is not to be visible outside the humidor. Frosted glass or other finishes that prevent viewing are acceptable options to ensure that tobacco products are not visible. Only the clerk is permitted to enter a walk-in humidor to retrieve the product. Where a non-Registered Tobacconist has portable or smaller humidors, these must also be in compliance with the display ban in line with the principles indicated in "Enforcement Principles" above and must be positioned away from view of the consumer.

### *Identification Tags*

Small tags are permitted on the outside of storage devices in order to assist a vendor to locate the particular tobacco product(s) contained in each storage device. These tags must:

- Use black type on a white background;
- Use letters up to 14 point type size;
- Not use logos or colour, and
- Not be larger than 2" X 1" (5 cm X 2.5 cm).

The use of these identifier tags is intended to be practical and used only as required to locate the specific product, and not as enhancements or to promote tobacco products. Price information is not permitted on these identification tags. The price tags that are currently permitted must be removed from view by May 31, 2008.

### *Signage*

Concerning price signage, vendors will continue to be permitted to have up to three signs in each premise (in addition to the signs required under the Act and the Regulation) referring to tobacco products or tobacco product accessories, or both. The size of each sign cannot exceed 968 square centimetres and is subject to all conditions as set out in section 7 of the Regulation.

### *Other Applications of the Ban*

No tobacco products, including snus, may be displayed by means of a counter-top display. Any device including a refrigerator cannot promote the use of tobacco products through any logo or promotional enhancement pursuant to s.3.1(3). Also, the snus could not be displayed in a manner that permits the consumer to view it prior to purchase.

## *Kiosks*

A particular vendor's location may allow for fewer storage options in order to comply with this section, and make it difficult to sell tobacco without displaying tobacco products prior to purchase. Despite these difficulties, operators of kiosks are required to comply with all aspects of the display ban as set out in the SFOA.

## *General Considerations*

The tobacco display ban does not change or affect other sections of the Act or the Regulation. For example, the restriction on the maximum allowable number of signs in the establishment remains in effect. All places that sell or offer to sell tobacco products must post the Government health warning, and age requirement signs. A fine under section 3.1 of the Act can be issued for up to a maximum of \$4,000 for an individual and \$10,000 for a Corporation with no prior convictions. These fine amounts increase to a maximum of \$100,000 for an individual and \$150,000 for a Corporation with repeated contraventions.

The display ban is about saving lives and reducing health care costs by preventing young people from starting to smoke, and by helping smokers quit. I appreciate that the display ban will require time and effort for tobacco vendors and public health staff to implement. Please be assured that we remain committed to working with all affected parties to effect an orderly transition.

Mr. Perley, please contact me if you have any questions or if I may assist your efforts to educate your members about the general application of the display ban. Should you have any questions or concerns regarding a specific location, please contact the local public health unit.

Yours very truly,



Denis Gertler  
Director (A),  
Smoke-Free Ontario

CC: Janie Romoff, Assistant Deputy Minister (A), Ministry of Health Promotion  
Sharon Sabourin, Tobacco Enforcement Coordinator, Ministry of Health Promotion  
Public Health Units  
Peter Goodhand, Chief Executive Officer, Canadian Cancer Society  
Rocco Rossi, Chief Executive Officer, Heart and Stroke Foundation of Canada  
Garfield Mahood, Executive Director, Non-Smokers Rights Association  
Cindy Shcherban, Director of Community Services, Ontario Lung Association

# 2005 National Baseline Survey on the Tobacco Retail Environment

## Report

*POR-04-48*

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## Introduction

Corporate Research Associates Inc. (CRA) is pleased to present the results of the 2005 **National Baseline Survey on the Tobacco Retail Environment** conducted on behalf of Health Canada. CRA research staff in consultation with Health Canada officials designed the survey used in the current study. The principal objective of the current study was to obtain quantitative data regarding smokers' and non-smokers' attitudes, beliefs, and behaviours associated with the tobacco retail environment. More specifically, objectives of the study included:

- Assess current knowledge, attitudes and behaviours associated with the tobacco retail environment such as: displays, availability, advertising, promotion, locations where tobacco is sold, and so on;
- Investigate whether smokers and non-smokers see linkages between smoking, displays at retail, and availability of tobacco products; and
- Examine views and attitudes towards possible modifications to the tobacco retail environment.

CRA utilized a telephone research methodology to achieve these objectives. The telephone survey was administered from February 17 to March 18, 2005 from Corporate Research Associates' data collection facilities (Halifax, Saint John, and Montreal). A total of 4,048 interviews were conducted with a representative sample of adult Canadians who were old enough (i.e., 18 or 19 years of age and older) to be legally sold tobacco products to, according to the laws of the province in which they were a resident. A sample of 4,048 general public interviews drawn from the adult population of Canada would be expected to provide overall results accurate to within +/- 1.5 percentage points in 19 out of 20 samples.

The sample for this study was drawn using systematic sampling procedures from a list of randomly selected households compiled from commercially available telephone numbers in Canada. The sample was stratified by province/territory and by smoking status (i.e., smokers and non-smokers). Accordingly, provinces were either over- or under-sampled in the stratification procedure. That is, while in many studies the interview quotas are assigned according to the actual distribution of the adult population, in this instance, over-sampling less populated provinces permits meaningful commentary on each province. Failure to do so would result in sample sizes in less populated provinces that are too small upon which to reasonably comment.

In addition to provincial stratification, sub-provincial quotas were established for smokers and non-smokers. In each province/territory, 60 percent of the interviews were conducted with residents classified as smokers and 40 percent with residents classified as non-smokers. The final data set was weighted to match the actual distribution of residents in the province. A more complete description of the methodology, sampling, smoking status classifications, and weighting procedures used to conduct this study, is provided at the back of the report.

Appended to this report are the survey questionnaires (Appendix A) and a set of comprehensive banner tables (Appendix B). All percentages presented in the banner tables have been rounded to the nearest whole number and, consequently, may not always total exactly 100 percent. Finally, unless otherwise stated, all figures are expressed as a percentage.



## Executive Summary

Results of the **2005 National Baseline Survey on the Tobacco Retail Environment** indicate that in terms of the most important factor in determining where to purchase cigarettes, convenience trumps all others, and a location close to home is even better. Specifically, one-half of all smokers say convenient geographic location is the most important factor, followed by price with one-third saying it is most important. Perhaps not surprisingly then, nationally, convenience stores are the primary place of purchase for most smokers. Notably, younger smokers (i.e., 18 to 34 years of age) are significantly more likely than older smokers to purchase cigarettes at convenience stores. On the issue of convenience, one-third of smokers say if they had to travel further to purchase cigarettes they would smoke fewer cigarettes, and younger smokers particularly so.

The removal of cigarettes from the product mix is likely to have the most negative impact on convenience stores. That is, establishments that sell products a smoker is apt to always purchase in addition to cigarettes (e.g., groceries at a grocery store) will see a smaller decline in sales of non-tobacco products to smokers, compared with locations that sell non-tobacco products that could be deemed impulse or non-essential purchases (e.g., convenience stores).

The typical wall of cigarettes in a retail establishment is clearly perceived to be a form of advertising. Moreover, such displays have a significantly greater influence on younger smokers compared with older smokers in terms of encouraging them to smoke more often. This is a view shared by one-half of the general public. Six in ten Canadians think there should be some form of restriction on the retail display of cigarettes.

In addition to restricting in store displays, there is reasonably strong support for licensing cigarette retailers, as well as establishing specific limitations on where cigarettes can be sold, particularly in relation to youth. Approximately seven in ten Canadians, including a majority of smokers, think establishments that sell cigarettes should be licensed. Moreover, support for licensing is strongest among younger smokers. Within the context of licensing, further consideration should be given to the issue of accessibility in relation to youth, specifically in terms of the types of establishments that sell cigarettes and their proximity to public schools. Support for limiting the types of establishments that can sell cigarettes is moderate and increases somewhat when limiting youth access is specified as an objective (e.g., within 500 metres of schools).

Finally, there is a clear and evident intent among the majority of smokers to quit doing so. Few smokers have never attempted to quit and in fact the majority of smokers who have attempted to quit have done so in the past year. Results show that fewer than two in ten smokers who attempted to quit smoking in the past year were successful.

**Evaluating the Health-Related Impact of Banning Tobacco Retail Displays:  
Preliminary Evidence  
Prepared for the Ministry of Health Promotion  
By Lise Anglin, Ontario Tobacco Research Unit  
March 8, 2007**

**Research on Health-Related Reasons for Banning Tobacco Retail Displays**

Earlier research suggests that bans on the display of tobacco products at the point of sale are likely to be associated with decreased rates of initiation of smoking behaviour among young persons, decreased rates of smoking in the general population, higher rates of successful quit attempts, and fewer relapses among quitters. These health-related benefits are ably summarized and documented in a policy analysis prepared for Smoke-Free Nova Scotia (Tilson, 2004)<sup>1</sup>, which includes lists of provisions from the relevant legislation in the Canadian provinces and territories and international jurisdictions (Iceland, Ireland, Australia, United States, United Kingdom). In her conclusions, Tilson (2004) emphasizes health benefits for children and adolescents as the best policy argument in favour of banning tobacco retail displays.

Tilson (2004) focuses on findings that show why tobacco retail display bans should be supported; this report focuses on evaluation of the impact of retail display bans in those jurisdictions where they have been implemented. Scientific evaluations are not available, but there are preliminary and informal indicators from some jurisdictions, e.g., posted on websites, presented at conferences, and quoted in press releases. These indicators, which go beyond the sources used by Tilson (2004), are presented in the paragraphs that follow.

**Jurisdictions with Legislation Banning or Restricting Tobacco Retail Displays**

A number of jurisdictions have enacted bans on the retail display of tobacco products. For the purposes of this report, a ban means legislation prohibiting any visibility of tobacco products (e.g., cigarette packages) at the point of sale<sup>2</sup>. In Canada, a ban is in effect in Prince Edward Island (2006) and is scheduled to take effect in Nova Scotia (March 31, 2007), Ontario (2008), and Quebec (2008). In Nunavut (2004), the display of tobacco products is prohibited at retail unless the display meets prescribed requirements. (The regulations have yet to be made.) Restrictions on the retail display of tobacco products are in effect in Saskatchewan (2002), Manitoba (2004), and the Northwest Territories (2006), i.e., tobacco products must not be visible from inside or outside if minors have access to the premises.

Internationally, retail display bans are in effect in Iceland (2001) and Thailand (2005). Other international jurisdictions that have or are actively considering significant legal restrictions on the retail display of tobacco products include Australia, Ireland, New Zealand, Singapore, South Africa and the United Kingdom.

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<sup>1</sup> Tilson M. (2004). *Restrictions on the retail display of tobacco products*. A report prepared for Smoke-Free Nova Scotia by Tilson Consulting, Ottawa, pp. 67, August 2004. Report can be viewed at: <http://www.smokefreens.ca/displayban.pdf>

<sup>2</sup> Some authors and websites use the term “ban” to describe both bans and restrictions.

### Evaluation of the Impact of Banning Tobacco Retail Displays

Because of the small number of jurisdictions that have complete bans on tobacco retail displays and because the relevant legislation is recent, scientific evaluation of impact on smoking prevalence and other outcomes is not available. Therefore, it is encouraging to note that, as part of the Smoke-Free Ontario Strategy, Ontario will be in a strong position to evaluate the impact of its own ban commencing in 2008. This evaluation will be aided by an infrastructure that includes ongoing monitoring surveys of smoking behaviour and tobacco-related attitudes among youth (e.g., Ontario Student Drug Use Survey) and adults (e.g., CAMH Monitor Survey; Ontario Tobacco Survey). These surveys and others (e.g., Canadian Tobacco Use Monitoring Survey) will make it possible to compare smoking behaviour and tobacco-related public opinion in Ontario before and after the ban. Measures of public opinion are an indicator of public acceptance, and are therefore a key component of the evaluation process.

Baseline data from 2004 and 2005 show that the majority of Ontario adults across all age groups support tobacco retail display bans in Ontario (CAMH Monitor, 2004; 2005; see Table 1). Public support is especially high in 2005.

**Table 1: Public Opinion Support for Banning Tobacco Retail Displays, by Age, Ontario Adults, 2004 (total  $n = 1197$ ) and 2005 (total  $n = 793$ )**

**“In stores tobacco products should be kept under the counter  
so that they are out of sight of children and young people”:**

	<u>2004</u>	<u>2005</u>
<u>Age Group</u>	<u>AGREE*</u>	<u>AGREE*</u>
18-24	71.67%	80.99%
25-44	76.53%	83.35%
45-64	69.88%	82.51%
65+	72.89%	73.55%
<b>TOTAL SAMPLE</b>	<b>73.33%</b>	<b>81.14%</b>

*Notes:*

\*AGREE = Strongly Agree + Somewhat Agree

Missing values are excluded.

Percentages are weighted; numbers are unweighted.

For 2004, estimate for age group 18-24 has moderate sampling variability and should be interpreted with caution; for 2005, estimates for age groups 18-24 and 65+ have moderate sampling variability and should be interpreted with caution.

*Source:* CAMH Monitor Survey of Ontario Adults, 2004; 2005; data analysis by OTRU

### **Preliminary Indicators of the Impact of Banning Tobacco Retail Displays**

Preliminary indicators of the impact of banning tobacco retail display are available. For example, **Iceland**<sup>3</sup> became the first jurisdiction in the world to implement a law banning all retail displays of tobacco in 2001<sup>4</sup>. The tobacco industry challenged the legislation and lost the case.

According to the Nordic Council of Ministers<sup>5</sup>, in 1985 the prevalence of smoking among Icelanders aged 18 to 69 was 40.8%. In 2002 (the year after the retail display ban took effect), the prevalence for the same age group had dropped to 24.1% (see Table 2). The Nordic Ministers write, “The most effective factors seem to be the public demand for restrictions, legislation, finances, and the activities of individual tobacco control advocates. When studying changes in the prevalence of tobacco use in Iceland, *we see the rate decrease with the implementation of every new piece of legislation...*” [emphasis added] (p. 32). Nevertheless, the decline in smoking cannot be attributed specifically to retail display bans.

Describing public support for tobacco control in Iceland, the Nordic Ministers write, “The public has embraced tobacco control and smoking restrictions....” (p. 34). The Nordic Ministers also say the effort involved in implementing strong tobacco control measures in Iceland, including the retail display ban, was “a gamble that paid off” (p. 32). They express eagerness to cooperate with other countries in connection with tobacco control initiatives. An external investigator (Tilson 2004, p. 30) reports that compliance with the retail display bans in Iceland is “very high.”<sup>6</sup>

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<sup>3</sup> Iceland is a constitutional republic with a population of 299,388 (July 2006 estimate) where literacy rates, longevity, income and social cohesion are first-rate by world standards (The World Factbook: <http://www.cia.gov/cia/publications/factbook/print/ic.html>).

<sup>4</sup> The relevant provision under Article 7 of Iceland’s *Tobacco Control Act* reads, “Tobacco and tobacco trademarks shall be so placed at points of sale that they are not visible to the customer.”

<sup>5</sup> Hakala K, Waller M (eds.). (2003). *Nordic Tobacco Control: towards smokefree societies*. © Nordic Council of Ministers, Copenhagen, pp. 63. Report can be viewed at: <http://www.norden.org/pub/velfaerd/social/helse/sk/Nordictobaccocontrol.pdf>

<sup>6</sup> Tilson M. (2004). *Restrictions on the retail display of tobacco products*. A report prepared for Smoke-Free Nova Scotia by Tilson Consulting, Ottawa, August 2004. Report can be viewed at: <http://www.smokefreens.ca/displayban.pdf>

**Table 2: ICELAND**  
**Prevalence of Smoking before and after Tobacco Retail Display Ban,**  
**by Age Groups, 1985-2002**

	Year				
	1985	1997	1998	<u>Display Ban in Effect 2001</u>	2002
<b>Age Group</b>					
12-16 years			11.4%		4.6% (daily smoking)
12-16 years			11.4%		6.8% (any smoking)
18-69 years	40.8%				24.1%
15-89 years		26.8%			21.1%

*Note:*

As indicated in the text preceding Table 2, the 2001 retail display ban was not the only form of tobacco control in effect in Iceland before the decline in smoking prevalence occurred. Therefore, it is not possible to infer that the retail display ban was a direct cause or the only cause of the decline in smoking prevalence. *Source:* Hakala K, Waller M (eds.). (2003). Nordic Tobacco Control: towards smokefree societies.

© Nordic Council of Ministers, Copenhagen, pp. 32-34. Report can be viewed at:  
<http://www.norden.org/pub/velfaerd/social/helse/sk/Nordictobaccocontrol.pdf>

In **Thailand**, the government ordered vendors to remove all cigarette packages from display at the point of sale or risk a \$50,000 fine, effective September 24, 2005. Reports on the impact of the display ban on smoking prevalence rates are not available. However, at the 2006 World Conference on Tobacco or Health in Washington, D.C., various spokespersons referred to Thailand's display ban as a success. The ban was not only implemented but also rigorously enforced with the result that there was a dramatic reduction in product visibility at all locations. The average number of point-of-purchase representations (visibility of tobacco products at point of sale) fell from seven to less than one.<sup>7</sup>

In conjunction with other forms of tobacco control already used in Thailand, such as pictorial health warnings and taxation of tobacco products (including a dedicated tobacco tax for tobacco control), the display ban is expected to contribute to reductions in the prevalence of smoking. About 15 years ago, more than 50% of Thai men and 4% of Thai women aged 15 years and older were smokers. In 2004 (the year before the retail display

<sup>7</sup> Kungskulniti N et al. (2006). Has cigarette point of purchase advertising disappeared in Thailand? Paper presented at the 2006 World Conference on Tobacco or Health, Washington, D.C. Available online: <http://2006.confex.com/uicc/wctoh/techprogram/P7562.htm>; see also: [http://www.who.int/tobacco/training/success\\_stories/en/best\\_practices\\_thailand\\_adv\\_ban.pdf](http://www.who.int/tobacco/training/success_stories/en/best_practices_thailand_adv_ban.pdf)

ban), smoking prevalence had dropped to 37% for men and 2.1% for women. Once data become available for 2006 and onwards, it will be possible to look for an impact on prevalence of smoking and other measures associated with the tobacco retail display ban.

In **Australia**, no jurisdiction has completely banned the display of tobacco products at retail. However, there are restrictions on tobacco retail displays in Victoria<sup>8</sup> (where displays are limited to one package face per brand variant), New South Wales, Tasmania, Western Australia and Queensland. In the latter two jurisdictions, tobacco displays at retail, with the exception of tobacconist shops, are not allowed to exceed one square metre.

Wakefield et al. (2006)<sup>9</sup> conducted an experimental evaluation of the impact of retail tobacco displays on children. A total of 605 Australian ninth-grade students aged 14 to 15 years participated in the experiment, which was designed to measure the effect of tobacco retail displays on children's perceptions of difficulty of access to cigarettes, health-related harms, brand popularity, normative beliefs, and intention to smoke.

Students were divided into three groups. One group was shown a colour photograph of a convenience store with no cigarette package display and no cigarette advertising; the second was shown a colour photograph of a convenience store with cigarette package display but no cigarette advertising; and the third group was shown a colour photograph of a convenience store with both cigarette package display and cigarette advertising (see Table 3). Afterwards the children filled out a questionnaire asking them about their perceptions.

**Table 3: Point-of-Sale Conditions for Australian Students (total  $n = 605$ )  
in the Experimental Evaluation by Wakefield et al. (2006)**

	<b>Colour Photograph of Convenience Store*</b>	<b>Cigarette Package Displays</b>	<b>Cigarette Advertising</b>
<b><u>Grade 9 Students</u></b> <b><u>Aged 14-15 Years</u></b>			
Group 1 ( $n = 210$ )	Yes	No	No
Group 2 ( $n = 203$ )	Yes	Yes	No
Group 3 ( $n = 192$ )	Yes	Yes	Yes

\*Note:

No retailers or customers were visible in the photographs and references to store names were removed.

<sup>8</sup> The Victoria legislation on tobacco retail displays can be viewed at:  
[http://www.health.vic.gov.au/tobaccoreforms/downloads/retailers\\_guide.pdf](http://www.health.vic.gov.au/tobaccoreforms/downloads/retailers_guide.pdf)

<sup>9</sup> Wakefield M, Germain D, Durkin S, Henriksen L. (2006). An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays. *Health Education Research* 21(3): 338-347.

Based on analysis of responses to the questionnaire, the authors conclude that cigarette package displays function much like cigarette advertising in the minds of children. In particular, the displays tend to increase children's perception that cigarettes are easy to obtain and make it easier for children to recall brand names. Both these effects have been shown to increase the risk of initiation of smoking behaviour among young persons. Therefore, the authors recommend that cigarettes should be kept out of sight in the retail environment in order to "curb the alarming rate of smoking uptake among adolescents" (Wakefield et al., 2006, p. 346).

In **Ireland**, on January 31, 2007, the courts struck down a tobacco industry legal challenge to the *Public Health Tobacco Acts*, 2002 and 2004. The Office of Tobacco Control in Ireland welcomed the judgment, which made it possible to implement all sections of the tobacco legislation. The Office of Tobacco Control was especially keen to move forward with provisions for the restriction of point-of-sale display of tobacco products. The Chief Executive of the Office of Tobacco Control said, "Recently the Office published comprehensive research on children and tobacco. This research showed that, despite the fact that media advertising of tobacco products has been banned for some time [in Ireland], children and young people are still very much aware of cigarettes. Indeed our research showed that children are very conscious of point-of-sale advertising—much more so than adults."<sup>10</sup>

In **Saskatchewan**, legislation prohibiting retail displays at commercial premises accessible by minors came into effect in 2002<sup>11</sup>. There was high retailer compliance, strong public support and an absence of significant problems associated with the legislation, economically or otherwise (Greaves, 2003<sup>12</sup>). Nevertheless, the tobacco industry challenged the legislation, which caused periodic interruptions of enforcement until 2005 when the Supreme Court of Canada unanimously upheld the legislation. According to the current posting on the website of the Canadian Council on Tobacco Control<sup>13</sup>, the Saskatchewan public continues to accept the retail display ban of tobacco products and enforcement officers report a 98% compliance level. Even ex-smokers appreciate the ban because it helps them to avoid relapse.

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<sup>10</sup> Press Release, Feb. 15, 2007. Office of Tobacco Control welcomes discontinuation of legal challenge against tobacco legislation. Office looks forward to Minister for Health and Children ending point-of-sale advertising in shops. Press release can be viewed at: <http://www.otc.ie/article.asp?article=353>

<sup>11</sup> The relevant provision from Saskatchewan's 2002 *Tobacco Control Act* reads, "No retailer shall permit tobacco or tobacco-related products to be displayed in the retailer's business premises so that the tobacco or tobacco-related products are visible to the public if young persons are permitted access to those premises."

<sup>12</sup> Greaves L. (2003). Canada: demolishing the power walls. *Tobacco Control* 12:7-8.

<sup>13</sup> <http://www.cctc.ca/cctc/EN/bandisplays/legislation> [accessed Feb. 23, 2007]

**Concluding Note**

Many researchers and tobacco control advocates believe that bans on tobacco retail displays are an important component of a comprehensive tobacco control strategy. The primary purpose of tobacco retail display bans is to discourage the uptake of smoking by children who are very much influenced by what they see. An increasing number of jurisdictions throughout Canada and internationally have legal restrictions on the retail display of tobacco products. Some have complete bans, i.e., legislation that prohibits any visibility of tobacco products at the point of sale.

Given that legislation banning the retail display of tobacco products was enacted for the first time in the world in 2001 (in Iceland), scientific evaluation of the health-related impact of this type of legislation has not been published yet. However, preliminary reports from jurisdictions that have such bans in effect, especially Iceland and Thailand, are positive. Indeed, these jurisdictions are celebrating the bans as a public health success of particular benefit to children.



## **Government Acts Wisely on Stealth Tobacco Ads**

**By Peter Goodhand, President, Canadian Cancer Society – Ontario Division  
George Habib, President and CEO, Ontario Lung Association  
Rocco Rossi, CEO, Heart and Stroke Foundation of Ontario**

**2008-05-27**

When was the last time you noticed the wall of cigarettes behind the cash counter in your local convenience store or gas bar? For the majority of Ontario adults, the answer is likely not for a long time. But for our kids, and those trying to quit smoking, it's a different story – and it's this different story that makes Ontario's May 31<sup>st</sup> ban of retail cigarette "power walls" so important.

Both the health sector and tobacco companies have long been aware of the importance of the youth market: it's a truism that up to 90% of smokers start before the age of 20. But as the evidence of tobacco's catastrophic health impacts has mounted, smokers have been quitting in droves in recent years.

During the same period, governments have increasingly tightened limitations on marketing, promotion and advertising, to the point that today, cigarette advertising is largely invisible.

The exception in Ontario is retail in-store advertising (usually called point-of-purchase, or POP advertising). POP ensures consumers – especially kids, who often visit convenience stores several times weekly - often see tobacco industry products.

POP also maintains an aura of "normalcy" around industry products. This key message is an important influence on kids' attitudes to tobacco industry products. After all, cigarettes can't be all that bad if sold next to the candy and newspapers, can they?

This normalizing message is also a block to those trying to quit. The last thing these vulnerable individuals need is to see walls of cigarettes every time they buy milk, a newspaper, or a lottery ticket.

Survey research done during the 2005 debate on the Ontario retail display ban confirmed our special concern about kids' reactions to repeat exposures to POP ads.

Even with minimal mainstream advertising, over 40% of Ontario kids from non-smoking households could spontaneously name cigarette brands. About two-thirds from the same households believed that kids their age might try smoking if they saw cigarettes in retail stores. Even more surprisingly, over one-quarter of the kids who didn't know any young smokers, could name cigarette brands. These findings make clear the importance of POP advertising as a key pro-tobacco influencer among our youth.

Not surprisingly, the tobacco industry has invested heavily to maintain this aura of "normalcy" around its products. In 2005, over \$100 million was paid to retailers across Canada to display products or signs. This investment helps minimize two core realities behind the industry's products:

- They kill 1 in 2 of their long-term users, and

- They are the only consumer products currently on the market which kill or maim when used exactly as intended by those who manufacture them.  
Offsetting these stark facts has been a big job for the industry, hence the importance of maintaining a “normal” presence in every variety store and gas bar across Canada.

The tobacco industry has a long history of creative response to restrictions on its activities and products, and its reaction to the upcoming Ontario display ban will provide a particular challenge. The provincial government must rigorously enforce this ban. Retailers can fully and willingly comply with this critical initiative, while at the same time rejecting any new promotional tactics from the industry.

On May 31- the second anniversary of his groundbreaking Smoke-Free Ontario Act - Premier McGuinty and his government can take great pride in having eliminated a critical source of communication between a lethal industry and the next generation of young Ontarians. His initiative should be widely supported and applauded in all parts of this province.

# Tobacco Promotions at Point-of-sale

## The Last Hurrah

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### ABSTRACT

**Objectives:** The retail environment provides important opportunities for tobacco industry communication with current, former, and potential smokers. This study documented the extent of tobacco promotions at the retail point-of-sale and examined associations between the extent of tobacco promotions and relevant city and store characteristics.

**Methods:** In each of 20 Ontario cities, 24 establishments were randomly selected from lists of convenience stores, gas stations, and grocery stores. Trained observers captured the range, type and intensity of tobacco promotions from April to July 2005. The extent of tobacco promotions was described using weighted descriptive statistics. Weighted t-tests and ANOVAs, and hierarchical linear modeling, were used to examine the relationships between tobacco promotions and city and store characteristics.

**Results:** Extensive tobacco promotions were found in Ontario stores one year prior to the implementation of a partial ban on retail displays, particularly in chain convenience stores, gas station convenience stores and independent convenience stores. The multivariate hierarchical linear model confirmed differences in the extent of tobacco promotions by store type ( $p < 0.01$ ); in addition, tobacco promotions were found to be higher among stores close to a school ( $p = 0.01$ ) and in neighbourhoods with lower median household incomes ( $p < 0.01$ ). Independent convenience stores with a greater number of employees had more tobacco promotions; however, the relationship was reversed for grocery stores.

**Discussion:** Tobacco promotions were extensive at the point-of-sale. Public health messages about the harms of tobacco use may be compromised by the pervasiveness of these promotions.

**Key words:** Tobacco; marketing; smoking; socioeconomic factors; observation

*La traduction du résumé se trouve à la fin de l'article.*

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Given extensive restrictions on tobacco advertising and promotion required under the 1997 Canadian *Tobacco Act*, the retail point-of-sale has become an important environment for the tobacco industry to communicate with current, former, and potential smokers.<sup>1-4</sup> Point-of-sale promotions include large tobacco-product displays called "powerwalls," countertop displays, and signs advertising tobacco. In 2005, tobacco manufacturers paid retailers \$100 million, mainly for prominent displays, representing a 35% increase from 2001.<sup>5</sup>

Widespread tobacco marketing at the point-of-sale has been reported in the United States.<sup>6-10</sup> A positive association has been found between cigarette promotional activities and adolescent smoking initiation.<sup>11-15</sup> Further, exposure to point-of-sale advertising can increase the amount people smoke, as well as former smokers' likelihood of relapse.<sup>4,7,16</sup>

The peer-reviewed empirical literature on the amount of tobacco promotions at point-of-sale has emanated entirely from the United States. Because the regulatory environment for tobacco advertising and sponsorship is quite different in Canada, and because of the recent interest in restricting tobacco promotions at point-of-sale in this country,<sup>17</sup> it is important to develop the evidence base for this type of policy intervention in the Canadian context. In Ontario, the provincial government instituted a partial tobacco display ban, prohibiting powerwall display panels, coloured shelf liners, and countertop displays in May 2006; a complete ban of all visible displays will come into effect in May 2008.

The present study was undertaken to describe the extent of tobacco promotions in Ontario retail outlets one year prior to the partial ban coming into effect, and to examine the relationships between tobacco promotional activities and store and neighbourhood characteristics.

### METHODS

#### Development of a tobacco promotion checklist

A data collection checklist was developed to capture detailed information on the type, range, and frequency of tobacco promotional strategies used in Ontario retail outlets. The checklist included items per-

taining to powerwalls (approximate size, prominent brands, colours, and display panels), countertop displays, tobacco signage, as well as information on promotions for confectionary and stop-smoking aids, to serve as comparisons (Appendix A). In developing the checklist, previous research and existing data collection instruments for tobacco promotions at point-of-sale were consulted (e.g., Project Impact, ImpacTeen, Operation Storefront, New York Department of Health Retail Tobacco Advertising Survey, Battelle Store Alert Training Guide, [storealert.org](http://storealert.org)). Two experts provided feedback on the checklist and data collection strategies.

### Selection of cities and stores

All Ontario municipalities with a population of at least 50,000 were eligible for inclusion in the study. The sample design involved 2 levels of stratification, first by health planning region and then by store type. Probability proportional to population size sampling was performed to sample cities from each of the seven health planning regions in Ontario. Each city was weighted according to population size.

The Ontario Yellow Pages Directory ([yellowpages.ca](http://yellowpages.ca)) was used to identify and create lists of eligible stores in each of four retail groups: 1) chain convenience, 2) independent convenience, 3) gas stations, and 4) grocery stores. Within each selected city, 15 stores were randomly selected from each retail group using a random number generator programmed in SAS. Within each list, the first 6 retail locations were selected for data collection, and the remaining 9 served as alternate stores in case a selected store was closed or did not sell cigarettes. MapQuest®, Google Maps™ and Yahoo!® Maps were used to identify the location of each retail outlet. The locations were plotted on hard-copy MapArt folding maps for navigational purposes during data collection.

### Data collection

Data collectors received two days of training, during which they familiarized themselves with the checklist and performed coding exercises in nearby convenience stores. From April to July 2005, three data collectors traveled to the 20 selected communities. Upon entering the retail location, data collectors scanned the store envi-

ronment for checklist items, spending the majority of time at the cash counter. At grocery stores, data collectors observed the cash counter where cigarettes were sold, most often a customer service desk. Data collectors employed strategies for appearing as legitimate customers, such as making a small purchase and maximizing in-store time by simulating cellphone conversations. Each checklist was completed immediately after leaving the retail outlet. If necessary, data collectors re-entered the store to collect additional information. Ethics approval was obtained from the University of Toronto.

Of the 667 stores visited, 114 did not sell cigarettes: 2 chain convenience stores, 5 independent convenience stores, 17 gas stations, 70 grocery stores, 6 “other” store types (i.e., did not meet the criteria for a grocery store or convenience store), and 14 stores with missing data on store type. Additionally, 5 stores were closed on the day of observation, 17 stores were out of business, and 50 stores were unable to be observed for some other reason (e.g., store could not be located, cigarettes were sold but not visible to customers, or the store was considered ineligible for observation). Thus, complete observations were obtained for 481 stores: 149 independent convenience, 121 chain convenience, 83 grocery stores, 69 gas stations with no attached convenience store, and 59 chain gas stations with an attached convenience store.

### Dependent and independent variables

A tobacco promotion index (TPI) was developed as a summary outcome measure for point-of-sale promotions, which included 15 items on powerwalls, countertop displays, and signage (Table I). Stores received one point for each feature present, plus one point for each countertop cigarette display. Scores ranged from 0 to 16. To provide some context for the level of tobacco promotions, a confectionary promotion index was also developed; it included 4 items related to countertop confectionary displays and signage. High index scores represented a high level of promotions.

Information on neighbourhood characteristics (median household income and education level) were obtained from the 2001 Canadian census and merged into the dataset by postal code. Number of

store employees and store sales were extracted from the Canadian Business Directory database.<sup>18</sup> To determine the number of schools within close proximity to our stores, a 1000-foot radius circle was drawn around each store on the hard-copy maps. The number of elementary and secondary school symbols falling within the circle were counted, and verified with ESRI ArcMap geographic information systems (GIS) software using CanMap Route Logistics Ontario v2005.3 and Enhanced Points of Interest v2005.3 map files from DMTI Spatial Inc. Smoking prevalence data were derived from Statistics Canada's 2005 Canadian Community Health Survey.

### Data analysis

All analyses were conducted in SAS version 9.2. Each store was weighted based on the total number of eligible stores of its store type within the respective city. For example, stores in cities with a relatively high number of a particular store type were assigned a higher weight than those in other cities with a lower number of a particular store type. T-tests and ANOVAs were used to assess bivariate associations between the TPI and health region, city, city-level variables, and store-level variables. Hierarchical linear modeling was conducted to examine the relationship between the TPI and the predictor variables, while accounting for city and region variances (Appendix B). Bonferroni-adjusted pairwise comparisons were conducted to identify differences across variable categories.

## RESULTS

### Tobacco promotions at point-of-sale in Ontario

Tobacco promotions were extensive (Table I). Mean TPI scores were highest in chain convenience stores (10.1) and lowest in grocery stores (2.7). The vast majority of chain convenience stores had shelf gliders (98.4%), shelf liners (96.6%), a top display panel (88.9%), and had tobacco products placed within one foot of candy (88.8%). Confectionary promotion index scores ranged from 0 to 4. Similar to tobacco promotions, mean confectionary index scores were highest in chain convenience stores (2.2) and lowest in grocery stores

TABLE I

**Weighted Descriptive Statistics for Tobacco Promotion Index Items and Overall Tobacco and Confectionary Promotion Index Scores, by Store Type, 2005 (n=481)**

	Type of Store				
	Chain Convenience Store (n=121)	Chain Gas Station with Attached Convenience Store (n=59)	Independent Convenience Store (n=149)	Gas Station with No Convenience Store (n=69)	Grocery Store (n=83)
Frequencies of tobacco promotion index items (%)					
Powerwall height greater than median	69.6	13.9	62.4	29.8	22.3
Powerwall length greater than median	66.6	33.6	43.9	1.9	31.9
Presence of danglers*	60.8	61.6	46.6	34.8	16.0
Presence of shelf gliders†	98.4	98.3	78.6	83.9	35.4
Presence of shelf liners‡	96.6	97.5	74.7	77.5	27.9
Presence of top display panel§	88.9	94.3	83.1	61.5	26.3
Presence of side display panel	24.7	11.4	18.4	2.6	6.8
Presence of price sign on powerwall	82.0	81.9	69.4	70.8	41.2
Presence of illuminated feature on powerwall	6.3	0.8	2.5	0.0	0.0
Presence of some "other" distinguishing feature	15.3	0.0	6.2	4.2	3.1
Any tobacco products within one foot of candy	88.8	89.8	83.0	55.8	16.9
Presence of indoor cigarette ads	63.0	46.8	25.8	27.8	17.8
Presence of cigarette packages attached to ads	47.2	2.2	17.4	6.7	8.0
Presence of outdoor cigarette ads	39.1	31.0	21.2	33.6	2.0
Number of countertop cigarette displays (mean, SD)	1.6 (1.3)	1.4 (0.8)	0.8 (1.0)	0.7 (0.9)	0.2 (0.5)
Tobacco promotion index (mean, SD)	10.1 (1.9)	7.9 (1.5)	7.1 (4.3)	5.6 (2.0)	2.7 (4.1)
Confectionary promotion index (mean, SD)	2.2 (0.9)	1.9 (1.1)	2.1 (1.1)	1.2 (1.1)	0.6 (1.1)

\* A dangler is a sign or other item that hangs off of the powerwall (traditionally designed to sway when customers walk by it).

† A shelf glider typically sits flat along a metal shelf rail. It may be coloured or have a price sign attached.

‡ A shelf liner is a full coloured piece behind the cigarette packs on the powerwall.

§ A top display panel is a raised horizontal panel above the powerwall.

|| A side display panel is a raised vertical panel on either side of the powerwall.

(0.6). Only 9 of the 481 stores (0.02%) had stop smoking aids displayed in the vicinity of the cash register, and 7 of these stores were chain convenience stores.

### Tobacco promotion index and city- and store-level characteristics

Significant differences in TPI scores were found by health planning region and by city. Tobacco promotion scores were significantly lower in large cities compared to medium-sized cities ( $p<0.01$ ) and small cities ( $p=0.05$ ) (Table II). Stores located in cities with higher prevalence of youth smoking, adult smoking, and adult daily smoking all had higher promotion scores ( $p<0.01$ ). Stores in cities that had no bylaw had significantly lower tobacco promotion scores than stores located in cities with more comprehensive bylaws ( $p<0.01$ ).

Chain convenience stores had significantly higher levels of promotions compared to gas stations with attached convenience stores ( $p=0.01$ ), gas stations alone ( $p<0.01$ ), independent convenience stores ( $p<0.01$ ) and grocery stores ( $p<0.01$ ). Grocery stores had significantly lower scores compared to independent convenience stores ( $p<0.01$ ) and compared to gas stations with no convenience store ( $p<0.01$ ). Independent convenience stores and gas stations with convenience stores with a higher number of employees tended

TABLE II

**Bivariate Relationships Between the Tobacco Promotion Index and City- and Store-level Variables, 2005 (n=481)**

	Tobacco Promotion Index - Mean (SD) or Correlation Coefficient	Statistical Significance
City-level variables		
City population size		
Small (<100,000)	7.2 (2.3)	$p<0.01$
Medium (100,000-500,000)	7.0 (3.2)	
Large (>500,000)	5.6 (6.9)	
Prevalence of youth smoking	$r=0.24$	$p<0.01$
Prevalence of adult smoking	$r=0.20$	$p<0.01$
Prevalence of adult daily smoking	$r=0.20$	$p<0.01$
Degree of smoke-free bylaw*		
None	5.3 (5.4)	$p<0.01$
One location	7.4 (3.1)	
Three locations	7.0 (2.4)	
Four locations	6.9 (3.9)	
Store-level variables		
Store type		
Chain convenience store	10.1 (1.9)	$p<0.01$
Gas station with convenience store	7.9 (1.5)	
Independent convenience store	7.1 (4.3)	
Gas station alone	5.6 (2.0)	
Grocery store	2.7 (4.1)	
Number of employees per store†	$r=0.12$	$p=0.03$
Total sales per store†	$r=0.07$	$p=0.17$
Median household income of neighbourhood‡	$r=-0.08$	$p=0.08$
Percentage no high school diploma in neighbourhood‡	$r=0.08$	$p=0.08$
Store located within 1000 feet of a school		
No	6.2 (3.9)	$p=0.47$
Yes	6.4 (4.6)	

\* Based on number of locations with smoke-free bylaws: restaurants, bars, bingo, and billiards.

† Grocery stores removed due to much higher total sales and number of employees compared to the other store types.

‡ Based on 2001 Canadian census data by dissemination area. A dissemination area is a small, relatively stable geographic unit composed of one or more blocks, and the smallest standard geographic area for which all census data are disseminated.

to have higher TPI scores ( $p=0.03$ ); however, among grocery stores, promotion scores increased with a decreasing number of employees ( $p=0.04$ ).

The random effects for city and region were not significant ( $p=0.17$ ,  $p=0.32$  respectively) when controlling for other predictors in the multivariate hierarchical



TABLE III

**Hierarchical Linear Modeling of Fixed Effects with City and Region as Random Effects, 2005 (n=481)**

Effect	Betas	F-value, Degrees of Freedom	Statistical Significance
City population size		F=0.12, df=2,389	p=0.89
Large	-0.39		
Medium	-0.45		
Small*	0		
Store type		F=7.37, df=4,389	p<0.01
Chain	4.18		
Gas with convenience store	0.29		
Gas only	-1.92		
Grocery	-1.63		
Independent convenience store*	0		
Store located within 1000 feet of a school		F=6.07, df=1,389	p=0.01
No (vs. yes)	-0.81		
Percentage no high school diploma in neighbourhood	-2.22	F=2.95, df=1,389	p=0.09
Median household income of neighbourhood	-0.33	F=13.39, df=1,389	p<0.01
Prevalence of youth smoking	0.26	F=2.07, df=1,389	p=0.15
Prevalence of adult smoking	-0.20	F=0.93, df=1,389	p=0.34
Degree of smoke-free bylaw		F=1.32, df=3,389	p=0.27
0	-1.23		
1	-1.71		
3	1.22		
4*	0		
Number of employees per store	1.14	F=0.94, df=1,389	p=0.33
Store type x Number of employees per store		F=6.85, df=4,389	p<0.01
Chain	-1.62		
Gas with convenience store	-0.32		
Gas only	-0.43		
Grocery	-1.78		
Independent convenience store*	0		

\* Reference category.

Note: The units are different for different predictor variables so it is not possible to compare 'effect sizes' based on the magnitude of the beta coefficients. All categorical effects are described in relation to a reference category; selecting a different reference category changes the coefficients of the other categories.

## Appendix A

### Selected Items from the Tobacco Promotion Data Collection Checklist

#### Type of Store:

- |  |                            |                        |
|--|----------------------------|------------------------|
| 1. Chain convenience store             | 4. Chain gas station       | 7. Supermarket         |
| 2. Independent convenience store       | 5. Independent gas station | 8. Small grocery store |
| 3. Chain gas station convenience store | 6. Other (specify):        |                        |

#### Placement of cigarettes:

- ☐ Over or behind counter      ☐ Behind customer service desk      ☐ Other (specify):

#### Powerwall Dimensions:

Height: \_\_\_\_\_ Width: \_\_\_\_\_

#### Powerwall Enhancements:

Are there:

- |                          |   |                          |  |                          |  |
|--------------------------|---|--------------------------|--|--------------------------|--|
| Yes                      | No  | Yes                      | No   | Yes                      | No   |
| <input type="checkbox"/> | <input type="checkbox"/> Danglers?                                    | <input type="checkbox"/> | <input type="checkbox"/> Display piece? If yes:  | <input type="checkbox"/> | <input type="checkbox"/> Illuminated features? |
| <input type="checkbox"/> | <input type="checkbox"/> Coloured shelf liners?                       | <input type="checkbox"/> | <input type="checkbox"/> Top <input type="checkbox"/> Side(s) <input type="checkbox"/> Other |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> Shelf gliders?                               | <input type="checkbox"/> | <input type="checkbox"/> Price signs?  |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> Any other distinguishing features? (specify) |                          |  |                          |  |

#### Countertop Displays:

Cigarettes #: \_\_\_\_\_

#### Products Close to Cash, Candy:

- Yes No  
☐ ☐ Tobacco products/accessories placed within 12" of candy, snack foods, or toys? Which ones:

#### Indoor and Outdoor Cigarette Ads:

- Yes No  
☐ ☐ Signs advertising cigarettes?  
☐ ☐ Cigarettes attached to signs or objects?  
☐ ☐ Signs and/or outdoor menu boards advertising cigarettes?

linear model. Tobacco promotion scores were higher in chain convenience stores ( $p<0.01$ ) than in both gas stations without

convenience stores and grocery stores; in stores that were within 1000 feet of a school ( $p=0.01$ ); and in stores located in

neighbourhoods with lower median household income levels ( $p<0.01$ ) (Table III). There was a significant interaction between store type and number of employees ( $p<0.01$ ); there was a positive relationship between number of employees and TPI scores among independent convenience stores and a negative relationship among grocery stores.

## DISCUSSION

The current study found extensive tobacco promotions at point-of-sale in Ontario retail locations one year prior to the partial ban being implemented, particularly in chain convenience stores, gas station convenience stores and independent convenience stores.

In a California city, Henrikson et al. reported almost three times more marketing shelf space devoted to brands, such as Marlboro and Camel, in areas where adolescents frequently shop, compared to other stores in the community.<sup>10</sup> Similarly, the current study found increased point-of-sale tobacco promotions at stores located close to an elementary or secondary school. Location close to a school was significantly associated with tobacco promotion score in the multivariate model but not in the bivariate analysis. Further analyses found that larger cities were more likely than smaller cities to have schools close to our sample of stores. Because there were lower tobacco promotions overall in the larger cities, no bivariate association was found. However, after controlling for this partial confound, close proximity to a school was significant in the multivariate model.

Our finding of more tobacco promotion in neighbourhoods with lower median income is consistent with results reported within two US states.<sup>8,19</sup> Additionally, there was support for our hypothesis that cities with more comprehensive bylaws would have more promotions, perhaps to offset the social unacceptability of smoking brought by restricting where smoking can occur.

While the study design provided a representative sample of various types of retail locations across all seven health planning regions in Ontario, these findings cannot necessarily be generalized to Ontario cities with a population less than 50,000. It is possible that not all potential confounders

were taken into account. For example, one determinant of the amount of tobacco promotions at point-of-sale may be the skill of tobacco company sales representatives in securing retail displays and shelf space.<sup>4</sup> Unfortunately, information on sales representatives' abilities is not available. We also did not include characteristics of neighbourhoods beyond socio-economic status – age structure, ethnicity and other cultural factors may be associated with the extent of tobacco promotions in stores. Although we assessed whether the store was located within 1000 feet of a school, the store may not be the one most frequented by students of identified schools; nonetheless, the approach used provides a conservative estimate of the relationship between proximity to a school and extent of tobacco promotions.

Across Canada, 10 of the 13 provinces and territories have either prohibited tobacco product displays at point-of-sale or have passed legislation that will come into effect by July 2008. Internationally, Australia, Iceland, Ireland, Singapore, South Africa, Thailand, the United Kingdom, and New Zealand have also implemented some form of restrictions on point-of-sale tobacco promotions.<sup>17</sup> This is an emerging policy issue that requires an evidence base that goes beyond the US context, particularly because the US studies have been conducted in a regulatory environment with minimal, or no, restrictions on promotions at point-of-sale. Upcoming field work will be conducted to document changes in the retail environment before and after the complete ban on visible tobacco displays in Ontario. Data collection will examine bylaw adherence and identify any new promotional strategies employed by the tobacco industry.

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## Appendix B

### Hierarchical Linear Model Regression Equations

Level I (Store Level):

$$Y_{ijk} = \beta_{0jk} + \beta_{1jk}X_1 + \beta_{2jk}X_2 + \beta_{3jk}X_3 + \beta_{4jk}X_4 + \beta_{5jk}X_5 + \beta_{6jk}X_1X_5 + r_{ijk}$$

Where

$Y_{ijk}$  = tobacco promotion index score for store i in city j and region k

$X_1$  = store type

$X_2$  = proximity to a school

$X_3$  = percentage no high school diploma in neighbourhood

$X_4$  = median household income of neighbourhood

$X_5$  = number of employees

$\beta_{0jk}$  = intercept in city j and region k

$\beta_{1jk}$  = slope associated with store type in city j and region k

$\beta_{2jk}$  = slope associated with store proximity to a school in city j and region k

$\beta_{3jk}$  = slope associated with percentage no high school diploma in neighbourhood in city j and region k

$\beta_{4jk}$  = slope associated with median household income of neighbourhood in city j and region k

$\beta_{5jk}$  = slope associated with number of employees in store in city j and region k

$\beta_{6jk}$  = slope associated with interaction between store type and number of employees in city j and region k

$r_{ijk}$  = random error associated with the i<sup>th</sup> store in city j and region k

Level II (City Level):

$$\beta_{0jk} = \gamma_{00k} + \gamma_{01k}X_6 + \gamma_{02k}X_7 + \gamma_{03k}X_8 + \gamma_{04k}X_9 + u_{0jk}$$

where

$\beta_{0jk}$  = intercept in city j and region k

$X_6$  = city population size

$X_7$  = prevalence of youth smoking

$X_8$  = prevalence of adult smoking

$X_9$  = degree of smoke-free bylaw

$\gamma_{00k}$  = intercept in region k

$\gamma_{01k}$  = slope associated with city population size

$\gamma_{02k}$  = slope associated with prevalence of youth smoking

$\gamma_{03k}$  = slope associated with prevalence of adult smoking

$\gamma_{04k}$  = slope associated with smoke-free bylaw

$u_{0jk}$  = random error associated with the j<sup>th</sup> city in region k

Level III (Region Level):

$$\gamma_{00k} = \tau_{000} + e_{00k}$$

where

$\tau_{000}$  = overall intercept

$e_{00k}$  = random error associated with region k

Putting the pieces together, we obtain:

$$Y_{ijk} = ((\tau_{000} + e_{00k}) + \gamma_{01k}X_6 + \gamma_{02k}X_7 + \gamma_{03k}X_8 + \gamma_{04k}X_9 + u_{0jk}) + \beta_{1jk}X_1 + \beta_{2jk}X_2 + \beta_{3jk}X_3 + \beta_{4jk}X_4 + \beta_{5jk}X_5 + \beta_{6jk}X_1X_5 + r_{ijk}$$

which can be rearranged as

$$Y_{ijk} = \tau_{000} + \beta_{1jk}X_1 + \beta_{2jk}X_2 + \beta_{3jk}X_3 + \beta_{4jk}X_4 + \beta_{5jk}X_5 + \beta_{6jk}X_1X_5 + \gamma_{01k}X_6 + \gamma_{02k}X_7 + \gamma_{03k}X_8 + \gamma_{04k}X_9 + r_{ijk} + u_{0jk} + e_{00k}$$

with the first line of the equation denoting fixed effects, and the second line representing random effects.

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## RÉSUMÉ

**Objectif :** Le commerce de détail offre de bonnes occasions aux fabricants de tabac de communiquer avec les fumeurs (actuels, anciens ou potentiels). Dans cette étude, nous avons documenté l'étendue de la publicité sur le tabac aux points de vente et examiné les associations entre cette publicité et les caractéristiques du point de vente et de la ville.

**Méthode :** Dans 20 villes de l'Ontario, nous avons choisi au hasard 24 établissements à partir des listes de leurs dépanneurs, stations-service et épicerie. Des observatrices formées ont noté la gamme, le genre et l'intensité des publicités de tabac entre avril et juillet 2005. L'étendue de cette publicité a été analysée à l'aide de statistiques descriptives pondérées. Pour examiner les liens entre la publicité et les caractéristiques du point de vente et de la ville, nous avons utilisé des tests T pondérés, des analyses de variance et des modèles linéaires hiérarchiques.

**Résultats :** Un an avant la mise en œuvre d'une interdiction partielle de la publicité aux points de vente en Ontario, nous avons observé un nombre considérable de publicités de tabac dans le commerce de détail, surtout dans les chaînes de dépanneurs, les dépanneurs de stations-service et les dépanneurs indépendants. Le modèle linéaire hiérarchique multivarié a confirmé des différences dans l'étendue de la publicité selon le type de point de vente ( $p < 0,01$ ); de plus, les publicités de tabac étaient plus intensives dans les points de vente à proximité des écoles ( $p = 0,01$ ) et dans les quartiers économiquement faibles ( $p < 0,01$ ). Les dépanneurs indépendants qui avaient davantage de personnel avaient aussi davantage de publicités de tabac, mais c'était l'inverse dans les épicerie.

**Discussion :** La publicité sur le tabac aux points de vente était considérable. Il est possible que les campagnes de mise en garde contre le tabagisme soient compromises par l'omniprésence de cette publicité.

**Mots clés :** tabac; marketing; tabagisme; facteurs socioéconomiques; observation

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# Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey

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## ABSTRACT

**Background** Although most countries now have at least some restrictions on tobacco marketing, the tobacco industry meet these restrictions by re-allocating expenditure to unregulated channels, such as at point-of-purchase.

**Methods** Longitudinal data from 10 Canadian provinces in the International Tobacco Control Survey was analysed to examine adult smokers' support for a ban on tobacco advertising and displays in stores and whether this support is associated with noticing either advertising or displays in stores, and quit intentions, over time. In total, there were 4580 respondents in wave 5 (October 2006 to February 2007), wave 6 (September 2007 to February 2008) and wave 7 (October 2008 to June 2009). The surveys were conducted before, during and in some cases after the implementation of display bans in most Canadian provinces and territories.

**Results** Smokers in all provinces showed strong support for a ban on tobacco displays over the study period. Levels of support for an advertising and display ban were comparable between Canadian provinces over time, irrespective of whether they had been banned or not. Noticing tobacco displays and signs in-store was demonstrably less likely to predict support for displays (OR=0.73, p=0.005) and advertising (OR=0.78, p=0.02) ban, respectively. Smokers intending to quit were more likely to support advertising and display bans over time.

**Conclusion** This study serves as a timely reminder that the implementation of tobacco control measures, such as the removal of tobacco displays, appear to sustain support among smokers, those most likely to oppose such measures.

## INTRODUCTION

For decades, tobacco marketing has been used to portray tobacco use in a favourable light, normalise smoking, underplay the associated health risks and ultimately undermine tobacco control efforts.<sup>1 2</sup> The Framework Convention on Tobacco Control,<sup>3</sup> currently with 172 signatories covering almost 90% of the global population, obligates member parties to introduce comprehensive bans on tobacco marketing. The need for bans to be comprehensive is based on evidence that the tobacco industry adeptly exploits unregulated channels, such as at

point-of-purchase (POP), to maintain and even increase consumption.<sup>4 5</sup>

POP marketing includes advertising as well as displays of tobacco products on, behind and above the service counter. Displays in particular increase exposure to tobacco products and normalise tobacco use, especially for young people.<sup>4 6 7</sup> They also provide powerful cues to smoke<sup>8 9</sup> and stimulate impulse purchases among adult smokers, recent quitters and those intending to quit.<sup>8 10–13</sup> The effectiveness of displays at POP helps explain why the tobacco industry have increased marketing expenditure within the retail environment, especially when other marketing channels have been closed off to them.<sup>5 14</sup>

The tobacco industry vehemently opposes the removal of POP advertising and particularly product displays, presumably as they are aware of their importance as marketing tools.<sup>8 13</sup> As displays remain one of the few viable means for promoting tobacco products, understanding the level of support for their removal among smokers, the group most likely to be opposed to such restrictions, and whether support is associated with quit intentions can help inform tobacco control policy. To date, however, research assessing smokers' support for the removal of tobacco advertising and displays within shops, and intention to quit, remains scarce, whether in countries that have banned displays or are yet to do so.<sup>13–15</sup>

In Canada, although the Tobacco Act 1997 banned various forms of tobacco marketing, in-store advertising such as portrayals of signs that indicate the availability of tobacco products and their prices were permitted.<sup>16</sup> In accordance with the regulations, tobacco products or accessories that display a tobacco-related brand may be allowed at retail outlets. Nonetheless, since 2002, several provinces and territories have passed laws requiring the removal of tobacco displays and associated advertising, despite strong opposition from the tobacco and retail industries predicting that the move to 'out of sight' tobacco sales would drive retailers out of business, a finding not substantiated by the evidence.<sup>17</sup>

Research in Ireland showed that at a population level, support for a display ban increased over a 9-month period before and after implementing the policy.<sup>14</sup> This study, and other research, indicates smokers to be supportive of display bans

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because these displays are considered to have promotional appeal<sup>18</sup> that may provide visual cues to would-be starters and recent quitters.<sup>5 18</sup> A recent cross-sectional study found that four times as many smokers were supportive of a ban on displays than were unsupportive (49% vs 12%).<sup>5</sup> No research, however, has empirically examined, over a longer time period, whether the introduction of a display ban is associated with an increase in support or whether support is associated with quitting behaviour, as we have seen for smoke-free policies. We extend existing research by examining whether adult smokers' support for the removal of tobacco advertising and displays in stores has increased between 2006 and 2009 in 10 Canadian provinces, where they have been removed before, during and after the study period.

This paper addresses three research questions: (1) What was the impact of the ban on tobacco displays in several Canadian provinces on smokers' support for such a ban over time? (2) Did noticing tobacco displays and signs in stores predict support for a ban on advertising and displays over time? and (3) What are the associations between intentions to quit and support for a ban on advertising and displays at POP?

## METHODS

### Data and analytic sample

The International Tobacco Control Four Country Survey is a quasi-experimental longitudinal telephone survey conducted annually with nationally representative samples of adult smokers aged 18 years or older in Canada, the USA, the UK and Australia. The survey is designed to evaluate the psychosocial and behavioural impact of key national-level tobacco policies in these four countries over time.

Participants are recruited by geographically stratified probability sampling, with telephone numbers selected at random in each country. Eligible households are identified by asking a household informant the number of adult smokers within the household, with smokers defined as having smoked >100 cigarettes in their life and at least once in the past 30 days. Where there was more than one eligible respondent, the next birthday method was used to select the target respondent in that household.<sup>20</sup> In order to maintain a sample size of at least 2000 within each country, replenishment is used each year to replace those lost to attrition, using random sampling from the same sampling frame. A full description of the methodology and sampling procedure can be found elsewhere.<sup>19 21</sup>

This study presents data from wave 5 (October 2006 to February 2007), wave 6 (September 2007 to February 2008) and wave 7 (October 2008 to June 2009). We used all available respondents that participated at one or more of the three waves. A total of 4580 respondents comprising only smokers from 10 Canadian provinces were used for this study. We focus exclusively on Canada and do not include Australia, the UK or the USA, given that only in Canada had some provinces and territories actually banned the display of tobacco products during the study period. All Australian states and territories have now passed legislation to move tobacco out of sight in general retail stores by January 2012, and the Scottish and English governments plan to do likewise in large shops and supermarkets by April 2012.

The implementation of the ban on tobacco displays in the 10 Canadian provinces occurred before, during and after the study period. Consequently, the 10 provinces were categorised into five zones to reflect provinces that had fully implemented a display ban prior to (zone 1), during (zones 2, 3 and 4) and after (zone 5) the study period (table 1). This permitted comparisons of provinces that had banned in-store displays and advertising before and

**Table 1** Implementation dates of bans on the display of tobacco at point-of-purchase in Canadian Provinces and Territories

Jurisdiction	Date of implementation	Zone	Period
Manitoba	1 January 2004	1	Pre
Nunavut	1 February 2004	1	Pre
Saskatchewan	1 January 2005*	1	Pre
Prince Edward Island	1 June 2006	1	Pre
Wave 5	2006/2007		
Northwest Territories	21 January 2007	2	Mid
Nova Scotia	31 March 2007	2	Mid
Wave 6	2007/2008		
British Columbia	31 March 2008	3	Mid
Ontario	31 May 2008	3	Mid
Quebec	31 May 2008	3	Mid
Alberta	1 July 2008	3	Mid
New Brunswick	1 January 2009	4	Mid
Yukon	15 May 2009	4	Mid
Wave 7	2008/2009		
Newfoundland and Labrador	1 January 2010	5	Post

NB: Three Canadian territories (Nunavut, Yukon, and Northwest Territories) were excluded in the analysis because of small population size.

\*Saskatchewan legislation banned retail displays of tobacco in 2002, but this was declared invalid because of a challenge by the tobacco industry. However, the Supreme Court of Canada unanimously upheld the constitutionality of the legislation in January 2005.

during the study period (classified as the treatment groups), with provinces that had not banned the display of tobacco at POP (classified as the control groups). Three Canadian territories (Yukon, Nunavut and Northwest Territories) were not included in the analysis because they have an average of 35 000 people (each territory has 0.1% of the total population of Canada).

The study was approved by the Institutional Review Board or Research Ethics Board at the University of Stirling (Scotland), the Open University (UK), University of Waterloo (Canada), Roswell Park Cancer Institute (USA), University of Illinois, Chicago (USA), and The Cancer Council Victoria (Australia).

## MEASURES

### Outcome measures: support for bans on POP advertising and displays

Two items were employed to measure support for a ban on POP advertising and displays: "Do you support complete bans on tobacco advertisements inside shops and stores?" and "Do you support complete bans on displays of cigarettes inside shops and stores?" Both were measured on a 3-point scale with the response options 'A lot', 'Somewhat' and 'Not at all'. For the Generalised Estimating Equations (GEE) analyses, this 3-point scale was dichotomised to give: *support for complete bans* (A lot, Somewhat) vs *does not support complete bans* (Not at all).

### Intention to quit

A 4-point scale that measured readiness to quit<sup>22 23</sup> was dichotomised to compare smokers with any intention to quit and those without.

### Covariates

Covariates included were: zones (between Canadian zones comparisons), wave (5\* vs 6 vs 7), gender (male\* vs female), ethnicity (Caucasian vs other\*), age (18–24 vs 25–39 vs 40–54 vs 55+\*), income (low vs moderate vs high\*) and education (low vs moderate vs high\*), where \* indicates the baseline or reference level. Consistent with Borland *et al*'s<sup>24</sup> study, a heaviness of smoking index combined responses about cigarettes per day and time to first cigarette (range 0–6). In addition, two interactions of main interest being zone × wave and education × income were considered.

Respondents were also asked two specific questions about their awareness of tobacco displays and signs in stores or shops: "In the last month, have you seen cigarette packages being displayed, including on shelves or on the counter?" and "In the last month, have you seen any signs or pictures or other things like clocks with cigarette brands or logos inside shops or stores?" Response to both was dichotomised as 'yes' (coded as 1) or 'no' (coded as 0).

## SURVEY WEIGHTS

Cross-sectional survey weights were computed for respondents using reciprocals of inclusion probabilities. Departures from proportional allocation to geographic strata over time were adjusted for and calibrated to sum to numbers of smokers in age–sex groups. Hence, respondents are weighted to be representative of the adult smoker population in each province. Respondents that completed the follow-up surveys (ie, waves 6 and 7) had their baseline weights (wave 5) adjusted for attrition.<sup>21</sup> All analyses described in this paper are weighted.

## DATA ANALYSIS

Analyses were conducted using SAS 9.2, a statistical software. GEE<sup>25–27</sup> were used to examine whether smokers' support for removal of advertising and displays at POP changed over time (waves 5, 6 and 7). GEE models were assessed via binomial variations and the logit link to determine whether the observed changes in policy support over time were greater in Canadian provinces with display bans than they were in those without bans. This approach accounted for the correlated nature of data within subjects across waves and permitted the assessment of the population averaged over the study period without requiring individuals to be present at each wave. All GEE models were specified via the exchangeable within-group correlation structure.

The observed changes in policy support were evaluated by testing the zone  $\times$  wave interaction effect in the various GEE models. Coefficients of covariates of interest (predictor variables) such as noticing tobacco displays and signs in stores and key demographics in the models were exponentiated to estimate the OR of policy support. For each coefficient, the p values and associated 95% CIs for the ORs are estimated via SEs.

## RESULTS

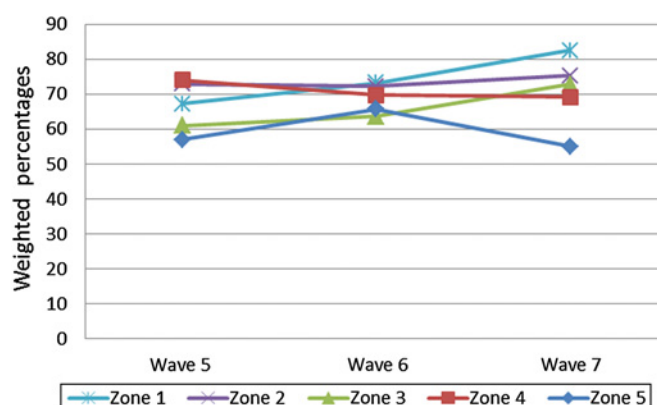
### Support for a ban on POP advertising and displays in the five Canadian zones

Policy support was greatest in zones 1 and 2 where there was early adoption of the display bans across the three waves, and lowest in zone 5 which was a late adopter, with just over half of smokers expressing support at each wave. Level of support for a display ban was fairly consistent between zones at wave 5, but relatively dispersed by wave 7 (see figure 1).

Similarly, support for a complete advertising ban was higher in zone 2 across the three waves and comparable in the remaining four zones as shown in table 2. Over two-thirds of smokers from zones 1 to 3 reported support for a ban on advertising at each wave. Additionally, level of support for a ban on advertising at POP was relatively consistent at wave 5 between zones but quite dispersed by wave 7 (figure 2).

### Support for bans on advertising and displays in the five Canadian zones and their associations with intention to quit over time

Table 3 presents weighted GEE models for smokers who support advertising and display bans over time and the relationship this support has with quit intentions. Drawing from these results, the



**Figure 1** Support for a ban on point-of-purchase tobacco displays by waves and zones.

overall zone  $\times$  wave interaction effect (not shown in table 3) indicated that support for a ban on displays was comparable across five Canadian zones over time ( $p>0.05$ ). Similarly, between-zone comparisons showed that support among smokers in Canada was comparable over the last three waves ( $p>0.05$ ). However, smokers in Canada who intend to quit smoking were 2.32 times more likely to support a display ban over time ( $p<0.0001$ ). Smokers who noticed tobacco displays in stores were less supportive of a display ban over time ( $OR=0.73$ ,  $p=0.005$ ).

Comparisons also showed that the overall zone  $\times$  wave interaction across the five Canadian zones showed no overall difference among these jurisdictions in the levels of support for tobacco advertising ban over the three waves. Likewise, between-zone comparisons showed that support for a ban on advertising was comparable over the study period ( $p>0.05$ ). Comparisons with quit intentions revealed that smokers intending to quit smoking in Canada were 2.11 times more supportive of a ban on advertising than those who did not intend to quit. Smokers who noticed tobacco advertising in stores were less likely to support a ban on advertising ( $OR=0.78$ ,  $p=0.02$ ).

## DISCUSSION

Although denied the use of traditional marketing channels, the tobacco industry continues to use the retail environment to

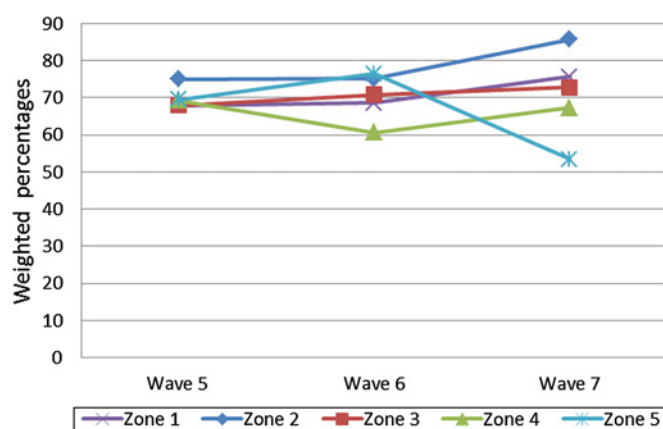
**Table 2** Support for a ban on point-of-purchase display and advertising (weighted frequencies by waves and zones)

	Wave 5 (%)	Wave 6 (%)	Wave 7 (%)
<b>Zone 1</b>			
Support display ban	99 (67.2)	121 (73.2)	96 (82.5)
Support ad ban	99 (68.0)	114 (68.6)	91 (75.7)
<b>Zone 2</b>			
Support display ban	46 (72.9)	58 (72.2)	57 (75.3)
Support ad ban	49 (75.0)	58 (75.1)	64 (85.7)
<b>Zone 3</b>			
Support display ban	881 (61.0)	858 (63.6)	836 (72.8)
Support ad ban	986 (68.0)	945 (70.8)	848 (72.8)
<b>Zone 4</b>			
Support display ban	34 (74.0)	25 (69.7)	23 (69.1)
Support ad ban	32 (69.3)	25 (60.7)	24 (67.3)
<b>Zone 5</b>			
Support display ban	23 (56.9)	35 (65.7)	22 (55.0)
Support ad ban	27 (69.5)	38 (76.4)	22 (53.5)

Zone 1, Saskatchewan, Manitoba and Prince Edward Island; zone 2, Nova Scotia; zone 3, Quebec, Ontario, Alberta and British Columbia; zone 4, New Brunswick; zone 5, Newfoundland and Labrador.



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**Figure 2** Support for a ban on point-of-purchase tobacco advertising by waves and zones.

market their goods.<sup>5 8</sup> We investigated adult smokers' support for a complete ban on tobacco advertising and displays at POP across 10 Canadian provinces and how this relates to their intention to quit over time.

It was found that smokers in Canada had high levels of support for the removal of displays over the study period. This support, among those most likely to oppose such measures, has been found in respect to support for other tobacco control policies such as tobacco advertising and promotion bans,<sup>28 29</sup> pictorial warning labels<sup>30</sup> and smoke-free public places.<sup>31</sup> The findings demonstrate the need for comprehensive bans on tobacco marketing, as included in Article 13 of the Framework Convention on Tobacco Control.<sup>32</sup>

Support was found to be greatest among smokers in Canadian provinces who were exposed to the policy at baseline, for example, at second follow-up, more than three-quarters of smokers in Saskatchewan, Manitoba and Prince Edward Island were supportive of a display ban compared with just over half of smokers in Newfoundland and Labrador, the only province not to ban displays until after the study period. There was, however, no significant difference in levels of support for a display ban across the 10 provinces and over the study period. It is possible that the comparable levels of support is indicative of the diffusion effect<sup>33–36</sup> of the display ban (as a consequence of public campaign, lawsuit and debate surrounding its removal) from provinces such as Saskatchewan, Manitoba and Prince Edwards

Island, to those which had either a partial ban or no ban. Further research would be needed to confirm this, but past research has found diffusion of policy support for smoke-free legislation across geographically dispersed smokers.<sup>33 34 36</sup> We found no significant difference in reported levels of support for a ban on advertising at POP across the 10 provinces either.

Smokers in Canadian provinces who noticed tobacco displays and signs in stores were less likely to support a ban on advertising and displays. That smokers exposed to in-store tobacco promotion were less supportive of the ban suggests that the, perhaps reassuring, presence of these visual cues weakens support. Smokers who had intentions to quit smoking were supportive of a ban on tobacco advertising and displays. This support may, in part, be a consequence of not having to be exposed to attractive visual cues to smoke within the retail environment, with displays found to stimulate impulse purchase among those trying to quit.<sup>8</sup>

Despite the use of a longitudinal design, our study is not without limitations. Respondents are lost to attrition at follow-up, which can potentially skew findings. As the analyses were performed via weighted GEE,<sup>25 26</sup> which allows these models to use all observations across the three waves, the potential effects of respondents lost to follow-up are minimised. There is also the possibility of differential bias between zones, as a result of the demand characteristics of the survey, which may have prompted socially desirable responding or may be influenced by personal experience or media coverage of policy implementation. Another potential limitation is the possibility of experiment-wise error as a result of the number of between-zone comparisons, that is, the likelihood of falsely rejecting the null hypothesis as a result of multiple comparisons. Finally, the no in-zone change in level of policy support over time may be due to lack of earlier data as well as the short study period.

In many countries, tobacco marketing at POP is one of the few remaining avenues for the tobacco industry to promote their products. Tobacco displays act as a potent marketing tool,<sup>5 12 13</sup> which normalise smoking and allow the tobacco industry to communicate with non-smokers, ex-smokers and established smokers.<sup>12 37 38</sup> That most smokers are supportive of banning the visible display of tobacco products in the retail environment, as they are with other tobacco control policies, should help persuade policy makers in other jurisdictions about the need to remove POP displays. Future research should assess the longer term impact of a display ban on smokers' support and

**Table 3** GEE models\* for support for a ban on POP display and advertising across the three waves and association with quit intentions and noticing tobacco displays and signs in stores

	POP display ban		POP advertising ban	
	OR (95% CI)	p Value	OR (95% CI)	p Value
Gender				
Female versus male	1.07 (0.09 to 1.27)	0.44	1.17 (0.98 to 1.39)	0.08
Age, years				
18–25 vs 55+	0.86 (0.61 to 1.21)	0.39	0.93 (0.65 to 1.33)	0.69
25–39 vs 55+	0.95 (0.75 to 1.20)	0.66	0.94 (0.73 to 1.22)	0.63
40–54 vs 55+	1.06 (0.85 to 1.30)	0.62	0.95 (0.77 to 1.87)	0.68
Quit intentions	2.32 (1.94 to 2.77)	<0.0001	2.11 (1.76 to 2.54)	<0.0001
Noticed display/signs	0.73† (0.59 to 0.91)	0.005	0.78‡ (0.64 to 0.95)	0.015

The overall wave (time) and zone effect and their interaction and also between-zone comparisons for POP display and advertising ban (all not shown in table) were not significant ( $p > 0.05$ ). Design variable for wave (time) was coded: wave 5 (0, 0), wave 6 (1, 0) and wave 7 (0, 1).

\*Each model is adjusted for age, sex, quit intentions, awareness of cigarette displays and signs in stores and shops as well as income, education, heaviness of smoking index and ethnicity, but these are not shown as they were not significant.

†Noticing tobacco signs in stores.

‡Noticing tobacco displays in stores.

POP, point-of-purchase.

## What this paper adds

- The tobacco industry is known to respond to restrictions on marketing by exploiting unregulated channels, such as at point-of-purchase.
- This paper shows that levels of support for a display ban at point-of-purchase were high and comparable across all 10 provinces in Canada, irrespective of whether tobacco displays within shops had been banned in each of these provinces.
- Support was lowest, however, in Newfoundland and Labrador, the only province not to introduce a ban on displays during the study period. Smokers intending to quit were more likely to support advertising and display bans over time.

if this support is linked to intention to quit, especially as a decline in exposure to displays at retail environment is anticipated to impact upon smoking cues and behaviour.

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**Competing interests** None.

**Ethics approval** The study was approved by the Institutional Review Board or Research Ethics Board at the University of Stirling (Scotland), the Open University (UK), University of Waterloo (Canada), Roswell Park Cancer Institute (US), University of Illinois, Chicago (US), and The Cancer Council Victoria (Australia).

**Contributors** All authors included on this paper have fulfilled the criteria of authorship, ie, have contributed to the conception and design, acquisition of data analysis or interpretation of data as well as drafting or revising this article. Moreover, there is no one else who fulfils these criteria who has not been included as an author.

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## Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey

Abraham Brown, Christian Boudreau, Crawford Moodie, et al.

*Tob Control* published online October 15, 2011  
doi: 10.1136/tobaccocontrol-2011-050153

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## NON-SMOKERS' RIGHTS ASSOCIATION CANADA

### WHY TOBACCO MUST BE KEPT OUT-OF-SIGHT

"The store environment, especially displays inside stores, is the biggest source of advertising awareness for all cigarette trade-marks." (Brown & Williamson, 1991)

Retail displays are a critical form of promotion when advertising is banned

Stores near schools are more likely to have tobacco promotion—countertop displays, posters, shelf-talkers, price signs (AC Nielsen, 2004)

Youth believe power walls influence their peers to start smoking

Power walls contribute to the widely-held belief among youth that 'everyone' smokes

Power walls normalize tobacco use and tobacco products

Tobacco displays near gum, candy and the daily paper suggest that tobacco products are equally harmless by association

Prominent tobacco displays encourage impulse buys among youth experimenters and adults trying to quit

# Tobacco Display Bans in Canada: Setting the Record Straight

DECEMBER 2010

## Display ban does not mean financial disaster for retailers

The Canadian Convenience Stores Association (CCSA) has been telling lawmakers and the media in countries around the world that Canada's experience with retail tobacco display bans has been disastrous.

CCSA President Dave Bryans has made numerous public claims about the impact on the sector of the display bans implemented in Ontario and Quebec on May 31, 2008:

- "23 corner shops closed every week in Ontario" after the display ban (Scotland, March 2009).
- "1,875 stores closed across Canada" in 2008 (New Zealand, January 2009; Australia, November 2009).

**"Sunset category or not, tobacco sells.... Despite common fears, operating a convenience store in a dark market does not spell DOOMSDAY."**

(Mike Hammoud, President, Atlantic Convenience Stores Association, March 2008)

These claims are not supported by independent data from Statistics Canada nor by the experience of retailers themselves cited in the retail trade journal *Your Convenience Monitor*. As the table below illustrates, the total number of convenience stores

in Ontario increased by 1.9% in 2008 or 126 stores. Across Canada, the total number of independent and chain convenience stores in 2008 declined by a modest 1.2% or 289 stores, a far cry from the more than 5 closures per day claimed by the CCSA. (While the StatsCan figures do not include convenience stores with gas stations as do those of CCSA, inclusion of this category would strengthen the economic indicators for the convenience sector, since convenience stores with gas stations experienced higher sales than convenience stores alone in 2008.)

Further evidence that the CCSA claims are not credible is the fact that the 2009 and 2010 State of the Industry reports give vastly different figures for the total number of convenience stores in Canada in 2008.

The 2009 report says there were 23,435 stores in 2008. In the 2010 report the stated 8.9% decline in the number of stores in 2009 is based on a 2008 total of 25,498. Increasing the 2008 total by 2,063 stores of course greatly inflates the percent of store closures in 2009.

## Claims of store closures don't add up

(Statistics Canada, CANSIM database, Table 080-0011)

Convenience + specialty food stores	Canada			Ontario			Alberta		
	2006	2007	2008	2006	2007	2008	2006	2007	2008
Chain stores	2,663	2,427	2,153	1,157	1,043	911	326	278	276
Non-chain stores	17,395	14,578	14,563	6,586	5,654	5,912	1,242	1,084	1,103
Total	20,058	17,005	16,716	7,743	6,697	6,823	1,568	1,362	1,379
% change from previous year		-15.2%	-1.7%		-13.5%	+1.9%		-13.1%	+1.2%





Tobacco companies are not the only ones willing to pay retailers for the prime, behind-the-cash display space

## Display ban does not mean financial ruin

CCSA claims of store closures due to display bans must be put in context; their numbers give no indication of what the average closure rate is for convenience stores in Canada, most of whom operate on very low margins. According to the 2009 State of the Industry report published by the CCSA and undertaken in partnership with HEC Montréal (post-secondary business school), PricewaterhouseCoopers (business consulting firm) and the Fédération des caisses Desjardins (large Canadian cooperative financial group), store closures were relatively

stable in the period 2004-2008. Moreover, the closures are attributed to consolidation within the sector and loss of income from contraband tobacco. Indeed the report makes **no mention of display bans causing financial hardship** for tobacco retailers:

"[T]here has been consolidation in the industry, and only convenience stores offering gasoline have seen their numbers increase. In fact, between 2004 and 2008, there has been an average decline of 2% per year in the number of convenience stores, which is equiva-

lent to one closing per day. Compressions of profit margins and losses of revenue from tobacco smuggling can account for these closings but so does the difficulty in finding people to take over from those who wish to sell."

It is important to note that many retailers have found that the valuable behind-the-cash real estate provides an opportunity for new income. Some sell advertising space on the flaps that cover the shelves of cigarettes, while others earn display income from manufacturers of non-tobacco products.

### PROFILE

We're situated in a popular tourist destination that fills with cottagers in the summer and snowmobilers in the winter, so it helps to carry items in our store that are memorable and worth returning for. One of the best decisions I've made at my convenience store, Henwood's General Store and Sweet Shoppe, in Haliburton, Ontario, is to carry fresh-baked Ingoldsby Function Butter Tarts. The partnership began last year when the baker, who used to rent space below me, outgrew the space and asked if he could sell the tarts in my shop instead.

Setting up the baked goods display near my front entrance has been the best move for both of us. The tarts have become a tourist attraction in themselves, as customers drive from neighbouring communities specifically



**The power wall brings in a decent income, and it also gets my customers talking while they stand in line.**

Independent Convenience News, February 2010

"You set an objective with a store, and should that store meet the objective, they're compensated with a payment."  
(Ron Funk, V-P, Rothmans, Benson & Hedges)

The Canadian experience also shows that a display ban does not necessarily mean the end of tobacco industry payments to retailers.

While tobacco companies no longer pay for retail display space in the form of display allowances or slotting fees, they have transferred that trade spending into pay-for-performance programs.

Rothmans, Benson & Hedges Vice-President Ron Funk has

publicly assured retailers:

"So we will be focused on specific brands, on information that you can provide to your consumers, those kinds of things.... [D]on't think that money is being removed from the category; it is not." (Your Convenience Manager, July 2008)

Retailers receive compensation from tobacco companies for a variety of services, from keeping sales representatives informed of customer purchasing

patterns, to providing customers with up-to-date product information, to stocking certain brands on prime shelf space, even though they are behind closed doors. Retailers have become an essential part of the industry's marketing strategy. Says Imperial Tobacco's Vice-President of Marketing, "The retailer is [no longer] someone who just visually sells the product behind the counter.... He is someone who provides information." (Maclean's, July 2008)

# Display ban does not fuel contraband



It is true that Canada has a contraband tobacco problem. What is patently false, however, is that Canada's retail display bans have fuelled the contraband tobacco market. All 13 provinces/territories have display bans, but contraband represents a significant share of the market in only two provinces, Ontario and Quebec. Moreover, Canada also had a major contraband problem in the early 1990s, a time when there were no restrictions on retail display.

As the full-page ad at left from *The*

*Hill Times* (June 2010) demonstrates, the CCSA and its allies in the National Coalition Against Contraband Tobacco clearly blame the problem on the illegal cigarette factories operating on native reserves. **The CCSA attributes contraband to display bans only with foreign audiences!**

Contraband is not caused retail displays—it occurs where there is opportunity, through the presence of distribution networks, organized crime, industry participation, and/or corruption. (Joossens et al, 2009)

**“It’s time to focus on the real problem and shut down the illegal cigarette factories.”**

(National Coalition Against Contraband Tobacco, June 2010)

## Display ban does not increase theft

In 2002, the province of Saskatchewan became the first to implement a retail display ban. Since then, there have been no reports, official or anecdotal, from Saskatchewan or any other province of increased theft as a result of the requirement to cover up tobacco products.

Shopkeepers regularly turn their backs to customers at the till and leave the counter to assist customers: this is not a tobacco-specific

issue. If the concern is that clerks will have to have their backs turned for longer as they retrieve cigarettes from behind closed doors, there is an easy solution—store tobacco products in drawers under the counter (as shown at right). This way the clerk can keep an eye on the customers and the cash register, and the public only sees the tobacco when it is purchased.



## Display ban does not mean slow service & irritated customers

Increased customer dissatisfaction is not a necessary corollary of a tobacco display ban. The President of the Atlantic Convenience Stores Association (ACSA) advises that the key to ensuring speed of service is to manage and maintain inventory and educate staff: “[K]nowing what products are available, at what price and where they’re located under the covers will go a long way to

helping the customer get used to buying products without seeing them first.” The ACSA President reported a 27% increase in tobacco sales in his own store after the display ban. (*Your Convenience Manager*, August 2008)

There are many practical solutions to reduce transaction time, such as keeping brand families together and stocking slow-moving products

away from the fast sellers.

In a survey of 300 smokers conducted for the Canadian convenience sector, 66% indicated that finding their desired cigarette brand after implementation of a display ban was a non-issue, and an additional 16% expressed indifference. (*Your Convenience Manager*, Dec. 2009)

**Retailers should “rest easy knowing that consumers repeated their confidence of shopping in a dark market.”**

(*Your Convenience Manager*, Dec. 2009)

# The Bottom Line:

**A product that kills 1 in 2 long-term users should not be promoted via attractive displays**



Tobacco power wall before display ban



Tobacco storage after display ban

Bans on the retail display of tobacco products are a critical tobacco control measure:

- Display bans contribute to a comprehensive ban on tobacco advertising and promotion
- Display bans play an important role in changing social norms related to tobacco use
- Display bans enhance the salience of health messaging about the risks of tobacco use
- Display bans reduce youth initiation, decrease impulse buys, and support cessation.

Misinformation about the impact of display bans comes from tobacco industry and its allies in the convenience store sector—all of whom have a vested interest in selling more tobacco! Experience with display bans in Canada and other countries clearly proves that the negative consequences predicted by tobacco companies and retailers simply do not materialize.

## **Non-Smokers' Rights Association Canada**

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## **The Non-Smokers' Rights Association (NSRA)**

is a non-profit health organization that has worked exclusively in the field of tobacco control for over 35 years. Its mission is to promote public health by eliminating illness and death caused by tobacco industry products, including second-hand smoke. The NSRA has members in all provinces and territories. In 2000 NSRA was the recipient of the international Luther L. Terry Award for outstanding organization.



**From:** Sharon MacIntosh [<mailto:Sharon.MacIntosh@cdha.nshealth.ca>]

**Sent:** October-01-08 9:29 AM

Below is a reply from the Nova Scotia experience from the manager responsible for the Act which banned point of sale promotions (2006) ... no evidence of economic impact.

***Dear Sharon,***

***I understand your colleagues with ASH Scotland have been receiving information with respect to the economic impact of point of sale advertising in Canada. I wish to provide a brief statement from Nova Scotia's perspective.***

***Let me first point out that since the 2001 adoption of the Nova Scotia Comprehensive Tobacco Control Strategy, Government has undertaken in a concerned way to reduce tobacco use. The adoption of the Strategy also signalled that business plans based on continuing to treat tobacco sales as a primary source of revenue would likely need to be rethought.***

***Let me also note that in advance of the adoption of the amendments to the Tobacco Access Act to prohibit point of sale advertising, some vendors and the tobacco industry expressed concern that the consumption of tobacco as a result of the changes to the Act would decline and would adversely affect their business.***

***Since the amendments came into effect last year, as far as I am aware, the Department of Health Promotion and Protection has not received research, data, analysis, reports or statements of any kind that point to any kind of economic impact of the point of sale advertising provisions of the Act. In particular, no vendor association or tobacco manufacturer has made the Department aware of any adverse impact. We would certainly welcome this information if it becomes available.***

***Please feel welcome to share this note with your colleagues.***

***Best regards,***

***Steve Machat  
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**TESTIMONY ON THE SCIENTIFIC EVIDENCE ON IMPACTS OF TOBACCO PRICING ON  
TOBACCO USE, RETAIL PROMOTION ON YOUTH SMOKING INITIATION, AND  
ILLEGAL SALES ON TOBACCO USE**

**TERRY PECHACEK, PHD  
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OFFICE ON SMOKING AND HEALTH  
NATIONAL CENTER FOR CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION  
U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION**

**NEW YORK CITY COUNCIL  
HEALTH COMMITTEE  
NEW YORK, NEW YORK  
MAY 1, 2013**

Thank you for the opportunity to submit testimony today about three critical, interrelated tobacco control issues: (1) the impact of pricing on tobacco use, (2) the impact of retail promotion on youth smoking initiation, and (3) the impact of illegal sales on tobacco use. I am Dr. Terry Pechacek with the Office of Smoking and Health, Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia, the lead Federal agency for comprehensive tobacco prevention and control. I am an author of the original and updated versions of the CDC guidance document *Best Practices for Comprehensive Tobacco Control Programs* and have been involved in the writing or scientific review of U.S. Surgeon General's Reports on the health consequences of tobacco since 1979. In addition, I have provided senior technical advice on the planning, implementation, and evaluation of comprehensive tobacco control programs in Arizona, Arkansas, California, Colorado, the District of Columbia, Florida, Georgia, Hawaii, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia.

I am submitting expert written testimony today at the request of the Honorable Maria del Carmen Arroyo, Chair of the Health Committee of the New York City Council, to discuss the scientific evidence related to the impact of pricing and the retail environment on tobacco use and youth smoking initiation. For the record, I am not submitting testimony for or against any specific legislative proposal.

Tobacco use is the leading preventable cause of death and illness in the United States. For every smoking-related death, 20 more people suffer from at least one serious tobacco-related illness.

Even more troubling, tobacco use is a pediatric epidemic. Each day across the United States, more than 3,800 youth under 18 years of age start smoking [U.S. Surgeon General's Report, 2012]. More than one-third (36 percent) of adults who had ever smoked a cigarette reported trying cigarettes for the first time by 14 years of age [U.S. Surgeon General's Report, 2012]. Furthermore, virtually no initiation of cigarette smoking (less than 2 percent) actually occurs in adulthood after 26 years of age [U.S. Surgeon General's Report, 2012]. In New York City in 2011, 28,000 public high school students under the age of 18 experimented with tobacco for the first time and of those, over a third (35 percent) currently smoke [New York City Youth Risk Behavior Survey 2011]. Although New York City has seen a considerable decline in youth smoking rates, these rates have plateaued since 2011 [New York City Youth Risk Behavior Surveys, 2007 and 2011]. Stopping kids and young adults from smoking before age 26 can dramatically reduce the burden of tobacco use [U.S. Surgeon General's Report, 2012].

There are multiple evidence-based interventions shown to reduce tobacco use so it is no longer a public health problem [Centers for Disease Control and Prevention 2007, World Health Organization 2008, Task Force on Community Preventive Services, U.S. Surgeon General's Report, 2012]. New York City has already implemented many key components of tobacco control practices—including price increases, hard-hitting anti-tobacco mass media campaigns, and a landmark 2002 smoke-free air policy—and has seen dramatic results. Together, these approaches reduced smoking prevalence in New York City from 21.6 percent to 19.2 percent between 2002 and 2003 alone, equivalent to about 140,000 fewer smokers [Institute of Medicine, Frieden]. And the city has seen that unprecedented progress continue; over the past decade, youth smoking has declined by more than half [New York City Youth Risk Behavior Surveys, 2007 and 2011].

Despite this incredible progress, about one in seven New York City residents still smoke [New York City Community Health Survey]. There are still more than 19,000 youth smokers in New York City [New York City Youth Risk Behavior Survey 2011]. If these young people remain addicted to tobacco, New York City will continue to face high health care costs for decades to come. Effective tobacco control approaches can sustain this progress and continue to keep upcoming generations tobacco-free.

### **The Impact of Pricing on Tobacco Use**

Raising the price of tobacco products is one of the most effective tobacco control strategies we have to reduce tobacco consumption and prevent initiation [U.S. Surgeon General's Report, 2012, Chaloupka et. al., 2011, International Agency for Research on Cancer]. The Institute of Medicine, Surgeon General, and World Health Organization all agree that increasing the price of tobacco products decreases the prevalence of tobacco use among both adults and youth and prevents youth initiation of tobacco use [Institute of Medicine, World Health Organization, U.S. Surgeon General's Report, 2012]. Raising prices also encourages cessation and prevents relapse, leading to improvements in health outcomes [U.S. Surgeon General's Report, 2012].

The 2000 report of the U.S. Surgeon General, *Reducing Tobacco Use*, concluded that a 10 percent increase in the price of cigarettes is associated with a 3–5 percent reduction in cigarette consumption—and this reduction can be even greater among youths and other price-sensitive groups [U.S. Surgeon General's Report, 2000, Task Force on Community Preventive Services, Chaloupka 1999, Tauras].

The 2012 U.S. Surgeon General's report, *Preventing Tobacco Use Among Youth and Young Adults*, reiterated this conclusion. The report found that higher cigarette prices both decrease smoking initiation among youth and increase smoking cessation among young adults [U.S. Surgeon General's Report, 2012]. Limited evidence also suggests that higher cigarette prices will prevent young adults from progressing to higher intensities of smoking, thereby further improving health outcomes in the long term [U.S. Surgeon General's Report, 2012]. On the other hand, “because there is strong evidence that as the price of tobacco products increases, tobacco use decreases, especially among young people, then any actions that decrease the purchase price of tobacco products can increase the initiation and level of use of these products among young people” [U.S. Surgeon General's Report, 2012].

As of March 2013, the Federal tax on cigarettes was \$1.01 per pack and the national state average for cigarette excise taxes was \$1.47 per pack, ranging from \$4.35 in New York to 17 cents per pack in Missouri [Centers for Disease Control and Prevention STATE System]. Currently, 15 states have excise tax rates over \$2.00 per pack, with five of those states having an excise tax rate of \$3.00 per pack or higher [Centers for Disease Control and Prevention STATE System]. Combined with the \$4.35 New York state tax, New York City has the highest current excise tax in the nation at \$5.85 per pack.

The price of tobacco products is also affected by the tobacco industry. In 2011, New Hampshire decided to decrease their cigarette tax by 10 cents per pack in order to gain additional revenue, thinking the low price would attract tobacco product buyers from other states [Ireland]. Within 24 hours of the tax cut going into effect, tobacco manufacturers raised the price of cigarettes by 10 cents a pack [Ireland].

After the 1998 Master Settlement Agreement, cigarette manufacturers shifted their marketing approach from traditional media advertising to price-related promotions [U.S. Surgeon General's Report, 2012, Chaloupka 2008, Wakefield 2002, Ruel, Loomis]. In 2010, the tobacco industry spent \$6.49 billion out of an \$8.05 billion marketing budget, or 80.7 percent of their marketing budget, on price discounts [Federal Trade Commission]. These pricing promotions currently include incentive payments for tobacco retailers and wholesalers to reduce the price of cigarettes to customers (known as buy-downs or off-invoice discounts), coupons, and retail value-added promotions (e.g., buy one, get one free offers).

The 2012 U.S. Surgeon General's report found that in recent years, the pricing of tobacco products has become a key marketing strategy in the tobacco industry [U.S. Surgeon General's Report, 2012]. "Price-reducing promotions have been the primary means of price competition among manufacturers, and there is evidence that these promotions have been targeted to specific brands or venues that are more important to young people" [U.S. Surgeon General's Report, 2012]. Discounts such as direct mail coupons, point-of-sale coupons, and "buy some, get some" offers are particularly appealing to young people [White]. One study found that 35 percent of smokers ages 18 to 24 reported that they "always" take advantage of discount and multi-pack coupons when purchasing cigarettes [White].

These promotions undermine the effectiveness of a powerful policy lever to stop youth and young adults from starting or continuing to use tobacco. Researchers estimate that if pricing schemes were banned across the United States, the number of current, established smokers would decrease by over 13 percent [Slater]. The U.S. Surgeon General concluded that "the industry's extensive use of price-reducing promotions has led to higher rates of tobacco use among young people than would have occurred in the absence of these promotions [U.S. Surgeon General's Report, 2012]."

Tobacco use rates and health care costs could be reduced even further in New York City by continuing to implement the evidence-based interventions we know work [Institute of Medicine, Centers for Disease Control and Prevention 2007, Tauras, Chaloupka 2011, Farrelly].

### **The Impact of Retail Promotion on Youth Smoking Initiation**

Beyond price discounting strategies, tobacco industries also promote their products by advertising in the retail environment, particularly at the point of sale [U.S. Surgeon General's Report, 2012]. These venues are primary targets for direct-to-consumer and—would-be-consumer—marketing and promotion. For instance, a study of retail outlets compared the incentive payments for premium shelf space and discounts on volume purchases paid to retailers across five types of products [Feighery]. This study found that significantly more retailers reported receiving slotting and display allowances for tobacco products than any other product type (62.4 percent) [Feighery].

More cigarettes are sold in convenience stores than any other type of store; in 2006, cigarette sales generated an average of \$400,000 in revenue per store, or one-third of all sales inside these stores [U.S. Surgeon General's Report, 2012]. Young people are frequent convenience store customers; "about 70 percent of adolescents shop at convenience stores at least weekly, and about a third at least two or three times a week" [U.S. Surgeon General's Report, 2012]. "Convenience stores have more tobacco



advertising and promotions than any other type of store, which increases the likelihood of exposing children and youth to pro-smoking messages while they are shopping and can affect initiation rates among those exposed” [U.S. Surgeon General’s Report, 2012]. This relationship between exposure and tobacco use initiation is particularly strong if these stores are located near schools [U.S. Surgeon General’s Report, 2012].

There is “a growing body of evidence that has found relationships between exposure of youth to tobacco marketing in stores and experimentation with smoking,” and “frequent exposure to retail marketing has been associated with a significant increase in the odds of ever smoking” [U.S. Surgeon General’s Report, 2012]. A 2010 longitudinal study of adolescents between ages 11 and 14 years of age found that these youth who shop at stores filled with the most tobacco advertisements were more than two times more likely to start smoking [U.S. Surgeon General’s Report, 2012]. The Surgeon General’s 2012 evidence review placed strong weight on this prospective study, which documented that exposure to cigarette advertising is a risk factor for smoking initiation [U.S. Surgeon General’s Report, 2012]. Furthermore, a multi-year, cross-sectional study of 8<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup>-grade students in the United States found that higher levels of advertising, lower cigarette prices, and greater availability of sales promotions increased the likelihood that youth would move from experimentation to regular use [U.S. Surgeon General’s Report, 2012].

Point-of-sale promotion is particularly troubling [U.S. Surgeon General’s Report, 2012]. Displays of cigarette packages in retail outlets, or “powerwalls,” “have high visibility among youth and help to establish brand imagery and social norms at an early age” [U.S. Surgeon General’s Report, 2012]. The U.S. Surgeon General’s report notes that “in two experimental studies, students who saw photos of stores with tobacco displays and advertising were more likely to overestimate the percentage of adolescents and adults who smoke and to believe that tobacco is easier to buy than were those who saw photos without retail tobacco materials” [U.S. Surgeon General’s Report, 2012]. Research also shows consistent, “significant associations between exposure to point-of-sale tobacco promotions and initiation of smoking or susceptibility to that behavior” [U.S. Surgeon General’s Report, 2012].

### **The Impact of Illegal Sales on Tobacco Use**

Higher tobacco prices have a significant, positive impact on public health, particularly in preventing youth initiation of tobacco use. Illegal tobacco sales, in their many forms, directly undermine this impact.

Illegal tobacco sales include: direct smuggling of tobacco products into the country, introducing products designed for export only into the domestic marketplace, manufacturing tobacco products without a license, buying products from one community for illegal resale in another, buying cigarettes on Native American territory for illegal resale to non-tribal members, and illegal internet sales that do not charge taxes [Alderman]. These types of illegal sales may reduce the effectiveness of the tobacco control policies that are designed to disincentivize youth initiation.

States that have taken steps to reduce illegal sales have seen dramatic increases in tax collection. After California implemented a high-tech tax stamp and increased illicit trade enforcement efforts, the state saw a 37 percent drop in cigarette tax evasion that also resulted in \$110 million in additional annual cigarette tax revenue, without any increases in the tax rate [McIntosh].

Illegal sales may also reduce the likelihood of tobacco purchasers from complying with customer age verification, licensing, advertising, manufacturing standards, and record keeping, which are important interventions for preventing sales to minors [Alderman].

Researchers estimate that if illicit trade were eliminated globally, governments would gain at least \$31.3 billion a year [Joosens]. However, beyond just bolstered revenues for communities to reinvest in health, eliminating illicit tobacco sales would have a significant impact on health outcomes. Researchers estimate that eliminating illicit trade could prevent over 164,000 premature deaths from 2030 onward [Joosens].

## **Conclusion**

Allow me to summarize the major points of my testimony:

1. Raising the real price of tobacco products is one of the most effective tobacco control strategies to reduce tobacco consumption and prevent initiation, especially among price-sensitive youth and young adults.
2. The U.S. Surgeon General has concluded that “the [tobacco] industry’s extensive use of price-reducing promotions has led to higher rates of tobacco use among young people” [U.S. Surgeon General’s Report, 2012].
3. Tobacco marketing at the point of sale is associated with youth tobacco use [U.S. Surgeon General’s Report, 2012]. “Because point-of-sale marketing is an important channel for tobacco companies, with very few restrictions, consumers, including children, are unavoidably exposed to pro-smoking messages when they shop” [U.S. Surgeon General’s Report, 2012]. A systematic review of the research concluded that due to the addictiveness of tobacco, the severity of health hazards posed by smoking, the evidence that tobacco marketing and promotion encourage children to start smoking, and the consistency of the evidence that it influences children’s smoking justify banning advertising and displays of tobacco products at the point of sale [Paynter and Edwards 2009].
4. Illegal tobacco sales undermine the effect of raising the real price on tobacco products—and could further reduce the effectiveness of pricing strategies on tobacco use. Closing potential illegal sales loopholes would be expected to reduce youth tobacco initiation and use.

There are evidence-based strategies that work to reduce tobacco consumption and initiation, especially among children. Comprehensive pricing policies are one of the most powerful tobacco control interventions. Regulating the retail environment could further reduce youth and young adults’ susceptibility to tobacco marketing and help prevent them from developing a life-long addiction to tobacco use. Finally, preventing illegal sales can help discourage tobacco use initiation, especially among price-sensitive youth and young adults, and encourage tobacco cessation, therefore improving health outcomes and reducing health care costs.

Thank you.

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Written statement of Carol L. Schmitt, PhD

Senior Public Policy Analyst, Public Health Policy Research Program

RTI International

for the

New York City Council Committee on Health

regarding

“Int 1020-2013 - Display of cigarettes and tobacco products by retail  
dealers of cigarettes and age restrictions on entry to retail tobacco stores”

May 2, 2013

New York City Council Hearing Room

250 Broadway, 16<sup>th</sup> floor

New York, NY 10007



This written statement has been submitted to the New York City Council in support of proposed legislation Intro 1020, prohibiting the display of cigarettes and tobacco products by retailers licensed to sell cigarette products.

I have a PhD in human services psychology from the University of Maryland, Baltimore. I have been involved in the evaluation of Federal (e.g., the American Stop Smoking Intervention Study), state, and regional tobacco control programs since 1999; and have led or made significant contributions to multiple research and evaluation projects focused on tobacco product marketing at the point-of sale (POS). I am currently a Senior Public Health Policy Research Analyst at RTI International, where I have been the Task Leader for the community program evaluation of the New York State Tobacco Control Program since 2007. The majority of the program's recent community efforts have focused on countering tobacco product marketing at the point-of-sale. The evaluation team has conducted focus groups and surveys to better understand public opinion about tobacco product displays and support for policies that would decrease youth exposure to it.

### **How extensive is exposure to tobacco product displays in the NY retail environment?**

Tobacco product displays are ubiquitous and represent a larger proportion of tobacco product presence than tobacco ads. In our 2011 survey of 3,677 licensed tobacco retailers[1], we documented 31.7 square feet of tobacco product displays in the “average” New York store. This space can contain approximately 205 packs of cigarettes. In 82.4% of New York stores more than half of the area behind the cash register was devoted to tobacco product displays.

### **Over 5 decades of research in social psychology and marketing demonstrates how repeated exposure to advertising affects behaviors—and New York parents understand this.**

The bulk of research linking exposure to tobacco product marketing and youth smoking has been conducted over the past 10 years. There is, however, a five-decade body of research documenting the effects of repeated exposure on emotions [2-4]. This literature shows that repeated exposure significantly increases positive feelings toward the object of exposure—repeated exposures to a product are the building blocks of a modern advertising campaign [5]. Every time a New York child visits a store, that child is exposed to 31.7 square feet of tobacco product displays. This exposure undermines parent influences and school anti-smoking programs—experts who study risk perception have demonstrated that when people (including children) have positive feelings toward a risky behavior like smoking, they will inflate the benefits associated with that behavior and minimize the costs of that behavior. Children then judge that behavior as less harmful or risky and are more likely to engage in it [6].

Parents understand how tobacco product displays influence their children. We conducted a series of focus groups in March 2012 where parents agreed that their children are being influenced by tobacco product marketing in the retail environment and described how they thought that influence occurred [7]. Examples of their comments are follows:

- *When they show so many [cigarettes], it looks like it's ok to purchase [them]. They can't be that bad if there's so many kinds [of cigarettes]. Everybody must smoke, look at them all. There's so many!*
- *With a 9 or 10 years old child, if you keep cookies in the jar in the middle of the table, every time they walk by that [jar], they're gonna want [a cookie]. And nine times out of ten, they're going to reach in there and grab one, no matter how many times you tell them no. But if you remove the temptation, then they look for something else.*
- *They can't buy it then, but subconsciously down the road when they turn 18, they'll remember what they saw in the store.*

### **New York adults and policy makers believe that tobacco product displays influence youth smoking and support a policy to ban them.**

Other studies we have conducted show that New York adults and policy makers understand the influence that tobacco product displays have on youth smoking and support a policy to ban these displays [7].

- In a telephone survey conducted with a representative sample of New York adults in 2010, 40.5% held negative attitudes toward display of tobacco products, and 45.4% supported a display ban policy. In 2012, we again surveyed New York adults and found that 57.3% supported a display ban.
- We also conducted an online survey of 1,062 New York adults in 2012 to examine their beliefs, attitudes, and support for POS policies. In this survey 63.4% of the participants thought that tobacco product displays influenced youth smoking and 58.7% supported a policy to ban displays.
- In 2011 we completed interviews with 679 (59%) of the 1,148 county-level elected leaders and local Board of Health directors in New York. 80.7% of these policy makers believed that seeing tobacco product displays makes youth somewhat or much more likely to become smokers, and 58.8% of these local policymakers supported a policy to ban them.

### **Summary**

Opponents of this policy may argue that “more research” is needed because the majority of research showing the impact of retail tobacco product marketing on youth smoking does not differentiate between product displays and other ads, and/or was not done in the United States. However, tobacco product displays epitomize a key element of successful advertising campaigns—repeated exposure to the product.

Repeated to a product creates positive feelings about that product. Our studies provide evidence that New York parents understand how tobacco product displays may be countering pro-health family influences; that the New York public and policymakers believe that tobacco product



displays influence youth smoking; and that the majority of New York adults and local policy makers support the type of policy that New York City is currently considering.

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# Langone Medical Center

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My name is Dr. Shelley. I am an Associate Professor of Medicine and Population Health at the NYU School of Medicine and I am a board certified internist. First, I want to clearly state that I strongly support all three of the proposed laws. By filling critical gaps in current tobacco product regulation, all three laws, implemented together, promise to reduce tobacco use initiation among youth and help current smokers quit.

About a year ago I launched a smoking cessation service at New York University's Cancer Center and I conduct research that studies ways to help smokers quit. Although thousands of smokers have quit because of the effective tobacco control policies that the NYC DOH health, with the support of the city council, has implemented, there are thousands more struggling every day. One of the issues that my patients who smoke consistently describe as a barrier to quitting is the pervasiveness of tobacco products in stores in NYC. In fact, the nature of the NYC retail environment creates unique challenges to smokers trying to quit, including tobacco retailers on almost every block. How does this impact smokers? The answer is in the following scenario often described by my patients who are trying to quit: they are walking home from work having succeeded in not smoking all day. They decide to walk into a drug store or local bodega to pick something up and find themselves bombarded with cues to smoke at the checkout counter. These cues, of course, are in the form of cigarettes in bright, attractive packaging behind the counter. This moment creates cravings and urges that are often difficult to resist and often lead to a slip or even relapse with the purchase of a pack.

One of the more confusing aspects of drug store policy, in particular, is the fact that many of these stores still hide the smoking cessation medication behind the pharmacist's counter and yet place cigarettes in a location that is likely to trigger a purchase. What does it say about our priorities as a city when we place triggers to smoke at the point of purchase where children and smokers, most of whom want to quit, see them every day, several times a day?

I have been asking every one of my patients who are trying to quit about the regulation that would prohibit the display of cigarettes or cigarette packaging and they are uniformly in support. Several said it would be a "relief" to know that they could walk into a store and not worry about having to see cigarettes every time they are paying for whatever they are purchasing at the time.

The two additional proposed regulations, one that would raise the age of legal tobacco sales to 21 and the second that will block the ways in which the tobacco industry and tobacco retailers undermine the cigarette tax increases, are also long overdue. There is strong scientific evidence that smokers who start using tobacco at younger ages, specifically as teens, become more addicted and have a harder time quitting than smokers who start smoking at older ages. We

don't want anyone to start smoking but it is particularly hazardous to start as an adolescent. We do not allow people under the age of 21 to legally purchase alcohol, why would we have a different standard for tobacco, a much more deadly product when used as directed.

The third proposed law is necessary to halt actions by the industry and retailers that undermine the cigarette taxes. Cigarettes tax increases are the most effective strategy for reducing tobacco use and preventing young people from starting. But coupons that reduce the price of tobacco, and treating other tobacco products, like little cigars, differently in terms of pricing and packaging, reduces the potential public health impact of high cigarette taxes.

I will close by urging the city council to support all three proposed laws. In particular, we need to block any opportunities the tobacco industry and retailers might have to undermine an otherwise strong policy environment in NYC. I am proud to live in a city that has the most innovative tobacco control program in the US. Let's continue to lead by endorsing this obvious next step in reaching our goal of a tobacco free city. This is an easy one. It is good policy, good for the public's health, good for our children and good for the over 70% of smokers who want to quit.

A handwritten signature in black ink, appearing to read "Adam Schiff", with a long, sweeping horizontal line extending to the right.

# Non-Smokers' Rights Association

## L'Association pour les droits des non-fumeurs

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1 May 2013

Honourable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Re: Int 1020-2013, Tobacco Product Display Restriction Initiative

Dear Madam:

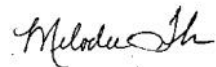
I am pleased to submit the attached brief from the Non-Smokers' Rights Association, Canada, to the Health Committee for your consideration during your deliberations on the proposal to restrict the retail display of tobacco products.

The Non-Smokers' Rights Association (NSRA) is a non-profit health organization with members in all Canadian provinces and territories, that has worked exclusively in the field of tobacco control for almost 40 years. Our mission is to promote public health by eliminating illness and death caused by tobacco, including second-hand smoke. The NSRA has developed a hard-earned reputation in Canada and international health circles for our forceful health advocacy, having been the driving force behind several world precedents, including the world's first graphic health warnings on cigarette packs. In 2000, the NSRA was the inaugural recipient of the American Cancer Society's international Luther L. Terry Award.

The NSRA believes that it is important for members of the Health Committee to have the facts regarding the implementation of display bans in all 13 Canadian provinces and territories. Representatives of the Canadian Convenience Stores Association, a well-known front group for Canadian tobacco manufacturers, and other industry apologists have been spreading misinformation about the Canadian experience in countries around the world that have been considering banning retail tobacco displays. The NSRA brief is intended to set the record straight, as well as provide recommendations regarding critical elements of an effective display ban. We have also appended a detailed policy analysis prepared for the province of Nova Scotia that includes an extensive summary of the research in support of banning tobacco product displays at point-of-sale.

We wish you success in your deliberations. If you have questions or would like additional information, please do not hesitate to contact me.

Sincerely yours,



Melodie Tilson  
Director of Policy

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# **BANNING TOBACCO DISPLAYS IN NEW YORK CITY**

## **A Submission by the Non-Smokers' Rights Association, Canada**

### **Rationale for a Retail Tobacco Display Ban**

#### **1. A product that kills half its long-term users should not be promoted via attractive displays**

Tobacco industry products kill half of their long-term users, half of them prematurely.<sup>1</sup> Furthermore, for every death caused by smoking, there are at least twenty smokers living with a serious smoking-related illness.<sup>2</sup> And, although tobacco products remain legal in most countries because of the significant number of people who are addicted to them, this in no way means that tobacco products should be freely marketed and sold. Numerous reputable health organizations from jurisdictions around the world have called for stringent controls on tobacco retailing—banning the retail display of tobacco products is an important step in that direction.

The *World Health Organization's Framework Convention on Tobacco Control (FCTC)*, a legally-binding global treaty which has been ratified by 176 nations, requires that Parties implement (barring a constitutional impediment) a comprehensive ban on all forms of tobacco advertising and promotion. Recognizing that retail displays are a valuable form of promotion, FCTC implementation Guidelines call for a ban on the visible display of tobacco products at-point-of-sale:

*"13. To ensure that points of sale of tobacco products do not have any promotional elements, Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale, including fixed retail outlets and street vendors. Only the textual listing of products and their prices, without any promotional elements, would be allowed. As for all aspects of Article 13 of the Convention, the ban should also apply in ferries, airplanes, ports and airports."*<sup>3</sup>

#### **2. Display bans play an important role in changing social norms related to tobacco use**

Large, highly prominent displays of tobacco products in every corner store, gas station, and a myriad of other outlets send the message that "everyone" smokes. Young people typically believe that a majority of their peers and adults use tobacco, when in fact less than 20% of the US population smokes.<sup>4</sup> Youth who believe that smoking is the norm are much more likely to become smokers themselves.<sup>5</sup>

The ubiquity, accessibility, and visibility of tobacco displays in retail stores play a significant role not only in normalizing tobacco products but also in undermining the impact of health risk information. The proximity of tobacco products to everyday essentials like bread and milk and to benign consumer goods like candy and trading cards renders them benign by association. This association contributes to the fact that while most Americans know that "smoking is bad for you," they seriously underestimate the extent of the risk.<sup>6</sup> Requiring that all tobacco products for sale be kept out of sight communicates a vastly different message about the health consequences of tobacco products and tobacco use. Display bans thus enhance the salience of health messaging about the risks of tobacco use. This is clearly illustrated in the photos below of a typical tobacco retail outlet in the province of Ontario, before and after the tobacco display ban was implemented.



Tobacco display, pre-ban, Ontario



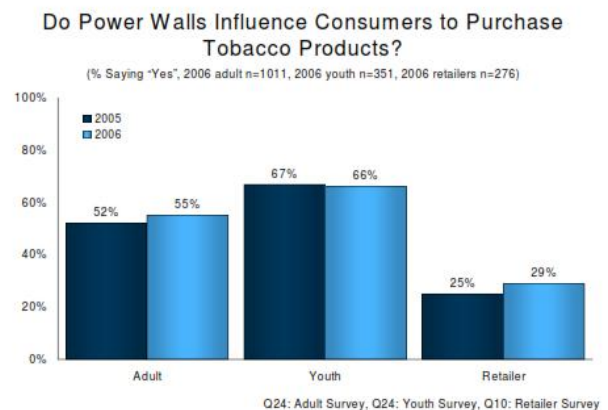
Tobacco display, post-ban, Ontario

### 3. Display bans reduce youth initiation, decrease impulse buys, and support cessation

A large body of evidence—from consumer product research, from internal tobacco company documents, from reports of tobacco industry spending on promotion, and from retailers themselves—proves that prominent retail tobacco displays increase tobacco sales. Tobacco promotion in retail outlets receives high levels of youth exposure. Two-thirds of teenagers report shopping at a convenience store at least once a week, meaning they are regularly exposed to tobacco advertising and displays at point-of-sale.<sup>7</sup> More than half of teens say they are influenced by in-store displays and promotions.<sup>8</sup> One study of students shown pictures of retail stores with and without tobacco ads found that the students shown photographs of stores with tobacco ads perceived that it was easier to obtain tobacco, believed that more of their peers had tried smoking, and expressed less support for tobacco control. The researchers concluded that the point-of-purchase environment has an important influence on youth “in terms of making tobacco use seem normative and, ultimately, increasing the likelihood of smoking initiation.”<sup>9</sup> A recent study by Henriksen of over 1500 adolescents aged 11 to 14 found that exposure to tobacco marketing at the point-of-sale was prospectively associated with smoking initiation among youth for all three measures of exposure.<sup>10</sup>

The graph at right illustrates the beliefs of Manitoba residents about the influence of retail tobacco displays, both before and after a display ban was implemented in the province. A majority of adults and a strong majority of youth believe that power walls influence people to buy tobacco products.<sup>11</sup>

There are many references in internal tobacco company documents to the importance of impulse buys to total tobacco sales. Prominent tobacco displays and signage at retail are designed to increase impulse buys: “The tobacco industry is now dominating the stimuli in many of these stores in the hope of dominating the impulse purchases.”<sup>12</sup> Research shows that despite the addictiveness of tobacco, a significant proportion of tobacco purchases are impulse buys.<sup>13</sup> The daily average number of cigarettes smoked by regular smokers is volatile. Moreover, one-fifth of current smokers in the US are occasional





smokers,<sup>14</sup> including almost two-thirds of youth smokers,<sup>15</sup> and thus do not purchase tobacco on a regular basis.

Power walls at the cash and other forms of point-of-sale promotion likewise weaken the resolve of those trying to quit and trigger relapse among ex-smokers. A large majority of US smokers—70%—want to quit, and half of smokers made one or more quit attempts in past year.<sup>16</sup> Most smokers must make multiple attempts before they are able to quit for good,<sup>17</sup> which is not surprising given that their efforts are undermined by the temptation on display in every convenience store, gas station, and supermarket. Research by Wakefield and colleagues, for example, found that 38% of smokers who had tried to quit in the past year and one-third of recent quitters experienced an urge to buy cigarettes as a result of seeing a retail tobacco display.<sup>18</sup>

The experience in Canada, where all 13 provinces and territories implemented bans on the retail display of tobacco products between 2002 and 2010, provides strong evidence of the value of a display ban in reducing tobacco use. Following a detailed analysis of pooled smoking prevalence and consumption data in Canadian provinces both before and after the implementation of display bans, Professor David Hammond concluded that the evidence shows a causal association between display bans and positive changes in smoking behaviour:<sup>19</sup>

*“Smoking prevalence and consumption levels among daily smokers significantly declined following provincial Display Bans among all age groups: youth aged 15-19, young adults aged 15-24, and adults aged 18+. The age of smoking initiation (the age at which smoking respondents smoked their first cigarette) among 15-19 year olds significantly increased following Display Bans in Canada.*

Smoking Prevalence by Province Canadian Tobacco use Monitoring Survey, 1999-2010												
Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Canada</b>	<b>25.2</b>	<b>24.4</b>	<b>21.7</b>	<b>21.4</b>	<b>20.9</b>	<b>19.6</b>	<b>18.7</b>	<b>18.6</b>	<b>19.2</b>	<b>17.9</b>	<b>17.5</b>	<b>16.7</b>
<b>British Columbia</b>	20.0	19.6	16.7	16.5	16.4	15.2	14.7	16.4	14.4	14.7	14.9	14.3
<b>Alberta</b>	26.0	22.6	25.1	22.8	20.0	20.1	20.6	21.3	21.0	20.4	18.0	18.8
<b>Saskatchewan</b>	25.9	28.1	25.4	21.2	24.1	21.7	22.0	23.7	24.0	20.4	22.3	21.1
<b>Manitoba</b>	23.3	25.7	25.9	21.1	20.9	20.6	22.3	20.1	19.9	20.8	18.9	20.5
<b>Ontario</b>	23.2	23.1	19.7	19.7	19.6	18.7	16.4	16.6	18.3	16.8	15.4	15.2
<b>Quebec</b>	30.3	28.2	24.1	25.8	24.6	22.2	22.2	20.1	21.7	19.1	20.7	17.8
<b>New Brunswick</b>	26.5	26.6	25.0	21.1	24.3	24.2	21.8	22.6	21.2	19.9	21.3	19.3
<b>Nova Scotia</b>	28.9	29.8	24.9	25.3	22.1	20.2	21.0	21.8	20.4	19.7	19.8	20.8
<b>Prince Edward Island</b>	25.6	25.7	25.6	23.1	21.4	21.2	19.9	19.2	18.4	19.2	17.7	16.2
<b>Nfld. &amp; Labrador</b>	28.5	27.7	25.7	24.1	23.0	21.8	20.6	21.7	21.2	20.2	20.7	20.0
*Includes daily and non-daily smokers Data Source: CTUMS, 1999-2010												

## The Canadian Experience—Debunking the Myths

### Display ban does not mean financial disaster for retailers

Retailers' fears about the loss of revenue from tobacco companies for slotting fees or promotional allowances have not been realized. After the display ban, instead of paying retailers for displaying their brands at certain heights, in certain locations, or with a specified number of visible packs, tobacco companies offer payments based on a retailer's performance. Retailers now receive compensation from tobacco companies for meeting specified sales quotas and/or for performing a variety of services, from keeping sales representatives informed of customer purchasing patterns, to providing customers with up-to-date product information, to stocking certain brands on prime shelf space, even though they are behind closed doors. Retailers have become an essential part of the industry's marketing strategy:<sup>20</sup>

*"You can expect our company [Rothmans, Benson & Hedges] to not be paying for retail display space. But that is not meant to imply that we are taking trade spending off the table, not at all. In fact, we will migrate that trade spend into pay-for-performance kind of programs. So we will be focused on specific brands, on information that you can provide to your consumers, those kinds of things ... don't think that money is being removed from the category; it is not."*

Retailers across Canada have turned the display ban into a marketing opportunity. Many retailers sell the space on the front of the flaps covering tobacco products to other companies to advertise their products or services:<sup>21</sup>

*"I started renting out the panels of my cabinet as billboard advertisements. [See photo below.] Neighbouring businesses pay \$125 to rent the space for the year, or \$200 for two years. The power wall brings in a decent income, and it also gets my customers talking while they stand in line."*

As well, when tobacco products are moved away from the prime back-of-cash location, that valuable real estate becomes available to other manufacturers to feature their products. A convenience store owner in the province of Manitoba operating under a display ban, for example, concluded that he would have no difficulty replacing the lost income from tobacco company slotting fees:<sup>22</sup>

*"I am doing some renovations and expect to sell other items such as sports cards and maybe sporting goods. I won't have any problem recouping the \$10,000 I have lost."*

### Claims of store closures due to display ban are false

The Canadian Convenience Stores Association (CCSA) has been telling lawmakers and the media in countries around the world that Canada's experience with retail tobacco display bans has been disastrous. However, these claims are not supported by the evidence. In Scotland in March 2009, then CCSA President Dave Bryans claimed "23 corner shops closed every week in Ontario" after the display ban [in effect 31 May 2008].<sup>23</sup> In Australia in November 2009, Bryans claimed that "1,875 stores closed across Canada" in 2008.<sup>24</sup> These claims are not supported by independent data from Statistics Canada nor by the experience of retailers themselves cited in the retail trade journal *Your Convenience Manager*. In fact, the total number of convenience stores in Ontario *increased* by 1.9% in 2008 or 126 stores. Across Canada, the total number of independent and chain convenience stores in 2008 declined by a modest 1.7% or 289 stores, a far cry from the more than 5 closures per day claimed by the CCSA.<sup>25</sup>



Moreover, it is important to note that the CCSA has been making these claims only on foreign soil—in Canada, in trade journals, media articles, and in government briefings, the Association has attributed store closures and worsening financial conditions to other issues, including contraband, competition from other industry trade channels, and fees for debit and credit card transactions.<sup>26</sup>

### **Display ban does not fuel contraband**

The contraband market in Canada was a serious problem between 2008 and 2010, particularly in the provinces of Quebec and Ontario. The contraband problem, however, had nothing to do with the implementation of retail display bans. All 13 Canadian provinces and territories have implemented a display ban, yet contraband was a major problem in only two provinces—Ontario and Quebec. Contraband is likewise not the result of high tobacco taxes, as the two provinces with the greatest contraband problem have the lowest taxes. Tobacco contraband is due to lack of enforcement, in particular because the contraband originates on native reserves. Given the political sensitivities related to aboriginal issues in Canada, federal and provincial governments are reluctant to take action that would involve reserves directly or indirectly.

### **Display ban does not increase customer dissatisfaction**

Increased customer dissatisfaction is not a necessary corollary of a tobacco display ban. The President of the Atlantic Convenience Stores Association, Mike Hammoud, says that tobacco sales in his own store increased 27% after the display ban. The key is to maintain inventory and educate staff.<sup>27</sup>

A survey of approximately 300 smokers conducted for the Canadian convenience sector concluded that retailers should “rest easy knowing that consumers repeated their confidence of shopping in a dark market for the second time.” Two-thirds of smokers surveyed said that finding their desired brand of tobacco after implementation of a display ban was a non-issue, and 16% expressed indifference. As well, 20% said they would be open to accepting a retailer’s suggestion of an alternative brand. The article concluded that “Consistent and thoughtful tobacco category management” is key to dealing successfully with a tobacco display ban.<sup>28</sup>

## **Recommendations for the City of New York**

- 1. Do not permit minors access to stores in which tobacco displays remain legal.**
- 2. Make it mandatory for all stores that sell tobacco to ensure that no tobacco products are visible from outside the premises.**
- 3. Limit to the extent possible all forms of point-of-sale promotion.**

There is an extensive body of research showing that tobacco companies consistently respond to restrictions in one form of promotion by transferring their promotional expenditures to other marketing activities. The impact of the display ban will be significantly weakened if the tobacco industry is allowed to paper retail outlets with other forms of promotion, such as attractive brand advertising and prominent price signs.

- 4. Ideally require tobacco products to be stored under the counter or in overhead containers that are visible only to the clerk.**

This provision would ensure that tobacco products are not visible to customers even when a pack is being retrieved or the shelves are being restocked.

**5. Stipulate the maximum size of the visible storage system for tobacco products, if mandating under/above counter storage is not feasible.**

The size of tobacco gantry, even if covered, conveys an impression about the importance of tobacco products in society—the extent to which their use is the norm. Given that the vast majority of New Yorkers do not smoke, there is no logical reason for tobacco products to continue to occupy shelf space that is so out of proportion with their actual use.

**6. Prescribe acceptable and unacceptable forms of storage to reduce the extent to which retailers can circumvent the intent of the display ban.**

- Require that the storage systems expose only small sections of product at one time, with the maximum size prescribed.
- Require that packages be stored such that the major face is not visible to the public.
- Require that the storage unit have a door or other cover that automatically closes without the assistance of a clerk.
- Prohibit a vendor from showing a customer the range tobacco products available for sale, permitting only one pack at a time to be shown following a specific request from a customer.

**7. Prohibit the visible display of all tobacco product-related paraphernalia.**

Experience has shown that when tobacco products themselves cannot be displayed, tobacco product-related paraphernalia, sometimes with tobacco branding, becomes more prominent in many retail outlets, serving to undermine the intent of the ban. Tobacco paraphernalia—including but not limited to cigarette papers, cigarette tubes, cigarette filters, cigarette makers, cigarette holders or pipes, devices for rolling cigarettes, cigarette or tobacco carrying or storage cases, pipe loaders, cigar cutters, lighters and matches, waterpipes, waterpipe charcoal—should be included in the display ban.

**8. Require government-authorized health warning signs to be prominently displayed wherever tobacco products are sold.**

**9. Set penalties high enough to serve as a real deterrent to non-compliance.**



Penalties for failing to comply with any of the provisions restricting point-of-sale promotion, including the display ban, should include significant fines. Retailers convicted of a second and subsequent offence should lose their right to sell tobacco for a specified period of time. Retailers with a sales suspension should be required to post prescribed signs in prescribed locations at the point-of-sale indicating the reasons for the sales suspension. The photo at left, of signage required by the province of New Brunswick for violations of the sales-to-minors law, is an

example of the type of messaging that serves a public education purpose, helping to change the social norms regarding tobacco sales and the use of tobacco products.

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# **Restrictions on the Retail Display of Tobacco Products**

## **POLICY ANALYSIS**

**PREPARED FOR SMOKE-FREE NOVA SCOTIA  
BY TILSON CONSULTING**

August 2004

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# **Restrictions on the Retail Display of Tobacco Products**

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# Restrictions on the Retail Display of Tobacco Products

## Executive Summary

There is a substantial body of research that demonstrates a strong correlation between the advertising and promotion of tobacco products and tobacco use. The evidence shows that youth are more influenced by tobacco marketing than adults, with exposure and receptivity to tobacco advertising among youth influencing not only experimentation with smoking but also progression from experimentation to established smoking. In an effort to reduce youth smoking initiation and tobacco use in general, countries around the world have restricted or banned traditional forms of tobacco product promotion. In response, tobacco manufacturers have altered their mix of marketing activities, placing greater emphasis on various forms of promotion at the point-of-sale. Thus tobacco control advocates and policy-makers have begun to call for legislated controls over how and where tobacco products may be displayed and sold in retail establishments.

This report is intended to stimulate informed debate on the question of restricting the retail display of tobacco products, by providing a detailed analysis of the evidence and arguments in support of and against such restrictions. The paper is based on extensive research in several distinct fields:

- Consumer product marketing research on the importance of the retail environment in general and point-of-purchase displays in particular;
- Internal tobacco company documents that discuss the value of retail merchandising and specific merchandising programs;
- Tobacco control research on point-of-sale promotions and related issues;
- Experiences of jurisdictions that have implemented display restrictions.

A range of different restrictions on the display of tobacco in retail outlets have been proposed or implemented in jurisdictions around the world:

- Regulating the proximity of tobacco products to children's goods;
- Banning countertop displays;
- Banning self-service displays;

- Limiting retail stores to one tobacco display each;
- Limiting the number of packs visible to the public;
- Limiting the size of the tobacco display;
- Banning the visible display of tobacco products.

In Canada, the federal government has banned self-service tobacco displays. Under the *Tobacco Act* the federal government also has the authority to regulate tobacco product displays and retail signage. Of the provinces and territories less than half have implemented some form of control on tobacco displays at point-of-sale. Self-service displays are banned in Quebec, New Brunswick, Nova Scotia, and Nunavut. Countertop displays are banned in three provinces—New Brunswick, Nova Scotia, and Nunavut. A complete ban on the display of tobacco products at retail has been passed by the governments of Saskatchewan, Manitoba, and Nunavut. However, a display ban is not currently in force in any province, pending the outcome of the court case between the Government of Saskatchewan and tobacco company Rothmans, Benson & Hedges on the legality of the provision.

A growing number of countries around the world are also legislating controls on the retail promotion of tobacco, including tobacco displays. Since August 2001, a ban on the visible display of tobacco at retail has been in effect in Iceland. Ireland has passed a law banning self-service tobacco sales and restricting retail displays to one package of each tobacco product offered for sale. However, the provisions have not been implemented, pending the outcome of legal challenge launched by several Irish and European tobacco companies. Several Australian states have similarly imposed limits on the size and content of retail tobacco displays, including Victoria and the Northern Territory. The government of New South Wales, Australia, has announced its intentions to ban tobacco products from public view in retail establishments.

That tobacco displays at point-of-sale are a vital form of product promotion is substantiated by a large body of evidence from consumer product and tobacco control research, as well as by internal documents of the tobacco manufacturers themselves. Tobacco sales depend on ongoing ability of tobacco companies to

- make consumers aware of the brand;
- have consumers recognize the brand;
- transmit the essential image of the brand in a way that motivates consumers to buy the product.



In the absence of traditional forms of advertising, the display of tobacco at point-of-sale plays a critical role in generating brand awareness and maintaining brand image. Tobacco displays work synergistically with other forms of tobacco product promotion, most notably the package design. Tobacco companies have conducted sophisticated scientific studies, using equipment such as eye-gaze monitors and projection tachistoscopes, to understand the behaviour of consumers in retail outlets and to incorporate this knowledge into the design of retail displays and tobacco packages.

General consumer product research has concluded that merchandising activities at point-of-sale increase product sales. Tobacco control research has likewise found that tobacco sales are boosted by point-of-sale promotional efforts. One study found that retail advertising and displays increase average tobacco sales by 12%. One reason for this is that an estimated 60% of tobacco purchases are unplanned. Large, attractive tobacco displays in virtually every convenience store, supermarket, and gas stations are designed to provide strong visual cues to consumers and prompt impulse purchases.

The position, size, and type of tobacco display, and the location and number of company signs to be posted are specified in contractual agreements between tobacco companies and retailers. In exchange for complying with the tobacco companies' requirements, retailers are paid promotional allowances, in the form of cash, discounts, rebates, merchandise, fixtures, prizes, or some combination of these. The competition between tobacco firms for prime display space is so intense that tobacco giant Philip Morris was even sued by other tobacco companies on the grounds that its retailer incentive program unlawfully restricted competition.

Tobacco companies contend that the purpose of tobacco product displays is to provide their customers with information on which to base their choice of brand, that is, to encourage brand switching among current smokers, and that displays have no impact on inducing non-smokers or former smokers to take up smoking. The research indicates, however, that smokers are highly loyal to their brands, with less than 10% of smokers switching brands each year. Moreover, smokers usually choose a brand while they are still experimenting with tobacco use. Since more than 80% of smokers begin smoking during adolescence, tobacco companies of necessity must direct their marketing to youth in order to influence their decision to smoke and their initial brand choice. In addition to being influenced by tobacco advertising and promotion, youth smoking is affected by adolescents' belief regarding the prevalence of tobacco use. Research shows that the degree to which young people overestimate smoking rates is a predictor of starting smoking. The widespread availability of tobacco products for sale and the size and prominence of tobacco product displays contribute to the belief common among youth that "everyone" smokes.

The ubiquity, accessibility, and visibility of tobacco displays in retail stores also play a significant role in normalizing tobacco products and undermining the impact of health risk information. The proximity of tobacco products to benign consumer goods like candy and trading cards renders them benign by association.

Given the importance of visibility for their products at the point-of-sale, tobacco companies have vigorously opposed any attempt by governments to limit the retail display and promotion of tobacco products. In several jurisdictions, including Iceland, Ireland, and Saskatchewan, tobacco companies have challenged the legality of display restrictions in court—arguing that the provisions violate their constitutional right to freedom of expression. Tobacco companies have also undertaken aggressive lobbying campaigns against any proposal to restrict product displays. Experience in Canada and the United States, however, indicates that the tobacco firms prefer to orchestrate public opposition by retailers, keeping their own interests in the background. Retailers can be expected to oppose government attempts to restrict or ban tobacco product displays for fear of losing tobacco company promotional allowances, suffering revenue losses from reduced tobacco sales, and incurring remodeling costs. The experience in Saskatchewan, together with current market forces, however, suggests that these losses could readily be mitigated.

The point-of-purchase is critical to marketing a product, uniting three of the four key elements of marketing—product, place, and promotion. The point-of-purchase is where the shopper can be transformed into the buyer—given the right inducements. In the case of a product that causes the death of over 47,000 Canadians every year, governments have a responsibility to do everything within their power to ensure that retail outlets do not serve to normalize tobacco products among youth, do not promote increased use among current smokers by prompting impulse buying, and do not cue smokers who are trying to quit to resume smoking.

# Restrictions on the Retail Display of Tobacco Products

## Overview of the Issue

There is a solid body of research demonstrating a strong correlation between the advertising and promotion of tobacco products and tobacco use (Wakefield and Terry-McElrath; U.S. Department of Health and Human Services). The evidence shows that youth are more influenced by tobacco marketing than adults, and there is evidence of a causal relationship between the advertisement and promotion of tobacco products and smoking initiation (Pierce).<sup>1</sup> Recent research also shows that exposure and receptivity to tobacco advertising influences not only experimentation with smoking but also progression from experimentation to established smoking (Choi). As traditional forms of promotion have been increasingly restricted over the past decade, tobacco control advocates and policy-makers have begun to emphasize the importance of legislating controls on the remaining forms of tobacco product promotion, in particular controls over how and where tobacco products may be displayed and sold in retail establishments, as a means of preventing youth from starting to smoke and reducing tobacco use.

The nature of the problem of retail tobacco displays is clearly portrayed in this description of a typical convenience store in Montreal:

“Walk into the *depanneur* in the basement of the downtown *Complexe Les Ailes* and you hit a wall of cigarettes. Sixty-four cartons of *Player’s* hover above the counter in a display case. Nearby a 4-foot-tall wall rack features 135 packs of *du Maurier*. Other Montreal stores strategically place plexiglass cigarette displays on their counters, often right next to candy. It certainly looks like advertising....” (Riga).

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<sup>1</sup> The study by Pierce and colleagues provides the first longitudinal evidence that tobacco promotional activities are causally related to the onset of smoking. The study “provides clear evidence that tobacco industry advertising and promotional activities can influence non-susceptible never-smokers to start the process of becoming addicted to cigarettes.” The authors estimate that 34% of all experimentation in California between 1993-1996 can be attributed to tobacco company promotional activities.

Power Wall—“a bright, colourful display of cigarette packages located behind the service counter, that show several brands on tens of columns and rows” (Health Canada, 1999).

In recent years, retail displays of tobacco products have gotten bigger. Display racks are also being modified so that the packages cover most of the health warnings. In some outlets, dozens of boxes of roll-your-own cigarette tubes—which don’t require health warnings—are piled up to form a large, branded “billboard” (Riga). The photographs below illustrate typical ‘power walls’ of tobacco products found in retail stores in Canada.

Photo 1: Power wall, Convenience store



Photo 2: Cascading power wall, Convenience store, Montreal, PQ



Photo 3: Gas station/convenience store, Amherst, NS



Photo 4: Convenience store, Truro, NS

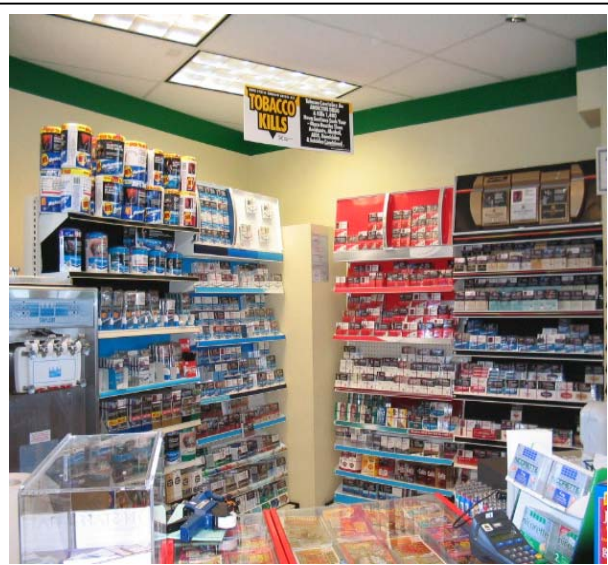


Photo 5: Smoke shop, Halifax, NS



Photo 6: Gas station, Elmsdale, NS



A variety of different restrictions to address the problem of promoting tobacco use through retail displays have been implemented in jurisdictions around the world:

- Regulating the proximity of tobacco products to children's goods;
- Banning countertop displays;
- Banning self-service displays;
- Limiting retail stores to one tobacco display each;
- Limiting the number of packs visible to the public;
- Limiting the size of the tobacco display;
- Banning the visible display of tobacco products.

The purpose of this paper is to stimulate informed debate on this issue, by providing a detailed analysis of the evidence and arguments in support of retail display restrictions and the potential negative repercussions of such a policy. The paper is based on extensive research in several distinct fields: general consumer product marketing research on the importance of the retail environment in general and point-of-purchase displays in particular; internal tobacco company documents that discuss the value of retail merchandising and specific merchandising programs; and tobacco control research on point-of-sale promotions and related issues. In addition the paper draws upon the experiences of jurisdictions that have implemented display restrictions to anticipate the likely response from key stakeholders in the issue, including tobacco companies and retailers.



## Arguments for Display Controls

### Merchandising Increases Sales of Consumer Products

“[M]arketing is a strategic process—a planned series of actions or methods that take place sequentially. This process includes developing products, pricing them strategically, making them available to customers through a distribution network, and promoting them through sales and advertising activities. The ultimate goal of the marketing process is to earn a profit for the firm by consummating the exchange of products or services with those customers who need or want them” (Arens).

In developing a marketing plan, marketing managers traditionally focus on the four P’s of marketing—product, price, place, and promotion. Merchandising is all the activities that showcase a product at the point of purchase:

[Merchandising] is the final step in ensuring that the consumer sees your product and is tempted to buy it. Good merchandising is about the impact your product has on the consumer, it is about using the product itself to stimulate the customer to buy, it is about reminding the consumer of your mass media campaigns at the actual point of purchase when he/she is faced with the buying decision” (British-American Tobacco, “Merchandising”).

The point-of-purchase in effect unites product, place, and promotion. It is where the shopper can be transformed into the buyer given the right inducements (Parmar, 2002).

It is only recently that marketing departments have recognized the value of the point-of-purchase as a vehicle to promote their products and increase sales (Facenda). This trend toward an increased emphasis on point-of-sale promotion began in the early 1990s. In many regions worldwide, particularly in the more mature markets such as North America, expenditures on point-of-purchase promotions grew by more than ten percent a year throughout the 1990s and at least until 2001 (Krakowka). Industry experts anticipate that figures for 2003 will again show that point-of-purchase has been accorded a greater share of marketing budgets, while other forms of media stabilized or decreased (Parmar, 2003).

“More than ever, trade dollars grease the shelves of all retailers,” says Mickey Jardon, executive vice president at DVC Co-Marketing” (K. Fitzgerald).

As marketers increasingly recognize the importance of point-of-sale, more and more manufacturers are paying retailers to promote their products, not just specific brands but entire product categories. The growth of point-of-purchase expenditures seen in North America during the 1990’s is now being mirrored internationally (Parmar, 2002).

“In real estate, the mantra may be ‘location, location, location,’ but for retailers it’s all about presentation.... A proper presentation can make all the difference in the sale of a product at retail...” (Facenda).

It is well-known within the retail sector that about 70% of all buying decisions are made at the point-of-sale. Depending on the product and the type of store, impulse purchases can account for as much as 90% of sales. Cognizant of the high proportion of sales that are unplanned, brand marketers and retailers use shelves, in-store signage, displays, promotions, and contests “to make cash registers ring” (K. Fitzgerald; *Hardware Merchandising*).

In-store signage is an inexpensive yet effective tool that retailers use to draw attention to their products and increase their sales (Turcik). Colour plays a key role on point-of-sale signage and advertising in attracting the customers’ attention to the products. Colour is also of vital importance in establishing brand image and brand recognition. Indeed, marketers use studies of colour psychology to develop effective colour combinations for packaging and display: “It is true to say that most successful brands now, own, their own colors” (Hancock).

A study on effective category management in retail stores found that retailers with the best performance do four things in common, including using feature advertising to increase traffic to their store and using displays to increase in-store purchases (Dhar). The key influencers of individual category performance, however, depend on the role the category plays in the consumer’s everyday life, that is, whether the category can be classified as a staple, a variety enhancer, a niche, or a fill-in.<sup>2</sup> While more and better displays do improve sales regardless of the category, displays have the greatest impact on sales of staples and niches, that is, products that are purchased often, either by the mass market (high penetration) or by a niche market (low penetration) (Dhar).

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<sup>2</sup> Product categories are classified into high and low penetration, defined as percentage of households that purchase the category, and high and low frequency, defined as the average number of times per year the category is purchased. Categories fall into one of four groups: staples are high penetration/high frequency; niches are low penetration/high frequency; variety enhancers are high penetration/low frequency; and fill-ins are low penetration/low frequency.

## Merchandising Increases Tobacco Brand Awareness and Tobacco Sales

“Presentation is everything not only in our business but in almost every business imaginable, travel agents, restaurants, airlines, the list is almost endless. You must make the product(s) talk to the consumer” (British-American Tobacco, “Merchandising”).

The previous section provided evidence from general marketing research of the importance of merchandising to everyday consumer products such as hardware and groceries. The sale of tobacco products likewise is directly affected by merchandising activities at point-of-sale, despite significant differences between tobacco and other consumer products in many respects, most notably the addictiveness of tobacco. Bloom sees the trend to an increased emphasis on using “‘push’ marketing tools (for example, sales calls, trade allowances, slotting fees, and display fees) over increasingly less effective ‘pull’ marketing tools (for example, media advertising)” as a reflection of the trend in the way consumer products in general are being promoted (Bloom). Evidence of the importance of the point-of-sale to tobacco companies can be found in a number of sources—in the actions of tobacco manufacturers, in the words of tobacco company executives, and in tobacco control research.

### Tobacco Companies Study Consumer Behaviour at Point-of-Sale

Testifying to the importance of retail display to the tobacco companies is the fact that the companies conduct scientific research on consumer behaviour in the retail environment in order to maximize the effectiveness of the tobacco display at point-of-sale. During the 1990s, for example, Philip Morris performed a study entitled “Metro Area Consumer Retail Master Study” to learn where its products should be placed in stores to garner the most attention from customers. As part of the study, participants wore eyetracking glasses while shopping to determine which displays and products attracted the most attention. The study found that the best locations where “on the counter, behind the counter or cashier, and on and around the door” (*United States’ Preliminary Proposed Finding of Fact*).

A sophisticated study by British American Tobacco entitled “A Cross Cultural Comparison of Visual Scanning Patterns” was designed to provide an understanding of the variables that affect visual scanning behaviour, including the size of the display, the number of shelves, the number and type of pricing information, and whether cultural factors such as differences in reading styles between eastern and western cultures influences the impact of these variables. The goal of these experiments was to produce a handbook of guidelines on maximizing the potential of the point-of-sale display:



“This technique makes use of an eye-gaze monitor to make the measurements and an infra-red technology and computerised [sic] digitization to analyse the results. By examining the routes of tracking over the display the output of the analysis provides a cumulated picture of the visual hot spots on the display. With this information it is possible to better position our brands on the gantry in order to receive the maximum amount of visual attention” (British-American Tobacco, “A Cross Cultural Comparison of Visual Scanning Patterns”).

### Tobacco Companies Pay for Prime Display Space

“The tobacco companies are making very large payments to retailers to encourage the creation of a retail environment that encourages trial and consumption of tobacco products” (*United States’ Preliminary Proposed Finding of Fact*).

For decades, tobacco companies have been compensating retailers for promoting tobacco products in their stores. The forms of promotion vary, from allocating premium retail display space to their products, to discounting the price of certain products, to permitting tobacco advertising in various locations in and around the store (on shopping baskets/carts, gas pumps, exit signs, clocks, counter tops, shelf banners, front windows, walls, and curb signs), to

displaying a higher percentage of one tobacco company’s brands than those of any other company. The nature of the compensation likewise varies considerably:

- slotting fee (also called slotting allowance, display fee, or placement fee)—cash payment made for displaying brands at certain heights, in certain locations (on the counter, behind the counter, in a self-service container, close to the register), or with a specified number of facings, units, or trademarks visible;
- trade allowance—reduction in the amount retailers owe on invoices or offers of free cases;
- buy down—payment made either in cash or as an off-invoice allowance to encourage the retailer to reduce the price of products currently held in inventory;
- rebate—payment made in cash or as an off-invoice allowance to retailers who have achieved certain sales volumes;
- two-for-one—retailers buy brands that are packaged in pairs of packs, for which the consumer and the retailer only pay for a single pack;
- free or discounted equipment—display cases, shopping carts, clocks;
- free entertainment—NASCAR tickets, free vacations, clothing (*United States’ Preliminary Proposed Finding of Fact*).

Below is one example of a retailer incentive program, this one used by American Tobacco in 1993.

Graphic 1: Retail Incentive Program, American Tobacco

## EXHIBIT I

### RETAIL INCENTIVE PROGRAM

The Retail Incentive Program has been designed as follows:

- 40 Pack Temporary Display
  - Incentive: 1-2-3-4 E.B. Gratis
- Semi Permanent Pack Display
  - Accommodates 60 Non-Promotional Packs Plus 20 Promotional
  - Incentive:
    - ~ 6 Free Packs with 60 Packs Displayed
    - ~ 8 Free Packs with 80 Packs Displayed
    - ~ Plus a One Time Bonus of 2 Free Cartons for a 3 Month Commitment
- Self Service Permanent Package Display
  - Accommodates 25 Packs Per Shelf with a Maximum of Four Shelves Per Display
  - Incentive:
    - ~ \$4.00 Per Shelf/Month, Paid Quarterly
    - ~ Plus a One Time Bonus of \$20.00 for a 6 Month Commitment
- Non-Self Service Permanent Package Display
  - Accommodates 25 Packs Per Shelf with a Maximum of Four Shelves Per Display
  - Incentive:
    - ~ \$2.00 Per Shelf/Month, Paid Quarterly
    - ~ Plus a One Time Bonus of \$10.00 for a 6 Month Commitment
- Semi Permanent Floor Display
  - Accommodates 70 Packs Over a Maximum of 108 Cartons (54/Shelf)
  - Incentive:
    - ~ 2 Free Cartons with 40 Cartons Displayed
    - ~ 4 Free Cartons with 80 Cartons Displayed
    - ~ 6 Free Cartons with 115 Cartons Displayed
    - ~ Plus a One Time Bonus for a 3 Month Commitment:
    - ~ 4 Free Cartons with 40 Cartons Displayed
    - ~ 8 Free Cartons with 80 Cartons Displayed
    - ~ 12 Free Cartons with 115 Cartons Displayed

While the practice of tobacco companies entering into contracts with retail establishments is well-known, the specifics of these agreements remain unclear. A recent qualitative study by Feighery and colleagues involving in-depth interviews with a sample of 29 tobacco retailers in 21 U.S. states concluded that “little systematic data are available on retailer incentive programmes because these transactions are negotiated privately and are unique to each retail outlet (Feighery, 2003).<sup>3</sup> Common to all the contracts, however, is that the tobacco companies offer volume discounts to retailers that meet minimum sales volume standards. The contracts are usually long-term, although the volume and the

“The consensus among retailers is that if you want to sell cigarettes they have to be visible to customers” (S. Fitzgerald).

terms are reviewed regularly. In return for the incentive payment, “retailers are expected to follow tobacco company requirements to place products and advertising in specific locations and to advertise special prices prominently” (Feighery, 2003).

The amount of money that retailers earn from their participation in these incentive programs varies greatly and, as stated, is usually negotiated on an individual basis (Feighery, 2003; S. Fitzgerald). A study of 108 randomly selected small retail outlets in Santa Clara County, California, found that an average store received about \$2500 annually from tobacco company slotting fees (Feighery, 1999). Other reports claim that convenience stores earn as much as \$20,000 per store per year by cooperating fully with incentive programs such as Philip Morris's Retail Leaders program (*United States' Preliminary Proposed Finding of Fact*).

As in the U.S., the payment of incentives to tobacco retailers is common across Canada. The Executive Director of the Ontario Convenience Stores Association, Peter Flach, has stated that most of his 2000 members receive display allowances from tobacco companies (S. Fitzgerald). The Quebec Association des Détaillants en Alimentation, which represents some 9,000 convenience store owners and other retailers, claims that retailers in Quebec received between \$4,000 and \$9,000 per year from tobacco companies in exchange for their in-store displays. In some cases the fee is sufficient to cover the rent (Riga). A calculation estimate by Physicians for a Smoke-Free Canada put the average retail allowance at \$1500 per year. The figure is based on total annual tobacco company expenditures on retail promotions of \$60 million, divided by an estimated 40,000 tobacco retailers in Canada (Physicians for a Smoke-Free Canada).

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<sup>3</sup> Feighery and colleagues interviewed store managers, assistant/section managers, and store owners. The types of stores included 9 small grocery stores both with and without gas stations, 9 convenience stores both with and without gas stations, 5 liquor stores, 3 chain supermarkets, 2 chain pharmacies, and 1 mass general merchandise.

### Tobacco Companies Compete For Display Space

“[P]oint-of-sale advertising is becoming increasingly important, according to Ms. Ivey [President of Brown & Williamson], who said that the biggest battle today is at the retail level, where display space is at a premium and the tobacco companies are constantly jockeying for position” (Stamler).

Further evidence of the value of display to the tobacco companies is the intense competition between companies for the prime display space. In its contracts with retailers, Philip Morris, for example, dictates the percentage of the display space to be devoted to its products (in keeping with the company’s overall market share). Typically the larger companies also demand that their products be displayed at eye level (Feighery, 2003). The ongoing battle over display space has even ended up in the courts. In 1999 Brown & Williamson, R. J. Reynolds, and Lorillard Tobacco sued Philip Morris over its “Retail Leaders” incentive program, claiming that the program unlawfully restricted competition and forced retailers to give Philip Morris brands unfair prominence on their shelves (Spethmann, 1998; Stamler):

“Under Retail Leaders, Philip Morris provides discounts to retailers on its popular Marlboro brand in exchange for the most advantageous display and signage space in retail establishments. This arrangement, the plaintiffs say, restricts the flow of information to consumers, limits the plaintiffs’ abilities to promote their products, insulates Philip Morris from effective competition, and results in higher cigarette prices” (U.S. Fourth District Court of Appeals).

Although the plaintiffs were unsuccessful, the fact that three tobacco companies sued a fourth over its retail incentive program demonstrates the significance of these programs to the competitive position of the companies and ultimately to their sales of tobacco products. As marketing professor Sheri Bridges puts it: “[The tobacco companies] are not spitting at each other just for the fun of it. This has real meaning because point-of-purchasing has such an impact on consumer choice and because point-of-purchasing displays play such a major role in building and maintaining brand image” (Quinn).

### Importance of Point-of-Sale Increases When Promotion Restricted

“Our results are consistent with those of other research demonstrating that as long as tobacco advertising restrictions are incomplete, significant reductions in overall marketing efforts are unlikely to be achieved” (Wakefield and Terry-McElrath).

There is an extensive body of research showing that tobacco companies consistently respond to restrictions in one form of promotion by transferring their promotional expenditures to other marketing activities. Bans on advertising on television and radio resulted in increases in print advertising. Where traditional forms of advertising are banned, the companies move to sponsorship advertising. In recent years, as tobacco companies have increasingly been prohibited from undertaking any form of advertising in any type of traditional mass media in countries around the world they have turned their focus to marketing their products at the point-of-purchase:

“As primary media channels become restricted, greater emphasis must be placed on effective point of sale and parallel communications” (British-American Tobacco, “Product Communication in the Context of Varying Degrees of Advertising Restriction”).

Under a total advertising ban, point-of-sale merchandising activities must fulfill multiple objectives:

- to inform the consumer of the presence of the brand;
- to promote recognition of the brand;
- to generate interest in and enthusiasm for the brand through special offers;
- to stimulate trial purchase and re-purchase; (British-American Tobacco Company, “Guidelines on Communication Restrictions and New Opportunities in Marketing”).

Consumer recognition of the brand and its associated image is achieved through effective pack design, display layout, and point-of-sale advertising.

An internal Philip Morris document from 1991 that outlines the launch strategy for a new product, Marlboro Medium, indicates not only that marketing activities at the point-of-sale work synergistically with the other elements of the marketing plan but also that their relative importance has grown:

“All of our advertising, merchandising and promotional strategies pay off only when we do our job in the store. We compete for the consumer's attention against all consumer goods companies. Each year the industry spends more and more on consumer and trade programs—in the store” (Philip Morris).

A study by Wakefield and colleagues of approximately 1500 retail stores both before and after the Master Settlement Agreement (which imposed restrictions on various forms of tobacco product promotion including banning all billboard advertisements) found significant post-ban increases in tobacco advertising and promotion at point-of-sale. Specifically the study found greater use of in-store tobacco sales promotions, more exterior and interior store advertising, and greater variety in exterior store advertisements (Wakefield and Terry-McElrath; *United States' Preliminary Proposed Finding of Fact*).

The findings of this relatively small study of 193 communities across the U.S. were confirmed by the Federal Trade Commission's analysis of tobacco company marketing activities in the first three years following the Master Settlement Agreement. From 1999-2001, total tobacco industry marketing expenditures *increased* by 67% to \$11.2 billion. During this period, the largest increases in spending were for retail promotional allowances (slotting fees) and "retail value added" which includes price promotions and gift giveaways. Point-of-sale promotions now account for 82% of the tobacco companies total marketing expenses. Of this, 40%, or \$4.5 billion, goes to retail promotional allowances (U.S. Federal Trade Commission).

In Canada's highly restrictive promotional environment, merchandising activities at point-of-sale have likewise become the industry's most important marketing tool. In 1996, tobacco companies spent \$60 million on retail promotions, including payments to retailers. This is three times more than the companies spent on all other forms of measured media. (The tobacco companies spent approximately \$20 million in total on radio, television, daily newspapers, magazines, billboards, and transit advertising (Physicians for a Smoke-Free Canada). By 2002, tobacco company spending had grown to \$77 million (Personal Communication, Rob Cunningham, Canadian Cancer Society, May 2004).

In the wake of the total ban in October 2003 on the promotion of sponsorships, including point-of-sale sponsorship advertising, Canadian tobacco manufacturers have responded with creative solutions that put even more importance on product displays. Imperial Tobacco Canada launched two new subsidiaries to promote its products in novel ways—Channel 2 and Rumbling Walls Events. Channel 2 specializes in finding non-traditional venues for product displays, including bars and entertainment events. Channel 2 will manage the merchandising activities and displays at events organized by Rumbling Wall Events (Imperial Tobacco, 2003).

“[W]hen there is less opportunity to establish brand imagery through traditional methods of advertising, as is increasingly becoming the case as advertising restrictions come into force, packaging must play a more important role in establishing and driving brand image” (Wakefield and Morley).

The experience in Australia when traditional advertising was banned at point-of-sale illustrates the value of tobacco product displays as a promotional vehicle. Cigarette packs themselves were used to make “pyramids, mechanical windmills, entire walls of display stock, designs and patterns on walls, ceilings, floors and anything else a creative advertising agency can dream up” (Wakefield and Morley). This experience also demonstrates that the impact of the tobacco display on the consumer is integrally related to the impact of the pack design:

“[I]n the context of tighter restrictions on conventional avenues for tobacco marketing, tobacco companies view cigarette packaging as an integral component of marketing strategy and a vehicle for (a) creating significant in-store presence at the point of purchase, and (b) communicating brand image...” (Wakefield and Morley).

“Under conditions of total ban, pack designs ... have enormous importance.... Therefore the most effective symbols, designs, colour schemes, graphics and other brand identifiers should be carefully researched.... An objective should be to enable packs, by themselves, to convey the total product message” (British-American Tobacco, “Guidelines on Communication Restrictions”).

While the tobacco package itself has always played an important role in the marketing mix, as advertising is curtailed, the pack grows in significance as a means of promoting brand imagery. To understand how to enhance the effectiveness of pack design, tobacco companies have undertaken sophisticated scientific research (British-American Tobacco, “Structured Creativity Group Presentation”; British-American Tobacco, “Principles of Measurement of Visual Standout in Pack Design”). One study by British-American Tobacco describes a series of experiments involving the use of a tachistoscope to measure the visual prominence of various elements of a cigarette pack:<sup>4</sup>

“The elements of the pack can be designed so that those that are most important in communication terms also achieve the highest level of visual impact.... The pack itself can be designed so that it achieves more visual impact in the point of sale environment than its competitors” (British-American Tobacco, “Principles of Measurement of Visual Standout in Pack Design”).

<sup>4</sup> “A conventional tachistoscope is a piece of portable equipment which allows the presentation of visual stimulus material for successively increasing short intervals of time. Initially, the exposure durations are so short that the stimulus material is presented below the threshold.... Threshold is the level at which exposure durations are just long enough for the individual to actually become consciously aware of the stimulus. As the exposure durations increase different elements of the pack reach the perceptual threshold level. This level is determined by the visual prominence of those elements” (British-American Tobacco, “Principles of Measurement of Visual Standout in Pack Design”).



While emphasizing how the use of a tachistoscope can enhance the package design process by ensuring that the pack has the desired impact, the authors stress that the “aesthetic aspect of pack design to support brand imagery” remains paramount (British-American Tobacco, “Principles of Measurement of Visual Standout in Pack Design”).

Just as the design of the pack influences the impact of the tobacco display, so too does the design of the display affect the impact of the package design: “The basic image prominence of a pack design can be augmented or detracted from significantly by its positioning in the structural array and the pack designs it is placed in proximity with” (British-American Tobacco, “Product Communication in the Context of Varying Degrees of Advertising Restriction”). Wakefield and Morley conclude that “a comprehensive ban on advertising would mean that cigarettes need to be available only from under the counter, rather than being on display” (Wakefield and Morley).

### Tobacco Displays Increase Tobacco Sales

“The more facings you can devote to a brand, the more effectively it will be portrayed to the consumer. It will be more visible on the shelf and have more chance of grabbing the attention of the consumer and of being purchased” (British-American Tobacco, “Merchandising”).

According to the Point-of-Purchase Advertising Institute, the standard placement of tobacco products behind the checkout counter has three advantages:

- Enhanced visibility;
- Reduced theft;
- Last-minute reminders to consumers.

The value of last-minute reminders speaks to the fact that a high percentage of tobacco purchases are unplanned. A 1995 study by the Institute indicates that approximately 60% of tobacco purchases are not planned, within the same range as the percentage of impulse buys of consumer products in general (Point of Purchase Advertising Institute). Prominent tobacco product displays, together with advertising and signage at the point-of-sale, cue the smoker to buy cigarettes or to smoke, leading to increased consumption (Feighery, 2001). There are many references in internal tobacco company documents about the need to take advantage of impulse buys:

“Many impulse sales are lost when stock is not available or cannot easily be seen or reached” (British-American Tobacco, “Merchandising”).

“There is an ever-increasing trend toward impulse purchases. The large majority of consumers do not really check ads ... or plan their purchase decisions. We should have Marlboro (and other PM brands) positioned to take maximum advantage of the impulse shopper” (Philip Morris).

According to a report by the U.S. Department of Justice, the current retail environment in which tobacco is sold is characterized by a substantial increase in the amount of interior and exterior promotion of tobacco product brand names and prices, including banners, billboards, signage, clocks, shopping baskets/carts, and change trays. The result is that “the tobacco industry is now dominating the stimuli in many of these stores in the hope of dominating the impulse purchases” (*United States’ Preliminary Proposed Finding of Fact*).

Tobacco use by non-daily smokers is by definition not regular and can be stimulated by suggestions at the point-of-sale. Approximately 4% of the population, or 20% of smokers, are non-daily smokers (Health Canada, 2003). Visual cues at the point-of-sale can also serve to weaken the will of former smokers and those who are trying to quit, “by reminding them of their favourite brand every time they visit a store” (Feighery, 2001). Seventy percent of smokers in Canada, or close to 2.2 million Canadians, made at least one quit attempt in the past year (Health Canada, 2003). It can take as little as one cigarette to turn a former smoker back into a current smoker. Point-of-purchase displays and advertisements have been found to increase average tobacco sales by 12% to 28% (Feighery, 2001).

Tobacco companies publicly claim that the purpose of product displays and signage at point-of-sale is to communicate with smokers about their brand offerings. “[T]he point-of-sale ... is the location where consumers who intend to buy a product are allowed to browse through the products available to them before they make their choice of brand” (Imperial Tobacco). The aim is to persuade a current smoker to switch to their particular brand. This argument does not stand up under closer scrutiny, however. Cigarettes have the highest brand loyalty of any consumer product, with less than 10% of smokers changing brands in any given year. Furthermore, smokers usually choose their brand very early in the smoking initiation process—there is a high correlation between the brand first smoked and the brand ultimately chosen as a usual brand (Wakefield and Morley). Thus loyalty to a tobacco brand usually forms during the teen years, when many smokers are still experimenting with tobacco use. Marketing appeals at point-of-sale ostensibly aimed at convincing adolescents to choose a particular brand in effect serve to entice them to smoke. Solomon’s conclusions about the importance of marketing to teens are even more salient with respect to tobacco product promotion: “Marketers view teens as ‘consumers-in-training’ .... For this reason advertisers

sometimes try to ‘lock in’ adolescent consumers so that in the future they will buy their brands more or less automatically” (Solomon).

### **Point-of-Sale Promotion Influences Youth Smoking**

A solid case can be made that point-of-purchase promotional activities serve to influence the factors that predispose youth to experiment with and continue tobacco use (Wakefield and McElrath; Chaloupka). One study of students shown pictures of retail stores with and without tobacco ads found that the students shown photographs of stores with tobacco ads perceived that it was easier to obtain tobacco, believed that more of their peers had tried smoking, and expressed less support for tobacco control policies compared to their counterparts who saw pictures of stores with no tobacco advertising. Wakefield and colleagues conclude that “the point-of-purchase environment may have important influences on youths in terms of making tobacco use seem normative and, ultimately, increasing the likelihood of smoking initiation” (Wakefield and Terry-McElrath). The U.S. Justice Department believes that retail outlets with prominent tobacco displays and point-of-sale promotional material create “tobacco-friendly” environments that “stimulate a lift in sales, particularly among new or occasional smokers” (*Preliminary Proposed Finding of Fact*). Studies in fact show that convenience stores and gas stations are where most youth purchase tobacco (Cummings).

Just as the tobacco industry has historically focused on advertising in publications with high youth readership, tobacco promotion in retail outlets receives high levels of youth exposure (Chaloupka). Three out of four teenagers shop at a convenience store at least once a week, meaning they are regularly exposed to tobacco advertising and displays at point-of-sale. One study of young adolescents (aged 12 and 13) found that over 60% of them recalled seeing tobacco ads in retail stores (Feighery, 2001). More than half of teens say they are influenced by in-store displays and promotions (*U.S. Distribution Journal*).

Finding that retail tobacco displays play a strong role in conveying brand image, the 1994 U.S. Surgeon General’s report on preventing youth tobacco use concluded that it is highly plausible that tobacco displays are intended to influence youth smoking:

“[T]o the extent that these displays focus on brand image, they may not only encourage experienced smokers to switch brands but also encourage new smokers to experiment with a particular brand.... The \$1.3 billion spent on promotional allowances and point-of-sale displays combined are thus funds potentially directed at new, youthful smokers” (U.S. Department of Health and Human Services).

Similarly, in its fraud case against the major U.S. tobacco manufacturers, the U.S. government alleges that the companies use marketing techniques to make their products attractive to children. The government cites tobacco industry studies showing that retail promotional activities are a key source of information for consumers about cigarette brands and their associated images. One study by Brown & Williamson, for example, found that “the store environment, especially displays inside stores, is the biggest source of advertising awareness for all cigarette trademarks” (*United States’ Preliminary Proposed Finding of Fact*). The government case emphasizes the close correlation between the imagery and objectives of traditional tobacco product advertising and the imagery and aim of point-of-sale promotions:

“Visibility of brands means communicating a brand equity message, which influences consumer choice, creates brand awareness and encourages product trial. It speeds and improves cigarette sales. And it is the vehicle by which the Cigarette Company Defendants communicate the same youth-targeted advertising images that they have honed and refined through their long-time recognition of the importance of the youth market, research into the best ways to obtain the youth market, and development of advertising campaigns designed to capture it that have remained largely unchanged for more than thirty years” (*United States’ Preliminary Proposed Finding of Fact*).

### **Retail Displays Normalize Tobacco Products**

The widespread availability and promotion of tobacco serves to ‘normalize’ both tobacco products and tobacco use, contributing to youth smoking uptake and continued smoking among current smokers:

“The pervasiveness and ubiquity of cigarette advertising in multiple media and forms make cigarettes a cultural commonplace, which creates a benign taken-for-granted attitude that Marlboro’s advertising agent called ‘friendly familiarity’” (Choi).

The ubiquity of tobacco product displays serves the same function, with large, prominent walls of cigarettes displayed for sale in virtually every grocery store, convenience store, and gas station in the country, as well as many pharmacies, discount stores, and bars. The high visibility of these products in so many public places contributes to the belief that tobacco use is socially acceptable behaviour—the norm. It is well-known that youth commonly overestimate the prevalence of smoking among both their peers and the adult

population as a whole. Research has shown that the degree of this overestimation is a predictor of starting smoking among young people (Choi). It would not be unreasonable to conclude that the widespread availability of the product for sale combined with the size of the sales displays contributes to the belief that smoking is something done by a large proportion of the public.

“[T]he positioning of tobacco with other commodities conveys subtle associational meanings” (Institute of Medicine).

In addition to conveying the impression that tobacco use is the norm, the ubiquity of tobacco displays sends the message that tobacco products are normal, everyday products. They become as benign as the products they are associated with in the minds of the public, products such as bread, milk, candy, and trading cards.

## Arguments Against Display Controls

### Opposition by Tobacco Companies

A good indication of how the tobacco companies in Canada might be expected to react to an attempt by government to impose a display ban can be found in their response to proposed restrictions on point-of-sale tobacco displays put forward by then Health Minister Allan Rock in 1999. The heads of Canada's three main tobacco companies together wrote a letter to thousands of tobacco retailers, warning them that the government's proposals would have dire consequences for their business including revenue losses in the thousands of dollars and more shoplifting. The retailers were invited to join forces in a campaign to prevent the proposals from being implemented.

"So let's take a TEAM approach to the challenges presented by misguided regulations. Let's ensure the united voices of our TEAM are heard against their costly and unworkable ideas that threaten us all" (Imperial Tobacco, 1999).

The tobacco companies also solicited the support of wholesalers and distributors. In a speech before ITWAL Limited, a national network of independent retail and foodservice wholesale distributors, Imperial Tobacco's Vice-President of Marketing made the case for how Health Canada's proposed display restrictions were "a serious economic threat" to the manufacturers, to the wholesales, and to the retailers.

"With profits of the average convenience store running at a razor-thin 0 to 2% of sales, the results are going to be bankruptcies and job losses" (Imperial Tobacco, 1999).

Imperial Tobacco emphasized that retailers would suffer financially, since the promotional allowances that tobacco companies pay retailers for prime display space is a significant source of revenue for many retailers. Retailers would have to pay for new displays and to revise their inventory management and storage systems. Hidden stock would give rise to increased theft. The retailers' loss of inventory control would cause serious problems for the wholesalers' supply systems. Either stock would run out or too much stock would be delivered for the amount of storage available to the retailers. Since the retailers would have less storage space, distributors would be forced to make more frequent deliveries. If retailers go out of business as a result of the display restrictions, wholesalers would lose business and jobs.

This response by the tobacco companies is typical of their response to proposed government regulations. Recognizing that their public credibility is weak, the tobacco companies seek the support of organizations with a favourable reputation and strong credibility and then put these organizations at the forefront of the public campaign to oppose the restrictions. During the 1990s, for example, when governments across North America were legislating tighter controls on tobacco sales to minors, the tobacco companies organized front groups headed by retailer associations to promote their plan—

Operation I.D. and Operation I.D. School Zone—which emphasized retailer education over the more effective financial sanctions for non-compliance and failed to disclose the role of the tobacco companies themselves in promoting youth access to tobacco. Similarly in battles over bans on smoking in public places in municipalities and provinces/states throughout Canada and the U.S., the tobacco companies provide financial and organizational support from behind the scenes to the hospitality associations for their lobbying campaigns.

The identical approach was used by tobacco-maker Philip Morris in California in 1996 in a campaign to prevent county government from banning self-service tobacco displays. Philip Morris hired a telemarketing firm with a prepared script to telephone area retailers, ostensibly on behalf of the California Grocers Association, and notify them that their revenue was in jeopardy as a result of the proposed display ban. Retailers were urged to contact their local representatives and to attend political meetings to oppose the ban. A copy of the telemarketers' script has been reproduced below (Optima).

Graphic 2: Memorandum, Optima Direct Inc.

OCT 11 '96 12:22PM OPTIMA DIRECT INC P.1

**ODI CODE: PM090 SAN FRANCISCO, CA**  
**TARGETS: COUNTY SUPERVISORS**  
**TROOPS: RETAILERS**  
**ISSUE: DISPLAY BAN**  
**DRAFT1: 10/11/96 11:30 AM ET**

*(California Cigarette Assoc. Assoc.)*

Good morning/afternoon/evening, my name is (TSR - use full name). May I please speak with Mr./Mrs./Ms..... (If contact is unavailable, find out when would be a convenient time to call back.) Mr./Mrs./Ms....., I'm calling on behalf of the \*\*\*\*\* Association to let you know that County Supervisors are considering proposals that will likely impose severe restrictions on your ability to market and sell cigarettes to adults in the county. **Are you aware of this?**

*Ed of*

**IF YES OR NO:**  
 County supervisors are proposing a ban on all self-service tobacco displays, promotions and even window advertising. If passed retailers in the county will be at an economic disadvantage as they could lose merchandising allowances. **Are you opposed to any proposal that would severely restrict your right to sell and market cigarettes to adult customers?**

**IF YES:** *Here to remind*  
 The County Supervisors will meet to discuss these proposals on Thursday, October 17th at 1:00 pm. These proposed regulations can affect your business so it is important to attend and let your voice be heard. **Would you be willing to attend the hearing?**

**IF YES WILL ATTEND:** Great! Do you have a pen and paper ready? (TSR INSTRUCTION - PLEASE WAIT FOR CONTACT TO GET A PEN AND PAPER). The Meeting will be held on Thursday at 1:00 pm at the Veterans Building, 401 Van Ness, Room 410. Please ask other employees and business people to attend. It is very important your elected officials hear from members of the business community. **Would you also take a moment to call a County Supervisor and voice your opposition to these proposals?**

**IF NO TO ATTENDING:**  
**Would you be willing to just take a moment and call a County Supervisor and voice your opposition to these proposals that can affect your business?**

**IF YES WILL CALL:**  
 Great! (TSR INSTRUCTION - PLEASE WAIT FOR CONTACT TO GET A PEN AND PAPER. Please call; (TSR NOTE: GIVE OUT ONE NAME AND ROTATE)

- Supervisor Angela Alloto	554-7788
Supervisor Susan Leal	554-6644
Supervisor Michael Yaki	554-7901

When you reach his/her office, please let them know you oppose ~~the~~ restrictions on self-service tobacco displays. *oppose anti-business proposal*

Mr./Mrs./Ms....., thank you for your time and have a pleasant day. good-bye.

**IF NO, WILL NOT CALL OR ATTEND, IS UNDECIDED, NOT INTERESTED IN THE ISSUE OR PREFERS ANOTHER ACTION:** Thank you for your time. Good-bye.

**IF IRATE OR HOSTILE:** I am sorry to have disturbed you. Good- bye.

**TSR INSTRUCTION:** Give the address or phone number only to retailers who understand the issue and oppose the restrictions.

2070321255



In terms of the anticipated impact of a display controls on the tobacco manufacturers themselves, the standard argument has been that these measures would severely impair the companies' ability to provide their customers with valuable information. Imperial Tobacco has claimed that even limiting the size of tobacco displays at point-of-sale or banning countertop displays would "make it next to impossible to communicate with customers about new products or changes in products" (Imperial Tobacco, 1999). Imperial Tobacco insists that the purpose of a tobacco product display is to provide their customers—that is, current smokers—with important information on which they will base their choice of brand. The display is for the benefit of current smokers and has no impact on inducing a non-smoker or former smoker to take up smoking:

"This [the point-of-sale] is the location where consumers who intend to buy a product are allowed to browse through the products available to them before they make their choice of brand.... It's not because we see a display of cough syrup that we choose to consume the product, or consume more of it. It is the customer who chooses to take over-the-counter medication for a cough that even notices the display, and then possibly purchases the brand that was highly visible" (Imperial Tobacco, 2002).

## Legal Challenges

Consistent with their response to most legislative restrictions imposed by governments in Canada, the tobacco companies launched a legal challenge of the first Canadian retail display ban. Rothmans, Benson & Hedges challenged the display ban provisions of the Saskatchewan *Tobacco Control Act* on two grounds:

- The provisions are in conflict with the federal *Tobacco Act* (which does not prohibit tobacco displays and signage at retail).
- The provisions violate section 2(b) of the *Charter of Rights and Freedoms*, which guarantees freedom of expression.

The display ban was upheld in September 2002 by the Court of Queen's Bench, which found the provision to be consistent with the federal law. The Appeal Court, however, struck down the display ban in October 2003, ruling that in the case of a conflict, the federal law takes precedence. The decision was a surprise, in particular because the federal government was an intervener in the deliberations and had declared the Saskatchewan provision not to be in conflict with the federal Act. In rendering its decision, the Saskatchewan Court of Appeal acknowledged that the law on this issue is unclear, calling it an "admittedly uncertain matter." Nonetheless, the Court rejected the government's request for a stay of the ruling, which would have kept the display ban in

effect until the Supreme Court makes a final ruling on the issue (*Cnews*). The Saskatchewan government was granted permission to appeal the ruling to the Supreme Court (Supreme Court). The Supreme Court is expected to render its decision sometime in 2005.

In addition to the question currently before the courts regarding whether there is a conflict between the federal and provincial laws, Rothmans, Benson & Hedges also contends that the display ban is an unjustified infringement of the freedom of expression guaranteed under section 2(b) of the *Charter of Rights and Freedoms*. Should the Supreme Court find in favour of the provincial government on the first question, Rothmans, Benson & Hedges can be expected to challenge the validity of the display ban in court on the second, and much more complex, grounds.

It is worth noting that the tobacco companies successfully challenged the advertising and promotion restrictions under the *Tobacco Products Control Act* on the same legal grounds, charging that they were an unreasonable breach of the constitutional guarantee of freedom of expression. A majority of the Court ruled that the government had failed to demonstrate that the provisions were reasonable and justified restrictions on freedom of expression and that less intrusive measures would be insufficient to achieve Parliament's objective of protecting the health of Canadians. More specifically, the Court objected to the fact that advertising ban also prohibited "purely informational advertising, simple reminders of package appearance, advertising for new brands and advertising showing the relative tar content of different brands." The Court argued that these prohibitions served to deny consumers "an important means of learning about product availability to suit their preferences and to compare brand content with an aim to reducing the risk to their health" (Health Canada, 1995).

In at least two other countries, tobacco companies have responded to government attempts to restrict tobacco product displays at retail by challenging the legislative provisions in court on similar grounds. In Iceland, the total ban on tobacco product advertising, which includes a retail display ban, was challenged by BAT Nordic on the grounds that the ban violates Iceland's constitution with respect to freedom of expression, the sanctity of property, and freedom of enterprise:

"The purpose of this litigation is to preserve our fundamental right of expression by displaying our products at the point of sale. We also believe that the clause in the Tobacco Control Act that bans any kind of discussion in mass media of an individual product for a purpose other than warning of their harmfulness, is unconstitutional" (British-American Tobacco Nordic).

The suit was dismissed by the courts on technical grounds in October 2003 (Canadian Cancer Society, SK Division).

“The Act ... would prevent consumers from knowing what products were available and stop them getting other information about available products. Carroll’s believes that such restrictions would be anti-competitive and would limit consumer choice” (P.J. Carroll, 2003).

In Ireland the legislated ban on the advertising and display of tobacco products in retail outlets is also being taken to court. In April 2004 several Irish and European tobacco companies, PJ Carroll, John Player & Sons, and Gallaher (Dublin) Ltd, launched a joint legal challenge, declaring the measures to be unnecessary, since tobacco advertising is already sufficiently controlled, and an unjustified infringement of the companies’ right of freedom of expression and of their right to communicate information to their consumers (P.J. Carroll, 2004).

## Opposition by Retailers

“Obviously, the tobacco growers are the political strength along with the 1,300,000 retail tobacco outlets” (Hill & Knowlton, 1953).

As explained previously, the response by retailers to government proposals to control retail displays of tobacco products has been fueled by the tobacco companies themselves. When the tobacco companies mounted a letter campaign to retailers in 1999 urging them to oppose Health Canada’s proposed restrictions, retailers reportedly “swamped [MPs offices] with angry letters and phone calls” (Kennedy). Retailers also got involved in media advocacy. Convenience store operators in Quebec, for example, held a news conference claiming that a display ban could cost them upwards of \$100 million—\$33 million in lost display allowances from the tobacco companies, \$25 million to refurbish their stores, and \$40 million from reduced tobacco sales—and some 2,000 jobs (Ledger; Riga). The tobacco companies have publicly stated their intention to discontinue the practice of paying slotting fees if there is no visibility for tobacco products and thus no “competitive positioning” of their products in retail stores (S. Fitzgerald).

The National Association of Convenience Stores (NACS) in the U.S. believes that banning the visibility and promotion of tobacco in retail would diminish tobacco sales. In testimony before Congress regarding a proposal that would permit tobacco merchandising in adults-only stores, the NACS voiced strong objections on the grounds that permitting tobacco products to be displayed and accessed by customers in adults-only outlets would “drive sales out of traditional retail establishments” (National Association of Convenience Stores, 2000).

Retailers also emphasize the storage and inventory problems that would be caused by a display ban. Requiring tobacco products to be kept out of sight could prevent retailers

from maintaining an adequate inventory to meet consumer demand without significant remodeling. Estimates for such remodeling costs are between \$4,000 and \$7,000 per store” (National Association of Convenience Stores, 2000). With over 400 brands of cigarettes and tobacco products on the market in the U.S., the NACS argues that a display ban would necessarily limit the number of brands a store can offer for sale. Given the brand loyalty of tobacco users, if their normal outlet no longer carries their brand they will purchase their tobacco, and whatever else they need, at another retailer (National Association of Convenience Stores, 2003).

“Consumer buying patterns in various classes of retail outlets have shifted causing a change in how and where cigarettes are purchased.... Traditional C-Stores and Oil Retailers are growing primarily due to their competitive merchandising of cigarettes and their high levels of promotion” (Brown & Williamson).

Tobacco products are clearly an important source of revenue for some segments of the retail market, in particular convenience stores. It has been estimated that 55% of cigarette sales are purchased at convenience stores, the largest retail share of tobacco sales (S. Fitzgerald). This has not always been the case. Historically supermarkets and grocery stores held the largest share of tobacco sales. However, by the early 1990s convenience stores and gas stations were taking over, as the consumer buying trend shifted to pack sales (Brown & Williamson). Cigarettes are a now the top in-store category for convenience stores, accounting for 38% of sales according to the U.S. National Convenience Store Association, with only gasoline producing higher sales (S. Fitzgerald).

While tobacco products account for a high proportion of convenience store sales, “on a per unit basis they don’t generate a lot of profit” (Bennett). Furthermore there is growing recognition within the retail sector that tobacco sales are in a state of decline. According to Jeff Lenard, Director of Communications with the NACS, “cigarettes are a low-margin commodity and those margins are shrinking” (S. Fitzgerald). Rather than opposing the trend, some establishments are responding by seeking new sources of revenue and profit. 7-Eleven Inc., for example, has broadened its service offering to include fresh food and postal outlets at some locations. Others, like Git-n-Go stores, are looking to prepaid phone, gift, and Internet cards to make up for some lost tobacco revenues (Bennett). Lenard believes that retailers “have seen that they need to evolve their offer. Retailers in general offer what the community wants, so if the community tastes switch and they look for something else, well then the retailers will offer it” (S. Fitzgerald). Likewise Jeff Leedy, Vice-President of Marketing with Rutter’s Farm Stores, points out that it’s nothing new for retailers to have to respond to changing market conditions:

“It’s marketing’s responsibility to grow income at every opportunity.... Certain categories were profitable that aren’t today. There are others that make money. Tobacco, gasoline and foodservice are historically high-volume categories for the industry.... Cigarettes and gas drive traffic, but on a unit basis they don’t generate a lot of profit” (Bennett).

## Retail Display Restrictions

### Canada

#### Federal Law

Under the federal *Tobacco Act*, self-service displays of tobacco are prohibited. The *Act* also grants the government the authority to regulate tobacco product displays and retail signage:

30 (1) Subject to the regulations, any person may display, at retail, a tobacco product or any accessory that displays a tobacco product-related brand element.

(2) A retailer of tobacco products may post, in accordance with the regulations, signs at retail that indicate the availability of tobacco products and their price.

To date, the federal government has not exercised the authority granted in the legislation to pass regulations restricting the display of tobacco products, despite having released a consultation paper on the subject more than five years ago—*Options for Tobacco Promotion Regulations*—and despite having strong support from the health community to do so.

#### Provincial/Territorial Laws

Approximately half of provincial/territorial governments have implemented some form of control on tobacco displays at point-of-sale. Four provincial/territorial governments have banned self-service displays—Quebec, New Brunswick, Nova Scotia, and Nunavut. Countertop displays are banned in New Brunswick, Nova Scotia, and Nunavut. A complete ban on the display of tobacco products at retail has been passed by the governments of Saskatchewan, Manitoba, and Nunavut.

#### *Saskatchewan*

Saskatchewan was the first jurisdiction to prohibit the display of tobacco products in retail outlets. *The Tobacco Control Act* bans the advertising, promotion, and display of tobacco products in any retail store accessible to minors. In adults-only stores that sell

tobacco products, tobacco promotion or advertising may not be visible from outside of the premises. Only government-approved signage is permitted in retail outlets.

The display ban was in place for eighteen months, from March 2002 to October 2003, when the Appeal Court struck down the provision. Saskatchewan's experience with the display ban provides an indication of what other provinces/territories might expect if they implement a similar a ban. No retailer claimed to have gone out of business as a result of the ban, and no retailer was prosecuted for non-compliance. The provision was nicknamed the "shower curtain law," as a number of retailers resorted to using shower curtains as an inexpensive, easy to install, and temporary solution to the need to obscure tobacco products from public view. Other more permanent storage solutions were also found such as keeping tobacco behind cupboard doors and in drawers (*Cnews*). Although the display ban was lifted when the Court of Appeal ruled in favour of tobacco company Rothmans, Benson & Hedges, several tobacco retailers are reported to have kept their tobacco products out of public view (Personal Communication, Donna Pasiechnik, Canadian Cancer Society, Saskatchewan Division, March 2004). The Saskatchewan government has appealed the ruling to the Supreme Court. (See section on Legal Challenges for more detailed information on the case.)

### *Manitoba*

Manitoba followed Saskatchewan's lead, including among amendments to the *Non-Smokers' Health Protection Act* a prohibition on the display, advertising, and promotion of tobacco products in places accessible to children. Passed in August 2002, the prohibition was set to go into force in January 2004, but enforcement has been put on hold pending the outcome of the court case on Saskatchewan's display ban. The Manitoba government has requested that the federal government amend the *Tobacco Act* to explicitly permit provinces to ban tobacco product displays.

### *Nunavut*

As part of its comprehensive *Tobacco Control Act*, which includes a ban on smoking in public places and workplaces, the Nunavut government prohibited the advertisement and display of tobacco products at retail, except under circumstances that may be prescribed in the regulations. The legislation also bans vending machine sales and self-service displays. Although most provisions of the *Act* went into effect on February 1, 2004, as with Manitoba the implementation of the display ban has been suspended pending the Supreme Court's decision.

### *Prince Edward Island*

The Prince Edward Island government recently completed committee hearings on a range of issues concerning the promotion and sale of tobacco products at retail. In its April 2004 report to the Legislature, the Standing Committee on Social Development made a number of recommendations concerning how tobacco products are displayed in retail outlets:

- Ban self-service tobacco displays;
- Prohibit the display of tobacco products and any signage indicating the availability of tobacco products in all establishments licensed under the *Liquor Control Act*;
- Prohibit the display of tobacco products and signage used to advertise or promote tobacco products in all retail establishments as of 1 January 2006;
- Review existing regulations governing signage related to the sale of tobacco products (Standing Committee on Social Development).

### *Ontario*

In Ontario Premier Dalton McGuinty included a commitment to ban retail displays of tobacco products in his 2003 campaign platform. Since the election, the government has on several occasions reiterated its commitment to implement a display ban.

This patchwork of retail display controls throughout Canada is summarized below:

<b>Table 1: Retail Display Restrictions</b>		
<b>Legislative Restriction</b>	<b>Federal Government</b>	<b>Provincial/Territorial Government</b>
Bans vending machine sales	Restricts to adults-only establishments	ON, NS, NU SK (restricts to adults-only establishments)
Bans self-service display	Yes	PQ, NB, NS, NU PEI (recommended)
Bans countertop display	Has authority; not exercised	NB, NS, NU PEI (recommended)
Bans all visible retail display of tobacco products	Has authority; not exercised	SK, MB, NU PEI (recommended)
Restricts/bans point-of-sale advertising	Yes	SK, MB, NU PEI (recommended)
Controls retail signage	Has authority; not exercised	SK, NU PEI (recommended)

## International

### Iceland

Since August 2001, a ban on the visible display of tobacco at retail has been in effect in Iceland, implemented as part of a comprehensive set of measures to regulate the marketing and sale of tobacco and to limit exposure to second hand smoke. Under the *Act on the Prevention of the Use of Tobacco*, the display of tobacco products is considered a form of advertisement, and all forms of advertising are forbidden, including “any kind of public announcements, or announcements aimed at specific target groups, including product presentations, displays in shop windows, any kind of signs and similar equipment” (Tobacco Control Task Force of Iceland). Tobacco products are typically kept in drawers or under the counter (see photos below courtesy of Tobacco Control Task Force of Iceland). A few shops store tobacco behind curtains. Compliance is reported as very high. The tobacco industry has launched a legal challenge to the *Act* (Personal Communication, Vidar Jensson, Tobacco Control Task Force of Iceland, January 2004).

Photo 7: Supermarket, Reykjavik, Iceland



Photo 8: Gas station, Reykjavik, Iceland





## Ireland

In Ireland, the *Public Health (Tobacco) (Amendment) Act, 2004* bans self-service sales of tobacco products. Retail displays are restricted to one package of each tobacco product offered for sale or a pictorial list showing one image of each package. The image must be no larger than the package itself and the list must contain a health warning. The advertisement of tobacco products in retail premises is also prohibited.

In April 2004, several Irish and European tobacco companies, P.J. Carroll, John Player & Sons, and Gallaher (Dublin) Ltd, launched a joint legal challenge over the legislated bans on the advertising and display of tobacco products in retail outlets, declaring the measures to be unnecessary, since tobacco advertising is already sufficiently controlled, and an unjustified infringement of the companies' right of freedom of expression and of their right to communicate information to their consumers (P.J. Carroll, 2004).

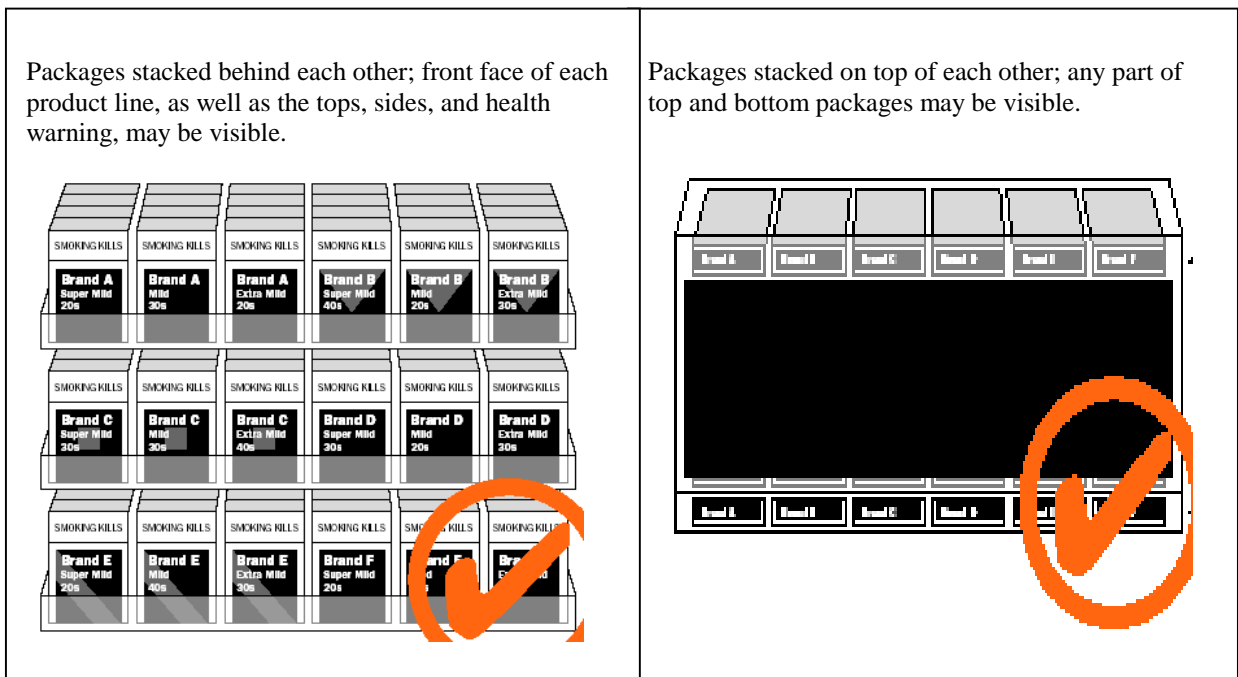
## Australia

In the state of Victoria, Australia, a series of amendments to the *Tobacco Act* went into effect in January 2002 regulating the display of tobacco at retail:

- No tobacco brand advertising is permitted inside or outside retail stores.
- The size of the tobacco product display is limited to a maximum 4 square metres.
- No cartons may be displayed.
- Only one package from each product line of tobacco stocked may be displayed. A product line is defined as a tobacco product that differs from other products based on one or more characteristics, including trademark, brand name, nicotine or tar content, or flavour.
- Only one tobacco display is permitted in each tobacco sales outlet.
- Tobacco can be sold from more than one point of sale in a retail outlet; however, if tobacco products are located at a point of sale other than the display area, the facings of the tobacco products must be hidden, for example, by using price tickets.

The illustrations below show the types of tobacco display cases that are permitted in Victoria (Victoria Government).

Graphic 3: Permitted tobacco display cases, Victoria, Australia



Tobacco brand and product advertising both inside and outside retail establishments is also prohibited. A generic “price board” indicating the product lines available and their prices is permitted at each point of sale within a retail shop (Victoria Government, 2001).

The Northern Territory of Australia has implemented similar retail display controls under its *Tobacco Control Act 2002* and *Tobacco Control Amendment Act 2003*. The following provisions went into effect in July 2003:

- The maximum size of a tobacco product display is 4 square metres;
- A tobacco display cannot be within 2 metres of a display of products marketed to children.
- Retailers are permitted to display one example of every type of tobacco product they sell in each size and package type (such as hard pack and soft pack for cigarettes and tin and pouch for loose tobacco).
- Carton displays are limited to one of each product type.
- One “price board” of a maximum size of one square metre is permitted. Shelf tickets are not permitted if the retail premise has a price board. Both price boards and shelf tickets must be black and white only.

The legislation also bans the use of lighting or any “device that causes movement” to draw attention to the display. Only one point of sale is permitted in sales outlets, other than premises that are licensed to sell alcohol. The advertising of tobacco products in public places is banned.

The restrictions also apply to tobacconists, although tobacconists are permitted a maximum display space of 12 square metres. A tobacconist is defined as a separate retail operation where 85% of the revenue comes from tobacco sales.

In February 2004, the government of New South Wales, Australia, announced that it intends to propose as part of its soon to be released state Cancer Plan that tobacco products be banned from public view in retail establishments. Having “already lowered the profile of tobacco through restricting tobacco advertising,” the government considers a display ban to be the logical next step. This move would make New South Wales the first Australian state/territory to completely prohibit tobacco product displays. Prior to implementing such a ban, however, the government intends to conduct a full public consultation with affected parties, including retailers, health groups, and government departments, and will weigh both the costs and benefits of the measure (Sartor).

In May 2004, the state government of South Australia introduced comprehensive tobacco control legislation. The legislation would phase in a total ban on smoking in enclosed workplaces and public places, prohibit tobacco sales to minors, and eliminate the remaining forms of tobacco advertising and promotion, including the visible display of tobacco products at point-of-sale. Although the legislation was passed by the House of Assembly in July 2004, debate on the display provisions was deferred until September to permit the Health Department to undertake additional consultations with retailers and other interested parties on the timing and implementation of the proposed display restrictions (South Australia Department of Health).

## USA

The U.S. Justice Department has launched a massive civil suit against the major tobacco manufacturers (Philip Morris, R.J. Reynolds, Brown & Williamson, Lorillard, British American Tobacco, American Tobacco, Liggett) and two trade organizations, the Council for Tobacco Research and the Tobacco Institute. The lawsuit claims that since 1954 the defendants have conspired “to deceive consumers into starting and continuing to smoke.” Specifically, the complaint alleges that the scheme involved:

- Concealing relevant research on the health effects of smoking and fraudulently claiming that there was controversy over smoking and health research;
- Misrepresenting the addictiveness of nicotine and manipulating the delivery of nicotine;
- Marketing low-delivery products with an intent to deceive consumers;
- Marketing tobacco to youth while denying that they were doing so (Altria; Department of Justice).

Of particular relevance to this report is the Justice Department's allegation that the tobacco companies have targeted young people with their marketing practices for decades and continue to do so, despite repeated public claims to the contrary. The Justice Department supports this allegation with evidence showing how the tobacco makers target youth with "their marketing at point-of-sale, including trade promotions and other materials displayed in retail stores" (*United States' Preliminary Proposed Finding of Fact*).

The Justice Department is seeking two forms of redress:

- 1) Financial—The Justice Department is requesting that the companies be ordered to forfeit approximately \$289 billion, the estimated profits the companies earned from thirty years of sales to the youth-addicted market.<sup>5</sup>
- 2) Regulatory—The Justice Department is also requesting that the court establish a new regulatory framework for tobacco companies that would, among other things, further restrict tobacco advertising, retail merchandising programs, and promotion aimed at youth (Altria; Lichtblau). The Justice Department wants the court to order the tobacco companies to disclose all documents related to their marketing practices that target youth; to enjoin the companies from undertaking such promotions in the future; to order the companies to establish mechanisms to ensure compliance; and to require that the companies "make corrective statements regarding the health risks of cigarette smoking and the addictive properties of nicotine in future advertising, marketing, and promotion of their tobacco products"

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<sup>5</sup> "[T]he United States...seeks 289 billion dollars: a reasonable approximation of the profits that Defendants obtained from the "Youth-Addicted Population" (those who began smoking more than five cigarettes daily before age 21) from 1971 (the effective date of the RICO statute) to 2001 throughout their smoking lives. The evidence establishes that smoking one to five cigarettes per day is a predictor of continued smoking and nicotine dependence...." (*United States' Preliminary Proposed Conclusions of Law*).

(*United States' Preliminary Proposed Conclusions of Law*) .

The trial is scheduled to begin in September 2004 (Altria).

The U.S. Department of Justice civil action against the tobacco companies is not the first time the government has sought to control the promotion and display of tobacco products at point-of-sale. In 1997 a proposed tobacco settlement agreement, negotiated by the tobacco companies and the Attorneys-General of several U.S. states, would have mandated significant changes to the manner in which tobacco products could be displayed and sold, including a ban on vending machine sales of tobacco products; a ban on self-service displays except in adults-only establishments; and the requirement that all tobacco products be out of reach and out of sight of consumers, except in adults-only stores. The agreement would also have imposed restrictions on point-of-sale tobacco advertising, regulating the size, number, and placement of ads (not within two feet of any candy display) and requiring that the text of ads be black and white only (*Text of Attorney General/Tobacco Industry Settlement*). Although the deal was widely condemned by members of the health community, particularly for the fact that it would grant the tobacco industry immunity from future litigation, the display ban provisions were not among those criticized (Fox).

### United Kingdom

In the United Kingdom, the issue of banning displays of tobacco products at point-of-sale has recently gained public profile, with the launching in early March of a consultation paper called *Choosing Health? A consultation paper on action to improve people's health* by Secretary of State for Health John Reid. The consultation paper addresses a broad range of issues related to preventing illness and disease and improving health. While acknowledging that government can't *force* people to make healthier lifestyle choices, the paper asserts that government "can and should provide information, encouragement and support to enable everyone to make healthier choices." Specifically, the consultation paper asks participants to consider whether local and national governments should "take more of a role in supporting people to make healthier choices" by regulating the advertising, promotion, and retail display of products that can harm health, including tobacco, alcohol, and foods high in fat, sugar, and salt. The results of the consultation process will influence the government White Paper, which will set out the government's intended course of action to improve public health. The White Paper is to be published in the summer of 2004.

## Alternatives to a Ban on Tobacco Product Displays

There are a variety of ways in which governments can limit the promotion of tobacco products at the point-of-sale, beyond mandating that the visible display of tobacco be completely banned:

- Limit the size and the number of tobacco displays;
- Prohibit the payment of promotional allowances for tobacco products;
- Eliminate tobacco sales from certain types of stores;
- Restrict tobacco sales to tobacco-only stores;
- Restrict tobacco sales to government-controlled outlets.

While likely more acceptable to tobacco manufacturers, restricting the size and number of tobacco displays does little to control the promotion of tobacco products at point-of-sale. Nor does it eliminate the need for retailers to remodel their stores. Furthermore, this option would likely cause significant enforcement challenges.

Prohibiting tobacco manufacturers from paying promotional allowances to retailers would likely give rise to a de facto ban on tobacco displays. Under this scenario other product manufacturers could be expected to take over from the tobacco companies in paying retailers for prominent display of their products. This has already been happening in places where countertop cigarette displays have been outlawed, with candy merchandisers moving in to pay for the space. As one retailer predicted, “There is still going to be competition for the spot, it’s just that the cigarette people have been the most lucrative up to this point” (Barnack, December 1997).

Banning certain types of stores from selling tobacco products would be a highly controversial move. The experience with banning tobacco sales in pharmacies provides some indication of the resistance that could be expected, although in the case of the pharmacy ban the opposition was tempered by the ethical issues involved with pharmacists promoting the sale of a lethal product. Nonetheless, only five Canadian provinces do not permit tobacco sales in pharmacies. According to the U.S. National Association of Convenience Stores, among the top concerns of their members is the possibility that the Food and Drug Administration, if granted authority over tobacco products, would limit the sale of tobacco products to specific categories of retail outlets. The NACS fears that the FDA “could determine that C-stores, as a class of trade, should not be permitted to sell tobacco” (Smith).

Another possible means of controlling the promotion of tobacco products at point-of-sale, while permitting tobacco companies to ‘communicate’ with their adult customers, would be to restrict tobacco sales to adults-only stores. This could result in tobacco sales being limited to privately-owned specialty tobacco stores or to government-controlled outlets. The trend to specialty tobacconists has already begun, particularly in the U.S., where cigarette/tobacco stores have been taking tobacco sales away from gas stations and convenience stores for some time now. Some convenience stores have responded by embracing the trend and setting up their own specialty tobacco divisions:

“Under the ‘If you can't beat them, join them’ rule of thumb, some marketers are taking sides with CTS [cigarette/tobacco stores] and jumping on the bandwagon. The trick is to overhaul less-than-optimal C-store sites and re-open with a new name as a CTS” (Barnack, Dec. 1997).

A related trend is convenience stores setting up a ‘store-within-a-store’ to handle tobacco sales. By creating a separate tobacco section and making it accessible only to adults, retailers are attempting to attract business back from the tobacco specialty store. Their longer-term goal is to qualify for the same regulations as tobacco specialty stores, which they anticipate will be subject to fewer display and marketing restrictions being off-limits to minors (Barnack, July 1997). Some analysts predict that supermarkets will follow suit, remodeling their stores to have a separate tobacco-only outlet (Barnack, Dec. 1997). This model would fit well with the Canadian supermarket scene, as many supermarkets are already redesigning their stores to include a number of specialty outlets, from flowers to wine to postal services. It should be noted that this concept is not a new one, as the establishment of a tobacco store-within-a-store was the initial response of a number of pharmacies to the legislated ban on tobacco sales in pharmacies.

Recognizing that in many cases the attempt to further regulate tobacco companies and retailers merely gives rise to creative end-runs around the letter and/or spirit of the law, long-time tobacco control advocate Ron Borland makes the case for more comprehensive controls over the tobacco market. In his paper on a “regulated market model for tobacco,” Borland calls for the creation of a new agency that would control all aspects of the distribution, marketing, and sale of tobacco products, contracting with tobacco manufacturers only for supply of the product. Tobacco would become a controlled substance and all remaining forms of tobacco promotion would be eliminated (Borland).

## Conclusions and Recommendations

There is a substantial and growing body of evidence demonstrating that the advertising and promotion of tobacco products is both directly and indirectly related to youth smoking initiation, to progression from experimentation to regular smoking among youth, and to continued smoking among adults.

As jurisdictions around the world have restricted or banned traditional tobacco product advertising, tobacco manufacturers have responded by adjusting their mix of marketing activities, emphasizing promotion at the point-of-sale. The primary challenge for tobacco companies remains the same, regardless of whether they are operating under conditions of a partial or total advertising ban. The companies' success depends on their continued ability

- to make consumers aware of the brand;
- to have consumers recognize the brand;
- to transmit the essential image of the brand in a way that motivates consumers to buy the product.

Thus in the absence of traditional advertising, the display of tobacco at point-of-sale is critical to the tobacco firms' ability to generate brand awareness and maintain brand image. Tobacco displays work synergistically with other forms of tobacco product promotion, most notably the package design. Testifying to the significance of point-of-purchase displays and related advertising and signage is the fact that tobacco companies have conducted sophisticated scientific studies to understand the behaviour of consumers in retail outlets and to incorporate this knowledge into the design of retail displays and tobacco packages. Eye-mapping studies, for example track the participants eye movements across a display, showing companies how they can position their brands to receive maximum visual attention.

In exchange for complying with the tobacco companies' requirements related to all aspects of the display, retailers are paid promotional allowances, in the form of cash, discounts, rebates, merchandise, fixtures, prizes, or some combination of these. The contractual agreements between the tobacco companies and individual retailers specify the position, size, and type of tobacco display and the location and number of company signs to be posted, and require the retailer to keep the display clean, stocked, and unobstructed. Some manufacturers demand that the proportion of the retailer's total tobacco display space devoted to its products be in keeping with its percentage of total market share. There is fierce competition between tobacco firms for prime display space to the extent that several U.S. tobacco makers sued Philip Morris over its aggressive "Retail Leaders" incentive program, claiming that it unlawfully restricted competition.



Both consumer product and tobacco control research conclude that merchandising activities at point-of-sale increase product sales. One study has found that retail advertising and displays increase average tobacco sales by 12%. One reason for this is that an estimated 60% of tobacco purchases are unplanned. Large, attractive tobacco displays in virtually every convenience store, supermarket, and gas stations are designed to provide strong visual cues to consumers and prompt impulse purchases. Internal tobacco company documents reveal that tobacco companies strive to take advantage of and promote impulse purchases through their merchandising activities at point of sale. A report by the U.S. Department of Justice concludes that “the tobacco industry is now dominating the stimuli in many of these stores in the hope of dominating the impulse purchases.”

Tobacco companies claim that their intent in promoting their products is to encourage brand switching among current smokers, but the research shows that smokers are highly brand loyal, with less than 10% of smokers switching brands each year. Moreover, smokers usually choose a brand while they are still experimenting with tobacco use. Since more than 80% of smokers begin smoking during adolescence, tobacco companies of necessity must direct their marketing appeal to youth in order to influence their brand choice.

Research shows that in addition to being influenced by tobacco advertising and promotion, youth smoking behaviour is affected by their belief regarding the prevalence of tobacco use. The degree to which young people overestimate smoking rates has been shown to be a predictor of starting smoking. The widespread availability of tobacco products for sale and the size and prominence of tobacco product displays contribute to the belief common among youth that “everyone” smokes.

The ubiquity, accessibility, and visibility of tobacco displays in retail outlets also play a significant role in normalizing tobacco products and undercutting health risk information. The proximity of tobacco products to benign consumer goods like candy and trading cards renders them benign by association.

In sum, a substantial body of consumer product and tobacco control research, enhanced by internal tobacco company documents, proves that tobacco product displays at point-of-sale are a vital form of promotion. Tobacco product displays are particularly important in places such as Canada, where most other forms of tobacco promotion have been prohibited.

Several provinces and territories in Canada have already legislated bans on tobacco displays in retail outlets accessible to children, including Saskatchewan, Manitoba, and Nunavut, and several others are considering following suit. Saskatchewan's display ban was in place for eighteen months before being struck down by the Court of Appeal. While the Saskatchewan government appeals the ruling to the Supreme Court, tobacco products remain on display in retail outlets across Canada.

Given the importance of visibility for their products at the point-of-sale, tobacco companies can be expected to oppose vigorously any attempt to control the retail display and promotion of tobacco products. Tobacco manufacturers have launched lawsuits in Canada and several other countries challenging the government's right to restrict their ability to communicate with their customers. Tobacco companies can also be expected to mount aggressive lobbying campaigns against any proposal to restrict product displays. Experience in Canada and the United States, however, indicates that the tobacco firms will spearhead opposition by the retailers, preferring to stay in the background. Retailers can be expected to oppose government attempts to restrict or ban tobacco product displays for fear of losing tobacco company promotional allowances, suffering revenue losses from reduced tobacco sales, and incurring remodeling costs. The experience in Saskatchewan, together with other market forces, however, suggests that these losses could readily be mitigated.

The point-of-purchase is critical to marketing a product. It is where three of the four key elements of marketing come together—product, place, and promotion. It is where the shopper can be transformed into the buyer, with the right inducements. In the case of a product that causes the death of over 47,000 Canadians every year, governments have a responsibility to do everything within their power to ensure that retail outlets do not serve to normalize tobacco products among youth, do not promote increased use among current smokers by prompting impulse buying, and do not cue smokers who are trying to quit to resume smoking.

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## Appendix A: Legislative Provisions Restricting Tobacco Displays

### Saskatchewan: *The Tobacco Control Act*

#### **PART II**

#### **Transactions involving Tobacco or Tobacco-related Products**

##### **Certain sales promotion practices prohibited**

6(1) No person shall advertise or promote tobacco or tobacco-related products in any place or premises in which tobacco or tobacco-related products are sold if young persons are permitted access to the place or premises.

(2) No person shall advertise or promote tobacco or tobacco-related products by means of an advertisement or promotional material placed in the windows of any place or premises in which tobacco or tobacco-related products are sold if the advertisement or promotional material is placed so that it is visible from the outside of the place or premises.

(3) No retailer shall permit tobacco or tobacco-related products to be displayed in the retailer's business premises so that the tobacco or tobacco-related products are visible to the public if young persons are permitted access to those premises.

2001, c.T-14.1, s.6.

##### **Unauthorized signs prohibited, display of supplied signs required**

7(1) No person shall, at any place or premises in which tobacco or tobacco-related products are sold at retail, display any sign respecting the legal age to purchase tobacco or tobacco-related products in Saskatchewan or health warnings respecting tobacco unless the sign:

- (a) is a sign supplied or approved by the department; or
- (b) is otherwise authorized pursuant to the Tobacco Act (Canada).

(2) No retailer shall fail to display in the retailer's premises any sign supplied by the department respecting the legal age to purchase tobacco or tobacco-related products in Saskatchewan or health warnings respecting tobacco.

2001, c.T-14.1, s.7.

## **Manitoba: *The Non-Smokers Health Protection Act***

### **Regulations re display and advertising**

7.1 Section 7.2 and subsection 7.3(1) do not apply in relation to a place or premises for which the sale of tobacco or tobacco-related products is the major activity, if the place or premises is prescribed for the purpose of that section or subsection in the regulations.  
S.M. 2002, c. 37, s. 4.

### **Tobacco not to be displayed**

7.2 No person shall display or permit to be displayed tobacco or a tobacco-related product such that it is visible to children in any place or premises in which tobacco or tobacco-related products are sold.  
S.M. 2002, c. 37, s. 4.

### **Tobacco not to be advertised or promoted**

7.3(1) No person shall advertise or promote tobacco or a tobacco-related product

- (a) in any place or premises in which tobacco or tobacco-related products are sold;
- (b) in any place or premises to which children are permitted access;
- (c) on an outdoor sign of any type, including
  - (i) a billboard or portable sign, or
  - (ii) a sign on a bench, vehicle, building or other structure; or
- (d) inside a building or other structure or vehicle if the advertisement or promotion is visible from outside the building, structure or vehicle.

### **Product and price lists allowed**

7.3(2) Notwithstanding subsection (1), a place or premises described in clause (1)(a) may have signage that lists the tobacco or tobacco-related products offered for sale and their prices, if the signage complies with the requirements specified in the regulations.

## **Nunavut: *Tobacco Control Act***

### **TOBACCO DISPLAYS AND SALES**

#### **Handling of tobacco prohibited**

**7.** No person shall sell or supply tobacco in a retail store by means of a display that permits a person to handle the tobacco before paying for it.

#### **Retail displays and promotional advertising**

**8.** No person shall advertise or promote the use of tobacco or tobacco products at a retail premises unless the advertisement or display meets such requirements as may be prescribed.

## Iceland: *Tobacco Control Act 002 no. 6*

### **Section II. Sales and advertising.**

#### **Art. 7**

All forms of advertising of tobacco and smoking accessories is prohibited in Iceland. This does not apply, however, to publications published abroad by foreign parties in foreign languages, provided that their primary purpose is not the advertising of such products.

Notwithstanding, the State Wine, Spirit and Tobacco Authority is authorised to issue a price list for tobacco and to publish a register of harmful substances in tobacco products.

It is also prohibited to show consumption or any form of handling of tobacco or smoking accessories in advertisements or information on goods or services of other kinds and in illustrations on goods.

Advertising within the meaning of this Act shall refer to, among other things:

1. any form of information addressed to the public or to a specified target group, including product promotions, window displays in shops, signs of any kind and comparable items.
2. all use of traditional tobacco trademarks (name and logo) or parts of them; products manufactured under such trademarks are, however, exempted, but the advertising-limitation provisions of the Act otherwise apply to them.
3. any form of media coverage of individual products for other purposes than to warn of their harmful effects.
4. distribution of samples of goods to consumers.

It is prohibited to place tobacco on the Icelandic market under trademarks which are known or used as trademarks for other goods or services.

Any form of contribution to an event or activity whose objective, or direct or indirect effect, is to promote tobacco, is prohibited.

Tobacco and tobacco trademarks shall be so placed at points of sale that they are not visible to the customer.

**Ireland: *Public Health (Tobacco) (Amendment) Act 2004***

**14.**—The Principal Act is amended by the substitution of the following section for section 43:

“43.—(1) Subject to subsection (2), it shall be an offence for a person to sell a tobacco product by retail, or cause a tobacco product to be sold by retail, by means of self service.

(2) It shall be lawful for tobacco products to be sold by retail, in accordance with regulations made by the Minister, by means of a vending machine on licensed premises or the premises of a registered club by such persons, or by persons belonging to such classes of persons, as are specified in the regulations (being persons who are registered under section 37 in respect of the licensed premises concerned or the premises of the registered club concerned).

(3) A person registered under section 37 (other than a person to whom regulations under subsection (2) apply) shall ensure that tobacco products sold by him or her are kept in a closed container or dispenser that is not visible or accessible to any person other than the first-mentioned person, or a person employed by him or her in connection with the business of selling goods by retail while so employed.

(4) A person registered under section 37 shall ensure that—

- (a) the registration number in respect of him or her is affixed to the container, dispenser or vending machine, as the case may be,
- (b) subject to paragraph (c) and the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. No. 639 of 2002)—
  - (i) no notice, sign or display shall be displayed, and
  - (ii) no leaflet, circular, pamphlet or brochure shall be issued to the public or given to a purchaser of a product,  
at any place, indicating that tobacco products may be purchased at the premises concerned,
- (c) a sign is displayed at the premises concerned—
  - (i) in such a manner and form as may be prescribed by regulations made by the Minister,



- (ii) informing the public that tobacco products may be sold at those premises to persons who have attained the age of 18 years, and
  - (iii) providing such other information as may be so prescribed.
- (5) (a) A person registered under section 37 may provide such information relating to a tobacco product sold by him or her to a member of the public intending to purchase a tobacco product as may be prescribed by regulations made by the Minister.
- (b) Regulations under paragraph (a) may provide that the person registered under section 37 may—
  - (i) notwithstanding subsection (3), show the member of the public concerned one packet only of each tobacco product sold by him or her, or a reproduction thereof, or
  - (ii) show the member of the public concerned a pictorial list consisting of visual images of packets of the tobacco products sold by him or her, provided that—
    - (I) each such image is not greater in size than the size of the packet concerned,
    - (II) the list does not contain more than one image of the same product, and
    - (III) the list or each such image contains a warning in such form and of such a type as may be prescribed by those regulations.
- (6) A person who contravenes subsection (3) or (4), or regulations under subsection (5), shall be guilty of an offence.
- (7) For the purposes of subsection (1), a tobacco product shall be deemed to have been sold by means of self service where the purchaser was permitted to supply himself or herself, either upon or before payment, with the tobacco product concerned whether by means of the depositing of money or a token (intended to be used as a substitute for money) in a machine containing the tobacco product or otherwise.”.

## Northern Territory of Australia: *Tobacco Control Regulations*

### **PART 4 – RESTRICTIONS ON ADVERTISING, DISPLAYS AND POINTS OF SALE**

#### **19. Price boards**

(1) For the purposes of section 18 of the Act, the requirements with which a price board is to comply are set out in this regulation.

(2) There is to be only one price board for tobacco products at a point of sale (other than a vending machine) in or on premises and then only if there are no shelf tickets for tobacco products at the point of sale.

(3) The area of the price board cannot exceed 1 square metre.

(4) For the purposes of subregulation (3), section 21(9), (10), (11), (12) and (13) of the Act applies (with the necessary modifications) in relation to a price board as if a reference to a display of tobacco products were a reference to the price board.

(5) The price board is to be within 3 metres from the display of tobacco products (if any) at the point of sale.

(6) The price board cannot be within 1 metre from a display of products designed or marketed for consumption or use by children (including but not limited to displays of confectionary and toys).

(7) The information on the price board is limited to the following:

- (a) names of tobacco products;
- (b) sizes or quantities of tobacco products;
- (c) prices of tobacco products;
- (d) tar contents of tobacco products;
- (e) countries of origin of tobacco products;
- (f) barcodes or reference numbers for tobacco products.

(8) The information referred to in subregulation (7) (other than barcodes) is to be in letters that are –

- (a) all the same font and size and not more than 2 centimetres high or 1.5 centimetres wide; and
- (b) marked only in black on a white background or only in white on a black background.

**20. Shelf tickets**

(1) For the purposes of section 18 of the Act, the requirements with which shelf tickets are to comply are set out in this regulation.

(2) There may be shelf tickets for tobacco products at a point of sale (other than a vending machine) in or on premises only if there is no price board for tobacco products at the point of sale.

(3) The size of a shelf ticket cannot exceed 70 millimetres x 50 millimetres.

(4) The information on a shelf ticket is limited to the following:

- (a) the name of a tobacco product;
- (b) the size or quantity of the tobacco product;
- (c) the price of the tobacco product;
- (d) the tar content of the tobacco product;
- (e) the country of origin of the tobacco product;
- (f) the barcode or reference number for the tobacco product.

(5) The information referred to in subregulation (4) is to be marked only in black on a white background or only in white on a black background.

(6) All shelf tickets at a point of sale are to be marked identically in accordance with subregulation (5).

**21. Displays other than at specialist tobacconists or on vending machines**

(1) For the purposes of section 21(3) of the Act, the numbers of packets of cigarettes, cigars (other than cigars sold singly) or other tobacco products that are displayed cannot exceed one packet of each kind of packet for each kind of cigarette, cigar or other tobacco product that is available under each brand name.

(2) For the purposes of section 21(4) of the Act, the numbers of cigars sold singly that are displayed cannot exceed 2 cigars of each size for each kind of cigar that is available under each brand name.

(3) For the purposes of section 21(5) of the Act, the numbers of cartons of cigarettes that are displayed cannot exceed one carton of each kind of packet for each kind of cigarette that is available under each brand name.

(4) For the purposes of section 21(7) of the Act, a display cannot be within 2 metres from a display of products designed or marketed for consumption or use by children (including but not limited to displays of confectionary and toys).

(5) For the purposes of section 21(8) of the Act, the area occupied by a display cannot exceed 4 square metres.

**21A. Displays at specialist tobacconists**

(1) For the purposes of section 20(1)(b)(ii) of the Act, the conditions specified in this regulation apply in relation to displays of tobacco products that are at points of sale at specialist tobacconists in substitution of the conditions specified in section 21(3), (4), (5) and (8) of the Act.

(2) The area occupied by a display cannot exceed 12 square metres.

(3) The area of the part of a display occupied by packets of cigarettes cannot exceed 4 square metres.

(4) The area of the part of a display occupied by cigars cannot exceed 4 square metres.

(5) The area of the part of a display occupied by loose tobacco cannot exceed 2 square metres.

(6) The area of the part of a display occupied by cartons of cigarettes cannot exceed 2 square metres.

## Victoria, Australia: *Tobacco Act*

### **PART 2—CONTROLS RELATING TO TOBACCO PRODUCTS**

#### **Division 2—Advertising and Other Controls**

##### **6. Certain advertising prohibited**

- (2) A person must not for any direct or indirect pecuniary benefit—
- (a) place or display or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement that is visible from a public place; or
  - (b) place or display, or cause or permit to be placed or displayed, or authorise the placing or display of, a tobacco advertisement on the outside of any road, sea or air vehicle or vessel.

Penalty: For a first offence: 10 penalty units.

For a second or subsequent offence: 100 penalty units.

- (2A) If there is a tobacco advertisement of a product line of a tobacco product at a point of sale at a retail outlet or wholesale outlet that is not in accordance with section 6A, the person carrying on the tobacco retailing business or the tobacco wholesaling business at that outlet is guilty of an offence.

Penalty: For a first offence:  
10 penalty units.

For a second or subsequent  
offence:  
100 penalty units.

- (2B) A person must not, in the course of carrying on a tobacco retailing business or tobacco wholesaling business, display tobacco products at a retail outlet or wholesale outlet other than at a point of sale.

Penalty: For a first offence: 10 penalty units.  
For a second or subsequent offence:  
100 penalty units.

- (2C) Sub-section (2B) does not apply to—

- (a) the display of cigars in an operating humidor; or
- (b) the display of cartons at an on-airport duty free shop.

- (3) Nothing in this section applies to—

- (a) a tobacco advertisement in or on—
  - (i) a newspaper or magazine; or
  - (ii) a book; or
  - (iii) a package containing a tobacco product, other than a package at a point of sale; or
- (b) a tobacco advertisement that is an accidental or incidental accompaniment to a film or video tape; or
- (c) a tobacco advertisement (other than a display of a tobacco product carried about on a person) at a point of sale inside a retail outlet or wholesale outlet that is in accordance with section 6A; or

- (ca) one notice about tobacco products at one or more points of sale at a retail outlet or wholesale outlet that complies with the prescribed requirements as to size, information contained in it and the manner in which the information is set out or displayed; or;
- (cb) tickets or labels on, or adjacent to, immediate packages of tobacco products displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or
- (cc) tickets or labels on, or adjacent to, representations of immediate packages of tobacco products in vending machines displaying retail prices, being tickets or labels that comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or
- (d) a tobacco advertisement that is within a retail outlet (whether or not it is visible from a public place) and that does not contain a trademark or brand name, or part of a trademark or brand name, of a tobacco product or the name of a manufacturer or distributor of a tobacco product; or

- (e) anything to which, by reason of section 10, this section does not apply; or
- (f) an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of business.

#### **6A. Point of sale advertisements**

- (1) A tobacco advertisement at one point of sale at a retail outlet or at any point of sale at a wholesale outlet may advertise a product line of a tobacco product in one only of the following ways—
  - (a) by the display of a single immediate package of the product line in the form in which the package is available for sale at that point of sale (including the display of an immediate package if only cartons are available for sale);
  - (b) by means of a stack dispenser for immediate packages of the product line in the form in which the packages are available for sale at that point of sale if—
    - (i) in the case of an angled stack, the most that is displayed is—
      - (A) any part of the single package at the front of



- the stack;  
and
- (B) any part  
(other than  
the face) of  
the other  
packages in  
the stack;  
and
- (C) those parts of  
the faces of the  
other packages  
that bear the  
warning  
message  
required by the  
Trade Practices  
(Consumer  
Product  
Information  
Standards)  
(Tobacco)  
Regulations  
1994 of the  
Commonwealth;  
and
- (ii) in the case of packages  
stacked on top of each  
other, the most that is  
displayed is any part of  
the package on the top  
of the stack and any part  
of the package on the  
bottom of the stack;
- (c) if the point of sale is a  
vending machine, by a  
single representation of an  
immediate package of the  
product line in the form in  
which the package is  
available, or usually  
available, for sale at that  
point of sale no larger than

- the actual size of the  
package, with the same  
appearance as the package;
- (d) in the case of a product line  
of cigars, by the display of  
either or both of the  
following—
  - (i) up to 13 cigars of the  
product line in an open  
box, or in any other  
manner;
  - (ii) a single closed box full  
of the product line in  
the form in which the  
box is available for sale  
at that point of sale.
- (2) A tobacco advertisement at any  
other point of sale at a retail  
outlet may advertise a product  
line of a tobacco product by  
means of a stack dispenser for  
immediate packages of the  
product line in the form in which  
the packages are available at that  
point of sale if—
  - (a) in the case of an angled  
stack, the most that is  
displayed is—
    - (i) any part (other than the  
face) of any package in  
the stack; and
    - (ii) those parts of the faces  
of the packages that  
bear the warning  
message required by the  
Trade Practices  
(Consumer Product  
Information Standards)  
(Tobacco) Regulations  
1994 of the  
Commonwealth; and

- (b) in the case of packages stacked on top of each other, the most that is displayed is any part of the package on the top of the stack (but not including the face or the top of that package as stacked or the side or end of that package directly facing the customer) and any part of the package on the bottom of the stack (but not including the face or the bottom of that package as stacked or the side or end of that package directly facing the customer).
- (3) A display of tobacco products at a point of sale may not consist of the display of the products, packages of the products or representations of the products or packages so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation.
- (4) A display of a product line at a point of sale at a retail outlet may not include the display of a carton of the product line, or any part of the carton, whether or not the carton is empty or partly empty.
- (5) Despite sub-section (4), a product line at a point of sale at a retail outlet that is an on-airport duty free shop may be displayed in such a way that—
  - (a) one carton of the product line is visible; or

- (b) in the case of cartons of the same size as each other, the cartons are stacked directly behind each other, and the most that is visible is—
    - (i) any part of the carton at the front of the stack; and
    - (ii) any end or the top (or both) of the next carton in the stack; or
  - (c) in the case of cartons of different sizes, the most that is visible is—
    - (i) one carton of one size; and
    - (ii) any end or the top (or both) of one other carton of that size; and
    - (iii) the smallest side (or one of the smallest sides) of one carton of any other size.
- (6) A display of a product line at a point of sale at a wholesale outlet—
  - (a) may include the display of one or more cartons of the product line, but only with the smallest (or one of the smallest) sides of the carton (or cartons) facing the customer service area; and
  - (b) must otherwise comply with this section.
- (7) The area of display of tobacco products that constitute a tobacco advertisement referred to in sub-section (1) at a retail outlet must not exceed the prescribed area.
- (8) A display of tobacco products on a vending machine may

include a display of one packet  
only of each product line  
available, or usually available,  
from the machine and must not  
include the display of any other  
product lines.

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The New York State American Academy of Pediatrics, District II, representing 6,000 pediatricians fully supports New York City's efforts to reduce young people's access to tobacco.

The science has been clear for some time. Smoking increases morbidity and mortality, which means smoking, can make you sick and it can kill you. Smoking is especially dangerous for children and teens. The younger a person is when they begin their smoking addiction, the more severe the health impacts going forward. Also the younger one starts smoking the more difficult it is to quit.

Keeping children from starting smoking is the best option. If they start, making it hard or expensive or illegal for them to buy cigarettes all have been shown to reduce smoking in children and teens. As pediatricians we believe that anything that can be done to reduce children's and teen's access to cigarettes and other tobacco products should be done.

New York City is proposing three important legislative initiatives to create barriers between children and tobacco products. We fully support all three.

### **We fully support legislation to raise the Purchase Age for Tobacco Products from 18 to 21.**

Tobacco products do nothing other than kill people. And the sooner a person starts smoking the more chance that they will face significant health problems related to smoking. Tobacco products have no positive qualities.

To create as many barriers as possible between young people and access to cigarettes and other tobacco products is a good thing. No, this will not stop all young people from smoking. But it will reduce the numbers and will reduce the availability and that is a first step. And, if older friends and siblings can no longer purchase and share with their younger teen and pre-teen friends and siblings even better.

Raising the purchase age also sends a strong public health message that some young people will actually hear.

### **We fully support legislation to Restrict the Display of Tobacco Products.**

Reducing access both, visual and actual, has been proven to diminish the youth impulse to buy and to smoke. This is a really important public health initiative to reduce young people's access to cigarettes, which do nothing but eventually kill the people who smoke them.

The proposal before you will prohibit the display of tobacco products in retail stores in order to reduce youth exposure to tobacco.

These displays are found in stores at the point-of-sale and are designed to promote tobacco purchases.

**We fully support Sensible Tobacco Enforcement.**

This proposal will curtail illegal and discounted tobacco products, which can increase tobacco use among youth and decrease the public health benefits of NYC's tobacco control efforts. By expanding enforcement and increasing penalties for retailers that evade tobacco taxes, these policies will also help honest retailers compete on a level playing field while meeting public health goals.

Raising tobacco product prices and taxes on those products and making sure that all businesses in the chain from supplier to consumer pay the legal rate the product is a reasonable approach to dampen down availability. Again, tobacco products serve no public good. The less available they are to children and young people the better. And increased cost has been shown to have a significant impact on young people's decisions to smoke or to continue to smoke.

We hope that, you our City leaders make a decision today that will have a positive impact on the health of tens of thousands of city children. We may not be able to stop 20,000 children and teens from smoking, but we if can stop 5,000 from starting and encourage 5,000 to stop smoking, we are making progress. These bills will help us get there.

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## **Testimony on Tobacco Product Display**

**Sandra Mullin**

**Senior Vice President**

**World Lung Foundation**

**May 2, 2013**

World Lung Foundation is a leading NGO dedicated to reducing the illness and death caused by tobacco and other critical public health issues.

Ten years ago, I was Director of Communications at the NYC Department of Health when Mayor Bloomberg and then Commissioner Dr. Tom Frieden decided to introduce a 100% smoking ban. At the time, people on both sides of City Hall thought we were nuts, that we would infringe on



smokers rights, that businesses would suffer --- a concern that we all know didn't materialize.

But we stood firm. The one question the Mayor had, knowing it would risk him serious political capital, was will it save lives? He decided that politics would take a back seat, and fortunately, despite the uphill battle before us, then Health Committee Chair Council Member Quinn agreed. And ultimately the administration and the Council put forward a progressive piece of legislation that has us all breathing cleaner air. The question today is will we once again put health and kids ahead of politics?

As we continue to strengthen our policies to reduce smoking in NYC, let's not forget that tobacco is the leading

epidemic of our time killing more Americans than AIDS, murders, suicide, car accidents and illegal drugs combined. All of these tobacco deaths are entirely preventable.

Sorry New York Post, but this is not simply a Nannystate issue.

And a reminder that in 2002, no country in the world was brave enough to have an anti-smoking law as strong as New York City's. Within months Ireland, yes, Ireland followed our lead. Today, dozens of cities and countries have pursued the example set by New York City, and more are on their way. As New York City goes, so does the world.

New York City leads, but we can also learn. At World Lung Foundation I have the privilege of seeing the best anti-tobacco policies around the globe. I'm often out there pushing the New York City's 100% smoke free model – urging countries in Asia, Latin America, Africa and Europe to follow our example.

But, I'm here to tell you something no New Yorker, this one included, wants to hear: countries like New Zealand, Singapore, Australia and Canada are ahead of us, several are doing some things better than we are.

We can follow Canada's example in this case. They have done what the World Health Organization has recommend, which is to take down these displays because

they are plainly and simply advertising and promotion.

Canada has seen their youth smoking rates drop as a result.

Exposure to tobacco marketing is a top predictor of youth smoking – even more than peer pressure. We've done a decent job of banning advertising on regular channels like television. So now the industry has redirected its massive marketing budget to unregulated channels like tobacco displays.

Tobacco displays within retail environments, our corner bodegas, grocery stores, newspaper and candy shops, are the most prominent examples of this. The industry pays a premium for these slick displays because they have their

own research to know they work. They hook kids and seduce them into thinking that cigarettes are as innocent and normal as purchasing a pack of chewing gum.

The pro-tobacco advocates who set aside the health impacts of smoking will argue that putting cigarettes below the counter or behind curtains will take away choice and destroy small business. Sounds just like what they said in 2002, that the smoking ban would destroy bars and restaurants and the nightlife industry. Evidence, the cornerstone of smart policy, showed that this did not happen.

While we have compelling evidence globally to know with confidence that retail display restrictions work, opponents have the same kind of hollow threats of economic doom we hear every time tobacco restrictions are considered.

At World Lung Foundation, we wholeheartedly support this bill. Save our kids from years of addiction to tobacco by relegating the product to the bottom where they belong.

Out of sight, and hopefully, eventually out of mind---- tobacco deserves nothing less and our kids deserve so much more.

Thank you.

## **FOR THE RECORD**



**Testimony of Nicole R. Harris-Hollingsworth, EdD, CHES  
President, Public Health Association of New York City  
Board Member, Bronx Health Link**

**Public Hearing of the New York City Council  
Submitted to NYC Council Committee on Health, Maria del Carmen Arroyo, Chair  
Tobacco Control Legislation  
May 2, 2013**

My name is Nicole Harris-Hollingsworth. I am an active member and the sitting President of the Public Health Association of New York City, also known as PHANYC. Since 1936 PHANYC has brought together public health professionals and students to work for improved health for the city's people. PHANYC has grown to be one of the largest affiliates of the American Public Health Association. Through my training as a health behaviorist and my certification as a Certified Health Education Specialist, I oversee the community and population health efforts for a nationally ranked academic medical center in New York City.

I want to thank the City Council for seeking testimony from stakeholders in public forums such as this. As a whole, PHANYC supports the efforts of our city leaders to implement new and innovative measures to further improve tobacco control in New York.

As these proposals represent a new frontier in tobacco control, PHANYC appreciates the historical trend of our administration to accompany policy implementation with strong enforcement and surveillance oversight. We believe these policies all hold potential to broaden the scientific basis for tobacco control measures and we look forward to the city's efforts to further this data collection.

The city has documented the cause of our concern. Despite having one of the best tobacco control programs in the nation, with the highest excise tax and ten years of the Smoke Free Air Act, New York City has retained a persistent youth smoking rate of 8.5%. This rate has remained level since 2007. We must take action now if we are going to protect the health of the nearly 100,000 young people who continue to smoke.

Regarding Intro 250-A, **reducing accessibility of tobacco products for minors, defined as less than 21 years of age, is a major factor in decreasing the rates of preventable premature death caused by smoking by delaying onset of smoking initiation.** Again, the city's evidence is compelling. Nearly, 80% of NYC smokers began their life of addiction before the age of 21. By targeting this age group, PHANYC anticipates a significant impact on the city's youth smoking rate.

As a public health professional, health care provider and researcher, I can emphasize the ample evidence supporting Intro 1021 and the increase in taxes on cigarettes and restrictions on available product sizes for tobacco products including little cigars in NY has shown a positive effect in reducing smoking in youth. Furthermore, PHANYC supports the elimination of coupons for tobacco products as they artificially create a decreased price point for tobacco products, thus undermining the intended public health goal behind the city's high excise tax.

It's also been well-documented that the tobacco industry has increasingly developed marketing in the guise of elaborate displays in our tobacco retail locations. Intro 1020 has the potential to dramatically reduce the impulse purchasing of tobacco, particularly among those New Yorkers who are trying to quit. There is also evidence that shows how susceptible our youth are to product marketing displays at the point of sale with increased tobacco product awareness and brand recognition. Intro 1020 will serve to reduce the influence of marketing on our young people, thereby protecting them from the perils of tobacco addiction.

In summary, in my role representing the leadership and the membership of the Public Health Association of New York City, we extend our conditional support of Intro 1020, Intro 1021 and Intro 250-A. **On behalf of PHANYC membership, I urge you to advance this legislation in support of reducing tobacco use by youths and young adults in New York City.** Thank you for the opportunity to present this testimony on behalf of the public health professionals and students throughout New York.

**Contact Information:**

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Testimony of

Louise Feld  
Senior Policy Associate  
Citizens' Committee for Children

Before the  
New York City Council  
Health Committee

May 2, 2013

Good afternoon. My name is Louise Feld, and I am the Senior Policy Associate for Food and Economic Security at Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 69-year old independent child advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe.

CCC would like to thank Chairwoman Arroyo and the members of the Health Committee for holding today's hearing on several proposed local laws aimed at reducing youth smoking in New York City. CCC is grateful to the Speaker, the Mayor, the Department of Health and Mental Hygiene (DOHMH) and the City Council for their ongoing commitment to reducing smoking, particularly by youth.

CCC is supportive of all three proposed local laws, which would:

- a) Raise the legal tobacco product sales age from 18 to 21;
- b) Expand enforcement and increase penalties for retailers that evade tobacco taxes, in order to curtail illegal and discounted tobacco products.
- c) Prohibit the display of tobacco products in retail stores, so that youth exposure to tobacco is reduced.

As has been widely known for quite some time, tobacco use presents a critical health problem. However, while tobacco use has decreased, it is still the leading cause of preventable, premature death in the United States and New York City.<sup>1</sup>

Of great concern is the fact that tobacco use remains a problem among young people. In New York City, almost 100,000 young adults between the ages of 18 and 24<sup>2</sup> and almost 20,000 public high school students<sup>3</sup> smoke. Further, approximately 80% of our City's smokers started smoking before they were 21 years old.<sup>4</sup> And, while youth smoking had steadily declined from 2001 (17.6%) to 2007 (8.5%), its rate has since remained level.<sup>5</sup>

Also relevant to the measure being discussed today is data from our bi-annual book, *Keeping Track*, which show that the rate of youth smoking among high school students gets larger with each grade, but in 2011 was clearly much higher among 12<sup>th</sup> grade students than among students in the 9<sup>th</sup> through 11<sup>th</sup> grades. The proposed legislation to raise the smoking age would make it more difficult for these 12<sup>th</sup> grade New York City high school students – many of whom are 18-years-old – to access tobacco products.

Overall, these statistics and the vast evidence about smoking's harmful effects demonstrate the need to enact the proposed legislation, as evidence shows that raising the smoking age will reduce the number of new and young smokers, and ultimately save lives. For example, the Center for Disease Control has reported that similar measures implemented in other jurisdictions have successfully reduced those jurisdictions' teenage smoking rates. Such states include Alabama, Alaska, New Jersey and Utah. Further, studies show that when England raised its smoking age

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<sup>1</sup> New York City Department of Health and Mental Hygiene. Preventing Non-Communicable Disease and Injuries: Innovative Solutions from New York City. New York: New York City Department of Health and Mental Hygiene, 2011.

<sup>2</sup> Youth Risk Behavior Survey New York City Department of Health and Mental Hygiene, 2011.

<sup>3</sup> Community Health Survey. New York City Department of Health and Mental Hygiene. 2011.

<sup>4</sup> New York City Department of Health and Mental Hygiene. Tobacco 21. 2013.

<sup>5</sup> New York City Department of Health and Mental Hygiene. Youth Risk Behavior Survey 2007, 2011.

from 16 to 18, a 30% decline in 16 and 17-year-old smokers was reported.<sup>6</sup> Finally, an existing study projects that raising the smoking age would eventually reduce the percent of smokers over the age of 21 by 30%.<sup>7</sup>

Notably, New York City would not be the only location in the state to increase the smoking age if these proposals are enacted. Several other counties around the state already have higher smoking ages than do the counties in New York City.<sup>8</sup> The New York State Legislature has also recently introduced a bill to raise the smoking age across the state to 21.

Finally, we assert that raising the smoking age in concert with the other proposed measures - curtailing illegal and discounted tobacco products and reducing youth exposure to tobacco products in stores - will profoundly and positively impact the next generation of New Yorkers. Decreased exposure to tobacco products minimizes impressionable young people's susceptibility and perception of tobacco use as "normal," thereby reducing youth smoking. Here, also, we see examples of this being the case elsewhere, as display restrictions implemented in Canada resulted in decreased youth smoking rates.<sup>9</sup> Further, the myriad of proposed actions, which range from expanded enforcement authority and increased penalties for retailers who evade tobacco taxes or sell tobacco without a license to the prohibition of discounts for tobacco products and the imposition of a minimum price of \$10.50 per pack of cigarettes, will function to make it harder for young people to access tobacco products. Importantly, these actions to reduce youth smoking will make significant progress in improving the health of youth in New York City.

We know much more about the inherent dangers of smoking than we knew a generation ago. It would be irresponsible not to use this knowledge to protect the health of the next generation of New Yorkers, and these common-sense proposals do just that. We are grateful to the Mayor's office and the City Council for your diligence on this issue and we look forward to working together to ensure these proposals are voted into law.

Thank you for the opportunity to testify.

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<sup>6</sup> Fidler JA, West R. Changes in smoking prevalence in 16-17-year-old versus older adults following a rise in legal age of sale: findings from an English population study. *Addiction* 2010;105(11):1984-8.

<sup>7</sup> Ahmad, S. (2005). Closing the youth access gap: The projected health benefits and cost savings of a national policy to raise the legal smoking age to 21 in the United States. *Health Policy* 75:74-84.

<sup>8</sup> Counties with higher smoking ages include Nassau, Suffolk, and Onondaga.

<sup>9</sup> Hammond D., Judicial review challenges against legislation prohibiting the display of tobacco products in the United Kingdom: Second supplemental report. Expert Witness report submitted on behalf of the UK Department of Health. December 2011.

Advocates of the  
Food Industry  
Since 1900

FIA

## **FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.**

130 Washington Avenue • Albany, NY 12210 • Tel (518) 434-1900 • Fax (518) 434-9962  
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### **Comments**

**By the Food Industry Alliance of New York State, Inc.**

**in opposition to**

**Int. No. 1020-2013, Int. No. 1021-2013 and Proposed Int. No. 250-A 2010**

Thank you for the opportunity to testify at today's public hearing. My name is Jay Peltz and I am the Vice-President of Public Affairs for the Food Industry Alliance of New York State. The Food Industry Alliance is a nonprofit trade association that promotes the interests statewide of New York's grocery stores, drug stores and convenience stores. Our members include chain and independent food retailers that account for a significant share of New York City's retail food market and the wholesalers that supply them, as well as drug stores and convenience stores.

Many of our members are small businesses struggling to survive as we approach the end of the fourth full year of the weakest of 11 postwar recoveries. As a result, weak consumer spending has become the new normal. In turn, unemployment remains stubbornly high in the City, at 8.9% in March 2013. On top of that, an era of regulatory overreach continues. As noted in an April 14 article in Crain's New York Business: "Despite lip service...about small business being the city's - and the country's - economic backbone, entrepreneurs are reeling from a slew of new rules and regulations enacted at every level of government. Obamacare and paid sick leave are both slated to go into effect in 2014. Last month, state legislators increased New York's minimum wage. Additionally, the City Council enacted the nation's broadest statute giving prospective employees the right to sue for not being hired. And last week, the council held a hearing on a bill that would bar employers from using credit checks in hiring." Separately, any of these new mandates may have been manageable. However, having all of them take effect within a relatively short time frame has heightened anxiety for employers already dealing with the high cost and bureaucratic hurdles of doing business in New York City.

Given this economic and policy context, these 3 bills, taken together, would further hurt our members, especially our small business members. All 3 measures are designed to cause legitimate sellers of a legal product to fully informed adult consumers to suffer losses of sales and customer traffic. Consequently, profits will decline thus creating the possibility of cuts to jobs and hours.

And for what public policy benefit? As a scholar from the Cato Institute recently noted, in jurisdictions that have imposed high taxes and other pricing and sales restrictions, "consumers are more likely to go to illegal, untaxed retailers for their tobacco needs." In addition, because the proposed legislation would limit the choices of fully informed, adult consumers and increase the price of legitimate tobacco products offered by New York City retailers, those consumers would be incented to visit legitimate competitors outside City limits, on the Internet or in Native American outlets in search of their preferred brands at lower prices. An uneven playing field would thus be created where New York City retailers would lose sales, City taxpayers would have to make up the lost tax revenue and sales of tobacco products could merely shift, rather than decline.

Moreover, fines that start at \$1,000 for a first-time violation are unjustified in light of high overall compliance rates reported by the federal government. According to reporting under the Synar amendment, the national weighted average retailer violation rate has plummeted from 40.1% in 1997 to a record low 8.5% in 2011. In New York, the retailer violation rate was even lower, reported at 5.6%. This data, combined with a weak economy that is causing retailers, especially small retailers, to struggle, suggests that the imposition of substantial fines is unwarranted, especially if there is no willful misconduct or the violator is not a repeat offender.

The legislation that would raise the minimum legal purchase age to 21 is misguided. Very few teens buy cigarettes at a retail outlet. Reportedly, 95% of teens get their tobacco from friends or family. So the retail accessibility of tobacco is largely irrelevant to their decision to smoke.

In addition, research shows that none of the reasons for adolescent smoking relate to the legal age for buying cigarettes. According to this "social determinants of health" approach, youth smoking is primarily the result of lower incomes, poor academic achievement/dissatisfaction with school/inadequate schools, dysfunctional family relationships, whether or not parents and siblings smoke and peer pressure. The persuasiveness of the social determinants approach led to its adoption by the World Health Organization as the basis for its tobacco control program. The City Council should follow this approach as well.

Finally, we believe that the proposed tobacco display ban is unconstitutional and is preempted under federal and state law. The First Amendment protects the communication of truthful and non-misleading commercial messages about lawful products. The Supreme Court has stated that those protections apply to communications about tobacco products. A retailer's display of a product for sale, with its packaging bearing the manufacturer's trademarks and trade dress, is core commercial speech protected by the First Amendment. In addition, courts have held that coupons and discounts constitute protected commercial speech.

Regarding preemption, the Federal Cigarette Labeling and Advertising Act precludes states and localities from prohibiting or otherwise regulating the advertising and promotion of cigarettes. Moreover, while New York state law prohibits certain forms of tobacco product couponing and discounting, other forms of couponing and discounting are expressly permitted. Thus, according to the New York Attorney General, New York state law preempts cities from restricting tobacco product discounting in a manner permitted by state law.

Accordingly, the Food Industry Alliance, on behalf of its members, opposes adoption of these 3 bills. Thank you for your time and attention to the Food Industry Alliance's concerns.

Respectfully submitted,

**Food Industry Alliance of New York State, Inc.**  
**Jay M. Peltz, Vice President of Public Affairs**  
**Metro Office: 914-833-1002**  
**[jay@fiany.com](mailto:jay@fiany.com)**

Testimony of James S. Calvin, President  
New York Association of Convenience Stores  
130 Washington Avenue, Albany NY  
518-432-1400 [www.nyacs.org](http://www.nyacs.org)

**Int. No. 1020** - In relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores.

**Int. No. 1021** - In relation to the sale of cigarettes and tobacco products, the regulation of retail dealers and wholesale dealers of cigarettes, and repealing subdivision c of section 17-176 of the administrative code of the city of New York, relating to an exemption from such section, and repealing section 17-707 of the administrative code of the city of New York, relating to requiring public health messages where tobacco advertisements appear.

**Proposed Int. No. 250-A** - In relation to raising the legal tobacco products sales age to twenty-one years.

Thank you for the opportunity to comment on behalf of licensed convenience stores.

Proponents of this legislation have a noble cause. They are trying to reduce tobacco consumption and prevent youth smoking.

But they are trying to hoodwink you. They want you to believe all of the following.

- 1.) That this is exclusively a public health issue. Wrong. It is a public health issue, but it is no less a small business issue, and I know you take seriously your responsibility to examine issues from all angles, and strike a proper balance.
- 2.) That because smoking is unhealthy, that because someone's Mom or Dad died from a smoking-related illness, that store owners who sell tobacco deserve to be harassed and pre-emptively punished by the City.
- 3.) That the smoking population is a captive audience, and whatever tobacco restriction you may pass, smokers will have no choice but to abide by it. I wish that were true. But the sad reality is that tens of thousands of New York City smokers – including teenagers – are routinely dodging your taxes, avoiding your legal purchase age, and ignoring your other tobacco regulations every single day, buying from the smugglers and bootleggers who control half of New York City's cigarette trade.
- 4.) That a higher purchase age automatically lowers the smoking rate. Baloney.

Four states are currently at 19, and here are their adult smoking rates, as of 2011, according to the Centers for Disease Control:

Two of them were lower than New York State's rate of 18.1 percent.

New Jersey – 16.8 percent

Utah – 11.8 percent

But the other two were well above New York State's rate of 18.1 percent:

Alabama – 24.3 percent

Alaska – 22.9 percent

5.) That the mere sight of packs of cigarettes displayed on a wall in a store compels kids to start smoking. Does that make sense to you? In order for that to be true, the sight of toothpaste on a store shelf would compel kids to brush their teeth. Does seeing beer displayed in a beverage center make kids start drinking alcohol? Does seeing lottery tickets displayed in a bodega make them start gambling? Does seeing condoms displayed in a pharmacy make them engage in premarital sex?

6.) That convenience store operators who sell legal tobacco products to adult customers in accordance with all state and city regulations are the scum of the earth. Does that match your impression of the man or woman who operates the neighborhood store you visit periodically?

7.) That the legal purchase age is the legal smoking age. Nothing could be farther from the truth. New York City's policy with regard to minors possessing cigarettes is "smoke 'em if you got 'em." And they get 'em easily – chiefly, according to the Centers for Disease Control, from adult relatives and friends as opposed to retail stores.

The point is that you need to apply a healthy dose of skepticism to what the Mayor and the anti-tobacco community want you to believe about these proposals. They are based largely on distortions and flawed assumptions. Don't be blinded by the emotion behind the noble cause.

Thank you.

FTR



**Testimony Submitted on behalf of Catherine M. Abate  
President and CEO  
Community Healthcare Network**

**Hearing before the City Council Health Committee  
250 Broadway, New York  
May 2, 2013**



Thank you for giving me the opportunity to submit this testimony.

Community Healthcare Network is a 32-year-old nonprofit that runs community-based health clinics throughout New York City. All 13 of our clinics are Federally Qualified Health Centers, serving some of the poorest neighborhoods. Half our patients are on Medicaid; 40 percent are uninsured.

We see some of the sickest people in the city including people with multiple chronic illnesses like hypertension, diabetes, asthma and more. Despite their already poor health status, too many of them smoke. They understand the health risks, but they are unfortunately addicted.

That's why we found New York City Health Commissioner Farley and City Council Speaker Quinn's proposal to increase the age for buying cigarettes from 18 to 21 welcome news.

Bad habits start young. If we can reduce the likelihood that a kid will grow up to be an addicted pack-a-day smoker, we should. The Commissioner and Speaker's proposal makes common-sense and health-sense and we applaud them both.

This proposal could go a long way in keeping deadly cigarettes out of the hands of our young adults.

Consider the following: In 2012, our doctors saw over 18,000 patients under 21 at our clinics, and although surveys suggest that youth smoking has been declining in New York City, the number of youth who smoke is still unacceptably high. According to our data, 3 percent of our 17-year-old patients report smoking and that number rises to 14 percent (reported) for patients who are 20 years of age.

Those 20-year-old smokers are more likely to be addicted and face a lifetime of increasingly poor health. Smoking is responsible for 33 percent of all cardiovascular deaths. It is also directly related to developing type 2 diabetes, is responsible for bone marrow loss that leads to hip fractures, and increases the likelihood of erectile dysfunction, and complications during pregnancy, such as spontaneous abortions. Half of all smokers will die of tobacco-related illnesses like cancer.

Young people also face more immediate health consequences of smoking, including a reduced rate of lung growth. Smoking also impacts young people's

physical fitness in terms of both performance and endurance, further exacerbating an already disconcerting rise in obesity rates among young people.

Increasing the age limit for purchasing this highly addictive and destructive drug makes sense and the City Council should make the proposal law.

It's the right thing to do.



## **NYC COALITION FOR A SMOKE-FREE CITY**

Testimony of **Sheelah Feinberg**

**Executive Director**

**NYC Coalition for a Smoke-Free City**

before the

**New York City Council Health Committee**

regarding

**Intro 1020 – Display of Cigarettes and Tobacco Products by Retail Dealers**

**Intro 1021 - Sensible Tobacco Enforcement & Pricing**

**Intro 250 - Raising the Legal Age to Purchase Tobacco Products to 21**

May 2, 2013

250 Broadway, 16<sup>th</sup> Floor Committee Room  
New York, NY 10007

Good afternoon and thank you to Council Member Arroyo and the members of the Health Committee for the opportunity to speak today about three exciting and bold new proposals that address the continuing epidemic of tobacco use head-on: Intro 1020, Intro 1021, and Intro 250.

My name is Sheelah Feinberg, and I am the Executive Director of the NYC Coalition for a Smoke-Free City, a program of Public Health Solutions. The Coalition is a public health advocacy group that has worked with over one hundred health and youth focused community groups across the five boroughs to raise awareness around tobacco control and prevention. We support neighborhood efforts for long-term change and believe that all New Yorkers have the right to breathe clean, smoke-free air where they live, work, and play.

A little over a month ago, the Coalition celebrated the ten-year anniversary of the Smoke-Free Air Act. New York City was considered a public health pioneer when we made our bars and restaurants smoke-free. Despite negative press coverage, concerns about potential harm to businesses, and big spending by Big Tobacco to defeat the proposal, the City Council and the Administration took bold steps to protect the health of New Yorkers. Contrary to the assertions of these critics, the restaurant and bar industry flourished, and an estimated 150,000 fewer New Yorkers were exposed to secondhand smoke at work.<sup>1</sup>

Since 2002, the Coalition has continued to educate community members, leaders, and organizations around the public health importance of tobacco control initiatives, such as expanding tobacco-free outdoor areas to hospital entryways and parks, beaches and pedestrian plazas, and decreasing tobacco marketing and product accessibility. Now, there are more former smokers in New York City who have successfully quit than there are current smokers.<sup>2</sup> With more adult smokers quitting, we must turn to preventing our youth and young adults from ever starting.

In 2011, the Coalition collaborated with the American Lung Association of the Northeast on a series of youth-led events called "Take a Walk in Our Shoes." These neighborhood walking tours highlighted that 75% of tobacco retailers are within 1,000 feet of a school.<sup>3</sup> In addition, Asian Americans for Equality (AAFE), a Coalition partner that works with a population disproportionately affected by the negative health effects of tobacco use, recently conducted an observational survey of tobacco sales and displays in pharmacies in New York City's Asian American neighborhoods. AAFE found that of the pharmacies they surveyed, 71% not only prominently displayed tobacco products but had them placed close to candy, gum, and other products typically purchased by youth.<sup>4</sup> New York City's youth are bombarded with tobacco products and marketing. The proposals being discussed today will address this critical public health issue directly.

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<sup>1</sup> "The State of Smoke-Free New York City: A One-Year Review." New York City Economic Development Corporation & the Departments of Finance, Health & Mental Hygiene, Small Business Services, March 2004.

<sup>2</sup> Community Health Survey, 2011. New York City Department of Health and Mental Hygiene.

<sup>3</sup> Henriksen, L. et al. "Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near school?" *Preventive Medicine* 47, 2008.

<sup>4</sup> Le D, Ryder M, Schmeltz M. "Prescription for a Healthy City." Asian Americans for Equality, 2012.

The Coalition and its partners are grateful to have a City Council and Mayor who have demonstrated an unprecedented commitment to improving public health. Our combined efforts have yielded historic success. Thanks to a comprehensive tobacco control program that includes bold policies, higher cigarette taxes, hard-hitting media campaigns, and cessation services to help smokers quit, the percentage of adults smoking in New York City has dropped to 14.8%<sup>5</sup> and the percentage of public high school students has dropped to 8.5%.<sup>6</sup> This means thousands of lives saved, increased life expectancy, and improved health for all New Yorkers.

While New York City has enjoyed tremendous success reducing both adult and youth smoking rates, our progress has stalled. This is not surprising since tobacco companies spend \$8.5 billion each year in the United States on marketing that works counter to the public's health and best interests, including \$196 million in New York alone.<sup>7</sup> We will continue to work vigilantly to give the community a Big Voice against Big Tobacco's commitment to recruiting New Yorkers into a lifetime of addiction to their deadly products.

The Health Committee now has before it three proposals: Intro 1020, which restricts the display of tobacco products in our local stores where youth frequently shop, Intro 1021, also known as the Sensible Tobacco Enforcement and Pricing (STEP) initiative, and Intro 250, which will raise the minimum age required to purchase tobacco products in New York City to twenty-one. All three are complementary, evidence-based strategies that will prevent today's youth from becoming the next generation of addicted smokers.

Intro 1020 goes to the front line of where we will win or lose our fight against the tobacco epidemic: prominent tobacco displays behind the register in retail chain pharmacies and our neighborhood convenience stores and bodegas. These displays are designed to attract youth and normalize both the availability and purchase of tobacco products -- the leading cause of preventable death in the United States. Multiple studies show that visibly placing cigarettes behind the register influences youth opinions on the social acceptability of tobacco use and makes them more likely to smoke.<sup>8,9,10</sup> Tobacco displays right behind the register also make it increasingly difficult for adult smokers and those trying to quit from making impulse purchases.

Intro 1021 will level the playing field for retailers who play by the rules and do not sell loose or unstamped tobacco products by increasing the penalties for those that do. This will strongly discourage retailers from evading tobacco taxes or selling without a

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<sup>5</sup> Community Health Survey, 2011. New York City Department of Health and Mental Hygiene.

<sup>6</sup> Youth Risk Behavior Survey, 2011. New York City Department of Health and Mental Hygiene.

<sup>7</sup> Campaign for Tobacco Free Kids. "Estimated tobacco industry marketing in NYS." December 2012.

<sup>8</sup> Wakefield M, Germain D, Durkin S, Henriksen L. An experimental study of effects on schoolchildren of exposure to point-of-sale cigarette advertising and pack displays. *Health Educ Res* 2006;21(3):338-47.

<sup>9</sup> MacKintosh AM, Moodie C, Hastings G. The association between point-of-sale displays and youth smoking susceptibility. *Nicotine & Tobacco Research*. 2012;14(5):616-620

<sup>10</sup> U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012.

license. Intro 1021 also brings New York City up-to-date with the changing marketplace for tobacco products by requiring cheap cigars (\$3 or less) and cigarillos to be sold in packs of no less than four and little cigars to be sold in packs of twenty. According to the NYC Department of Health and Mental Hygiene, the rate at which our youth are smoking individually wrapped and cheaply sold cigars, little cigars, and cigarillos nearly tripled from 2001 to 2009.<sup>11</sup>

Intro 250 takes the important step of raising the minimum age to purchase tobacco products to twenty-one, targeting both youth access and addiction. Research shows that 90% of people purchasing cigarettes for minors are eighteen, nineteen, or twenty years old.<sup>12</sup> Under the new minimum age of twenty-one, New York City high school students could no longer purchase cigarettes, and the number of public high school students under the age of eighteen who smoke, currently 20,000,<sup>13</sup> would decline. We can stop our young people from becoming addicted: experimental smoking for young adults typically becomes regular smoking around age twenty.<sup>14</sup>

While opponents of tobacco control are often vocal, well-funded, or both, public opinion polls show that 59% of New Yorkers support prohibiting tobacco displays in stores,<sup>15</sup> and 67% support raising the minimum age to purchase tobacco products to twenty-one.<sup>16</sup>

In closing, despite great progress, tobacco use still causes hundreds of thousands of preventable deaths in the United States annually including thousands of lives lost here in New York. For over twenty years, the NYC Coalition for a Smoke-Free City has been a proud supporter of the leadership and historic tobacco control work of New York City. We're ready to make history again.

Thank you.

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<sup>11</sup> Youth Risk Behavior Survey, NYC Department of Health and Mental Hygiene, 2001 & 2009 Data Analysis.

<sup>12</sup> DiFranza J, Coleman M. Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tob Ctr* 2001;10:323-328.

<sup>13</sup> Youth Risk Behavior Survey, 2011. New York City Department of Health and Mental Hygiene.

<sup>14</sup> Hammond D. Smoking behavior among young adults: beyond youth prevention. *Tob Ctr* 2005;14:181-185.

<sup>15</sup> NYC Department of Health and Mental Hygiene Tobacco Behavior and Public Opinion Survey, 2012.

<sup>16</sup> NYC Department of Health and Mental Hygiene Tobacco Behavior and Public Opinion Survey, 2012.

Testimony of  
Chong Sik Lee, President, Korean-American Grocers Association of NY

Before the Committee on Health

Regarding

**Introduction Nos. 1020 and 1021** - Local Laws to amend the administrative code of the city of New York, in relation to the display and sales of cigarettes and tobacco products

May 2, 2013

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Good Afternoon. My name is Chong Sik Lee, and I am the President of the Korean-American Grocers Association of New York. We represent approximately 4,000 Korean-American retailers in the New York Metropolitan area. I am here today to urge you to oppose these new regulations, which will impose new costs on our members and subject them to more fines.

Our members opened their stores in pursuit of the American Dream. They work hard day after day, selling legal products in compliance with existing laws and regulations. However, it is harder and harder to keep up with the multitude of conflicting layers of regulation at the federal, state, and city level. And it is making it difficult to continue to operate in New York City.

We work very hard – and successfully – to stop underage tobacco sales. But if a mistake is made and, for example, we don't have the most recent sign up, we get fined. These new bills have all new sales requirements and fines as high as \$10,000. We cannot afford that!

On top of that, the proposals require us to make changes to our stores to hide tobacco products. Not only is there a cost to comply with this, but it will cause us to lose sales. Our customers come in each day to buy not only tobacco products, but milk, bread and other items. If they do not see the products they want to buy, they will leave and take their business elsewhere. We will lose customers.

These customers may then go and buy tobacco on the corner or through other illegal means. This is bad for New York, and it is unfair to our stores that must compete with illegal sellers.

If the costs of doing business continues to grow in New York City and our stores close, who will provide groceries and serve the neighborhoods we operate in? And how will our members earn a livelihood and pursue the American Dream? How will they build a business they can pass on to their children?

Last month, the City seemed to want to help small businesses like ours by removing unnecessary regulations and reducing the fines that are strangling small businesses in the city. Less than two weeks later, you have proposed these measures despite the high rate of compliance with existing laws preventing tobacco sales to minors.

As small business owners, our members share the Mayor's goal of preventing minors from smoking, and work hard every day to comply with the law. But we strongly believe this measure will not help further that goal and could in fact make the issue worse.

It is mandates like these that force responsible, compliant small businesses out of business, creating new opportunities for the illegal sellers to fill the void.

We urge the City Council to look for ways to help legitimate businesses to succeed in today's difficult economic climate –not burden them with additional costly mandates that do not serve their intended purpose. Please oppose these measures. Thank You.



## FOR THE RECORD

Manhattan Chamber of Commerce

Testimony for Hearing on Int 0250-2010. Int. 1020-2013, Int. 1021-2013 May 2, 2013

Nancy Ploeger, President

Good afternoon. We are here today on behalf of our business community to comment on the proposed legislation being discussed at this hearing.

Our city's small business community has been struggling for years with the economic downturn and regulatory burdens that continue to grow for most of our business sectors. Whether it is the increase in fines on restaurants –over \$50 mill in 2012, an increase of \$38 million just since 2008-or increased parking fees on businesses struggling to deliver goods to the stores and restaurants, it is harder and harder for businesses to survive. Public Advocate DeBlasio did a study last year and reported - "Each year, multiple agencies budget for more and more revenue from fines, often without any enforcement-based justification. Combined, fine-based revenue from 20 City agencies has nearly doubled since 2002, to \$800 million per year in 2011." In 2012, am sure the fines are well in excess of that number.

Despite the administration and city council enacting some regulatory reform measures in the past year, the actual benefits of any reform are outweighed by all the new regulations and fines that continue to be legislated on the backs of these businesses. And now even further controls are being requested here-even though there is already a high compliance rate by retailers - that add more burdens for these businesses who are basically trying to survive day to day. Not only are there new regulations being proposed, there are compliance issues and fines up to as much as \$10,000!

"Burdensome regulations and high regulatory compliance costs are commonly cited as among the biggest difficulties facing small businesses." According to the National Federation of Independent Businesses most recent survey, "21% of small businesses list 'government requirements and red tape' as their single most important problem – a larger proportion than list any other difficulty, including sales." (citing National Federation of Independent Businesses, "NFIB Small Business Trends," February 2013, available at <http://www.nfib.com/Portals/0/PDF/sbet/sbet201302.pdf> .)

And I believe there is a question of the legality of this proposed display ban issue. The First Amendment protects the communication of truthful and non-misleading commercial messages about lawful products. The Supreme Court has made clear that those protections apply to communications about tobacco products. A retailer's display of a product for sale, with its packaging bearing the manufacturers' trademarks and trade dress, is core commercial speech protected by the First Amendment. Such a display informs consumers that the product is for sale, communicates product attributes, and allows consumers to differentiate between product brands. Also, have any studies been done to suggest that not displaying tobacco products reduces usage/sales?

And the Federal Cigarette Labeling and Advertising Act precludes states and localities from prohibiting or otherwise regulating the advertising and promotion of cigarettes. So this proposed legislation would be pre-empted by existing federal law.

This proposal would also create incentives for adult consumers to purchase tobacco products not only from the black market, but also from other sellers not regulated by New York City law such as neighboring jurisdictions, the internet or Native American outlets in search of their preferred brands and lower prices. Our combined city and state excise tax is already the highest in the nation. And with more costs, consumers would look at these alternative sources. A growth in these sales outside NYC would lead to further losses for city's retailers.

And with regard to imposing minimum prices, preventing couponing, preventing visible displays etc. of a legal product, this proposed legislation is setting a precedent. What other legal products deemed "unhealthy" or otherwise out of favor could be next? Candy bars since they have high sugar content? Chips because they have high salt content?

We ask that you consider the ramifications of these proposals and affects that would yet again, place more financial burdens on our small business community, endangering their survival and the sustainability of the jobs in this business sector.

FOR THE RECORD



**Public Testimony from Marlene Fox, Senior Manager of Healthy Harlem,  
The Harlem Children's Zone®  
New York City Council Committee on Health  
May 2<sup>nd</sup>, 2013**

Good Afternoon Chairwoman Arroyo and Members of the Committee on Health. I am Marlene Fox, Senior Manager of The Harlem Children's Zone's Healthy Harlem program. I've been deeply involved in health, education, and community development work in Central Harlem for over 20 years.

Harlem, despite recent gentrification in some areas, remains plagued with poverty and its corresponding social ills: abysmal educational outcomes, high rates of foster care placement, domestic violence, illegal drug use, incarceration, and numerous serious public-health issues.<sup>1</sup> Typically, any child who comes from a challenging environment like this, and who manages to succeed in spite of it, is celebrated for *beating* the odds. Our approach at the Harlem Children's Zone is to focus on an entire neighborhood and *change* the odds for all children living in that community.

The Harlem Children's Zone is a comprehensive, place-based organization working with 11,000 children and young adults within a 97-block zone in central Harlem. HCZ provides children and families with a coordinated pipeline of free, best-practice programs at every developmental age from birth through college graduation. While academic excellence is a key outcome, schools are only one mechanism through which it is achieved. If your mission is about all of the students in a community, then dealing with family crises, gangs, drugs, violence, and health all become part of your strategy to support development of the whole child; therefore our interventions must include *and* extend beyond simply improving performance on standardized tests.

I am here because—although the percentage of New Yorkers who smoke has declined—smoking is still of great concern to us. While studies show that smoking affects the poor and under-educated disproportionately, we can assure you it is true because we see it on the streets of our community every day. According to the CDC, in 2010, 45.2% of adults 18-25 who had obtained a GED smoked compared to just 9.9% of adults with a bachelor's degree. Further, 28.9% of adults living below the poverty line smoked compared to 18.3% of adults living at or above the poverty level.

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<sup>1</sup> In Central Harlem, 72.5% of youth are born into poor families; 31.9% of families with children under 18 years old live below the poverty level. Central Harlem reports 41.2 abuse and neglect reports per 1,000 children, the 2nd highest in Manhattan. Central Harlem has the 2nd highest number of children in foster care in Manhattan (482) in March 2011. On the 2012 New York State Exams, Community School District 5 was among the lowest performing school districts in New York in terms of meeting math and ELA standards. In Central Harlem (including Morningside Heights) only 25% of adults 25 and older are high school graduates. Only 20% of adults 25 years and older are college graduates. Sources include the Citizen's Committee for Children's Keeping Track of New York City's Children (2010); NYC's Community Snapshot 2010; NYCDOE; and the United States Census Bureau.

There are three specific areas of concern I'd like to mention today: 1. Cigarette use during pregnancy; 2. Second-hand smoke and asthma; and 3. Teen smoking.

### **Cigarette use during pregnancy**

We know that smoking during pregnancy is highly correlated with low birth weights and other serious risks—this is indisputable. Far too many of our expectant mothers are smokers. In HCZ's Baby College®, a series of parenting workshops for expectant and new parents, we discuss this at length. We teach families about pre-natal brain development and discuss the effect smoking during pregnancy will have on the baby's health. We also encourage all the family members surrounding a child to practice behaviors that will support having a healthy baby, and refer them, as needed, to smoking cessation programs. But policies that can decrease the number of fathers and mothers who smoke go a long way to assist with this.

We find that, without exception, families genuinely want to do what is best for their children. When parents find out about the level of risk associated with smoking while pregnant, they try to quit. Watching mothers struggle with this task makes us all the more convinced that we need policies that help prevent others from becoming addicted.

### **Second-hand smoke and asthma**

We are also particularly concerned about the effect second-hand smoke has on children who suffer from asthma. In 2003, researchers from the Harlem Hospital Center discovered that one of every four children in central Harlem had asthma, which remains one of the highest rates ever documented in the country. In our community, asthma is the number one reason children miss school, visit the emergency room, and are hospitalized.

Researchers do not fully understand why Harlem has such high rates of asthma; but we do know what triggers asthma flare-ups. Together with our partners at A.I.R. Harlem<sup>2</sup>, we are working closely with asthmatic children and their families to help them manage the disease and lessen its effects. We refer many of our families to the program, which provides home visits and phone support from trained community health workers; education on reducing home asthma triggers, medication and asthma management; asthma trigger-control supplies; legal services to address badly-maintained housing and other issues that can make asthma worse; and referrals to smoking cessation programs.

A.I.R. Harlem's recent data demonstrates its success: among those served, the number of children admitted to the ER decreased by more than half, and that of participants hospitalized overnight for asthma decreased by 79%. Smoking inside the home—which of course exacerbates asthma—decreased from 7% to less than 1%.<sup>3</sup>

Breathing second-hand smoke causes numerous health problems in infants and children; beyond asthma attacks, it also can cause respiratory infections, ear infections, and sudden infant death syndrome (SIDS) and eventually heart disease and lung cancer. In addition to referring families to free smoking cessation programs, HCZ and A.I.R. Harlem ensure they have access to free nicotine

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<sup>2</sup> A.I.R. Harlem is a partnership between HCZ, the Robin Hood Foundation, the Department of Health and Mental Hygiene, Volunteers of Legal Service, Columbia University's Mailman School of Public Health, Harlem Hospital Center, Fund for the City of New York, Single Stop NY, NYC Smoke-Free Partnership, and the Goddard Riverside Community Center. For more information, visit [www.harlemasthma.org/aic/](http://www.harlemasthma.org/aic/).

<sup>3</sup> According to program evaluations by A.I.R. Harlem

patches and gum to help them quit. So many of the interventions we provide are to “fix” problems that were created in the first place because there were no policies in place to prevent them.

### Teen smoking

While smoking rates in teens have dropped considerably over the last decade<sup>4</sup>, they have unfortunately remained largely steady over the last five years. This is a concern because research repeatedly confirms what we already know: that the vast majority of adults who smoke developed the habit before age 21.<sup>5</sup>

HCZ programs measure the prevalence of risky behaviors among our teens, including behaviors like drug and alcohol use that are correlated with poor educational and health outcomes. We compare our rates to the national rates indicated by the Youth Risk Behavior Surveillance System (YRBSS), a national school-based survey conducted by the CDC. The theory behind our use of this tool is that engaging children in structured, youth-directed activities and educational programming will divert them from engaging in risky behaviors. We consistently see that the middle and high school students who participate in our programs engage in cigarette smoking and other drug use at a rate that is more than 50% lower than the national average.<sup>6</sup> But as long as *any* of our young people are smoking, we have more work to do. And there are so many young people across New York who lack safe and educational programs as an alternative to street culture they live in.

Our kids are the targets of aggressive retail discount policies that make cigarettes readily available and effectively more affordable for them. It’s no secret why tobacco companies are giving out coupons and discounts by the handful: there’s significant evidence that increases in price have contributed to the decrease<sup>7</sup>, particularly among teens, in smoking. These so-called “point-of-sale discounts” and special buy-one-get-one-free offers, which you can get just about anywhere in NYC, are used because teens are particularly price sensitive. They threaten to undermine the progress that has been made. In addition, we also know that youth are targeted with disproportionate levels of magazine advertising for tobacco products, and these ads are quite intentionally connecting cigarette products to hip hop and club culture and use buzz language and imagery to target teens in particular.<sup>8</sup>

The future health of our kids depends in large part on how successful we are at preventing young adults from taking up the habit. The sad fact is that *every day* new young people in our community and across NYC are smoking for the first time and are beginning down a path toward addiction.<sup>9</sup> We do not want children in our community to struggle with addiction and health issues for the rest

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<sup>4</sup> According to the NYC Department of Health and Mental Hygiene’s Youth Risk Behavior Survey, the percentage of teen smokers in NYC has declined by more than half over the last decade, from 17.6% to 8.5%. (During the same period, the smoking rate for that same cohort declined across the country, although slightly less nationally than it did in New York City.)

<sup>5</sup> According to NYC Community Health Survey, 2004-2007, 80% of smokers in New York City started before the age of 21. Other sources put this number as high as 90%. Smoking continues to be the leading cause of preventable death and disability in the U.S., with nearly 443,000 deaths each year attributable to smoking or exposure to secondhand smoke.

<sup>6</sup> In 2012, just 3.3% of HCZ high school participants surveyed had smoked at least one cigarette in the 30 days before the survey, compared to 18.1% of high school students nation-wide and approximately 8.5% city wide.

<sup>7</sup> For example, in every single state that has significantly raised its cigarette tax rate, pack sales have gone down sharply immediately following: [www.tobaccofreekids.org/research/factsheets/pdf/0098.pdf](http://www.tobaccofreekids.org/research/factsheets/pdf/0098.pdf).

<sup>8</sup> For example, “candy-flavored,” “XL,” and “exotic blends”; see [www.help.senate.gov/imo/media/doc/Connolly.pdf](http://www.help.senate.gov/imo/media/doc/Connolly.pdf).

<sup>9</sup> The NYC Dept of Health and Mental Hygiene’s Youth Risk Behavior Survey from 2011 reported that 28,000 public high school students in NYC tried smoking for the first time that year.

of their lives. Tobacco use is still the leading cause of preventable death and illness in the United States. And approximately half of all smokers will die from a smoking-related disease.<sup>10</sup>

We want the healthy option to be the easiest option in our community. While tobacco products will not disappear, we'd like it to require a good deal more effort to seek them out. In short, we care deeply about the kids we serve, and we spend a lot of time talking to them about avoiding cigarettes, but we need help. These proposals are that help. Thank you for hearing my testimony on this important matter.

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<sup>10</sup> From the CDC Morbidity and Mortality Weekly Report at <http://www.cdc.gov/mmwr/pdf/wk/mm6035.pdf#page=21>.

# FOR THE RECORD

**NEW YORK CITY COUNCIL  
COMMITTEE ON HEALTH  
COUNCILMEMBER CARMEN DEL ARROYO, CHAIRWOMAN**

**WRITTEN TESTIMONY OF  
YOUSAF NASEER**

**7- ELEVEN FRANCHISE OWNER  
AND  
VICE PRESIDENT OF THE 7-ELEVEN FRANCHISE OWNERS ASSOCIATION OF NEW YORK**

**TESTIMONY IN OPPOSITION TO INTRO. 1020, INTRO. 1021 AND PROPOSED INTRO. 250-A**

**MAY 2, 2013**

Chairman Arroyo and members of the committee, thank you for the opportunity to testify before you today. My name is Yousaf Naseer and I'm here because I am the owner of a 7-Eleven convenience store at 224 Fifth Ave, in Manhattan. I am also the Vice President of the 7-Eleven Franchise Owners Association of NY that represents hundreds of 7-Eleven stores across the state.

I took time away from my store today to ask you to vote against the proposed ban on tobacco displays, the huge fines associated with violations, the preclusion of coupons, and the economic harm of not allowing the sale of legal products like cigarettes to adults.

Cigarette sales are a top sales category for my store and comprise approximately 30% of my business. Currently, I employ 17 people. Last year I personally invested about \$500,000 in this business.

If these proposals are enacted, my tobacco and cigarette sales will certainly plummet. These sales constitute a major source of my revenue, and as a result, I will not be able to continue to maintain the current level of employment at my store.

Cigarette sales are the number one inside store sale category for a convenience store so these proposals will directly harm the convenience stores more than other retail formats. We simply cannot afford to lose these sales.

We work very hard to be viable business in New York City. My staff "age verifies" for legal adult product sales and we have a state of the art age verification system when tobacco sales are made. I do not understand why the city wishes to disadvantage local retailers and send our business out of the city.

New York City cigarette taxes have increased dramatically, making cigarette prices here the highest in the nation. My business cannot afford these additional anti-sales measures.

These costly measures will impose new requirements and increase regulatory burdens on my small business.

Additionally, other purchases made by tobacco customers will be lost such as the lottery ticket sales and other convenience store product sales. My tobacco customers also purchase beverages, and food. Therefore, if cigarette sales decrease, then overall related sales will suffer as well, and ultimately, city and state tax revenues will decrease as well.

While some may applaud this legislation thinking that people will quit smoking. I believe people will still smoke, but make their purchases elsewhere, avoiding taxes and empowering the black market. I respectfully ask and urge you to oppose these proposals. Thank you for your time.

Testimony of

Ramon Murphy, President, The Bodega Association of the  
United States and Owner, Red Apple Deli in Upper  
Manhattan

Before the Committee on Health

Regarding

**Int. No. 1020-2013** - A Local Law to amend the administrative code of the city of New York, in relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores.

**Int. No. 1021-2013** - A Local Law to amend the administrative code of the city of New York, in relation to the sale of cigarettes and tobacco products, the regulation of retail dealers and wholesale dealers of cigarettes, and repealing subdivision c of section 17-176 of the administrative code of the city of New York, relating to an exemption from such section, and repealing section 17-707 of the administrative code of the city of New York, relating to requiring public health messages where tobacco advertisements appear.

May 2, 2013

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Good afternoon. My name is Ramon Murphy, and I am the President of The Bodega Association of the United States, and the owner of Red Apple Deli in Upper Manhattan. On behalf of the over 14,000 bodegas that The Bodega



# New York City Newsstand Operators Association

325 BROADWAY • SUITE 501  
NEW YORK, NEW YORK 10007  
(212) 513-1988

Testimony of Robert Bookman, Counsel, in opposition to proposed restrictions on the sale and display of lawful tobacco products /

I am Counsel to the NYC Newsstand Operators Assoc, the 25 year old trade group that represents the 300 sidewalk newsstands in NYC, the smallest of mom and pop business owners. We respect the intentions of these bills. But as long as tobacco remains a legal product, your well intentioned after well intentioned restrictions only serves to hurt honest business owners by driving business away from them, especially now in a very tough economy, and towards black market sales of tobacco.

Let me highlight a few policy reasons why these bills should not be made law.

1-The display ban makes no sense as it will not accomplish its stated goal of making tobacco products less visible and attractive. The wall behind the counter which currently contains tobacco products will be replaced by sliding wood doors. What do you think retailers will place on those doors? Attractive tobacco ads, that's what. Joe Camel, the Marlboro Man. The ads are more attractive than the ends of cigarette packs, so the law will have the opposite impact.

There will also be "gotcha" fines because in a busy moment the door inevitably will not be completely closed after a sale. Gotcha...\$1000 bucks for a few inch opening.

With an impressive 92% compliance rate in undercover inspections, NYC retailers are obsessive about complying with the law. So what is the point of the display ban as it relates to underage smoking. To the extent underage individuals are smoking, they are not getting their tobacco from

licensed retailers, yet you want to add more layers of regulations on already overburdened small businesses.

2- Fines. While the Council just passed legislation moving the regulation of small businesses from fines to warnings, these bills go in the opposite direction. With no warnings, first time fines at \$1000 and repeat violations as much as \$10,000, this will bankrupt small business owners.

3-These are legal products, like it or not. What is next, no display of cookies or pretzels? 21 to buy a bag of potato chips?

4-The 21 year old proposal is nothing short of age discrimination against young adults with no constitutional basis for such discrimination. In NYS if you are 18 you are an adult for all legal purposes except alcohol, because that has its own constitutional basis given to the States. Not so here.

5-By the bills own statistics, ("over time could reduce smoking rate of 18-20 year olds by 55%) if passed, you will be sending thousands of current 18-20 year old smokers underground to purchase their tobacco. They will be using fake ID's, buying on the internet and purchasing from the black market on the street. You will be increasing that illegal trade here in NYC and will have to bear a share of the responsibility for that. But of course, it is the small business owner who bears the full responsibility of enforcing this restriction. The user of the fake ID, the 18 year old buying and smoking tobacco, gets off scott free in these bills. And the guy selling illegal cigarettes on the street for \$5 a pack does not care about checking IDs.

These are misguided bills with huge negative consequences for our small business owners and for the rule of law in our city.



April 30, 2013

New York City Council Members  
New York City Hall  
250 Broadway  
New York, NY 10007

**Subject: Comments on Proposed Local Tobacco-Related Laws**

Dear New York City Council Members:

As the legal counsel for the National Association of Tobacco Outlets, Inc. (NATO), a national retail tobacco trade association, I am submitting this letter on behalf of the association and its retail store members located in New York City to provide comments and legal arguments relating to three proposed local laws to further regulate the sale of cigarettes and tobacco products, raise the legal age to purchase tobacco products from 18 to 21, and ban all retail displays of tobacco products from public view.

**Regulations on the Sale of Cigarettes and Tobacco Products (Int. 1021-2013)**

Minimum Cigarette Price Violates New York State Law: Section 17-176.1, Subdivision (e) of proposed Local Law 1021-2013 establishes a minimum “cigarette price floor” of \$10.50 per pack of cigarettes. However, New York State law sets minimum cigarette prices at the wholesale and retail levels statewide, including in New York City. Under the Cigarette Marketing Standards Act (Article 20-A, Section 483 of New York Laws), the minimum legal retail price for a pack of cigarettes ranges from \$10.72 to \$12.67 per pack. These minimum state prices are published regularly by the New York State Department of Taxation and Finance as shown in the accompanying Publication 509, “Minimum Wholesale and Retail Cigarette Prices”, dated December, 2012. Since the proposal New York City “cigarette price floor” at \$10.50 per pack is less than the statewide minimum, the proposed “cigarette price floor” is contrary to and likely violates the state law. In fact, with the Cigarette Marketing Standards Act in place, a local cigarette price floor is unnecessary and should be removed from the proposed local law.

Ban on Coupons, Multi-Package Discounts and Less Than List Price Discounts: Section 17-176.1, Subdivisions (c) and (d) of proposed Local Law 1021-2013 ban the redemption of tobacco product coupons, prohibit the sale of tobacco products at a discounted price if offered in multi-package formats, and outlaws selling tobacco products at less than the list price. A very similar ordinance was adopted by the Providence, Rhode Island City Council in January of 2012, which banned coupon redemption and the sale of promotional priced multi-pack tobacco products.

In response, NATO along with another tobacco-related trade organization and several tobacco manufacturers, filed a federal lawsuit seeking to overturn the Providence restrictions. The claims in the lawsuit include the violation of First Amendment rights by unconstitutionally limiting the ability of manufacturers to communicate price information to adults through the use of coupons and the pre-emption of the Providence restrictions on promotional price products by the Federal Cigarette Labeling and Advertising Act. This federal law requires manufacturers to place warning labels on cigarette packaging and advertising and precludes a local or state government from imposing any "requirement or prohibition based on smoking and health" that is "with respect to the advertising or promotion of any cigarettes." (15 U.S.C. § 1334(b)). Every federal court that has considered the question of "promotion" has agreed that offering price discounts constitute "promotion" which means that a city is strictly precluded from regulating coupons and price discounts for cigarettes.

With the Providence lawsuit now on appeal to the U.S. Circuit Court of Appeals for the First Circuit, I am requesting that the New York City Council consider postponing consideration of Local Law 1021-2013 until the federal appeals court rules on the Providence ordinance since that ruling may have a direct impact on the proposed New York City restrictions.

Cigars Sold in Packages of Four or More: Retailers are responsible business people and are not in the business of selling cigars to underage minors. Restricting cigar package sizes to four or more will not help achieve the health-related goal of preventing cigar sales to minors due to the compliance by retailers with laws prohibiting tobacco sales to underage youth and will force adult consumers to purchase more cigars at a time since smaller packages of these products will not be available. The result is that adults may tend to smoke more cigars, not fewer cigars.

### **Raising the Legal Age to Purchase Tobacco Products to 21**

The current legal age to purchase tobacco products in the State of New York is 18 years old. Raising the legal age to purchase tobacco to 21 is unnecessary due to the efforts undertaken by retailers to ensure that underage youth are prevented from buying tobacco products. In fact, retail compliance rates in preventing tobacco sales to youth in New York City have risen dramatically in the past ten years and are among the highest in the nation. A Fiscal Year 2012 Synar Amendment Compliance Survey issued by the New York State Office of Alcoholism and Substance Abuse Services reports that 92% of retailers passed inspections and did not sell tobacco products to minors, continuing a trend of improving compliance since 2006.

The argument being made that increasing the legal age to purchase tobacco products to 21 is necessary to prevent underage youth from buying tobacco products in New York City does not take into account this significant effort being made by local retailers in preventing the sale of tobacco products to minors. Also, in a press release issued on April 22<sup>nd</sup> from the New York City Council Office of Communications, a claim is made that raising the legal age would reduce the opportunities for underage youth to obtain tobacco products from adult-aged youth.

Increasing the legal age to 21 will not solve the problem of "enabling adults" who are adult age siblings, other family members and friends who are older than 21 but may still obtain and provide tobacco products to underage youth. Moreover, a law in New York City requiring a

person to be age 21 to buy tobacco products will shift the buying habits of adults who are 18, 19 and 20 years old, and who purchase tobacco products, from buying tobacco products within New York City to purchasing tobacco products outside the city limits. In other words, there is no means to prevent this “cross-border” effect of young adults traveling across the city line to a neighboring city to buy tobacco products.

#### **Tobacco Product Display Ban (Int. 1020-2013)**

This proposed local law would ban from the public view all tobacco products prior to purchase, except in retail tobacco stores that do not permit underage youth to enter the store unless accompanied by a parent. From a legal perspective, this ordinance violates the First Amendment of the U.S. Constitution, which protects the right to advertise legal products. The packaging of a product is a form of advertising, and the proposed local law would prevent any tobacco product from being displayed by a retailer. That prohibition of displaying legal tobacco products undermines the constitutional right of a manufacturer, through a retailer, to display its products for the public to see.

In *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), the Supreme Court ruled that “so long as the sale and use of tobacco is lawful for adults, the tobacco industry has a protected interest in communicating information about its products and adult customers have an interest in receiving that information.” By requiring all tobacco products to be stored out of the public view, the proposed New York City local law completely prohibits the communication of information through tobacco product packaging and fails to adhere to constitutional standards protecting product advertising.

Thank you for your consideration of these comments and legal arguments regarding the three proposed local laws.

Sincerely,

***Thomas A. Briant***

NATO Executive Director and Legal Counsel

## Minimum Wholesale and Retail Cigarette Prices

As a result of price increases by manufacturers, the minimum wholesale and retail prices for certain brands of cigarettes in New York State have changed.

The minimum price enforcement date for this notice is December 10, 2012.

Minimum wholesale and retail cigarette prices must be determined by referencing manufacturers' list prices. Common list prices for certain standard brands are listed below. When a minimum price change occurs because of a manufacturer's price increase or decrease, the enforcement date of the change is the second Monday after the price change is announced. If a price change is announced on a Monday, that day is considered to be the first Monday. The enforcement date is in effect whether or not a manufacturer notifies the Tax Department of the price change.

After one manufacturer announces a price change, if other manufacturers also change their prices **before the second Monday after the initial price change is announced**, then those subsequent price changes will also be effective for enforcement purposes on the same second Monday.

When a minimum price change occurs because of an excise tax rate change, the enforcement date of the change is the date the rate change takes effect.

To determine the minimum wholesale or retail prices for any cigarette brand, you must refer to the manufacturer's price list. If you are unable to obtain the price list, please ask your supplier for assistance. In addition, Publication 508, *Minimum Price List for Cigarettes*, can help you determine the minimum prices of standard and nonstandard brands of cigarettes in cartons of 200 cigarettes, 10 packs per carton. See *Need help?* on the back for copies of Publication 508.

The New York State minimum prices relating to each of the 10 currently applicable manufacturers' list prices for standard brands are printed in the tables below.

You must charge your customers the minimum price or any price in excess of the minimum price.

You may not offer merchandise for sale as a tie-in with cigarettes if the total price of the items sold is less than the minimum price of cigarettes plus your cost for the other merchandise.

New York State (sales outside New York City)		Minimum sales prices for standard brands*				
Manufacturer's list price ** (per carton)	Agent's basic cost (per carton)	Type of sale				
		Wholesale (per carton)			Retail sales to the consumer	
		Agent to wholesale dealers	Agent to chain stores	Agent to retail dealers	Retail (per carton)	Retail (per pack)
\$37.74	\$81.24	\$82.16	\$82.66	\$84.59	\$90.51	\$9.06
\$38.34	\$81.84	\$82.76	\$83.27	\$85.22	\$91.18	\$9.12
\$40.44	\$83.94	\$84.88	\$85.40	\$87.40	\$93.52	\$9.36
\$41.14	\$84.64	\$85.59	\$86.11	\$88.12	\$94.29	\$9.43
\$42.04	\$85.54	\$86.49	\$87.03	\$89.06	\$95.29	\$9.53
\$43.24	\$86.74	\$87.70	\$88.25	\$90.31	\$96.63	\$9.67
\$44.54	\$88.04	\$89.02	\$89.57	\$91.66	\$98.07	\$9.81
\$48.90	\$92.40	\$93.41	\$93.99	\$96.19	\$102.92	\$10.30
\$51.40	\$94.90	\$95.94	\$96.53	\$98.78	\$105.70	\$10.57
\$55.25	\$98.75	\$99.82	\$100.44	\$102.78	\$109.98	\$11.00

New York City (sales within New York City)		Minimum sales prices for standard brands*				
Manufacturer's list price ** (per carton)	Agent's basic cost (per carton)	Type of sale				
		Wholesale (per carton)			Retail sales to the consumer	
		Agent to wholesale dealers	Agent to chain stores	Agent to retail dealers	Retail (per carton)	Retail (per pack)
\$37.74	\$96.24	\$97.29	\$97.89	\$100.17	\$107.19	\$10.72
\$38.34	\$96.84	\$97.89	\$98.50	\$100.80	\$107.85	\$10.79
\$40.44	\$98.94	\$100.01	\$100.63	\$102.98	\$110.19	\$11.02
\$41.14	\$99.64	\$100.72	\$101.34	\$103.71	\$110.97	\$11.10
\$42.04	\$100.54	\$101.62	\$102.25	\$104.64	\$111.97	\$11.20
\$43.24	\$101.74	\$102.84	\$103.47	\$105.89	\$113.30	\$11.33
\$44.54	\$103.04	\$104.15	\$104.79	\$107.24	\$114.74	\$11.48
\$48.90	\$107.40	\$108.54	\$109.22	\$111.77	\$119.59	\$11.96
\$51.40	\$109.90	\$111.07	\$111.75	\$114.36	\$122.37	\$12.24
\$55.25	\$113.75	\$114.95	\$115.66	\$118.36	\$126.65	\$12.67

\* Minimum prices listed are for standard brands and standard packages (20 cigarettes per pack, 10 packs per carton). See *Computing the minimum wholesale cigarette prices* on the back for the markups for each type of sale listed.

\*\* Consult manufacturer's price list to verify the price for each specific brand.

## Publication 509 (12/12) (back)

Furthermore, it is illegal for any cigarette agent, wholesale dealer, or retail dealer to induce, or attempt to induce, or to procure the purchase of cigarettes at a price less than the minimum price set by law. The Tax Department will issue this publication as notification for changes in the minimum prices each time a manufacturer's price change occurs or a state or city excise tax changes.

**Prepaid sales tax** — The prices below do not include any prepaid sales tax. The prepaid sales tax is paid by the agent at the time the cigarette tax stamps are purchased. The prepaid sales tax is passed along in each subsequent sale down to and including the retail dealer (but is not passed down to the consumer). At the time of delivery, the seller must give the purchaser either Form ST-133, *Certificate of Prepayment of Sales Tax on Cigarettes*, or have the required information included on the invoice.

**State and local sales taxes** — State and local sales taxes must be collected from the consumer at the time of the retail sale. Sales tax must be collected upon the total retail sale price, including sales in New York City (effective September 1, 2003). For more information, see Important Notice N-03-22, *Computation of Sales Tax on Cigarettes Sold Within the City of New York*.

### Computing the minimum wholesale cigarette prices

Publication 508, *Minimum Price List for Cigarettes*, lists the minimum prices for standard and nonstandard brands of cigarettes by the carton (20 cigarettes per pack, 10 packs per carton).

The *basic cost of cigarettes* means the invoice cost of cigarettes to the agent who purchases from the manufacturer, or the replacement cost of cigarettes to the agent, in the quantity last purchased (whichever is lower), less all trade discounts (except discounts for cash), to which is added the full face value of any stamps (excise tax only) that are required by law. (The federal excise tax placed on the manufacturer would be included in the invoice cost of cigarettes from the manufacturer.)

The basic cost of cigarettes **does not** include any sales tax prepaid by the agent at the time the cigarette tax stamps were purchased.

The *cost of the agent* means the basic cost of cigarettes (as defined above) plus the cost of doing business by the agent. Unless otherwise substantiated, the cost of doing business by the agent is presumed to be as shown in the table below:

Percentage (plus 20 cents) of the basic cost of cigarettes per carton (20 cigarettes per pack, 10 packs per carton)	
Agent to wholesale dealers	7½% plus 20 cents
Agent to chain stores	1½% plus 20 cents
Agent to retail dealers	3⅞% plus 20 cents

In determining the prices for nonstandard brands, remember that an agent may not sell cigarettes to wholesale dealers (as defined in the Cigarette Marketing Standards Act (CMSA)) below the basic cost of cigarettes plus 7½% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton). An agent or wholesale dealer may not sell cigarettes to a registered chain store below the basic cost of cigarettes plus 1½% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton). An agent or wholesale dealer may not sell cigarettes to a retail dealer below the basic cost of cigarettes plus 3⅞% and 20 cents per carton (20 cigarettes per pack, 10 packs per carton).

Anyone selling at a price less than the *cost of the CMSA retail dealer* minimum sales price must have proof on file that the customer was eligible for the lower purchase price. The *cost of the CMSA retail dealer* is presumed to be a 7% markup of the *agent-to-retail-dealers* price.

The selling price of cigarettes sold by one licensed cigarette agent to another, when the cigarettes are either picked up at the seller's warehouse or delivered to the purchaser's warehouse, is not required to include the cost of doing business by the agent, but it may not be less than the basic cost of the cigarettes.

If an agent sells cigarettes to a chain store with 15 or more outlets (excluding vending machine operators), the cigarettes are delivered to a central warehouse owned and operated by the chain store, and the chain store delivers the cigarettes to its outlets, the agent's selling price is not required to include the cost of doing business by the agent (that is, the agent's presumptive 1½% plus 20 cents minimum markup is not required). However, the price may not be less than the basic cost of cigarettes.

**Custom stamping** is the affixing of cigarette tax stamps by one agent for, or on behalf of, any other agent. It also includes the sale of stamped cigarettes by one agent to another agent. **Custom stamping** is prohibited without the prior written authorization of this department. Send your request to: NYS Tax Department, TDAB-FACCTS-Cigarette Tax Unit, W A Harriman Campus, Albany NY 12227. See also Cigarette Tax Regulations (Title 20 NYCRR section 74.3(a)(3)). Violations of this provision may result in the revocation or suspension of the agent's license under Tax Law Article 20.

A licensed agent who sells cigarettes at retail is considered to be a CMSA retail dealer. The cost of the agent for those retail sales must be the same as the *cost of the CMSA retail dealer*.

### Computing the minimum retail cigarette prices

To compute the minimum retail selling price for cigarettes (standard, nonstandard, generic, or subgeneric brands), 20 cigarettes per pack, 10 packs per carton, you may use Publication 508.

Anyone making retail sales of cigarettes must first determine the *agent-to-retail-dealers* minimum selling price and increase that amount by at least 7%.

If a retail dealer does not know the manufacturer's list price for computing the minimum retail cigarette price, the retail dealer should mark up the cartons or packs of cigarettes 7% above its invoice cost (excluding any prepaid sales tax).

If you need help determining the legal minimum wholesale or retail selling price of cigarettes, contact your supplier or call the New York State Business Tax Information Center at the number listed under *Need help?* below.

**Civil penalties** — Violations of the CMSA may result in the suspension of an *agent's* or *wholesale dealer's* license or the imposition of a fine not to exceed \$20,000, or both, for a first offense. Subsequent violations within three years may result in license revocation, suspension, or suspension plus a fine not to exceed \$50,000.

**Criminal penalties** — Violations of the CMSA by *wholesale* or *retail dealers* are a Class B misdemeanor and may result in fines of up to \$500 (or double the amount of the gain from the commission of the offense) or up to three months imprisonment, or both.

## Need help?



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**Miscellaneous Tax Information Center:** (518) 457-5735

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## Testimony on Increasing the Smoking Age

David Schwartz

New York Association of Grocery Stores

NYC Council Committee on Health

May 2, 2013

- The City of New York has been waging a relentless campaign against the legal sellers of tobacco products since the mayor took office in 2002. Initially, the city raised the cigarette tax from 8 cents a pack to \$1.50.
- The city's bodega owners who relied on the tobacco revenue to survive were particularly incensed by the proposed tax and took to the steps of city hall to castigate the mayor.
- The proposed cigarette tax increase was the first sign of Mike Bloomberg's obsession with health-and its proposal was a clear indication that any and all other concerns would be downgraded if health was considered the policy goal. This came as quite a shock since this aspect of Bloomberg's persona was kept well hidden when he ran on a conservative, pro-business platform. It was at the same time also a clear indication of how the interests of small business would be sacrificed on the altar of Bloomberg's nascent Nanny State.
- By the summer of 2002 it was becoming abundantly clear that the precipitous cigarette tax increase-by all accounts the largest proportional tax increase in NYC history-was having its toll on the retailers. Our ominous predictions about the loss of sales and badly needed revenue-dismissed as alarmist by some clueless elected officials-were unfortunately too close to the mark;
- *"The number of cigarettes sold in New York City has been cut almost in half since the city began charging the highest cigarette tax in the nation last month, driving the price of many cigarettes to \$7.50 a pack, according to figures released yesterday.*
- *Only 15,630,000 packs of cigarettes were sold in the city during July, the first month of the tax, which represents a 47 percent drop from the 29,220,000 packs sold last July, according to Sam Miller, a spokesman for the city's Department of Finance."*



- So with protests mounting and editorial support climbing at the NY Post (5/15/2002) and NY Sun (9/17/2002), the mayor was questioned sharply about the bodega plight on the heels of one of our many press events on the subject. His response epitomized the extent to which the mayor's detachment and incapacity for empathy governed his relationship with the city's small businesses:  
*"Mayor Bloomberg infuriated bodega owners yesterday by dismissing complaints that his cigarette tax is killing their businesses. "I just find it inconceivable that you could equate people's lives - particularly children that buy cigarettes in bodegas - with a minor economic issue," he said yesterday. "Let's get serious!"*
- The strength of the health impulse made the mayor and his acolytes impervious to a spate of stories that highlighted violent episodes related to the "buttlegging" of cigarettes. Stories that reported on the death of street sellers and the use of black market cigarette profits for terrorist activity, were inconsequential in the face of the imperative to force New Yorkers to live healthier lives.
- The end result of this health mania-along with the other high taxes and regulation that the city has thrust on the small stores-is an economic crisis of neighborhood retailers. As Albor Ruiz has pointed out: "Small, friendly and convenient, bodegas are more than businesses - they are veritable neighborhood institutions. Yet they are disappearing faster than you can say "stimulus package." Ramón Murphy, president of the Bodega Association of the United States, and a bodega owner, is sounding the alarm about the state of the business to which he has dedicated 24 years of his life - and that has allowed him to raise four children.
- New York needs a healthy business climate. An obsession with regulating the stores-regulating them out of business-is itself unhealthy. We need to recognize the importance of the neighborhood retailers. Without these stores the health and diversity of our local communities will die. Now that's really unhealthy.
- The current legislation to raise the smoking age and force retailers to play "hide the cigarettes," is just another example of the mayor and the speaker's unhealthy health mania-a concern that doesn't encompass the health of the local stores. None of these new proposals will have any impact on reducing smoking. The end result will be to further feed a black market in cigarettes that is totally out of control.

- What the city needs to do is to crack down on illegal sellers from backpacks that are all over the poorer neighborhoods. None of these black marketers are proofing for age or charging the taxes that the city and the state rely on.
- The Bloomberg administration and the city council should put these bills on hold and do an economic impact analysis of how the current taxes and regulations have impacted the viability of stores and newsstands since 2002. It's great to posture as being anti-tobacco, but it's a lot more thoughtful to analyze whether proposed laws will actually do more harm than good.
- We ask the council to delay the consideration of these bills until the impact study is done. We also call on the mayor to launch a concerted campaign to rid the city of black market sellers-something the anti-tobacco mayor has strangely done little about

# **The Small Business Congress, Inc.**

*United with a Goal of Creating a Healthy Small Business Environment in New York City*

146-03 34th Avenue, Flushing, NY 11354

Tel: (718) 886-5567 Fax: (718) 886-5535

E-mail: [smallbusinesscongress@yahoo.com](mailto:smallbusinesscongress@yahoo.com)

## TESTIMONY

PUBLIC HEARING OF NYC COUNCIL COMMITTEE  
ON HEALTH, MAY 2, 2013, 250 BROADWAY

ON

INTRO NO. 250A

INTRO NO. 1020

INTRO NO. 1021

by

SUNG SOO KIM  
President

THE SMALL BUSINESS CONGRESS, INC.

My name is Sung Soo Kim, President & CEO of The Small Business Congress, Inc., a federation of 75 trade organizations in the City, is firmly opposed to Mayor Bloomberg's three pending tobacco regulation bills. SBC admires Mayor's spirit underlying these bills, but they have gone astray from the spirit. These legislative crafts do not guarantee a responsible and positive collective good.

These bills will be ended up exclusively with damaging 13,000 tobacco retailers in the City, while enriching opportunities for black marketers' growth, helping the Government lose legitimate taxes, and guaranteeing no increased protection of minors from smoking.

The small business community including these 13,000 cigarette retailers in the City has been in serious crisis. From 1986 to 2011, the City recorded 383,712 stores disappeared, which eventuated in 1,726,704 job losses. (enc.#1). New York State ranked the worst number #50 in the Small Business Survival Index as the worst and least friendly public policy environment. (enc.#2). SBC worries that the bad scenario of the 1995-97 Decline in Grocery Store Jobs Selling Tobacco Products in NYC (Washington-based Political Economic Analysis) by minus 6.6% because of the tobacco excise tax may recur with the input of these legislative crafts. (enc.#3).

Mayor's and Speaker Quinn's proposals knowingly or unknowingly will enrich DCA's ticketing blitz. DCA has maximized existing tobacco codes towards creating maximum fines. For instance, missing the Tobacco Warning sign at the store is fined \$1,450. Any sign missing one word leads to the fine of \$450. In fact, this sign requirement used to be one of 7 warning items of DCA up to the Giulinai Administration. (enc.#4). Intro #1020 and #1021 when these become laws will safely create 7 to 11 violation codes thus greatly "contributing" to enrich City's coffer.

The Small Business Congress, Inc. now presents four recommendations to Mayor and the Council:

- I. SBC demands Mayor and the Council to put these three ill-conceived and unprepared bills under MORATORIUM. An economic impact study and a pilot study should be implemented in advance. DCA's existing and prospective fine schedules involving tobacco sales should be audited by the Council's authority. SBC denounces the present DCA fine policy to be a typical example of "Taxation Without Representation." DCA even further goes to link the pending fine to the suspension of any license. This is a Gestapo enforcement!
- II. SBC proposes Installation of "A Neighborhood Tobacco Surveillance Team" for each neighborhood of the City. This team is composed of police, neighborhood influentials, school, community board, store-owner and or church. It functions as a street-corner education and surveillance

agent to keep neighborhood minors from smoking. South Korea is a successful example. A joint body of PTA, Red Cross, Health Department implement education programs each school to keep minors away from smoking. South Korean showed a reduction of minor smoking from 13.3% in 2007 to 11.4% in 2012.(enc.#5).

- III.SBC calls on Mayor and the Council to launch a concrete campaign to rid the City of Black Market Sellers. The profit made from the illicit tobacco trade channels, black markets, fund other serious criminal activities, i.e., organized crimes, terrorist organizations. (Disclosed by Tobacco,Firearms and Explosive in a 2011 report to the Congress). SBC demands Mayor Bloomberg at least lays out a war against these illicit tobacco trade channels during his remaining days as Mayor.
- IV. Mayor Bloomberg's Style of Governance is to put the Community in confrontation with the Government. SBC sincerely appeals to all Mayoral candidates of 2013 not to follow Mayor Bloomberg's governance style but to build up Partnership between the Government and the Community.

< ENC.#1 >

NEW YORK CITY L & T COURTS ALL COUNTIES  
COMMERCIAL WARRANTS FOR EVICTIONS ISSUED  
FOR BUSINESSES CITYWIDE 1986- 2011

For majority:

Holdovers - Leases expire, landlords want tenants removed 70%  
Non-payment of rent , landlords want tenants removed 30%

MAYOR KOCH:

YEAR	NUMBER
1986	3,575
1987	3,697
1988	5,595
1989	<u>4,566</u>

MAYOR DINKINS:

1990	6,684
1991	6,634
1992	7,663
1993	<u>6,928</u>

MAYOR GIULIANI:

1994	8,305
1995	6,824
1996	8,860
1997	<u>8,819</u>
1998	8,848
1999	9,137
2,000	7,812
2001	<u>7,384</u>

MAYOR BLOOMBERG:

2002	7,444
2003	7,665
2004	8,070
2005	<u>6,950</u>
2006	7,147
2007	6,998
2008	6,714
2009	<u>7,582</u>
2010	6,560
2011	<u>6,259</u>

TOTAL EVICTION WARRENTS ISSUED AGAINST BUSINESSES 182,720 DEDUCT 30% 54,816

**Due to unfair lease terms Total 127,904 SB Evicted 1986-2011**

ESTIMATED 2/3 BUSINESSES VOLUNTARILY CLOSE AND WALK AWAY without a fight in court = 255,808

**ESTIMATED BUSINESSES CLOSINGS NYC 1986-2011 383,712**

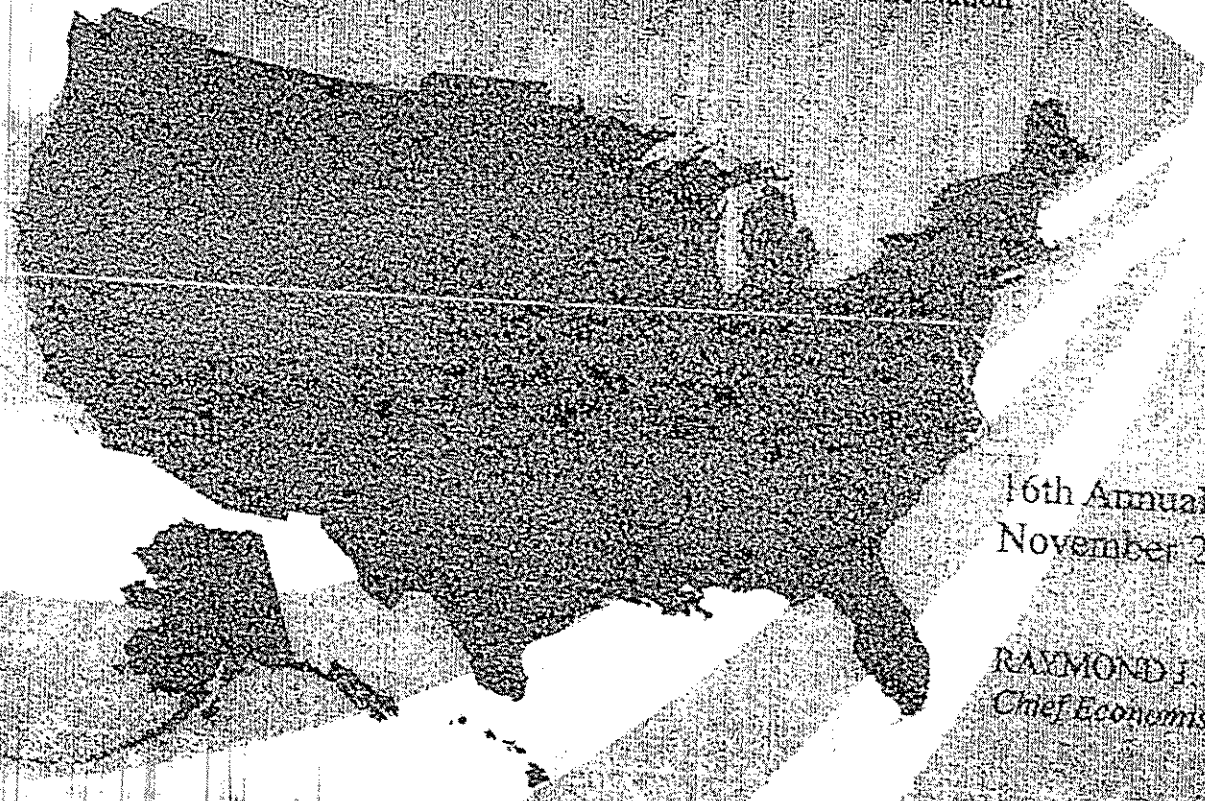
ENC.#2 ✓

SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL'S

REVISED & EXPANDED

# Small Business Survival Index 2011:

Ranking The Policy Environment For Entrepreneurship Across The Nation



16th Annual Edition  
November 2011

RAYMOND J. KEATING  
*Chief Economist*

[www.sbecouncil.org](http://www.sbecouncil.org)  
empowering small business, promoting entrepreneurship



# Small Business Survival Index 2011: State Rankings\*

(Ranked from the Friendliest to the Least Friendly Policy Environments for Entrepreneurship)

Rank	State	SBSI	Rank	State	SBSI
1	South Dakota	32.292	26	Louisiana	60.120
2	Nevada	38.531	27	Idaho	60.452
3	Texas	39.076	28	New Mexico	60.576
4	Wyoming	46.049	29	Michigan	61.480
5	South Carolina	47.047	30	Montana	62.193
6	Alabama	48.765	31	Delaware	62.785
7	Ohio	49.538	32	West Virginia	63.486
8	Florida	50.081	33	New Hampshire	63.568
9	Colorado	51.317	34	Oregon	65.181
10	Virginia	51.697	35	Pennsylvania	65.350
11	Washington	52.312	36	Nebraska	66.420
12	Mississippi	52.319	37	North Carolina	66.858
13	North Dakota	53.296	38	Maryland	67.103
14	Utah	53.374	39	Hawaii	70.889
15	Arizona	54.388	40	Illinois	72.078
16	Georgia	54.639	41	Iowa	72.525
17	Missouri	55.382	42	Massachusetts	73.976
18	Arkansas	56.162	43	Minnesota	75.308
19	Oklahoma	57.080	44	Connecticut	75.587
20	Indiana	57.747	45	Maine	75.876
21	Alaska	58.802	46	California	76.357
22	Kentucky	58.934	47	Rhode Island	77.250
23	Kansas	58.977	48	Vermont	78.291
24	Wisconsin	59.282	49	New Jersey	82.625
25	Tennessee	59.976	50	New York	82.787
			51	Dist. of Columbia	84.354

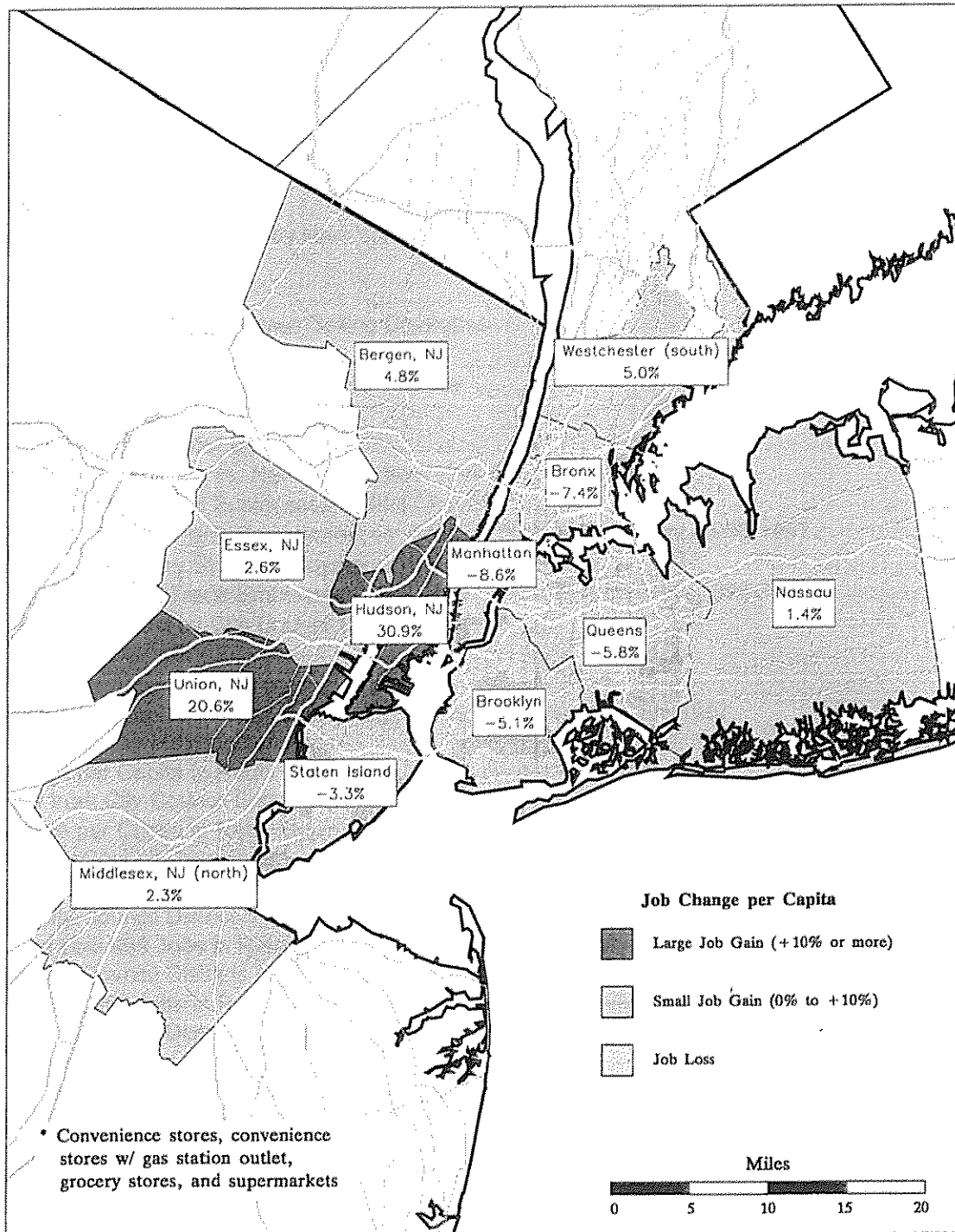
and note that the District of Columbia was not included in the studies on the state tort costs, eminent domain legislation and highway cost efficiency, so D.C.'s last place score actually should be worse.)



< ENC.# 3 >

## The Decline in Grocery Store Jobs in New York City, 1995 - 1997: A Case Study in Cross-Border Differentials

by William Lilley III and Laurence J. DeFranco



**SALE of**

cigarettes, cigars, chewing tobacco,  
powdered tobacco, shisha or other  
tobacco products, herbal cigarettes,  
electronic cigarettes, rolling papers  
or smoking paraphernalia,

to persons **UNDER 18 years of  
age is PROHIBITED BY LAW.**

속보 위기 빠진 '셀러리맨 신화' 강력수

MK 뉴스 연예 스포츠 패션 오피니언 DB플러스 포토 게임

< ENK.#5 >

4월 30일 화 강릉 14.8℃

검색

뉴스를 전체기사 경제 정치 사회 국제 기업 증권 부동산 IT·과학 문화 기획/연재 Special Edition 영문뉴스 전문뉴스

사회

청소년 금연교육 효과있네 "담배끊고 결석도 줄었어요"

여성가족부 프로그램에 올해 2000명 참여

기사입력 2012.12.25 17:04:04 | 최종수정 2012.12.25 17:24:30

0 0 0 보내기

NOTICE



인기뉴스

이웃

기사

CALLING No.1 클럽 갤럭시 KPGA 전골립 사용률 1위



대구 능인고등학교 학생들이 지난 11월 여성가족부가 진행하는 금연 교육프로그램에서 오가명상 강습을 받고 있다. < 사진 제공 = 여성가족부 >

서울 신현고등학교 2학년에 재학 중인 이 모군.

이군은 지난해 겨울까지만 해도 하루에 담배를 한 갑씩이나 피우는 '헤비스모커'였다.

그러나 여성가족부가 2010년부터 청소년흡연증주예방협회와 청소년들을 대상으로 진행하는 금연교육을 받고 나서 기적처럼 금연에 성공했다.

이군은 "교육을 받으면서 내 꿈과 진로에 대해 이야기를 나누다가 난생 처음 미래에 대해 생각해보게 됐다"며 "그 일을 계기로 성실하게 살아야겠다는 생각이 들었고, 금연을 결심하는 계기가 됐다"고 말했다.

이군은 평소 학교에 결석하는 일이 잦았지만 금연에 성공하면서 결석일수도 줄었다.

금연을 계기로 생활 태도까지 개선된 것이다.

여성부가 실시하고 있는 금연 사업은 날로 높아지는 청소년들 흡연율을 낮추기 위한 목적에서 시작됐다.

제자에게 올랐던 위 김요한 중학교 교사 직발  
핵심생산인구 비중 19년만에 40% 붕괴  
알바 시장에 뛰어드는 50대 꾸준히 늘어  
오늘의 운세 (2013년 4월 29일 月)  
은퇴후 일자리 '행정사' 도전해볼까  
'생칼로 비판' 50대 여성 지하철 무선  
경의선 전철, 단전으로 한때 운행 중단  
제주 516도로서 렌터카 전복...관광객 6명 사..  
원세훈 전 국가정보원장 검찰 출석(종합)  
오늘의 운세 (2013년 4월 30일 火)

기획/연재

이웃



[이은주 기자의 경제학으로 세상 읽기] 머피의 법칙에 대한 경제학적 해석



[버린 IT기거서 정보 줄줄 샌다] 버린 IT기거서 개인정보 줄줄 샌다... '해킹' 은상 될수도

분야별 주요뉴스

종합 섹테크 라이프 이슈



[오늘의 이슈] 4.24 국회의원 재보궐선거 결과는



[오늘의 역사] 유시민 통원 첫날 '북장' 소동

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April 10, 2013

Dear *Council Member,*


We represent the statewide association of cigarette tax collection agents and bear witness daily to the tragedy of the Mayor's policy of having created the highest cigarette taxation in the nation, while allowing massive cheating in an atmosphere of non-enforcement. It is costing the city mega-millions in lost revenue and lost jobs, while frustrating health initiatives and making it impossible for honest storekeepers to compete. (A policy that has endured to benefit only criminals and terrorists.)

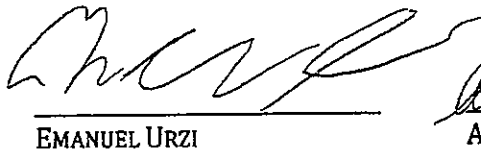
Please find enclosed the following articles:

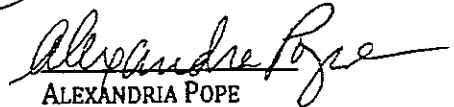
- The Great Houdini
- New York Post article, refuting high taxes reduces smoking
- Brooklyn DA press release
- The illegal cigarette market...the case of the South Bronx
- Our Recommendations

We will be available for discussion at the association office and may be reached at (718) 439-9011. We value your help in overcoming this irresponsible situation.

Very truly yours,

  
ARTHUR KATZ

  
EMANUEL URZI

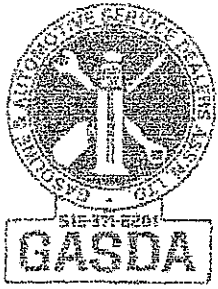
  
ALEXANDRIA POPE

**About the undersigned:**

**Arthur Katz:** Currently is the Executive Director of the NYSAWMD, having served in the NYPD for 33 years as Executive Officer 41 pct. (Fort Apache), commanding officer 61 and 71 pcts. Commanding Officer Operations Division, Executive Officer Major Case and Commanding Officer safe, loft and truck.

**Emanuel Urzi:** Currently is the V.P. for enforcement of the NYSAWMD, having served in the New York State Tax Department for 48 years; 45 of which assigned to the Criminal Enforcement Division as, Chief Excise Tax Investigator, Chief of Internal Affairs and Special Investigations, Director of Cigarette Tax Bureau, Director of Tax Investigations, special assistant to the Deputy Commissioner of Enforcement.

**Alexandria Pope:** President of Local 805 of the International Brotherhood of Teamsters. This is the union that represents the tax collection agents (the only source of taxed cigarette purchases in the state).



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May 2, 2013

**Testimony –** New York City Council - Committee on Health  
Thursday, May 2, 2013 - 1:00 PM  
6<sup>th</sup> Floor Committee Room  
250 Broadway  
New York City, NY

**Subject -** Intro #1020  
Relating to the display of cigarettes and tobacco products

Intro #1021 Relating to requiring public health messages where tobacco advertising appears

Also to oppose Intro #250-A in relation to raising the legal tobacco product age to 21 years.

Thank you for the opportunity to testify before this committee. My name is Ralph Bombardiere. I am the Executive Director of the Gasoline and Automotive Service Dealers Association, representing repair shops, gasoline stations and convenient stores throughout the metropolitan area. GASDA was established in 1931 in Brooklyn, New York. It has been in business for eight-two years. Our office recently moved to Inwood, Long Island when we merged with a Long Island Association.

GASDA is a member of the New York State Association of Service Stations and Repair Shops and the Service Station Dealers of America. It is our obligation to protect our members in the industry against unreasonable and unfair regulation and legislation.

Unfortunately, unreasonable regulations run rampant in New York City. Our members are constantly harassed and badgered by City enforcement agencies. If it's not New York City Consumer Affairs, it's the Department of Environmental Protection or the Health Department. To say this industry needs relief is an understatement.

The three proposals before the Council today rank among the highest of the insults and injuries bestowed upon the service station industry in this City, along with other businesses. On any given day New York City inspectors run rampant throughout

**RALPH BOMBARDIERE**  
Executive Director

**KENNETH GELLER, ESQ.**  
General Counsel

businesses issuing violations and draconian fines destroying any possibility for financial security for businesses in this City. The association is forced to retain attorneys on staff just to handle the violations, which are constantly being enforced. We expect and do comply with City laws and regulation but the smallest violation reaches a magnitude of exorbitant fines along with a procedure, where even if our member is innocent, it is almost impossible to present a defense.

Some of the agencies have what they call a settlement hearing. I challenge you to go to one and recognize this as a fair procedure.

However, we are here today to express our concern of Intro 1020, Intro 1021 and Proposed Intro 250-A. We recently went through a court proceeding against a New York City regulation to post a disgusting sign wherever cigarettes were being sold. The case went to court and the City lost. I assume that the case will be appealed because the City doesn't easily accept defeat even when they're wrong. I suspect that Intro 1020 and 1021 will face a similar legal challenge.

Intro 1020 and Intro 1021 are bad enough, but Intro 250 -A is mind-boggling. Do not misinterpret this to mean drop Intro 250, and that Intro 1020 and 1021 will be OK.

The City cannot continue to expect retail clerks to challenge persons under the age of 21. An individual may have just returned from Afghanistan or Iraq, at twenty years of age, and we are not allowed to sell them cigarettes because they are not old enough to make up their own mind? The City must have some indication of how easy it is to get illegal drugs, marijuana and booth legged cigarettes in the City. Enforcement and regulatory agencies, and you the legislature, haven't even been able to successfully collect the taxes on tobacco products and here you are placing the clerk in the position of turning down someone who is twenty and is buying cigarettes. If you are serious about this, than make it illegal for anyone under the age of twenty-one to purchase cigarettes. Make it illegal to purchase tobacco product if you are under the legal age.

If the City expect this industry or any industry to enforce these unreasonable and draconian laws and regulations than I suggest that you make arrangement to arm the clerks. There are times when garbage cans come through windows and that a Snapple bottle will hit a clerk in the head. We are not law enforcement agencies. The employees are clerks. Some of them struggle with the language, some have difficulty reading, and they are trying to make a living and feed their families. The owners of these retail stores do the best they can; they provide a service and they also provide employment to many people who otherwise would have trouble earning a living.

I challenge you to think of the people who work in convenient stores. I cannot believe anyone feels this law will not financially damage a convenient store and force owners to lay off employees. In an economic turndown when jobs are almost impossible, proposing legislation that is going to reduce employment is ridiculous.

May 2, 2013

page 3

I ask that you once again review Intro 1020, Intro 1021 and Intro 250-A, and withdraw them from any possibility of becoming law or regulation.

Again, thank you for the opportunity to speak before this body. I would hope that you would consider the businesses and people affected before casting your vote in favor of any of these three Intro's.

Respectfully submitted,  
Gasoline and Automotive Dealers Association



The Consumer Advocates for Smoke-Free Alternatives Association

<http://casaa.org>

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TESTIMONY OF GREGORY CONLEY, J.D. / M.B.A.

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ALTERNATIVES ASSOCIATION

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON HEALTH

HEARING ON INT-1020 & INT-1021

May 2, 2013

Chairwoman Arroyo and distinguished members of the Health Committee:

Int-1020 and Int-1021 would redefine “tobacco product” in several subchapters of New York City law to include vapor products, which are commonly referred to as electronic cigarettes or e-cigarettes. Such a redefinition would have several unintended consequences, with the most critical being that it would act as an impediment to New York City smokers who are looking to quit smoking and dramatically reduce their health risks. Thus, the Consumer Advocates for Smoke-free Alternatives Association (CASAA)<sup>1</sup> urges the New York City Council to reject these ordinances unless amendments are put in place to ensure that enactment of these ordinances will neither harm public health nor accidentally protect cigarette markets.

### **(1) Legal Status in the State of New York**

In 2012, CASAA supported New York State Assembly bill AB A9044-B, which banned selling of e-cigarettes to minors. In line with other states that have rightfully banned sale of such products to minors, New York State law does not classify the devices as “tobacco products.”<sup>2</sup>

### **(2) Tobacco Product Definition**

Both Int-1020 and Int-1021 would redefine and expand the New York City’s definition of “tobacco products” under several different subchapters of New York City law to include any

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<sup>1</sup> CASAA is a non-profit, all-volunteer organization with a grassroots membership of approximately 3,000 individuals from all walks of life. CASAA is dedicated to ensuring the availability of reduced harm alternatives to smoking and to providing smokers and non-smokers alike with honest information about those alternatives. Since its founding in 2009, CASAA has educated the public and increased awareness about the benefits of reduced harm alternatives to smoking. CASAA also encourages responsible legislative policy designed to improve public health by recognizing that smoke-free tobacco- and nicotine-containing products are inherently far less dangerous than smoking.

<sup>2</sup> See 2012 New York Code PBH - Public Health Article 13-F - (1399-AA - 1399-MM)



product “made or derived from tobacco that is intended for human consumption including any component, part, or accessory of such product.” Notably, the drafters of this definition included an indefinite list of some products that would be considered “tobacco products” under New York City law. Absent from this list is any mention of e-cigarettes.

It is evident that the drafters of these ordinances had no intention of restricting e-cigarettes. Nonetheless, the new definition of “tobacco product” is sufficiently broad to cover them. The nicotine found in e-cigarettes – as well as pharmaceutical nicotine products like the nicotine gum and nicotine patch – is derived from the tobacco plant. Therefore, e-cigarettes with nicotine are likely to be found by the enforcing authority to be covered under these ordinances.

Consequently, from this redefinition, passage of Int-1020 and Int-1021 would apply nearly every New York City law referring to “tobacco products” to the sale of e-cigarettes that contain nicotine. However, e-cigarettes are also sold without nicotine. Such a product would not contain anything “made or derived from tobacco,” so it would appear that such products would fall outside the scope of the proposed ordinances. On the other hand, by also including “any components, parts, or accessories of a tobacco product” in the definition, the question of what products these ordinances actually cover becomes very muddled.

E-cigarettes are radically different from all tobacco products currently in the market. We are no longer in the era where a “component, part, or accessory” of a tobacco product is essentially limited to cigarette rolling papers. The majority of individuals who will testify before the committee today will be using e-cigarette devices that cost upwards of \$200, contain replaceable parts, and can be refilled with a liquid solution that may or may not contain nicotine. Without clarification, it is likely that litigation will be the only solution to the quandary of what this new “tobacco product” definition would actually cover.

### **(3) Int-1021 Would Ban Flavored E-Cigarettes and Foreclose Premium E-Cigarette Stores from Opening in New York City**

In 2009, the New York City Council passed an ordinance banning sales of “flavored tobacco products” in virtually all businesses in New York City. The only exception in the law is that flavored tobacco products can be sold in “tobacco bars” as defined by Title 17, Chapter 7, Subchapter 2, Section 17-502 of the New York City Administrative Code. In brief, a tobacco bar is a specially designated business where cigarettes and/or cigars are permitted to be smoked. New York City law does not permit the operation of any tobacco bar that did not exist in 2001.

If Int-1021 is passed, it’s likely that there will never be a brick & mortar storefront selling e-cigarette products in any of the five boroughs. Whereas most brands of e-cigarettes sold in convenience stores or gas stations come in two flavors, menthol and tobacco, storefront e-cigarette businesses will often have a list of available flavors that go far past 50 and even beyond 100. Many e-cigarette consumers have reported that the availability of flavors had made the transition from smoking to vaping (exclusive or near-exclusive use of e-cigarettes) much easier than if they were only able to use tobacco or menthol flavors. There is also no evidence of use of flavored e-cigarette products among minors or young adults.<sup>3</sup>

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<sup>3</sup> See Villanti, et. al., Flavored Tobacco Product Use Among U.S. Young Adults, American Journal of Preventive Medicine, 1 April 2013, 44:4, 388-391 (in a survey of 4,196 respondents between the ages 18-34, failing to find a single person who had used a flavored vapor product); Pepper, et. al., Adolescent Males’ Awareness of and Willingness to Try Electronic Cigarettes,

The New York City Council has been a leader in enacting laws on the basis of protecting the public from the hazards of secondhand smoke. Under Int-1021, the only place in New York City where an ex-smoker or a smoker looking to quit can legally buy a flavored e-cigarette will be in a smoky bar. We submit that such a proposition does not make any sense.

Passage of Int-1021 in its current form would also shut down at least one New York City-based e-cigarette business. CASAA is also aware of at least three individuals who, before becoming aware of these ordinances, were in the process of trying to open e-cigarette specialty stores in New York City. Because customers of specialty e-cigarette stores are almost exclusively interested in flavors – including varieties of menthol and tobacco that would also be banned under this ordinance – none of these stores is likely to ever open up in New York City.

**(4) New York State Law Bans Sales of E-Cigarettes to Minors, and therefore there is no Need to Classify E-Cigarettes as a “Tobacco Product”**

Int-1021 would also amend the definition of “tobacco products” found in Title 17, Chapter 7, Subchapter 1, Section 17-702 of the New York City Administrative Code. Subchapter 1 concerns sales to minors and tobacco product licensing. The State of New York has already banned the sale of e-cigarettes to minors. Consequently, there is no need for the City of New York to redefine “tobacco products” in order to prevent minors from purchasing e-cigarettes.

**(5) Suggested Amendment to Int-1020 and Int-1021**

CASAA proposes the following amendment to the definitions of “tobacco product” found in Int-1021 and Int-1021.

“Tobacco product” means any product made or derived from tobacco intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, or dissolvable tobacco product. Tobacco product shall not include cigarettes, vapor products, or any product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purpose.

“Vapor product” means a noncombustible product containing nicotine that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge; as

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The Journal of Adolescent, 1 February 2013, 52:2, 144-150 (in a survey of 228 respondents between the ages of 11-19, failing to find a single nonsmoking youth who had tried a vapor product, and finding no difference in the willingness of youth to try a regular vapor product versus a flavored vapor product).

well as any vapor cartridge or other container containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. "Vapor product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purpose.

Vapor products (e-cigarettes) are helping millions of American smokers quit smoking or dramatically reduce their intake of combustible cigarettes. If the New York City Council's intention in considering Int-1020 and Int-1021 is to reduce smoking, the Health Committee should act to ensure that vapor products are not unnecessarily restricted. Therefore, CASAA urges you to reject or substantially amend Int-1020 and Int-1021.

Sincerely,



Gregory Conley, J.D. / M.B.A.

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Legislative Director -- Consumer Advocates for Smoke-free Alternatives Association (CASAA)

## **Addendum: A Brief Explanation of Tobacco Harm Reduction**

According to the Centers for Disease Control (CDC), cigarette smoking is the leading cause of preventable death in the United States. In fact, the CDC estimates that 443,000 deaths in the United States each year are attributable to smoking, representing 1 out of 5 deaths in the United States. [1] Smoking rates declined steadily from 1965 (42.4% of adults) to 2004 (20.9 % of adults), but over the last several years, smoking rates have stagnated. The CDC estimated a smoking rate of 18.9% in 2011, representing a decline of only 2 percentage points over the entire 7-year period from 2004 to 2011.

Most notably, this stagnant period represents a time during which the tobacco control and public health communities successfully lobbied for, among other things, higher cigarette taxes and increased smoke-free legislation. Despite this, the smoking rate has barely budged, and millions of Americans continue to smoke.

While nicotine is arguably what keeps many smokers smoking, it is not what causes the whole host of health problems associated with smoking. What is so dangerous about smoking is not the nicotine; rather, the process of inhaling smoke. . [2] Despite this, public health care professionals and the tobacco control community, insist that in order to quit smoking, one must ultimately give up nicotine, and they are resistant to the very common-sense observation that long-term, successful smoking abstinence can be achieved without demanding nicotine abstinence.

Given (i) the significant risk of disease and death associated with smoking,(ii) the dismal long-term success rate of 7% for FDA-approved smoking cessation products (or, perhaps more appropriately, a stunning failure rate of 93%), and (iii) the stagnant smoking rates, it is clear that policy makers must consider alternatives in order to reduce smoking rates. CASAA respectfully submits that tobacco harm reduction is the most promising alternative.

Tobacco harm reduction describes actions taken to lower the health risks associated with using tobacco or nicotine. While cigarettes and smoke-free tobacco products are both addictive (i.e., creating daily dependence), the risks associated with cigarette smoking far, far exceed those associated with smoke-free products. In fact, on a continuum of tobacco mortality risk from 1 to 100 where nicotine-replacement therapy (NRT) products such as the patch and gum are a 1 and cigarettes are a 100, smoke-free tobacco products fall below a 2. [3]

The public health and tobacco control communities claim that smoke-free tobacco- and nicotine-containing products are not a "safe" alternative to smoking, leaving the general public with the mistaken impression that these smoke-free products carry risks similar in magnitude to smoking. However, the truth is that the risk from using any of the smoke-free products available in the United States is estimated to be about 1/100th of that from smoking. In real-world terms, this is quite literally the difference between life and death for someone who is unable or willing to quit smoking but who might, if given accurate information, consider switching to a low-risk, smoke-free product.

Tobacco harm reduction represents a practical approach to reducing smoking rates and the attendant smoking-related health problems. But, just as importantly, tobacco harm reduction is a compassionate strategy, offering smokers a low-risk, effective alternative to smoking rather than the “quit or die” approach that results in more than 443,000 deaths each year.

#### Footnotes

[1] Centers for Disease Control and Prevention. “Vital Signs: Current Cigarette Smoking Among Adults Aged  $\geq 18$  Years—United States, 2005–2010.” *Morbidity and Mortality Weekly Report* 2011;60(33):1207–12 [accessed 2012 Jan 24]. <[http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6035a5.htm?s\\_cid=%20mm6035a5.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6035a5.htm?s_cid=%20mm6035a5.htm)>

[2] Phillips C.V. (2009). Debunking the claim that abstinence is usually healthier for smokers than switching to a low- risk alternative, and other observations about anti-tobacco-harm-reduction arguments. *2009 Harm Reduction Journal* 6:29.

[3] Sweanor D, et. al. (2007). Tobacco harm reduction: how rational public policy could transform a pandemic. *Int J Drug Policy*. 2007 Mar; 18(2).

# The Rest of the Story. Tobacco News Analysis and Commentary

...Providing the whole story behind tobacco news.

Wednesday, January 23, 2013

## New Study on Electronic Cigarette Use Among Youth Fails to Find a Single Nonsmoking Youth Who Has Even Tried an Electronic Cigarette

In a newly published article in the *Journal of Adolescent Health*, Pepper et al. report the results of an online survey of 228 adolescent males, ages 11-19, to assess awareness, willingness to use, and actual use of electronic cigarettes.

The results were reported as follows: "Only two participants (< 1%) had previously tried e-cigarettes. Among those who had not tried e-cigarettes, most (67%) had heard of them. Awareness was higher among older and non-Hispanic adolescents. Nearly 1 in 5 (18%) participants were willing to try either a plain or flavored e-cigarette, but willingness to try plain versus flavored varieties did not differ. Smokers were more willing to try any e-cigarette than nonsmokers (74% vs. 13%; OR 10.25, 95% CI 2.88, 36.46). Nonsmokers who had more negative beliefs about the typical smoker were less willing to try e-cigarettes (OR .58, 95% CI .43, .79)."

The article concludes: "Given that even experimentation with e-cigarettes could lead to nicotine dependence and subsequent use of other tobacco products, regulatory and behavioral interventions are needed to prevent "gateway" use by adolescent nonsmokers."

In an accompanying commentary entitled "Electronic Cigarettes: A New Nicotine Gateway?" Dr. Rachel Grana of the Center for Tobacco Control Research and Education expresses alarm because "18% of the sample endorsed being susceptible to trying e-cigarettes." On this basis, she concludes that: "Additional action should be taken to ensure e-cigarettes are not sold to youth and their appeal to youth and nonsmokers is minimized, such as enacting restrictions on health claims, explicit celebrity endorsements, and the elimination of the flavors."

### The Rest of the Story

These two articles are a perfect example of the profound disconnect between the scientific evidence and the policy agenda in the modern tobacco control movement.

Here we have two papers which sound the alarm about the terrible

#### About Me

##### Michael Siegel

Dr. Siegel is a Professor in the Department of Community Health Sciences, Boston University School of Public Health. He has 25 years of experience in the field of tobacco control. He previously spent two years working at the Office on Smoking and Health at CDC, where he conducted research on secondhand smoke and cigarette advertising. He has published nearly 70 papers related to tobacco. He testified in the landmark Engle lawsuit against the tobacco companies, which resulted in an unprecedented \$145 billion verdict against the industry. He teaches social and behavioral sciences, mass communication and public health, and public health advocacy in the Masters of Public Health program.

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problem of youth use of electronic cigarettes and about the hazards of e-cigarettes serving as a gateway to nicotine addiction. But what did the study actually show?

It showed that not a single nonsmoking youth could be found, among a sample of 228 male adolescents, who actually uses or has ever even tried an electronic cigarette. And only two smoking youth could be found who have tried the product.

This is a striking finding which puts to bed the contention of many anti-smoking groups and advocates that electronic cigarettes appeal heavily to youths and serve as a gateway to nicotine addiction. The finding quite strongly answers the question posed by Dr. Grana, in the negative.

Yet instead of emphasize this important finding, the articles try to scare the public about the scourge of electronic cigarettes among our nation's youth, citing the rather meaningless finding that 18% of youths would be willing to try an electronic cigarette. Most adolescents are willing to try anything. This finding means nothing. The important finding is that in contrast to popular belief among anti-smoking advocates and researchers, the electronic cigarette is simply not popular among adolescents. In this particular sample, not a single nonsmoking youth could be found who has even so much as tried the product.

The first sentence of the paper's discussion reads as follows: "Although few adolescent males in our national sample had tried e-cigarettes, around two-thirds were aware of them." This is an odd way to summarize the results. I would have stated it in exactly the opposite way: "Although two-thirds of the adolescent males in our national sample were aware of electronic cigarettes, only two had ever tried them."

This is a striking finding. Adolescents are widely aware of these products, but they are not using them. And they are not even experimenting with them. Clearly, this is a product which is not particularly appealing to adolescents. They much prefer the real thing. Just as they prefer "real" jeans to imitation ones and "real" name-brand sneakers to imitation ones.

To be sure, public health practitioners and policy makers need to stay vigilant and monitor the use of electronic cigarettes. And measures to prohibit the sale of electronic cigarettes to minors are certainly justified. But the rest of the story is that there simply is no evidence to suggest that electronic cigarettes are appealing to, or popular among youth. Measures suggested by Dr. Grana - such as prohibiting flavors, outlawing celebrity endorsements, or banning truthful claims about the relative safety of these products - are not justified or warranted.

But I don't think most anti-smoking groups or advocates care about the actual evidence. They've already made up their minds. Vaping looks too much like smoking. So forget about the fact that not a single nonsmoking youth could be found who has even tried the product. The advocates must continue to follow the party line and warn about the danger of electronic cigarettes as a gateway to

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Posted by Michael Siegel at 7:34 AM 29 Comments 

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The call to ban flavorings simply shows that they don't even bother to put effort into understanding the technology. They just take one look at it, determine that they don't like the look of it, and call to ban the whole technology.

Various flavorings are required to be available not to attract children  
but because each electronic cigarette needs to be personally

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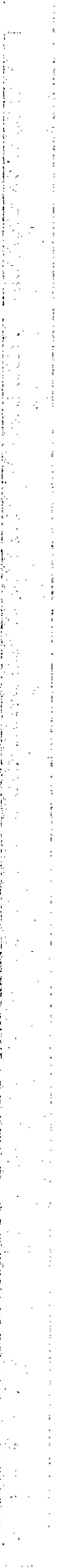
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My name is Mona Golub, and I represent Price Chopper Supermarkets - an American-owned, family-managed chain of 130 stores headquartered in Schenectady, New York with 80 retail locations across New York State.

I appreciate the opportunity to address you today in support of the “Tobacco Product Display Restriction” legislation that has been proposed by Mayor Bloomberg, Deputy Mayor for Health and Human Services, Linda Gibbs, Health Commissioner Thomas Farley, Finance Commissioner David Frankel and Consumer Affairs Commissioner Jonathan Mintz. I do so, not only as an advocate for the philosophy that inspires this legislation, but as the representative of an 81-year old retail business that has already, *voluntarily*, enacted exactly that which is being proposed for New York City.

Back in 2008, Price Chopper Supermarkets made a commitment NOT to entice a next generation of smokers. As such,

- we muted the visual impact of the tobacco cases in our stores by covering their façade with two sheets of an opaque film that neutralizes all color and brand recognition. All that remains visible is generic, item and price signage
- we have controlled consumer access to the category, meaning that tobacco products are sold full service only, requiring the assistance and inviting the scrutiny of an adult Price Chopper teammate, who is accountable for responsibly handling each transaction
- we no longer promote tobacco products in any of our advertising

It’s been proven that kids are attracted to the colorful marketing and advertising elements that are associated with tobacco products, so we had to believe that the action we were taking would contribute to a broader effort to keep tobacco away from kids. Receiving thank you notes, county fair petitions of support and even accolades from several youth and adult tobacco-free coalitions confirmed our belief and led to ongoing partnerships with those constituencies dedicated to having a similar impact.

We also had to believe that the removal of the category’s alluring visuals would cause our tobacco sales to decrease - and it did - though we recognize that a number of other variables contributed to this result, such as an ever-increasing cost and retail structure, rising taxes, and of course the proliferation of ads that convey the health consequences of smoking.

Category sales decreases notwithstanding, I can assure you that we sleep a little bit easier at night, knowing that our action speaks to our commitment NOT to entice a next generation of smokers. And it’s been my privilege to share Price Chopper’s experience at various conferences over the years, and to empower others to make the compelling argument that restricting the display of tobacco products does deter the adoption of this addictive habit by children.

As supermarket operators, we do business on a very competitive landscape, but the truth of the matter is that we would gladly hold hands with our competitors in the food, convenience and gas station channels to support the adoption of this legislation statewide.

Thank you.

# Cigarette Center

All cartons sold at state minimums.

## Cigarettes

BRAND	PACK	CARTON
Basic	\$6 <sup>95</sup>	\$65 <sup>20</sup>
Camel	\$7 <sup>20</sup>	\$68 <sup>00</sup>
Capri	\$7 <sup>95</sup>	\$75 <sup>38</sup>
Marlboro	\$7 <sup>25</sup>	\$68 <sup>20</sup>
Merit	\$8 <sup>40</sup>	\$79 <sup>57</sup>
Parliament	\$7 <sup>50</sup>	\$70 <sup>95</sup>
Virginia Slim	\$7 <sup>60</sup>	\$71 <sup>95</sup>

"SALE OF CIGARETTES,  
CIGARS, CHEWING TOBACCO,  
POWDERED TOBACCO, OR  
OTHER TOBACCO PRODUCTS,  
ROLLING PAPERS OR PIPES,  
TO PERSONS UNDER EIGH-  
TEEN (18) YEARS OF AGE IS  
PROHIBITED BY LAW."

## Cigarettes

BRAND	PACK	CARTON
Sonoma	\$6 <sup>00</sup>	\$56 <sup>45</sup>
USA Gold	\$6 <sup>28</sup>	\$58 <sup>73</sup>
Kool	\$7 <sup>20</sup>	\$68 <sup>00</sup>
Marlboro Menthol	\$7 <sup>25</sup>	\$68 <sup>20</sup>
Misty	\$6 <sup>40</sup>	\$60 <sup>83</sup>
Newport	\$7 <sup>85</sup>	\$74 <sup>30</sup>
Pall Mall	\$6 <sup>00</sup>	\$63 <sup>01</sup>
Salem	\$7 <sup>20</sup>	\$68 <sup>00</sup>



# FOLLOW THE SIGNS

R A I S E   A W A R E N E S S

Testimony of

**La Tanisha C. Wright**

**Former Big Tobacco Marketing Manager &**

**Director of Follow the Signs**

before the

**New York City Council Committee on Health**

Thursday, May 2, 2013

**Regarding T2013-6007 and T2013-6008**

New York City Council Hearing Room

250 Broadway, 16<sup>th</sup> Floor

New York, NY 10007

Greetings. My name is La Tanisha Wright. I am a former Big Tobacco Marketing Manager. While working for the tobacco industry, I engaged with multiple tobacco companies, wholesalers, and distributors. I worked directly with nearly 1,000 retailers and frequently communicated to hundreds of tobacco users—some young, others suffering from tobacco-related diseases. Three years into my career, I decided to use my experience to protect the public from the harms of tobacco and transitioned into tobacco control. I am the Founder and Director of Follow the Signs (FTS). For the past nine years, FTS has been dedicated to reducing tobacco-related disease, disability, and death by increasing awareness of tobacco industry retail marketing aimed at increasing tobacco use. Over the past few years, I have trained over 5,000 tobacco control advocates representing over 850 agencies, nationwide. It is my pleasure to provide testimony in support of the Tobacco Product Display and Sensible Tobacco Enforcement bills.

Commercial marketing firms manipulate marketing components in order to gain brand recognition and increase sales.<sup>1</sup> Predatory tobacco industry retail marketing practices aimed at the culture and lifestyle of urban youth and low socioeconomic status (SES) residents undermine the public health benefits of New York City's tobacco control efforts.

### Tobacco Retailers & Tobacco Industry Retail Contracts

As a tobacco trade marketing manager (TM), I was responsible for tobacco retail marketing in two large metropolitan areas. TMs are responsible for building relationships with retailers in order to execute and maintain tobacco contracts in a specific geographic region. TMs work to achieve 100% contract penetration in their assigned territories. They visit contracted stores at least once per month to ensure contract compliance and monitor tobacco product, price, presence/placement, and promotion. They identify and exploit opportunities for advertisement and display placement, as well as refresh and enhance tobacco presence and position at the curb, entrance, ceiling, and primary point-of-sale. They ensure sufficient distribution of key brands to maximize sales opportunities and determine which brands and brand styles will be heavily marketed in each store. TMs will visit most non-contracted stores at least once per quarter to monitor contract potential and/or provide tobacco ads, coupons, and/or customer sweepstakes brochures.

The price and promotion of tobacco products is a vital element of tobacco industry retail marketing. The tobacco industry spends nearly a million dollars per hour to market tobacco in the United States, spending more on retailer promotional allowances and customer price reduction methods than on all other marketing categories combined.<sup>2</sup> Deep tobacco discounting and multi-pack promotions are often advertised on multiple large exterior tobacco advertisements and lure customers into stores to purchase not only tobacco, but items in all other product categories.

Without tobacco industry support, retailers cannot afford to constantly refresh advertising and/or self-fund ongoing tobacco discounts. Tobacco companies offer strict retail contracts to retailers—providing them with ongoing incentive and discount payments in exchange for control of the store's tobacco category. Contracts give tobacco companies the authority to manipulate the quantity and presence/placement of displays and signs, as well as other conditions governing product visibility. Contracted retailers must adhere to contract requirements, including: meeting 100% distribution on select brands and brand styles, passing on tobacco industry discounts and promotions to customers, and allowing visible distribution and price communication of select products at the primary point-of-sale (often near cash registers, candy/gum, toys/trinkets, magazines, etc.).

The tobacco industry's tight control of the tobacco category in contracted stores can leave retailers feeling strong-armed by the tobacco industry and intimidated to discuss, alter, and/or dispute excessive or unwanted tobacco product and ad placement. Non-compliance often results in the suspension and/or termination of the retailer's discount programs and/or contract payments. Non-contracted retailers are at a competitive disadvantage. The Sensible Tobacco Enforcement bill will restrict the tobacco industry from using product price reduction as leverage to lure retailers into contracts.

### Tobacco Product Displays & Package Design

Tobacco product displays are one of the tobacco industry's most valued advertising items. Although large tobacco industry supplied displays are designed to store hundreds of tobacco brands and brand styles, the primary use of



tobacco displays are to showcase leading tobacco products. They are often the largest advertising piece in retail stores for all product categories. When multiple tobacco displays are placed side-by-side, they can form a wall that extends horizontally several feet. In addition, they can be built to extend vertically as desired by contracting tobacco companies. Because contracted tobacco displays are more likely to serve as premium advertising versus tobacco storage, tobacco contracts require retailers to keep displays fully stocked, well-lit, and placed in highly visible areas.

The average NYC tobacco display features 196 cigarette packs.<sup>3</sup> The brand portfolio of each Big Tobacco Company consists of multiple brands. Each brand is available in different brand styles (i.e. full flavor, mild, light, etc.). In addition, package options vary (i.e. king soft, king box, 100's soft, 100's box). Tobacco displays are merchandised in a manner that advertises multiple pack facings for select leading brands and brand styles. In most cases, each horizontal tray consists of multiple pack facings of the same leading brand arranged contiguously to achieve a clean merchandising look that increases brand visibility. Leading (or "support") brands are advertised in the most visible areas (i.e. top 50%) of tobacco displays, while "non-support" brands are featured in less visible areas like the bottom 10-50%, depending on the store's set-up behind the counter. In most cases, it is the retailer's choice to purchase non-support brands, which are commonly not advertised, discounted or featured on tobacco displays.

Tobacco product displays stimulate unplanned tobacco purchases, play an important role in brand selection, and discourage quit attempts and abstinence among current and former smokers.<sup>4</sup> Tobacco is often merchandised on tobacco displays in a manner in which the more addictive brand styles are most visible to customers from the point-of-sale. The more addictive brand styles (i.e. full flavors and milds) are likely to have more pack facings and visibility than less addictive brand styles (i.e. lights, ultra lights, etc.). Although the 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) prohibits the tobacco industry from labeling cigarettes as full flavor, mild, or light, tobacco companies have used color association to help smokers identify their preferred brand styles (i.e. red packs represent full flavors, gold packs represent lights, etc.).

The tobacco package design is another compelling aspect of marketing that can provide reinforcement of choice for smokers. Tobacco companies have a long history of developing tobacco products with names and package designs that demonstrate specific demographic targeting. In a 2003 business plan, KOOL USA marketing staff report that "on-pack communications" are an aggressive and strategic platform for KOOL.<sup>5</sup> In 2004, Brown & Williamson Tobacco specifically targeted African American communities with the KOOL Mixx Campaign. The campaign featured four packs that when placed side-by-side created a mural of a "hip-hop club scene" with African American cartoon characters (Figure 1). The product packaging violated the 1998 Master Settlement Agreement that bans the use of cartoon graphics on tobacco advertising, promotion, and packaging.

In 2007, RJ Reynolds (RJR) launched Camel No. 9 in a black and hot pink package that appealed to girls (Figure 2). In addition, Capri and Misty—RJR support brands likely to be featured on tobacco displays along with Camel—also received new packaging with colorful pack designs aimed at females (Figures 3-4). In 2008, Philip Morris launched a new brand style of Virginia Slims called the "purse pack" sold in a lipstick-size package designed clearly to target females (Figure 5). In 2010, a small tobacco company in Florida launched O'bama cigarettes with a signature oval ring around the logo (Figure 6). In 2010, RJR launched the Camel "Hipsters" campaign that targeted 10 US cities, including Williamsburg, Brooklyn, New York (Figure 7). The product packaging featured city skylines, similar to the 2006 "KOOL Design a Pack Contest" which allowed artists to submit artwork depicting "hip-hop music" and "urban life." Winning pack designs were featured as special limited edition packs (Figure 8).

Since 2009—and after RJR introduced Camel Snus nationwide and began test-marketing strips, orbs, and sticks in select cities—several smokeless and dissolvable tobacco products packaged like candy and gum have emerged (Figures 9-11). In 2012, Lorillard acquired blu e-cigarettes, which according to the brand's website is available at over 700 NYC retail stores. Electronic cigarettes feature flavored nicotine cartridges that appeal to youth (Figure 12).

### Predatory Tobacco Marketing Practices in Low SES Communities

Due to predatory tobacco industry retail marketing practices, stores located in low SES communities have a higher quantity of interior and exterior tobacco ads (Figures 13-14), and a greater quantity of high profile tobacco displays.



They also receive greater allocations of coupons and “Buy 1, Get X Free” promotions as compared to the more expensive, less desirable “Buy 2 or Buy 3, Get X Free” promotions provided to mid to high SES communities. “Switch selling” activities allow TMs to distribute coupons and free unregulated tobacco products to customers, along with access to brand websites and a guarantee of future direct mail promotions. In 2011, high SES neighborhoods in NYC were less likely to have tobacco price promotions than lower SES neighborhoods. They were also almost 30% less likely to have exterior ads as well as interior or exterior price promotion than retailers in low and mid-income neighborhoods.<sup>3</sup>

Mentholated products (like KOOL and Newport) are heavily discounted and advertised in communities with urban characteristics, primarily African American and low SES communities (Figure 15). Mentholated products have been under increased scrutiny since the Tobacco Control Act granted the Food and Drug Administration (FDA) the power to regulate cigarettes and smokeless tobacco.<sup>6</sup> The Tobacco Control Act banned cigarette flavorings that appeal to youth, but excluded menthol. There is mounting evidence that menthol cigarettes are a starter product for youth.<sup>7</sup> Menthol is a mint-derived substance. It’s pleasant, cooling sensation causes users to take deeper drags on their cigarettes and inhale a greater amount of smoke and toxic chemicals than non-menthol (i.e. Marlboro) smokers.<sup>8</sup> In addition, menthol smokers tend to have a more difficult time quitting than non-menthol smokers.<sup>9</sup>

Cigar smoke, like cigarette smoke, contains toxic and cancer-causing chemicals that are harmful to both smokers and nonsmokers.<sup>10</sup> The Tobacco Control Act does not give the FDA the power to regulate cigars, little cigars, and cigarillos, which too are heavily advertised in low SES communities. They are inexpensive when sold individually. They are available in a variety of flavors, have package designs that attract youth, and are often displayed near fruit, candy/gum, and cookies and/or against protective glass at the primary point-of-sale (Figure 16).

The Sensible Tobacco Enforcement bill will restrict the tobacco industry’s ability to heavily discount and promote more addictive products to New York City residents that reside in underserved, low SES communities. It will also prevent tobacco companies from circumventing NYC tobacco control efforts to reduce tobacco use by providing contracted retailers with “price protection” on leading brands during tobacco price/tax increases.

#### Benefits to Retailers, Tobacco Users, and Store Patrons

The Tobacco Product Display ban will benefit and protect NYC tobacco retailers, tobacco users, and store patrons. Many retailers cannot afford expensive video surveillance equipment. As a safety precaution, it is imperative to arrange store advertising and displays in a manner that allows law enforcement the maximum visibility of the point-of-sale while conducting neighborhood rounds. There is often one store clerk on duty during nightshifts when most robberies occur. Excessive tobacco displays on checkout counters and protective glass restrict the retailer’s ability to monitor the store floor and quickly detect theft or other possible situations that could jeopardize the safety of store patrons (Figure 17). Large tobacco displays require retailers to turn their backs to customers while searching for specific brand styles, which too, can create a severe safety hazard for retailers. Keeping tobacco out of sight can possibly reduce tobacco theft at retail stores, which could consequently reduce underground tobacco sales to youth.

Eighty percent of NYC retailers devote the majority of the area behind the checkout counter to tobacco displays.<sup>3</sup> Residents residing in urban and/or low SES communities often rely on local corner stores for all of their household items. People value clean, customer friendly stores. The Tobacco Product Display bill will allow retailers to eliminate space behind the counter, and not only free-up premium advertising space, but also reduce common non-compliance contract issues. In order to avoid contract non-compliance, retailers must not remove, reposition and/or obstruct the view of any contracted display, which causes an ongoing challenge for retailers with limited space behind counters. In addition, some tobacco industry contracts have required retailers to dust tobacco displays to preserve product freshness. The daily upkeep of tobacco displays takes time and effort that many retailers simply cannot spare.

Urban communities tend to have more stores per capita than nonurban communities. As a result, many urban retailers tend to experience low sales volumes for all product categories. Due to strict tobacco contract requirements requiring 100% distribution, retailers often overstock on tobacco products to avoid out of stock situations that could

result in contract non-compliance. In many cases, retailers are required to maintain distribution on products that have little to no demand in their stores solely to keep tobacco displays fully stocked. As a result, many urban and low volume stores (drug, supermarket/grocery, and corner/mom-n-pop, etc.) are often burdened with stale products. Tobacco companies do not return stale, damaged, or infested product. Retailers are required to sell what they buy or risk losing profits. Retailers are not trained to decode tobacco product expiration codes. Unless the packaging is noticeably brittle, visibly damaged, and/or infested, retailers and tobacco users are often unaware of stale tobacco product. Keeping tobacco out of sight could allow retailers to store tobacco products in drawers and away from direct sunlight, which could possibly keep tobacco products—cigarettes in particular—“fresh” for longer periods.

Like most New York residents, retailers have been negatively impacted by the dangers of tobacco use. Many have children, and they do not want them to use tobacco. Some have (or will) personally witness their valued customers, friends, and/or family members suffer from a tobacco-related disease, disability, and/or death. Retailers must take back control of their stores and realize that tobacco companies rely on them to increase tobacco industry sales, share of market, and profits. A variety of tobacco contract options are available. Retailers have the right to *and can*: determine the quantity and placement of tobacco ads and displays in their stores; reduce tobacco ads and displays for all contracting tobacco companies in a fair and equitable manner and still qualify for a tobacco industry contract.

### Conclusion

Laws that address tobacco industry retail marketing are well-justified and an effective approach to protecting the youth, residents, visitors, and retailers of New York City. NYC youth deserve to shop at retail stores without being enticed by sophisticated tobacco industry marketing. Adult NYC tobacco users deserve the opportunity to shop without constant reminders at the counter that trigger continued use. NYC retailers have the right to advertise and sell tobacco in a responsible manner that does not harm the public.

Thank you for the opportunity to provide testimony in support of the Tobacco Product Display *and* Sensible Tobacco Enforcement bills. New York City’s continued groundbreaking efforts to protect the public from the harms of tobacco clearly establishes the city as a global leader in tobacco control, and I will gladly continue to work with you to educate the public on the impact of tobacco industry marketing practices.

<sup>1</sup>Siegel, M., & Doner, L. (1998). Marketing public health – Strategies to promote social change. Gaithersburg, Maryland: Aspen Publications.

<sup>2</sup>Federal Trade Commission reports for cigarette and smokeless tobacco marketing for the years 2009 and 2010. Last accessed 4/23/2013. Available at: <http://www.ftc.gov/os/2012/09/120921cigarettereport.pdf>

<sup>3</sup>New York City Department of Health and Mental Hygiene. NYC Vital Signs Report 2013. Last accessed 4/24/2013. Available at: <http://www.nyc.gov/html/doh/downloads/pdf/survey/survey-2013tobaccopromotion.pdf>

<sup>4</sup>Carter OB, Mills BW, Donovan RJ. The effect of retail cigarette pack displays on unplanned purchases: results from immediate postpurchase interviews. Tob Control. 2009 Jun;18(3):218-21. doi: 10.1136/tc.2008.027870. Epub 2009 Mar 4. PubMed PMID: 19264731.

<sup>5</sup>Kool USA. (2003). Kool Business Review 2003. Market: USA. Bates No. 532370631/0689. Retrieved from <http://legacy.library.ucsf.edu/tid/udp27a00/pdf?search=%22kool%20usa%20business%20review%22>

<sup>6</sup>U.S. Food and Drug Administration (USFDA) (2010). Guidance, Compliance and Regulatory Information, U.S. FDA, retrieved from <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/>

<sup>7</sup>Substance Abuse and Mental Health Services Administration. (2009). *The NSDUH report: Use of menthol cigarettes*. Retrieved from <http://oas.samhsa.gov/2k9/134/134MentholCigarettes.htm>.

<sup>8</sup>Gardiner, P. (2004). The African Americanization of menthol cigarette use in the United States. *Nicotine & Tobacco Research* 6(1), S55–S65. Retrieved from [http://www.trdrp.org/Docs/CNTR\\_06\\_S1\\_07.pdf](http://www.trdrp.org/Docs/CNTR_06_S1_07.pdf)

<sup>9</sup>Gandhi, K., Foulds, J., Stienberg, M., et al. (2009). Lower quit rates among African American and Latino menthol cigarettes smokers at a tobacco treatment clinic. *International Journal of Clinical Practice*, 63, 360-367.

<sup>10</sup>National Cancer Institute. Cigar Smoking and Cancer. Available at: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>. Last accessed 4/24/2013..

Figure 1.  
KOOL Mixx

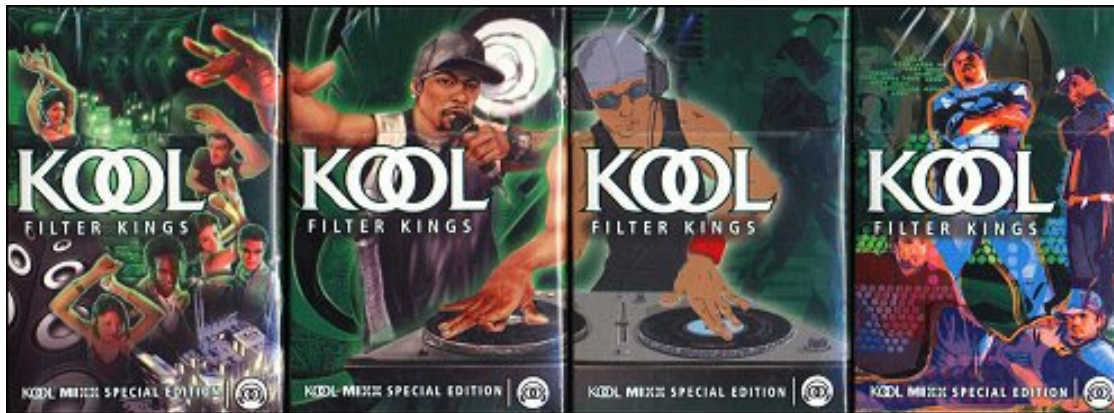


Figure 2. Camel No. 9



Figure 3. Capri



Figure 4. Misty



Figure 5. Virginia Slims Purse Packs



Figure 6. Obama's

Figure 7. Camel "Hipsters"

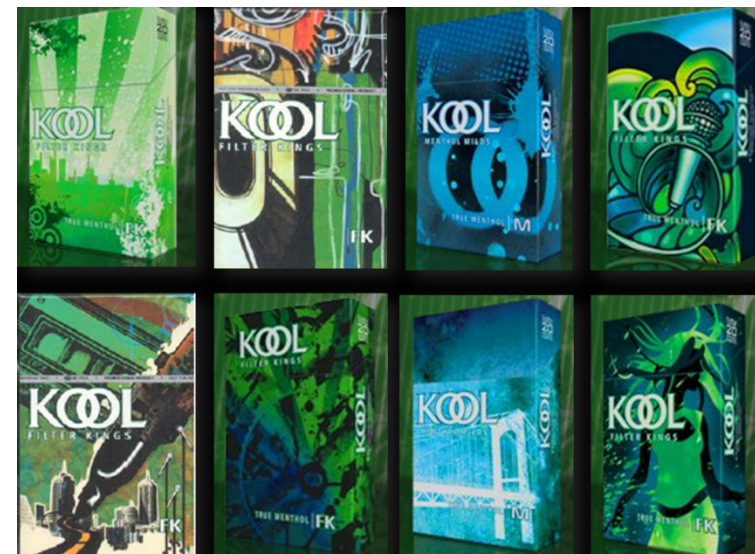


Figure 8. KOOL Design a Pack Special Limited Edition Packs



Figure 9. Camel Snus



Figure 10.  
Camel Strips, Orbs, Sticks,  
and Variety Pack



Figure 11.  
Marlboro Snus & Sticks



Figure 12.  
blu E-cigarettes & Variety of Flavored Cartridges







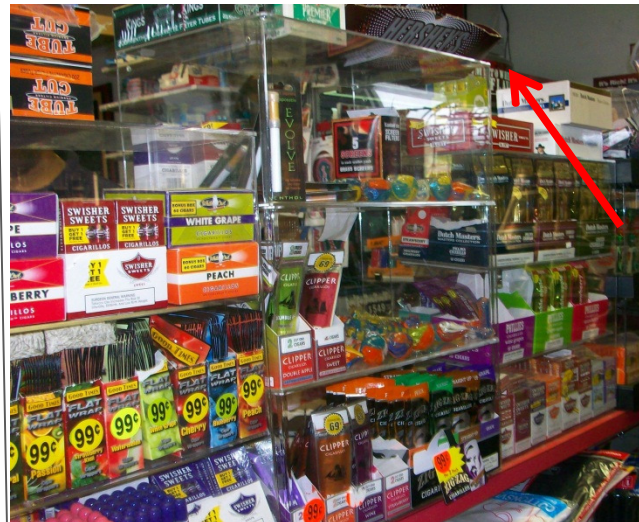
**Figure 13.** Mid to high SES exterior tobacco ad placement



**Figure 14.** Low SES exterior tobacco ad placement



**Figure 15.**  
Low SES interior tobacco displays and unregulated flavored tobacco rack (Circled)



**Figure 16.**  
Low SES interior at primary point-of-sale featuring flavored cigars, cigarillos, little cigars, blunt wraps, e-cigarettes, and other tobacco paraphernalia. Retailer and cash registers are behind displays. Arrow points to Hershey's Chocolate.



**Figure 17.**  
Low SES interior at point-of-sale at store with protective glass covered with tobacco advertising and displays near candy, cookies, and gum.





Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

April 23, 2013

Dear Honorable Maria del Carmen Arroyo,

It has come to my attention that you're presently working on eliminating the "Visual Presence" of tobacco products within a retail environment; namely, the convenience store. I would like to take a moment and share some of my knowledge and experience with you.

J. Gottheil Marketing has been in the advertising and marketing business for over 30 years. We specialize in retail advertising and marketing on a local, national and international level. We have designed, manufactured and installed retail displays, Point of Purchase Material (POP) and signage for practically every major retailer across Canada not to mention a few in the United States and Europe.

We have also worked with the Non-Smokers' Rights Association and the Ontario Campaign for Action on Tobacco for over 7 years to help make the "Visual Presence" of all Tobacco products illegal in Ontario and Quebec, Canada. During that period of time we produced a research report, a video documentary (interviewing over 1000 children from 4 separate school boards) attended press conferences, spoke at government regulatory committee's and spoke in parliament. After it became law in Ontario, we were hired by the Ontario Government to mediate discussions with The Convenience Store Owners Association, The Korean Businessman's Association, The Canadian Grocers Association, Tobacco Control Officers and countless other stake holders and non profit organizations to implement a strategy for execution of this new law. We also designed the units (please note: we did not produce them or profit from them) to be implemented in hiding tobacco products, as well; we helped to establish the rules on type (size/style) to indicate what was behind the panels.

It is important to note that Point of Purchase displays are one of the most Powerful and Influential forms of advertising there is today. It is the only advertising medium that can influence the customer when they have cash in hand and are ready to make a purchase decision.

POP is designed to capture your attention and Influence your purchase decision. POP is designed to physically fit within the retail environment and be perceived as an endorsement by the store.

If I trust the store than I trust the products they sell.

If we look at Tobacco Powerwall Advertising (The back wall displaying tobacco products) in Convenience stores. We see a product that is strategically placed in the most influential spot in the store. "The back wall behind the cash counter".

Think about it, anyone that walks into a convenience store today is exposed to a wall of cigarettes anywhere from 4ft to 16ft across. We may take for granted this wall of cigarettes but please don't under estimate it's effect, especially on our children.

Convenience stores are playing a significant role in informing kids about tobacco products.

According to a study by Brown & Williamson (an affiliate of Imperial Tobacco): "the store environment, especially displays inside stores, is the biggest source of advertising awareness for all cigarette trademarks" and "Impulse Purchase" is a factor in the tobacco category, particularly among young and occasional smokers.

Is this having an influence on our children? 85% of kids from non-smoking households spontaneously name c-stores as a place that sells cigarettes.

Over 40% of kids from non-smoking households can spontaneously name brands of cigarettes.

There are approx. 8,400 convenience stores located across Ontario, Canada located near

- Residential areas
- Schools
- Mostly within walking distance from their home  
(Thus the name convenience stores)

The corner store is very much a part of our life and culture.

77% of kids go to c-stores at least once a week and many 2 to 5 times a week.

- During lunch hour
- After school for a snack or
- On the weekend for a treat

For a child, it's their first "Right-of-Passage" to spend their allowance and buy something for themselves like a chocolate bar. Do they have to be exposed to this wall of cigarettes every time they walk into a convenience store?

We must realize how scary the idea of that much exposure over that much time can have on a child.

Tobacco companies in Canada spend 88 million dollars a year just for the right to position their product on this particular back wall and an additional 240 million a year on POP material, displays and listing allowances.

Out of the 12.5 billion US dollars spent by cigarette companies (\$34 million a day) on overall promotions (2006) \$11.2 billion or 90% was spent on POP advertising, price discounts and promotional allowances. Over 90% of all a cigarette company's promotional budget is allocated to "what's happening inside our stores" and these are 6-year-old figures.

Tobacco companies claim that their Point of Purchase advertising is intended to influence only smokers who might switch brands. They also maintain that their POP advertising has no impact on non-smokers, particularly on youth smoking.

We analyzed the tobacco companies definition of a "Brand Switcher" and found their interpretation to be, "People that don't smoke a brand to those that now smoke a brand" are considered a "Brand Switcher" (A non-smokers to a smokers is a switcher)

Did you know that according to an ACNielsen report, convenience stores nearest schools have significantly more Tobacco ad presence?

- Children today know where to purchase cigarettes.
- They know how the cigarettes are merchandised
- They know the brands by name
- They know the colors of the packages
- They know the graphics being used
- They feel that Tobacco Power walls haunt them
- They feel that Tobacco Power walls provoke them and encourage them to smoke

They know far too much. 2/3 of children believe that Tobacco Power wall advertising will encourage other kids to try smoking. All this, from what tobacco company's claim, has no effect on non-smokers yet alone our children.

If the Product is restricted so should be the message.

Anyone that walks into a convenience store today to make a purchase, is exposed to cigarettes.

We must protect our children and the influence this "Tobacco Powerwall Advertising" has on them. The message is within harms way of a child. (The packaging, the graphics, the colours, the brand)



We must restrict the message, by putting the product "Out of Sight and out of Mind"

Do you leave harmful products around your home if there's a child present? NO you put them "Out of the reach of a child". Why then would you put a harmful product, (a poison) like cigarettes within the reach of a child.

The key here is - Why is the product restricted and not the message?

I hope I've been able to answer all your questions. If you have any other questions please feel free to contact me personally.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey Gottheil". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Gottheil" clearly distinguishable.

Jeffrey Gottheil  
President



SASKATCHEWAN  
COALITION  
FOR TOBACCO  
REDUCTION

April 29, 2013

Honorable Maria del Carmen Arroyo  
Chair, Health Committee  
New York City Council  
City Hall  
New York, NY 10007

Dear Chairwoman Arroyo:

Our province, Saskatchewan, Canada, is the second jurisdiction in the world, after Iceland, to pass legislation banning retail tobacco displays at point of sale. Thus the province has extensive experience with the tobacco retail display ban. The ban was first recommended by the Saskatchewan Legislature's *All Party Committee on Tobacco Control*. The legislation was passed unanimously by the Saskatchewan Legislative Assembly and proclaimed in 2002.

Saskatchewan's point-of-sale ban legislation has been a success story. The opportunity to ban one of the tobacco industry's last avenues to promote tobacco products to youth was precedent-setting and, although legally challenged by Rothmans Benson & Hedges Inc, was upheld by the Supreme Court of Canada in 2005.

The success of the legislation has led to all Canadian provinces and territories passing similar legislation. Jurisdictions around the world have also passed similar laws including Iceland, Ireland, Thailand, all eight Australian states/territories, the British Virgin Islands, Finland, New Zealand, Mauritius, Norway, Panama, the United Kingdom (England, Wales, Northern Ireland) and Scotland. The law has also been included in the World Health Organization's Guidelines for the international treaty, the Framework Convention for Tobacco Control.

*Ease of Implementation of Saskatchewan's display ban*

One of the most remarkable features of Saskatchewan's display ban was its ease of implementation. Health Canada tobacco enforcement officers reported the law achieved a very high level of compliance within six months to a year after its proclamation. Public support was also high including one unexpected group. Ex-smokers related it was easier not to smoke when not faced with tobacco displays.

Ray Joubert, *Saskatchewan Pharmaceutical Association* (now the Saskatchewan College of Pharmacists), also reported the implementation of the ban went “smoothly”.

Personally, I have had over 30 years of experience in tobacco reduction and have seen many tobacco-related laws passed. This particular piece of legislation stands out because of its very smooth implementation and public acceptance.

### **Increase of ‘point-of-sale’ research**

With the increased number of jurisdictions passing point-of-sale bans, there has been an increase in research around this area. The literature confirms that the primary purpose of point-of-sale displays is to promote to children and youth.

### **Decrease in smoking prevalence in Saskatchewan**

Saskatchewan has introduced a number of tobacco reduction measures. The provincial smoking prevalence has decreased from 28% in 2000 to 19% in 2011. (*Canadian Tobacco Use Monitoring Survey*)

### **Detractors to Saskatchewan’s legislation**

I would be remiss if I didn’t mention there were detractors to the legislation. The *Saskatchewan Committee for Responsible Tobacco Retailing* was formed prior to the legislation being passed. The Committee appeared to be well-funded. It mounted a fax campaign to retailers urging them to oppose the legislation. Retailers were provided with misinformation predicting dire outcomes if the legislation were passed. Suspicions of links between the retail committee and the tobacco industry were strengthened when a Committee member admitted it was a sub-committee of the *Canadian Coalition for Responsible Tobacco Retailing*, a tobacco industry coalition with a similar name.

### **Misinformation Regarding Tobacco Retail Display Ban**

Some misleading arguments were proposed by those opposing the ban.

#### *Economic Impact*

The most common misinformation is that retail display bans cause loss in business. In Saskatchewan, there have been **no media or other reports of economic losses**. In fact, Saskatchewan’s economy is going very well. Tobacco enforcement officers report compliance appears to have been achieved at minimal cost to retailers. No stores have closed and no staff has been laid off. Mr. Ray Joubert said:

*“Compliance is high. There have been no significant problems or failures, economically or otherwise.”*

He has not heard of any negative outcomes such as businesses closing or staff being let go. The Saskatchewan Ministry of Health reported in an email that it concurred with the Saskatchewan Coalition for Tobacco Reduction’s assessment that there has been no negative economic impact.

Although the Canadian Convenience Store Association, in the past, has stated that businesses in Canada closed due to the display ban, no Canadian province or territory has reported a negative economic impact due to the ban.

The only business that is negatively impacted by the ban is the tobacco industry as fewer and fewer youth become addicted to its products.

*“Banning tobacco product displays won’t affect youth smoking.”*

As mentioned, there is considerable research evidence proving that tobacco advertising and promotion increase tobacco use. If such advertising did not work, it is unlikely the tobacco industry would have spent millions of dollars on it every year in Canada. Because of the introduction of this and other tobacco reduction measures Saskatchewan’s youth smoking rate has decreased from 28% to 19%.

*Thefts in stores increased because clerks had to spend more time with their backs turned.* Such a suggestion is outside the experience of Saskatchewan retailers. In fact, 30% to 40% of retailers continued to keep their display bans in place during the 18 months the law was struck down by the tobacco industry’s legal challenge. These retailers reported they did this for a number of reasons, one being that they believed having tobacco products visible increases theft.

*Clerks were at personal risk because their backs were turned to their customers for longer periods of time.*

Again, we have not heard anything about this and nothing has been reported in the media in Saskatchewan.

In closing, the Saskatchewan Coalition for Tobacco Reduction encourages you to recognize that the tobacco industry and its allies will fight to keep the promotion of its product in front of the next generation of smokers – the children and youth of New York.

I am enclosing an updated presentation that was provided for the 6<sup>TH</sup> National Conference on Tobacco or Health. I would be pleased to provide further information or answer questions. I can be reached at (306) 545-4100 and [sctr@accesscomm.ca](mailto:sctr@accesscomm.ca)

The Saskatchewan Coalition for Tobacco Reduction is a provincial coalition of 18 health groups working to reduce tobacco-related diseases and deaths in Saskatchewan.

Yours sincerely,



Lynn Greaves  
President

Attachment



This report describes how Saskatchewan's retail display ban law impacted the province, Canada, and the international community. The tobacco industry's opposition to our Coalition's efforts to deal with the opposition are assessed.

Original – 2009

Updated – 2013.

## Banning advertising & promotion



- Banning tobacco advertising & promotion decreases consumption & youth initiation.
- The World Health Organization says “The most effective measures to reduce tobacco use are **regulatory**.”

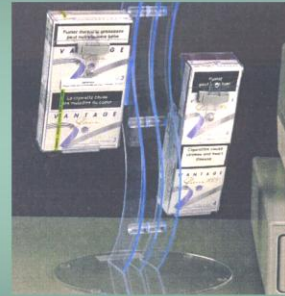
This is a picture from the ‘80’s. In the foreground you see a Rothmans’ billboard. Immediately behind it is the Regina Health Department and City Hall. This picture portrays the prevailing environment of acceptability of tobacco promotion at that time.

Eventually, research showed that banning advertising and promotion decreased consumption and youth initiation – and, as the World Health Organization has said, the most effective measures to reduce tobacco use are regulatory.

## ***Point-of-sale Displays***



**Power walls**



**Counter  
top displays**

As advertising and promotion were regulated out of the environment the tobacco industry's displays at point of sale increased to enormous size. The industry called them 'power walls'.



## ***All Party Committee for Tobacco Control***



Tobacco Control  
Act passed  
**UNANIMOUSLY** by  
Saskatchewan  
Legislative  
Assembly in 2001

I would like to recognize the All Party Committee for Tobacco Control, a committee of six members of the Saskatchewan Legislative Assembly. These people recognized that tobacco displays were wrong.



## Power walls replaced by

- cupboards
- drawers
- sliding doors
- other mechanisms



Saskatchewan's Tobacco Control Act was proclaimed in 2002. Power walls were immediately replaced by cupboards, drawers, sliding doors and other mechanisms.

## Implementation goes smoothly



- 98% compliance within a year
- No economic loss
- High public acceptance

The implementation went very smoothly with no economic losses and high public acceptance. Within a year, compliance was at 98%.

# Reactions!

## *'A new wave in tobacco control'*



Also passed in -

- All Canadian provinces/territories
- Iceland
- Ireland
- Thailand
- All 8 Australian states/territories
- Finland
- New Zealand
- Mauritius
- British Virgin Islands
- Norway
- Panama
- The United Kingdom (England, Wales, Northern Ireland)
- Scotland

The precedent-setting legislation has since been passed in all Canadian provinces and territories, all eight Australian states/territories, Finland, Iceland, Ireland, New Zealand, Mauritius, Norway, Panama, Thailand, the United Kingdom (England, Wales, Northern Ireland), Scotland, and the British Virgin Islands.

# How the Industry Fights Best Practices

- It won't work
- It will harm the economy
- Delay Delay Delay



*World Health Organization*

But the story isn't complete without the story of the tobacco industry's opposition. Generally, the World Health Organization says that falls into three themes:

- *It won't work.*
- *The proposal will harm the economy.*
- *We can't possibly implement the proposals in the time frame proposed – or delay, delay, delay.*

## ***Saskatchewan Committee for Responsible Tobacco Retailing***



### **Opposed Ban**

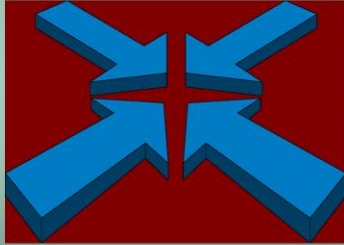
- \$10,000 Fax Campaign to retailers using scare tactics
  - Won't work
  - Clerks at risk for theft
  - Fines will put stores out of business
- Call their legislator

Before Saskatchewan's legislation was passed, the ban of tobacco product displays was opposed by a newly formed retailer group, the *Saskatchewan Committee for Responsible Tobacco Retailing*.

Their spokesperson was also the head of the tobacco industry's Operation ID program. The Committee launched a campaign to retailers telling them to oppose the ban because:

- it wouldn't stop youth smoking
- clerks would be at risk for theft if they had to leave the till.
- fines could put stores out of business.

# Saskatchewan Coalition for Tobacco Reduction



## Countered misinformation

- \$1000 Fax campaign
- Information line for retailers
- Media release
- Ad campaign – “4 people”

Our Coalition countered the campaign with a less expensive campaign refuting the misinformation and providing an Information Line for retailers.

# **ROTHMANS BENSON & HEDGES**

Of course, the tobacco industry did not give up the fight.

In 2002, Rothmans Benson & Hedges legally challenged the ban.



## 90 Minutes at the Supreme Court of Canada!!



But in 2005, the Supreme Court of Canada - after only 90 minutes - upheld the law and dismissed the tobacco industry's challenge.

This, to me, was one of the most poignant moments in tobacco control. These university students in Ottawa didn't know us – and we didn't know them and yet they were out there in -30 below weather supporting the display ban at the Supreme Court of Canada.



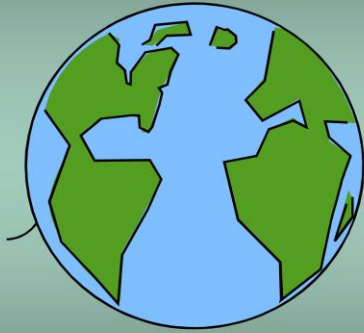
## **What does the tobacco industry think?**

***“Restrictions in Saskatchewan make it the toughest jurisdiction in the world to market tobacco.”***

British American Tobacco, 2005

We wondered what the tobacco industry would do next. They didn't tell us – but they did tell us what they thought about the law. In 2005 a BAT executive was quoted as saying:

## **Saskatchewan takes the display national & global!**



- *Tobacco Control Journal*, 2003
- *National Conferences on Tobacco or Health*, 2002, 2004, 2005
- *World Conferences on Tobacco or Health*
  - Finland, 2003
  - Washington DC, 2006

Around this time the Saskatchewan Coalition began to realize our work was not done – that if we in Saskatchewan had had tobacco displays in front of us for decades without really seeing them, then maybe the situation was the same in the rest of the world – and maybe we had a responsibility to share this information.

We were first asked to speak about the display ban as a new ‘best practice’ at the 12th World Conference on Tobacco or Health in Finland. The law was also featured in the international Tobacco Control journal.

We continued to describe the law at three national conferences and another World Conference in Washington.

And interest in the law grew.

# ***Framework Convention on Tobacco Control***



- Coalition joined FCA
- Provide resources to FCTC
- Attended COP-3, Durban, South Africa
- Inclusion of POS ban in Guidelines for Article 13

One of our proudest moments came when the Framework Convention on Tobacco Control, the international tobacco treaty, included point-of-sale bans in its guidelines for Article 13.

# International Opposition



## ■ Canadian Convenience Store Association

- Dave Bryans, former tobacco company employee

But the tobacco industry was not going to be quiet forever. The Canadian Convenience Store Association began a campaign against retail display bans.

# Canadian Convenience Store Association



- Stores in Canada have closed because of the retail display ban
- Display ban causes an increase in contraband
- Display ban has no effect on smoking rates
- Clerks at risk

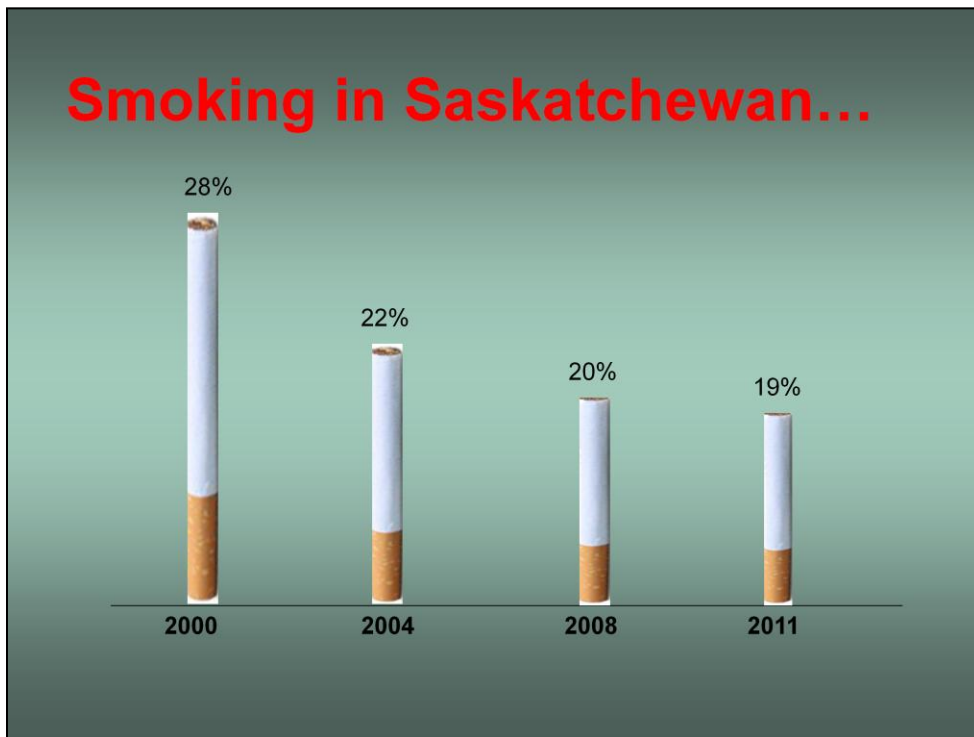
The main messages were:

- Stores in Canada have closed because of the retail display ban
- Display bans cause an increase in contraband
- Display bans have no effect on smoking rates
- They put clerks at risk

However, the experience in Saskatchewan has been that no stores have closed and any increases in contraband are not related to the display ban.

Experiences in other provinces have been similar.

Smoking rates across Canada have continued to decrease and there have been no reports of clerks being at risk.



The Canadian Tobacco Use Monitoring Survey reports that Saskatchewan's smoking prevalence has dropped nine percentage points over the last 11 years.

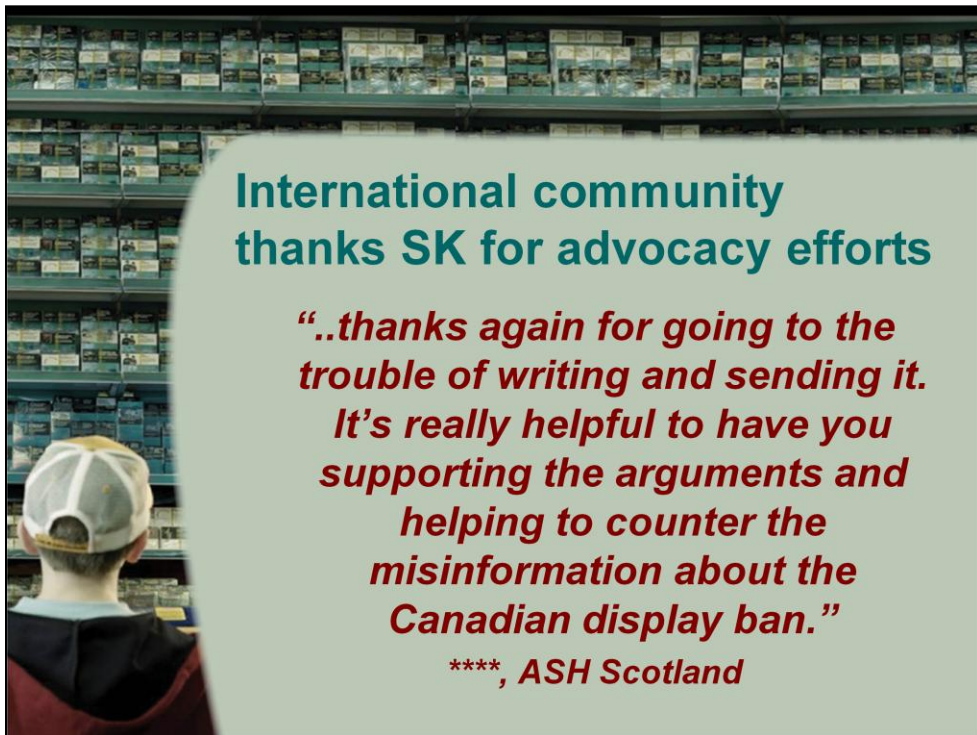
Scotland

© Jean Louis Bertocchio 2007

- Letter sent to government
- Letters sent to Scottish newspapers

On the request of ASH Scotland, we wrote a government committee and two newspapers. In part, the letter sent to Scotland said:

19



## International community thanks SK for advocacy efforts

***“..thanks again for going to the  
trouble of writing and sending it.  
It’s really helpful to have you  
supporting the arguments and  
helping to counter the  
misinformation about the  
Canadian display ban.”***

***\*\*\*\*, ASH Scotland***

Did these efforts have an effect? Well Ash Scotland did contact us to say:

*“..thanks again for going to the trouble of writing and sending it. It’s really  
helpful to have you supporting the arguments and helping to counter the  
misinformation about the Canadian display ban.”*

*\*\*\*\*, ASH Scotland*



## Examples of countering misinformation campaigns



### ENGLAND

- Government requested information
- Letter sent to All Party Parliamentary Group
- Letter sent to newspaper

ASH England also requested information be sent to an All Party Parliamentary group and to newspapers. They were also appreciative of these efforts.

## Ongoing requirements of defending the display ban

- *Keep up-to-date on misinformation campaigns – What are they saying?*
- *Identify the information to counter misinformation*

I would like to point out that the efforts invested in countering misinformation are rather minimal when you consider that we are sending a few letters and emails. In the future, we should keep up-to-date with whatever the misinformation campaigns are saying and find the evidence to counter it.

## Ongoing requirements of defending the display ban

- *Keep tobacco control advocates around the world aware of campaigns & how to counter them*
  - » *Globalink*
  - » *Conferences*
  - » *FCA*
  - » *Networking*

We also have to not let this issue die. We need to keep advocates around the world aware of these campaigns and how to counter them.

We can do this through Globalink, through conferences and the Framework Convention Alliance, of which we are a member.

## Lesson Learned



**Let the country's  
advocates take the lead....**

- **What do they need?**
- **When do they need it?**
- **What format is needed?**
- **To whom should it be sent?**

A lesson we have learned is to let the country's advocates take the lead.  
The people in the country know best.

## **Partners in countering misinformation campaigns**

- Ontario Campaign for Action on Tobacco
- Quebec Coalition for Tobacco Control
- Non-Smokers' Rights Association

I'd like to recognize some others who have been involved in activities countering misinformation – the Ontario Campaign for Action on Tobacco, the Quebec Coalition for Tobacco Control and the Non-Smokers' Rights Association.

## Lesson Learned



- It is possible to counter the tobacco industry's massive misinformation campaigns with a minimum of time, energy & resources  
& with  
**THE TRUTH**

But the most important lesson learned is that it is possible to counter the tobacco industry's massive misinformation campaigns with a minimum of time, energy and resources – and with the truth.

FOR THE RECORD

**Testimony of Cándida A. Bidó, before the NYC  
Council Hearing on Tobacco Product Display  
Restriction May 2, 2013**

Good afternoon Chair Person and members of the Committee. I am a longtime advocate of tobacco control.

According to the Surgeon General, the Centers for Disease Control and Prevention, the New York State Department of Health, the New York City Department of Health and Mental Hygiene, and my Asthma Doctor, tobacco is a leading cause of preventable death in New York City, killing thousands each year.

The 2011 NYC Youth Risk Behavior Survey found that 19,000 public high school students under the age of 18 currently smoke...these adolescents are my nephews, my nieces, my cousins, my neighbors, my friends and many of the youth I work with! In a 2012 Tobacco Behavior and Public Opinion Survey, 59% of New York City residents, including 41% of smokers, favor keeping tobacco products out of sight.

Our society and culture are shaped by the information and imagery we received every day! Many businesses in the South Bronx display tobacco products and advertisements defiantly and without regards at children eye level and in plain sight...every day!

As an elected official I implore you to do the right thing: **KEEP TOBACCO PRODUCTS OUT OF OUR CHILDREN'S SIGHT!** Tobacco companies 'messages bombard us every day and monopolize our decisions; removing tobacco displays will have a great impact on residents' wellbeing and particularly on our youth's health and future!

FOR THE RECORD

FOR THE RECORD

FOR THE RECORD

## **Testimony of Samapti Khanan , Health Opportunity High School Student before the NYC Council Hearing on Tobacco Product Display Restriction May 2, 2013**

As an eighteen year old female, living in the Bronx, Many times I feel overwhelmed and stressed when I walk down the streets in my neighborhood and tobacco smoke hits my face forcing me to involuntary inhale it.

All of my friends want to look cool and they want to fit into this glamorous life style shown in tobacco advertisements. Stores in my neighborhoods have a lot of shelf space displaying popular cigarette brands that my friends smoke.

I know that the ingredients in cigarettes can cause my friends harm and that the presence of tobacco products in our stores normalizes their use, creating the impression tobacco use is socially acceptable and it further increases the chance we will smoke.

Many of my friends are obsessed with cigarettes; they cannot focus in class, get to school on time, and they feel the need to smoke. I see my peers go in the school bathroom, in the locker room, and around the corner to smoke. My classmates, who smoke, invite me to join in so I won't feel left out, but I do not!

It's best for stores in the Bronx not to display tobacco products to us, the youth.  
**We are still being targeted by Tobacco Companies!**

**IT'S YOUR DUTY TO PROHIBIT TOBACCO PRODUCTS DISPLAYED IN OUR NEIGHBORHOODS!**

Our lives would be better without the constant pressure local stores place on us with their countless tobacco displays. If we do not work together and decrease tobacco products displayed in stores, the efforts of NYC tobacco control to reduce youth smoking in the Bronx will be in vain.

FOR THE RECORD



**Testimony of Phil Konigsberg before the New York City Council Health Committee, May 2, 2013**

Prohibiting tobacco products from being displayed in retail establishments and convenience stores is essential to break the cycle of addicting the next replacement smoker generation.

Cigarette advertisements and product placement in retail stores are highly sophisticated marketing strategies that are extraordinarily effective in attracting vulnerable underage youth to experiment with tobacco. Statistics indicate that \$34 million in tobacco advertising is spent on a daily basis and most of that amount is targeted toward teenagers as young as 13 years-old based on formerly secret tobacco industry documents.

I recall seeing photographs of cigarette advertisements placed in huge mobile billboard trucks that were strategically parked in front of schools and playgrounds all day so they were seen by school aged children going in and out of school and playing sports in the schoolyard.

The tobacco industry knows that the best way to attract new smokers is to recruit them when they are still impressionable and have a sense of immortality. They know that seeing images of tobacco products on a daily basis is perceived as smoking being a normal behavior in society and are susceptible to experimenting with its use before they are old enough to buy cigarettes.

By keeping cigarettes out of sight of youngsters is keeping them out of mind.

When Johnnie walks into a convenience store after school to buy a bag of M & M's he shouldn't see a pack of Marlboro or Newport in his line of sight at the checkout counter. Something that does not occur by coincidence, but rather by product placement strategy and financial incentives offered to the store owner by the tobacco industry.

Phil Konigsberg  
Smokefree Community Advocate for ¼ of a century

**FOR THE RECORD**

**Christa Belgrave**

**Testimony before the New York City Council Committee on Health**

**May 2, 2013**

I have learned a great deal since I began interning at the Manhattan Tobacco Cessation Program and feel honored to have become involved in such an important public health issue. My education and experiences have shown me how important it is to address tobacco and its pervasive negative health effects. This means deterring the onset of tobacco use in young adults and teenagers. Studies demonstrate that most smokers begin at a young age and my encounters with patients have only reinforced this reality. Most of these patients want to quit yet often they lack the tools and/or resources to do so. This is why it is imperative to reduce the percentage of individuals who start smoking, in addition to providing support for those who are trying to quit. On a more personal note, I once had a patient tell me that he quit smoking after he saw an advertisement on TV. He called the New York State Smokers' Quitline and has been working on cessation ever since. This story reinforces the necessity of a diverse approach to tobacco control. Whether it is an advertisement, a poster, or advocating with elected officials, it all matters in delaying and preventing our youth from smoking. As a prospective physician I vow to always address and talk to my patients about tobacco use and dependence as it is a preventable health priority that directly effects thousands of New Yorkers every year.

## **FOR THE RECORD**

Thursday, May 2, 2013

### **Testimony before the New York City Council Health Committee**

Out of sight out of mind. That is what I stand by when I think of cigarettes.

It should also be the slogan for how we can protect our kids from the tobacco industry and the dangers of smoking. Studies have proven that the more tobacco marketing kids see, the more likely they are to smoke. I have seen this personally within my own family.

I have two brothers who are serious smokers and they got their start in high school. At one point in my life, I asked them why did they start smoking? The answer they gave haunted me because of the simplicity in which they decided to begin a serious and dangerous habit. They stated that the cigarettes were there and they were easy to get.

As I write this, my doctor not too long ago informed me that my asthma and subsequently my lung capacity have gotten worse. I developed asthma and other respiratory problems due to second hand smoke from years of my brothers smoking near me. If my brothers had not been able to get their hands on cigarettes so easily, I may not have to fear everyday about forgetting to take my medication to help me breath.

Sincerely,  
*Hasiba Rashid*  
Brooklyn, NY

## FOR THE RECORD

Testimony of Justine Ouano before the New York City Council Committee on Health

Thursday, May 2<sup>nd</sup> 2013

For the past two years, I have been working with ninth graders at the High School for Medical Professions (HSMP) in Canarsie, Brooklyn. Because the nature of the school focuses on health, a significant portion of curriculum is dedicated to learning about the effects of smoking and creating actions to speak out against Big Tobacco companies.

Global Kids is an organization that uses the lens of human rights to mold young leaders able to make change in their local and global communities. For the past few months, my colleague and I have been working with our HSMP students connecting media literacy and the marketing tactics of Big Tobacco companies. They are now successfully able to make the connections between the visible placement of tobacco products at their local corner stores and the strategy of Big Tobacco towards youth; they are also now have the ability to see past the appeal of many tobacco ads to be aware that just because it may look cool to smoke, becoming addicted to a product containing rat poison and nail polish remover, among other harmful ingredients, is not.

As proud as I am with the way my students have absorbed this new knowledge, I know very well that media literacy is unfortunately not enough. Every day, my students are bombarded with messages attempting to lure them into smoking. This is why the display ban policy is of critical importance for my students and all young people throughout NYC. There need to be more policies that support the continuing health of youth, especially in Canarsie where there are already not enough resources to help individuals quit smoking. While there is a long way to go, the display ban would definitely a strong start in supporting children in growing up smoke-free.

Justine Ouano  
Senior Trainer  
Global Kids Inc.  
137 East 25th Street, 2nd Floor  
New York, NY 10010

## **Testimony of Stephen Nallen before the New York City Council Committee on Health**

May 2, 2013

Good afternoon Council Member, my name is Stephen Nallen. I am a 6<sup>th</sup> generation Bronx resident, home owner, tax payer and proud small business owner.

I am here today to speak on behalf of my parents small Business Tri-Edy's Deli. Tri-Edy's Deli is located in the Woodlawn section of the Bronx and has been in business for over 34 years. Because of the economic downturn and other circumstances many of the old mom and pop stores on our avenue have closed. The old butcher, tailor, candy store, 5 and dime, and stationary store are all gone. These stores have been replaced with, as I like to call them, 24 hour bazaars.

I went to business school for accounting and understand the concepts of capitalism and competition. I celebrate both principles as I think capitalism and fair competition is what makes our nation and this city prosper. We are here today to hear testimony on proposed changes to tobacco laws in NYC.

The first two aspects of the law relate to changing the age requirement from 18 to 21 and the display of cigarettes. As a deli owner and a NYC Tobacco retailer I am not opposed to any of these proposed changes. I do not believe changing the age requirement or taking away the ability to display cigarettes will affect our business in anyway. Our business is not made on cigarettes. In fact in the current landscape we operate in, the actions of direct competitors of ours, and the proliferation of illegally trafficked and unstamped cigarettes sold by our competitors has ruined the business my parents worked so hard to build.

For 34 years my parents have done one thing. They've played by the rules. The majority of other shop's in our neighborhood have not been playing by the rules for some time now. A majority of the other stores in our neighborhood sell illegal unstamped cigarettes which are brought in from other states and sold to the consumer at a reduced cost as compared to a legitimate NYC Tobacco retailer like myself.

These unjust retailers pay as little as \$30 for a carton of cigarettes and sell them to the consumer for \$9 dollars a pack. That amounts to \$60 per carton profit going directly into the retailer's pocket. Cash, untaxed, and New York State & New York City excise tax evaded. My parents on the other hand pay \$112 for a single carton of cigarettes and sell them for \$11.50 per pack. We make \$3 total on a carton of cigarettes selling them legally while these criminals make \$6 per pack evading all taxes.

And after two years of fighting this there is still no accountability. Five to seven years ago when our prices on cigarettes were on par with the other stores in the neighborhood we used to sell upwards of 150-200 cartons of cigarettes a week. We now sell 8 cartons of cigarettes a week.

I know that as a result of costs, health concerns, and various initiatives put forth by the city and the health department people are smoking less then there were 5 or so years ago. However, knowing my neighborhood, the one that I've lived for my whole life; my neighborhood is still a

very smoker heavy neighborhood. My neighbors, friends, and former customers now shop elsewhere at those retailers selling illegal unstamped cigarettes.

As I previously mentioned before, our business has never been based on cigarette's, rather our reputation, relationship with our customers and the quality product we are able to deliver. The proliferation of illegal cigarettes made readily available by retailers in my neighborhood not playing by the rules has cost us customers. Customers who, with un-even playing field, will never return to shop with us.

What people fail to realize is we are not losing just because the customer will not buy a pack of cigarettes from us. We lose on the whole sale. That consumer who went into that store to buy a pack of cigarettes also buys a loaf of bread, a gallon of milk, some cold cuts and only shops at that location because he is saving 3 dollars a pack on his illegal cigarettes. That is the true impact.

Five to seven years ago we never really made much money even when we did sell 150-200 cartons a week. My family doesn't look at those packs of cigarettes as lost profit but really a true indicator of the sheer volume and amount of customers and shoppers we have lost a result of the current regulatory and enforcement environment we are in. The truth is in the numbers and as a result of losing many of our loyal customers to the other retailers not playing by the rules- conservatively our overall sales are down 40-50% as compared to 5-7 years ago.

Selling illegal cigarettes is a highly lucrative business. Other stores on the block are doing upwards of 500% more business than we are. We have the best location, best cold cuts, best sandwiches, and coldest beer in the neighborhood but cannot continue to operate in this current environment. That is why I am here today to implore the city council to consider the changes being considered, in particular the enforcement piece related to sale of unstamped cigarettes.

Throughout all areas of the city; local neighborhood businesses that play by the rules are being ruined by these criminal operations selling illegal cigarettes. Businesses lose, neighborhoods lose, and most importantly the City and State lose out of an exponential amount of tax revenue.

According to the New York Department of Finance half of all the cigarettes sold in the city are untaxed, which is why I implore you to consider the changes being considered today.

All we are looking for is a level playing field.

Thank you for your time and I look forward to seeing all aspects of these proposed changes enacted into law.

## The Great Houdini Asks: Would you rather pay \$12, or \$7?

That is the question the mayor should be asking 18 – 21 year olds and all New Yorkers who smoke. Bloomberg's proposal that would increase the legal smoking age is self serving and utterly unrealistic. Does he really believe that citizens between 18 and 21 years of age who are in the habit of smoking cigarettes will follow his dictum, or will they simply make their purchases from untaxed sources? Guess what: Most already do! The mayor's personal crisis agenda with smoking and his repeated willingness to abrogate individual freedoms has become less of a surprise. What is more disturbing now is news of the recruitment of **City Council Speaker Christine Quinn**. **When did she become Bloomberg's Myrmidon?** Quinn has a record peppered with accomplishments undertaking issues of individual and class rights. What unholy attachment to this outgoing bully can she have?

Mayor Bloomberg's slight of hand approach to cigarette policy is costing the City hundreds of millions in lost revenue and jobs while failing to decrease either teenage smoking, or inner-city usage. The several articles attached herein confirm that which both the trade and unbiased law enforcement has known for years. Taxes can only raise revenue if people pay them! The Mayor's prolific tax increase of 1875% during his first 5 months in office became the catalyst for criminals and terrorists to flock to New York and cause illegal, untaxed cigarettes to become ubiquitous.

While the national smoking rate has decreased by 27% in the past 12 years because of greater individual health awareness and local restrictions, the rate of decline of taxed purchases in New York City during Bloomberg's watch has fallen by 83% (42 million cartons in 2001 and 7 million cartons for 2013e.) If the true rate of consumption in New York City were only 7 million cartons, then the Mayor's "big daddy" approach to social engineering would score points with the health community. But that is far from the truth in Gotham. The attached articles and other recent authoritative (non-industry) studies by public officials and our own State Department of Health show that attempts to socially engineer behavior through increased taxes produce a far different outcome than intended, with the black market the main beneficiary. According to the current consensus by enforcement professionals and unbiased research, 65% - 75% of all cigarettes consumed in New York City are untaxed. Adding together revenue shared from sales taxes and excise taxes; the City and State are losing \$1.2 Billion annually from New York City's illegal trade.

Truckloads of cigarettes are coming into New York daily and stored in warehouses, loaded into vans and sold to street merchants and stores. One such operation was brought to justice by the cooperation of industry with Kings County District Attorney **Charles Hynes**, when February of last year he announced 23 arrests for distributing 6,600,000 untaxed cigarettes, evading \$2 million in City and State taxes. This was just the tip of the iceberg. The evolving criminal and terrorist groups that have been attracted to the big money in cigarette smuggling in New York have been caught with several other nefarious illegal activities, including credit card fraud, counterfeiting, money laundering and gun running. Long Island's congressman **Peter King**, chairman

of the House Homeland Security Committee, has repeatedly found evidence here in New York of the funding of terrorism through cigarette trafficking.

Mayor Bloomberg's misguided taxing policy has created the largest criminal enterprise in the country. Yet, he pontificates on the wonder of his achievement of having stopped 80% of teenage and overall smoking during his tenure. The truth is that with the almost total absence of enforcement efforts and a judicial system overburdened, criminals will always make contraband competitive and available allowing the public to buy even cheaper smokes than before. The Mayor's appointed health officials mimic his rhetoric and slight of hand, while kids are smoking more, not less.

After the Mayor's unprecedented tax increase of 2002, at first Indian reservations supplied the thousands of street merchants who sold mostly from backpacks. Then even worse happened! Licensed retailers, not able to compete and stay in business, began buying untaxed product and selling to known customers during the evening. And now, competition at retail has reached the level where half of all cigarettes are sold untaxed in stores throughout the city. This trend will continue unabated; teenagers will buy cheap smokes in greater numbers and New Yorkers will be required to cough up more in taxes to offset the deficit from the lost revenue, because Bloomberg's disappearing cigarette magic act is measured in taxed sales, not total usage and he won't reveal the lie by allowing City and State law enforcement to do its job.

When it comes to getting back our much-needed revenue and promoting health, we must finally realize that unsustainable rates of taxation and 'make believe' law enforcement will never go hand and hand. Yet Houdini, our fearless leader, unencumbered by the facts, and still having us believe that he has stopped smoking and saved our health, now in a most fatuous manner, is attempting to **make cigarettes disappear from the shelves all together**. Mr. Mayor, take the blindfold off and stop treating New Yorkers as second-class citizens. Level the cigarette tax with the rest of the state and enforce the law. At least do that before adding to the problem with more of your personal agenda.

New York City is the revered entry point for the "melting pot" that is the U.S.A. Many immigrants become storeowners or their employees. The choice of selling contraband, or going out of business does not teach respect for the rule of law and leads to recalcitrance and the underground economy that follows.





# NEW YORK POST

DAY, OCTOBER 3, 2002

LATE CITY FINAL

## THE GREAT CIGARETTE-TAX LIE

EW York's highest-in-the-nation cigarette taxes are failing to drive down smoking rates; instead, they're just putting a heavy burden on poor New Yorkers. A new study funded by the state's Department of Health confirms these ugly facts.

Yes, the public-health establishment insists that every hike in cigarette taxes results in fewer people smoking. But it's not true: Extensive research shows that high "butt taxes" are a major public-health mistake that punishes the poor without reducing smoking.

Today, smokers are mostly lower income and younger people. But neither of these overlapping groups is smoking less — and both groups are poorer, thanks to cigarette taxes.

The state-funded study found that cigarette taxes hurt poorest smokers the most — that is, they're "regressive," the term economists use to describe a tax that hits harder on lower-income folks.

In this study, Research Triangle Institute researchers surveyed more than 13,000 people (found on New York, but with a national sample as well) to investigate the impact of high cigarette taxes on different income levels. They found that low-income smokers (individuals in families making less than \$30,000 a year) spent an average of 11.6 percent of annual family income on cigarettes, way up from 11.6 percent in 2004.

In stark contrast, smokers in families making more than \$60,000 a year spent an average of just 2.2

percent of their family income on cigarettes.

Despite New York's several butt-tax hikes over the past decade, the study found no decline in smoking among low-income smokers. The lead researcher, Dr. Matthew Farrelly, openly conceded, "It may be that raising [cigarette] taxes does not work well for low-income smokers."

Most recently, there is strong evidence from France that higher cigarette taxes haven't dampened youth smoking. On the contrary, in tandem with a tobacco advertising ban, higher taxes have made teen smoking cooler than ever.

In fact, many other studies have reached similar findings. A very large body of research evidence from a variety of countries suggests high taxes fail to reduce total smoking.

Yes, smoking is down — but not because of taxes. In the decades since the 1964 Surgeon General's Report, greater knowledge of smoking's impact on health has led many to quit, and more to never start smoking; and of course most people are more health-conscious than half a century ago. But the drop has been overwhelmingly among middle- and upper-class people.

Why don't higher taxes reduce smoking? We don't know for sure, but social scientists have documented some factors. First, higher taxes promote illicit trade in cigarettes (both smuggling and counterfeiting), especially among the poor. And, second, a good many lower-income

smokers respond to higher butt taxes by cutting back elsewhere — as the New York study demonstrates yet again.

In other words, lower-income smokers don't respond the way the elite public-health establishment thinks they should.

Why does the policy debate continue on as if they do? Well, the political and media classes trust the anti-tobacco crusaders — who are too caught up in their cause to admit failure.

And academics have no incentive to publicize their "counterintuitive" findings; it would only win them scorn and charges of somehow being in the pocket of Big Tobacco. (The authors of the New York study are both displeased with and puzzled by their findings.)

So arrogant politicians like Mayor Bloomberg continue with their tax-to-the-max, relying on "experts" who tell them what they want to hear, with propaganda dressed up as science.

The public-health elitists' attitude seems to be (with apologies to H.L. Mencken) that smokers deserve the taxation they get — and they deserve to get it good and hard.

Yet these taxes fail any test of sensible public health policy. They are unjustified by the scientific evidence and morally compromised by their harmful impact on the disadvantaged — exactly the sort of policy to be avoided by any government that is either wise or good.

Patrick Basham, a Cato Institute adjunct scholar, and John Luik, a Democracy Institute senior fellow, are the co-authors of "The Plain Truth: Does Packaging Influence Smoking?"

**PATRICK BASHAM  
& JOHN LUIK**

## **The illegal cigarette market in a socioeconomically deprived inner-city area: the case of the South Bronx<sup>1</sup>**

Marin K. Kurti, Klaus von Lampe, Douglas E. Thompson

### **ABSTRACT**

**Objective:** To determine the scope of the cigarette black market in a socioeconomically deprived inner-city area in the US, taking the South Bronx in New York City as a case study.

**Design:** The South Bronx Litter Pack Survey collected discarded cigarette packs (n=497) along 30 randomised census tracts to quantify the prevalence of counterfeit, legal and out-of-state tax stamps.

**Results:** It was found that 76.2% of cigarette packs collected avoided the combined New York City and State tax. More specifically, 57.9% were untaxed (counterfeit or bearing no tax stamp), for 15.8% taxes were paid outside of New York City (including other states and New York State only). Only 19.4% of tax stamps collected indicated that New York City and New York State taxes were paid. 4.4% of the cigarette packs could not be analysed because the tax stamps were not discernible. The finding that the majority of cigarettes did not have a tax stamp or bore a counterfeit tax stamp suggests that these cigarettes were being bootlegged, most likely from Native American Reservations.

**Conclusions:** The present study highlights the importance of examining the illegal cigarette market in socioeconomically deprived regions of the US, where tax avoidance and black market activities appear to far exceed levels found elsewhere in the country including Chicago and New York City at large.

### **INTRODUCTION**

The main factors believed to contribute to the illegal cigarette market in the US include poverty, high rates of cigarette consumption, social acceptability of illicit activities, high tax rates as well as high tax-induced cross-border price differentials.<sup>1,2</sup> These variables are highly prevalent in the South Bronx area of New York City. New York City has the highest tax rates on cigarettes nationwide. Cigarettes sold in New York City in 2011 have been subject to a combined New York State (US\$4.35) and New York City tax (US\$1.50).<sup>3</sup> At the same time, New York City is in relatively close proximity to low-tax jurisdictions, namely Native American Reservations in New York State. In addition, the South Bronx currently has the highest rates of smokers in New York City and also the highest rates of poverty in the nation.<sup>4,5</sup> We therefore assume that nowhere else in the US is it more likely to find a highly prevalent and well entrenched cigarette black market, which makes the South Bronx an obvious starting point for studying local cigarette black markets in the US. The main aim of our study is to provide, for the first time, a detailed

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<sup>1</sup> *Tobacco Control* published online, August 4, 2012, doi:10.1136/tobaccocontrol-2011-050412

Table 1 South Bronx litter pack survey

Tax stamp	Percentage
Untaxed	42%***
No tax stamp	14.1%***
NYC/NYS (counterfeit)	1.8%
NYS (counterfeit)	57.9%
Total	
Out of New York City taxes paid	0.2%
Ohio	0.2%
Tennessee	0.6%
Georgia	0.7%
Indiana	0.6%
Delaware	4.4%***
New Jersey	9.1%***
Virginia	0.2%
Dominican republic	2.3%*
NYS only (genuine)	15.8%
Total	
New York City taxes paid	19.4%***
NYC/NYS (genuine)	19.4%
Total	
Unknown cigarettes	4.4%***
Unknown	4.4%
Total	100%

SE \* $p < 0.05$ , \*\* $p < 0.01$ , \*\*\* $p < 0.001$ .  
 NYC, New York City; NYS, New York State.

In the analysed sample, there were 14 different types of cigarette brands, although Newport and (to a lesser extent) Marlboro were found to dominate the South Bronx cigarette market. In fact, 86% of cigarette packs were Newport (menthol), 7% regular Marlboro, (commonly termed 'reds') and 3.3% were Marlboro Light.

## DISCUSSION

The findings that 76.2% of discarded packs in the South Bronx were not legally sold within New York City confirms the general expectation that where taxes are high and income levels low, a cigarette black market of significant proportions develops. Our research suggests that tax avoidance in the South Bronx exceeds the levels of previous estimates for the US,<sup>17</sup> and also the levels of about 50% found in recent research in New York City.<sup>12</sup> Although tax avoidance rates mirror those found in Chicago, the rate of counterfeit tax stamps is higher.<sup>8</sup>

The finding that 42% of discarded cigarette packs do not have a tax stamp and 15.9% bear counterfeit tax stamps confirms recent research and anecdotal evidence that Native

American Reservations have been the main source of contraband cigarettes for the black market in New York City.<sup>9 12</sup>

For example, William Comiskey, former Deputy Commissioner of Tax Enforcement at the New York State Department of Taxation and Finance, testified before the US Senate that since the late 1990s an increasing share of cigarettes shipped to New York State have gone through Native American Reservations. The share increased from 2.9% (5.7 million cartons) in 1988 to 34.1% (27.5 million cartons) in 2008.<sup>10</sup> Of the 80 New York State licensed stamping agents, 10 sold over 122 million cartons of untaxed cigarettes to Native American Reservations from January 2006 to August 2009.<sup>10</sup> Cigarettes sold on Native American Reservations are subject to federal but not state excise taxes and, until a recent change in law, did not have to bear tax stamps. Considering the geographical proximity of the Native American Reservations, including two that are in close driving distance from the South Bronx (68.2 and 94 miles), they are the more likely source than states where tax stamps are not traditionally affixed, that is, North Carolina, South Carolina and North Dakota.<sup>3</sup>

Given recent changes in the legal framework the reported trend may no longer be true. Under amended tax law, confirmed by a US Court of Appeals on 9 May 2011, Native American Reservations now have to prepay taxes on all cigarettes to be sold to tribal and non-tribal members except for small amounts which may still be obtained from wholesale dealers without tax stamps.<sup>11</sup> Future research is needed in order to understand if bootlegging patterns have shifted from Native American Reservations to low-tax states such as Virginia, Georgia, North Carolina and South Carolina.

**Acknowledgements:** We would like to thank the New York State Department of Taxation and Finance (NYSDTF) for analysing the discarded cigarette packs and Eric Proshansky (New York City Law Department) for sharing his expertise on tobacco tax law. We also thank David Merriman (University of Illinois at Chicago) and Howard Chernick (CUNY, Hunter College) for their invaluable advice regarding data collection and analysis. We express our gratitude to the three anonymous reviewers for their helpful comments.

**Contributors:** This study was designed by MKK and KVL. MKK collected the data. KVL, MKK and DET analysed the data and wrote the article.

**Funding:** Funding was provided by John Jay College of Criminal Justice. Graduate Research Scholarship.

**Competing interests:** None.

**Patient consent:** Obtained.

**Ethics approval:** This study was conducted with the approval of John Jay College of Criminal Justice, New York, NY, USA.

## Recommendations: Increase Revenue, Health, Jobs and Legality

- **High Tax:** The additional \$1.50 per pack of New York City excise tax on cigarettes, which when added to the New York State excise tax of \$4.35 per pack, causes a differential with lower taxed and untaxed jurisdictions that encourages bootlegging, criminality and the funding of terrorism. By leveling the excise tax to that of the state, the incentive for this illicit trade would greatly diminish and business would return to the City's retail trade. The truth is that this tax is paid only a fraction of the time now and will continue to diminish under current conditions. The City would amend the revenue sharing agreement with the state, since there will be \$4.35 in additional revenue for the state with each pack that is recaptured.
- **Enforcement:** Both the City and the State have given up on enforcement, but is still possible to make a significant difference at a reasonable cost, by arresting and prosecuting bootleggers who rob the City and State of hundreds of millions of dollars each year. Engage the cops on the beat and bring in the undercover officers that know how to infiltrate the supply chain. The State is not doing its job now and that should be addressed by the City's setting the example. Many hundreds of stores and street merchants are openly buying and selling untaxed product. Busts and roll-ups of supply will break organized crime with their many types of illegal acts.
- **Special Court:** When the tax enforcement division of New York City attempted to arrest backpackers after the Mayor's 1875% tax rise of 2002, justice was not served. The District Attorneys and the courts would not cooperate. Now the illegality has spread to stores and organized crime and there is no response from law enforcement. This must be addressed! A special court should be created and its sole responsibility would be to deal with cigarette tax avoidance cases. Whether stores, (licensed, or not), or bootleggers will be prosecuted there.
- **Awareness and Reward Program:** Much like the FDA has proposed, we must solicit the eyes of the industry and the public to easily make cigarette law enforcement aware of the contraband in stores, or street sales being distributed by vehicles. Signage in stores and public awareness through announcements and the media can become way more effective in concert with a reward program.  $[\$4.35 + \$1.50 + \text{Sales Tax}] = \$7$  per pack, or \$70 per carton of cigarettes. Why not clean up this mess with the public's help? Offer a \$10 per carton reward for all contraband confiscated by law enforcement as a direct and exclusive result of information. Also, the State Income Tax Return has a line that requires payment for untaxed cigarette purchases. The City Income Tax Return should follow. Prosecution will be made easier!
- **Intensify Youth Anti-Smoking Program:** Rather than rob 18 – 21 year olds of individual rights, increase the effectiveness of anti-smoking propaganda in the city's middle schools. This can make a difference without the unintended consequences of sending thousands of young smokers to untaxed sources.

# What is an e-cigarette?

**What is it?** The electronic cigarette is also known as an "e-cig", "an e-cigarette", "a personal vaporizer", a "PV", a "nicotine vaporizer" and many other things. It is a device used to simulate smoking to absorb nicotine in vapor form and is used by more than a million people in the United States as an alternative to cigarettes and in situations where cigarettes are not permitted.

**How does the electronic cigarette work?** A rechargeable battery powers a heating element called an atomizer which heats (or steams) e-liquid (aka nicotine liquid). The atomizer turns the liquid into a vapor which is inhaled and delivers nicotine to the bloodstream. After the nicotine is absorbed, the excess vapor (steam) is exhaled.

**What is in the exhaled vapor/steam?** The vapor is visible and simulates smoke and most times contains a mixture of trace amounts of nicotine (also available without nicotine), flavoring (also available without flavoring) and propylene glycol and/or vegetable glycerin. Propylene glycol is the liquid used in fog machines at shows and clubs. It is also the main component in some asthma inhalers as well as many household products. It is generally regarded as safe for consumption by the FDA. Fewer studies have been done on vegetable glycerin based formula.

**Who uses this product?** Smokers and others addicted to nicotine that are looking for a way to maintain nicotine use and avoid the known risks that tobacco smoking presents to their own health and the health of those around them. Not for use by those under 18 or by pregnant women.

**Does it contain tobacco?** The name electronic cigarette is quite deceiving since the device actually contains no tobacco and nothing burns. The lack of combustion can eliminate carcinogens, smoke, tar, carbon monoxide and a number of other chemical byproducts usually produced by tobacco cigarettes.

**Does using the device save money over smoking regular cigarettes?** The average smoker spends between \$2000 and \$4000 a year on cigarettes. Using electronic cigarettes can effectively cut that by 75% (or more!). Cost of a decent e-cigarette kit should NOT exceed \$100!

**Is it legal to use inside?** Yes, except in a few towns and counties in different states as well as the states of New Jersey and Utah. Any establishment, however, reserves the right to ask you not to use it on their property so please be courteous and step outside if asked.

**Where can I get one of these?** They are mostly available for purchase on the internet. Simply search electronic cigarettes or go to our links page for trusted vendors with reasonable prices.

Sponsored by...

**National Vapers Club**

[www.VapersClub.com](http://www.VapersClub.com)

and

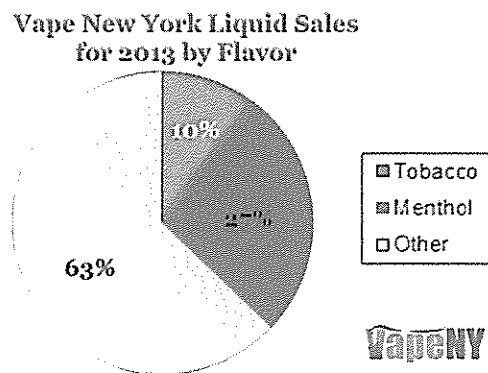
[www.VapeNY.com](http://www.VapeNY.com)

## Fact Sheet on Vapor Products Regarding Flavors

-An apparent unintended consequence of Int 1021-2013 is that it could potentially disallow the sale of vapor products (sold as e-cigarettes) that are not tobacco or menthol flavored.

-“ ...smoking for just a few more months on the way to becoming abstinent is a greater health risk than a lifetime of e-cigarettes” - Dr. Carl Phillips on Tobacco Harm Reduction.

-This legislation could stop most NYC vapor product sales as the majority of e-cigarette users use flavors that are not menthol or tobacco (see chart attached) and send users back to deadly tobacco cigarettes.



-Vapor Products that taste like tobacco or menthol cigarettes maintain the habit of tasting cigarette flavors and is likely to make people want to keep smoking. Using other flavors in e-cigarettes is pleasant and can make smoking tobacco seem unpleasant.

-If Nicorette gum only came in Marlboro and Newport flavor, NO ONE would use it. Smokers who are trying not to be reminded of cigarettes do NOT want something that tastes like a cigarette.

-When given the choice between cigarette flavored soda or cherry flavored soda, most adults would prefer pleasant flavors over tobacco and menthol flavors.

-Adults should have the right to choose. There is vanilla coffee and cherry vodka and these are both consumables that are meant for adults.

-NYS law already bans sales of e-cigarettes to minors and there is little or no evidence of minors using or purchasing e-cigarettes.

-While hundreds of thousands of New Yorkers use vapor products, only one violation has been cited in the 4 months since e-cigarette sales to minors has been restricted.

-Multiple surveys show (See attached) that children who never smoked are not using e-cigarettes and the average age of e-cigarette users is over 40.

-Vapor Products do not contain tobacco and should NOT be regulated in the same way as tobacco products. They are used as Smoking Replacement Products.

## Potential Amendment for 1020/1021

Please exclude vapor products from the proposed legislation. See amendment below...

### **Definition of Tobacco Product-**

"Tobacco product" means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, or dissolvable tobacco product. Tobacco product shall not include cigarettes, **vapor products** or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purpose.

### **Definition of Vapor Product-**

"Vapor Product" means any electronic oral device, such as one composed of a heating or ultrasonic element, battery, and/or electronic circuit, which does not contain tobacco, but provides a vapor that may or may not contain nicotine. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.



# Electronic cigarette: users profile, utilization, satisfaction and perceived efficacy

1. Jean-François Etter<sup>1,\*</sup>,
2. Chris Bullen<sup>2</sup>

## Addiction

Volume 106, Issue 11, pages 2017–2028, November 2011

## ABSTRACT

**Aims** To assess the profile, utilization patterns, satisfaction and perceived effects among users of electronic cigarettes ('e-cigarettes').

**Design and Setting** Internet survey in English and French in 2010.

**Measurements** Online questionnaire.

**Participants** Visitors of websites and online discussion forums dedicated to e-cigarettes and to smoking cessation.

**Findings** There were 3587 participants (70% former tobacco smokers, 61% men, mean age 41 years). The median duration of electronic cigarette use was 3 months, users drew 120 puffs/day and used five refills/day. Almost all (97%) used e-cigarettes containing nicotine. Daily users spent \$33 per month on these products. Most (96%) said the e-cigarette helped them to quit smoking or reduce their smoking (92%). Reasons for using the e-cigarette included the perception that it was less toxic than tobacco (84%), to deal with craving for tobacco (79%) and withdrawal symptoms (67%), to quit smoking or avoid relapsing (77%), because it was cheaper than smoking (57%) and to deal with situations where smoking was prohibited (39%). Most ex-smokers (79%) feared they might relapse to smoking if they stopped using the e-cigarette. Users of nicotine-containing e-cigarettes reported better relief of withdrawal and a greater effect on smoking cessation than those using non-nicotine e-cigarettes.

**Conclusions** E-cigarettes were used much as people would use nicotine replacement medications: by former smokers to avoid relapse or as an aid to cut down or quit smoking. Further research should evaluate the safety and efficacy of e-cigarettes for administration of nicotine and other substances, and for quitting and relapse prevention.

# **New Study on Electronic Cigarette Use Among Youth Fails to Find a Single Nonsmoking Youth Who Has Even Tried an Electronic Cigarette**

**Dr. Michael Siegel** – Boston School of Public Health

In a newly published article in the *Journal of Adolescent Health*, Pepper et al. report the results of an online survey of 228 adolescent males, ages 11-19, to assess awareness, willingness to use, and actual use of electronic cigarettes.

The results were reported as follows: "Only two participants (< 1%) had previously tried e-cigarettes. Among those who had not tried e-cigarettes, most (67%) had heard of them. Awareness was higher among older and non-Hispanic adolescents. Nearly 1 in 5 (18%) participants were willing to try either a plain or flavored e-cigarette, but willingness to try plain versus flavored varieties did not differ. Smokers were more willing to try any e-cigarette than nonsmokers (74% vs. 13%; OR 10.25, 95% CI 2.88, 36.46). Nonsmokers who had more negative beliefs about the typical smoker were less willing to try e-cigarettes (OR .58, 95% CI .43, .79)."

The article concludes: "Given that even experimentation with e-cigarettes could lead to nicotine dependence and subsequent use of other tobacco products, regulatory and behavioral interventions are needed to prevent "gateway" use by adolescent nonsmokers."

In an accompanying commentary entitled "Electronic Cigarettes: A New Nicotine Gateway?" Dr. Rachel Grana of the Center for Tobacco Control Research and Education expresses alarm because "18% of the sample endorsed being susceptible to trying e-cigarettes." On this basis, she concludes that: "Additional action should be taken to ensure e-cigarettes are not sold to youth and their appeal to youth and nonsmokers is minimized, such as enacting restrictions on health claims, explicit celebrity endorsements, and the elimination of the flavors."

## **The Rest of the Story**

These two articles are a perfect example of the profound disconnect between the scientific evidence and the policy agenda in the modern tobacco control movement.

Here we have two papers which sound the alarm about the terrible problem of youth use of electronic cigarettes and about the hazards of e-cigarettes serving as a gateway to nicotine addiction. But what did the study actually show?

It showed that not a single nonsmoking youth could be found, among a sample of 228 male adolescents, who actually uses or has ever even tried an electronic cigarette. And only two smoking youth could be found who have tried the product.

This is a striking finding which puts to bed the contention of many anti-smoking groups and advocates that electronic cigarettes appeal heavily to youths and serve as a gateway to nicotine addiction. The finding quite strongly answers the question posed by Dr. Grana, in the negative.

Yet instead of emphasize this important finding, the articles try to scare the public about the scourge of electronic cigarettes among our nation's youth, citing the rather meaningless finding that 18% of youths would be willing to try an electronic cigarette. Most adolescents are willing to try anything. This finding means nothing. The important finding is that in contrast to popular belief among anti-smoking advocates and researchers, the electronic cigarette is simply not popular among adolescents. In this particular sample, not a single nonsmoking youth could be found who has even so much as tried the product.

The first sentence of the paper's discussion reads as follows: "Although few adolescent males in our national sample had tried e-cigarettes, around two-thirds were aware of them." This is an odd way to summarize the results. I would have stated it in exactly the opposite way: "Although two-thirds of the adolescent males in our national sample were aware of electronic cigarettes, only two had ever tried them."

This is a striking finding. Adolescents are widely aware of these products, but they are not using them. And they are not even experimenting with them. Clearly, this is a product which is not particularly appealing to adolescents. They much prefer the real thing. Just as they prefer "real" jeans to imitation ones and "real" name-brand sneakers to imitation ones.

To be sure, public health practitioners and policy makers need to stay vigilant and monitor the use of electronic cigarettes. And measures to prohibit the sale of electronic cigarettes to minors are certainly justified. But the rest of the story is that there simply is no evidence to suggest that electronic cigarettes are appealing to, or popular among youth. Measures suggested by Dr. Grana - such as prohibiting flavors, outlawing celebrity endorsements, or banning truthful claims about the relative safety of these products - are not justified or warranted.

But I don't think most anti-smoking groups or advocates care about the actual evidence. They've already made up their minds. Vaping looks too much like smoking. So forget about the fact that not a single nonsmoking youth could be found who has even tried the product. The advocates must continue to follow the party line and warn about the danger of electronic cigarettes as a gateway to nicotine addiction. Never mind that the gateway just doesn't exist.

## **Testimony for May 2, 2013 New York City Council hearing on Tobacco Display Restriction**

Good afternoon. My name is Barbara P. Sullivan. Born and raised on Staten Island, I am a wife, a mother, a grandmother, a non-profit director and a tobacco control and prevention advocate. I am also a former smoker.

I smoked my first cigarette at the age of 13; I used to take them from my mother's purse and light up at the bus stop on my way to school. Both my parents were smokers. In the days when they started we didn't know the harm that smoking can do or the fact that nicotine is an addictive substance. After a heart attack at age 40, my father switched from cigarettes to little cigars called cigarillos. They were supposed to be less harmful. He smoked those until he had his second heart attack at age 60, the one that killed him. My mother stopped smoking on the day my father died, but I continued for another ten years.

I am also a trained smoking cessation counselor. I've helped countless smokers to quit with the help of Nicotine Replacement Therapy patches and gum. One person I can't seem to help is the person I love the most, my husband of 34 years. To paraphrase Mark Twain, he is an expert on quitting; he's done it a hundred times. He just can't stay off cigarettes. I worry every day about losing him the way my mother lost my father.

In my work and in my neighborhood on Staten Island I see so many young men and women with cigarettes in their mouths. I see the "Power Walls" of cigarette packs in delis and convenience stores that teens and younger children visit every day. The proposal on Tobacco Display Restriction that has brought us here today may not help my husband or other smokers to quit, but it can help young people not to pick up the habit and send a message that smoking is not only deadly but also unacceptable. If it stops even one of them from becoming a replacement smoker and dying prematurely from tobacco-related causes, it's the least we can do for future generations.

Barbara Sullivan

Barbara.Sullivan@CHASINY.org

718-808-1406

## **Testimony of Marie Wilkins before the New York City Council Health Committee**

**May 2, 2013**

My name is Marie. I'm here today because I am a victim of smoking.

I want to make sure others, especially young people, don't become victims too. Even more important, I want you the City Council to protect young people from becoming victims of Big Tobacco, like I did when I started smoking at age 17.

I have Buerger's Disease which is a terrible circulation disease. It stops oxygen and blood from flowing freely through your arteries. This then causes amputations, which I have had several. i.e.: leg, partial foot and several fingertips. This disease is unbelievably cruel and painful and it comes from smoking, which is so addictive. Let me give you an example, after my leg was amputated, all I could think of was getting out the hospital so I could get a cigarette. Now if that's not addictive I don't know what is.

Luckily I got help and I am proud to say it will be 7 years May 15th that I will be smoke free. I hope my story helps those that are trying to stop smoking get help and for those that don't smoke never to start. Not everyone that smokes will get this disease but why take that chance of being that unlucky one, LIKE ME. And if a smoker doesn't get Buerger's Disease from smoking, odds are they will still suffer addiction, lung disease, heart disease, cancer or some other horrible, painful disease. And I don't know anyone who hasn't suffered the loss of someone they love due to smoking.

Mayor Bloomberg is trying to stop the big tobacco companies from forcing our young adults and children to see ads, posters and displays of cigarettes whenever they enter a store. A section that hides cigarettes all the way in the back of the store sounds good to me. After all, out of sight, out of mind. I also support the idea of raising the age for cigarette sales to 21 and cracking down to make sure cigarette smuggling, coupons and promotions don't make cigarettes affordable for young people.

I endorse these ideas and I hope you will too. Let's try to keep cigarettes as far away as we can and try to encourage people to see what smoking really does. Thank You

**THE COUNCIL  
THE CITY OF NEW YORK**

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I represent: None

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Address: 10 Hillcrest Dr. (Arthurs Manor) NY 10367

I represent: \_\_\_\_\_

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Name: Romeo R. Oviamba

Address: 172-06 84th Ave Jamaica N.Y. 11432

I represent: E-Lig Flavors

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Name: FRANCISCO CORREIA

Address: WESTBURY, NY

I represent: SELF

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Name: Russell Wishart

Address: 163 Stanton St. Apt. GR

I represent: Self

Address: \_\_\_\_\_

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Date: 5/2/13

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Name: Esther Zar

Address: 808 Columbus Ave, #3D, NY NY 10025

I represent: Self

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)

Name: MICHELE BONAN

Address: 132 W 32 ST. NY NY 10001

I represent: American Career Society (acc. Artin Nelson)

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/2013

(PLEASE PRINT)

Name: ARTHUR KATZ

Address: 5402 3RD AVE BKLYN

I represent: NYWMDA

Address: \_\_\_\_\_

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 6/2/2013

Name: Dr. NICOLE HARRIS-HOLLINGSWORTH, EDD, CHES (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Public Health Association of New York City

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

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Date: \_\_\_\_\_

Name: Sheriff EDGAR DOMENECH (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: FINANCE

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card

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Date: 5/4/13

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Address: 21438th St NY NY

I represent: AMERICAN LUNG ASSN

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: DAVID FRANKEL, COMMISSIONER (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: FINANCE

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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☐ in favor ☐ in opposition

Date: 5/2/13

Name: Tara Narula (PLEASE PRINT)

Address: 300 E. 74th St Apt 15F

I represent: ATA NY NY 10021

Address: \_\_\_\_\_

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1016/1017/20A Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 5/2/13

Name: Sheelah Fenberg (PLEASE PRINT)

Address: 40 Worth St.

I represent: NYC COMMISSION FOR A SMOKE FREE CITY

Address: 40 Worth St.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1025 104 Res. No. 250A

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Daniel McGoldrick (PLEASE PRINT)

Address: 1400 I St. NW Ste 1200

I represent: Campaign for Tobacco-Free Kids

Address: Washington, DC 20005

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 5/2/13

Name: Stephen Nallen (PLEASE PRINT)

Address: 4345 Katonah Ave Bronx NY 10470

I represent: Tri-Edy's Deli

Address: 4345 Katonah Ave Bronx NY 10470

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Dr. Kurt Ribisl (PLEASE PRINT)

Address: UNC Public Health

I represent: UNC Public Health

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: EDGAR DOMENECH

Address: \_\_\_\_\_

I represent: Sheriff of NYC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Fran Freedman

Address: Deputy Commissioner

I represent: Dept of Consumer Affairs

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020-1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Jay Peltz

Address: 1385 Boston Post Rd, Ca-ch-na-c, NY

I represent: Fool E-Justice Alliance of NY

Address: Same as above

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Barnow Murphy

Address: 157 Holmström Ave

I represent: The Endless Journey

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Chavis S. K. Lee

Address: 48-28 76 St Flushing Meadows

I represent: 21-5 11345

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/2013

(PLEASE PRINT)

Name: SUNGT SOO KIM, SBC

Address: 146-03 34th Ave Flushing

I represent: SMALL BUSINESS NY 11354

Address: CONGRESS, INC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. <sup>0250</sup>1020 <sup>1020</sup> Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: THOMAS BRIANT

Address: MINNEAPOLIS, MN 55347

I represent: NATIONAL ASSOCIATION OF TOBACCO OUTLETS

Address: MINNEAPOLIS, MN

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. <sup>1020</sup>1021 <sup>Age 21</sup> Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Phil Konigsberg

Address: 23-25 Bell Blvd

I represent: Queens Tobacco Control Coalition

Address: Queens, NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 6/10/16

(PLEASE PRINT)

Name: Robert P. Sullivan

Address: 140 Good Avenue + 100-2004

I represent: NY State Police Inside the City

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. 17-720

☒ in favor ☐ in opposition

Date: 5/2/13 *disphy brn*

(PLEASE PRINT)

Name: Annice Kim  
Address: 3040 E. Cornwallis Rd RTP, NC 27709  
I represent: RTI International  
Address: same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020-1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: May 3, 2013

(PLEASE PRINT)

Name: Ralph BOMBARDIER  
Address: 65 ROBERTS DRIVE S/T NY  
I represent: GASOLINE & AUTOMOTIVE SUPPLY  
Address: 371 DOUGLASS BLVD INWOOD NY 11096

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 5-2-13

(PLEASE PRINT)

Name: Jaclyn Bitterman  
Address: 960 Sullivan Ave NY  
I represent: Urban Health Plan Inc  
Address: 960 Sullivan Ave NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

250

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: DR. JAMIE SILVERMAN (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Urban Health Plan

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 250 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: MARLENE FOX (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Marlton Childrens Zone

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: KURT RIBES (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: UNC Public Health

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 250, 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Danny McGoldrick (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: TFK

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020, 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Craig Thompson (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Memorial Sloan Kettering

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 250, 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Tava Namila (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Lenox Hill, AHA

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Mona Golub

Address: \_\_\_\_\_

I represent: Price Choppers

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 150,102 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition 1021

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: MARIE WILKINS

Address: \_\_\_\_\_

I represent: PRIVATE CITIZEN

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Stephen Nallen

Address: \_\_\_\_\_

I represent: Iri Eddy Deli

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Annice Kim

Address: \_\_\_\_\_

I represent: RTI

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: La Tanisha Wright

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. 1020, 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michelle Bonan

Address: \_\_\_\_\_

I represent: ACSCAN

Address: \_\_\_\_\_

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

250

I intend to appear and speak on Int. No. 1020, 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Siebeck

Address: \_\_\_\_\_

I represent: ALA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

250

I intend to appear and speak on Int. No. 1020, 1021 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Sandra Mullin

Address: \_\_\_\_\_

I represent: World Lung Foundation

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Micah Berman

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 250/121 Res. No. 121

☐ in favor ☒ in opposition

Date: 5/6/13

Name: Robert Bookman (PLEASE PRINT)

Address: 325 Broadway

I represent: N.Y.C. Restaurant Operators Assoc.

Address: 325 Broadway

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. 1020

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Gwilt Fong (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: U of Waterloo

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 250 Res. No. 1020

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

Name: Sheelah Feinberg (PLEASE PRINT)

Address: \_\_\_\_\_

I represent: Coalition Smike Free City

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1021 1020 Res. No. 250

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Louise Feld

Address: \_\_\_\_\_

I represent: Citizens Committee for children

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 Res. No. 1020

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Law McGowan

Address: 45-19 43rd St. #2 B - Long Beach

I represent: Self

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020 1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/11/12

(PLEASE PRINT)

Name: Theresa P. P. P.

Address: 9th Ave. 7th St

I represent: NYPIRG

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

-2013

I intend to appear and speak on Int. No. 1020 + 1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)  
Name: JIM CALVIN NY Assn. Convenience Stores

Address: \_\_\_\_\_

I represent: NY Assn of Convenience Stores

Address: 130 Washington Avenue Albany

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: MARIE WILLIAMS

Address: 34 Highland Ave

I represent: Myself

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 120<sup>250</sup> 1021 Res. No. 90

☒ in favor ☐ in opposition

Date: May 2, 2013

(PLEASE PRINT)  
Name: LaTasha Wright

Address: PO Box 18772 Atlanta, GA 31126

I represent: Follow the Signs

Address: PO Box 18772 Atlanta, GA 31126

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Julian Hadeney

Address: 60 Tully Way

I represent: Reality Check

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: David J. Murtz

Address: 105-50 225 Broadway, Suite 630

I represent: NY Association of Grocers, etc.

Address: Same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Charles Mazzeo

Address: 34 Dover Green St, NY

I represent: Reality Check

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Tarique Rumi  
Address: 8555 Bergen Avenue Bronx, NY 10455  
I represent: Coalition for a Smoke Free City  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Candida A. Bido  
Address: 1826 Arthur Ave  
I represent: myself  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Samir  
Address: 1826 Arthur Ave  
I represent: Myself  
Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Finckh, George

Address: 1826 Arthur Ave

I represent: Summit Pharms

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1620/1021 Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 5/2/2013

(PLEASE PRINT)

Name: Gregory Conley

Address: 231 Church Road, Medford, NJ

I represent: Consumer Advocates for Smoke-Free Alternatives

Address: SGME

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 262 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Jeffrey Gross

Address: 7 Indigo St. #1R

I represent: Bedford Stems (business equipment)

Address: Spine

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Stewart Bowers

Address: 1175 Kings Highway

I represent: BKlyn NY

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: David Ross

Address: 153 14th St #4 Hoboken NJ 07030

I represent: Vape NY / CASA

Address: Queens NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1021 Res. No. 1021

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Brandon Kryzzer

Address: 353 Palisade Ave Jersey City NJ 07307

I represent: Vape NY

Address: Jamaica, Queens

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Liesl Gardner  
Address: 1820 Himmer St. Ridgewood NY 11385  
I represent: Vape New York  
Address: Queens NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Antoinette Lanza  
Address: 312 11th Ave 4E New York, NY 10001  
I represent: Smokeless Image electronic cigarettes  
Address: NY, NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Philip Rosen  
Address: 7618 Grand Central Pkwy. Forest Hill S, NY 11375  
I represent: Vape NY  
Address: Jamaica, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. <sup>1020</sup>1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Spike Babaian

Address: 162-10 Jamaica Ave, Jamaica N.Y.

I represent: National Vapers Club / Vape New York

Address: Queens, N.Y.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. <sup>1020</sup>1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/2013

(PLEASE PRINT)

Name: John Urban

Address: 39 Bay Avenue Huntington NY 11743

I represent: National Vapers Club & Casaa

Address: Queens NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. <sup>1020</sup>1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Christopher Mikovits

Address: 634 Webster Ave New Rochelle NY

I represent: Cherry Vape

Address: New Rochelle NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/13

(PLEASE PRINT)

Name: Sal Vario

Address: 1655 Mon

I represent: Vape NY

Address: Queens NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Keith Mather

Address: 45-85 163rd St

I represent: SELF

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1020/1021 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 5/2/2013

(PLEASE PRINT)

Name: DANIEL KARPUS

Address: 306 WEST 100 ST

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms