

## Tobacco Industry Efforts to Influence Tobacco Control Media Interventions

*Tobacco control media interventions often face opposition from the tobacco industry at both the state and national levels. This chapter examines how tobacco industry interests and their allies work to inhibit antitobacco media efforts, including examples from specific media campaigns:*

- *Minnesota Plan for Nonsmoking and Health, one of the first state-level tobacco control efforts to include a large-scale media campaign*
- *California Tobacco Control Program, a voter-approved initiative under Proposition 99 that targeted tobacco industry practices and social norms regarding smoking*
- *Arizona's efforts toward tobacco prevention and education programs under Proposition 200*
- *Florida's Tobacco Pilot Program, which led to the successful state "truth" media campaign designed by young people for their peers, and to the American Legacy Foundation's national rollout of a similar program*

*Tobacco industry strategies to counter or weaken these programs include efforts to divert funding away from tobacco control media campaigns, lobbying and financial support of elected officials, negotiated settlement restrictions, and legal challenges.*

## Introduction

Tobacco control media campaigns can be an effective means to reduce cigarette consumption (see chapter 12). Such efforts clearly have the potential to affect tobacco sales, while advertisements that educate the population about the industry's practices can influence perceptions about tobacco companies. This chapter examines how the tobacco industry works, at times through intermediaries, to prevent or limit the effectiveness of these campaigns. Readers may also refer to the National Cancer Institute's Tobacco Control Monograph 16 for a description of tobacco industry attempts to counter the American Stop Smoking Intervention Study (ASSIST),<sup>1</sup> which included media campaigns in some states (such as Massachusetts).

This chapter provides some historical context for the development of antismoking and anti-industry advertisements, beginning with the Fairness Doctrine messages in the 1960s, and outlines the corresponding tobacco use behaviors that result from changes in regulation of tobacco industry advertising. Second, this chapter reviews published information on selected state tobacco control media campaigns as they developed over time from Minnesota to California to Arizona and Florida. It also reviews the American Legacy Foundation's (Legacy's) tobacco control media activities at the national level and its adoption of Florida's "truth" campaign. The chapter concludes by identifying four specific approaches the tobacco industry uses against tobacco control media campaigns.

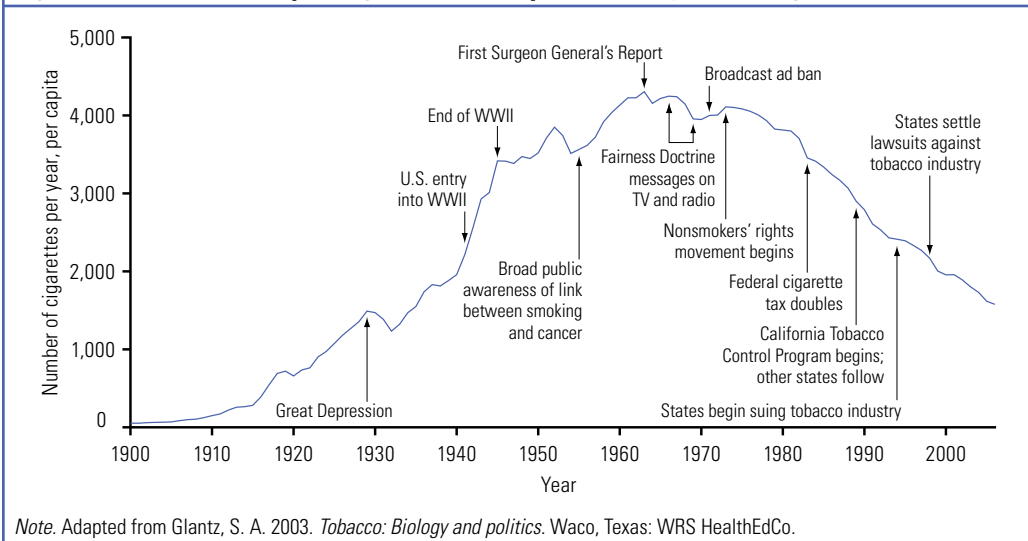
## Fairness Doctrine

One of the first examples of a large-scale tobacco control advertising campaign came in 1966, when Action on Smoking and Health (ASH) approached a New York

television station for free air time to respond to cigarette advertisements and was denied.<sup>2</sup> After this denial, ASH filed a complaint with the Federal Communications Commission (FCC) under its Fairness Doctrine. The doctrine required television and radio stations to air both sides of "controversial issues," even though doing so required the provision of free air time to one side of the "controversy."<sup>2</sup>

The Fairness Doctrine was created in 1949 as a result of the FCC's decision that licensed stations were obligated to provide a reasonable opportunity for interested parties to present both sides of a controversial issue. The doctrine was designed to ensure that all sides of controversial issues would be given access to the airwaves, even if one side could not pay for access.<sup>3</sup> In 1967, when the FCC declared cigarette advertising "controversial," it opened up the broadcast airwaves to large-scale antitobacco advertising for the first time. (Before then, free public service announcements were rare and generally were not placed in prime time.) While there was no specific formula, the common practice was to provide approximately one antismoking advertisement for every three advertisements that the tobacco industry placed.<sup>2</sup> Nearly \$200 million in free air time (in 1970 dollars) was donated for antismoking messages between 1967 and 1971<sup>4</sup> (or \$341 million in 2006 dollars) (see chapter 11). The effect was dramatic, with an immediate drop in cigarette consumption. The antismoking messages that aired slowed cigarette consumption by 531 cigarettes per person per year, while tobacco company advertising increased consumption by only 95 cigarettes per person per year<sup>5</sup> (figure 13.1).

Subsequent to this decrease in consumption, Congress banned cigarette advertising on television and radio, effective January 2, 1971. Between 1970 and 1971, cigarette advertising decreased by 20%–30%, thereby also decreasing the number of antismoking

**Figure 13.1 Adult Per Capita Cigarette Consumption and Major Smoking-and-Health Events**


messages, resulting in an increase in cigarette consumption.<sup>5</sup> Public health authorities viewed the legislation ending broadcast cigarette advertising as a step forward. However, by removing cigarette commercials from television and radio, the broadcast advertising ban removed the requirement for antitobacco advertisements as well. This eliminated the most effective antismoking campaign at that time. While losing direct broadcast advertising, the tobacco industry was able to compensate by increasing its advertising and promotional expenditures elsewhere.<sup>6</sup> The public health community did not have the resources to buy advertising to counter the increased cigarette advertising appearing on billboards, in magazines, and in other venues. In addition, the industry continued to effectively use sports sponsorship, advertising in baseball and other stadiums, and event sponsorship to ensure that its logos and images remained prominently displayed on television. The result was that rates of tobacco consumption began to increase again.<sup>5</sup>

After the Fairness Doctrine antismoking messages ended, there was no systematic tobacco control advertising at the national

level for 30 years, until 2000. That year, Legacy (created as part of the Master Settlement Agreement [MSA] between 46 state attorneys general and the tobacco industry)<sup>7</sup> began its national “truth” campaign.

With the elimination of tobacco control advertisements at the national level in 1970, the focus shifted to the state level. In the mid-1980s, states began to establish tobacco control programs, including paid media campaigns. Several states, beginning with Minnesota, developed and implemented significant media campaigns, which were met by tobacco industry efforts to curtail the effectiveness of such media campaigns. This chapter presents case studies to illustrate efforts that helped eliminate antitobacco campaigns in Minnesota and Florida, limited the scope of the campaigns in California and Arizona, and impeded progress on campaigns such as that of Legacy.

## Minnesota

Minnesota was the first state to create a statewide paid tobacco control media

campaign. In 1982, Minnesota commissioner of health Sister Mary Madonna Ashton convened the Technical Advisory Committee on Nonsmoking and Health (TACNH) to formulate recommendations to promote nonsmoking and health for individuals. On September 14, 1984, the TACNH released its report, *The Minnesota Plan for Nonsmoking and Health* (Minnesota Plan). The document proposed “a coordinated statewide program to prevent young people from starting to smoke, to encourage and assist smokers to quit, and to promote clean indoor air.”<sup>8</sup>(Bates no. 680581560) The Minnesota Plan made recommendations for the creation of multiple components of a program, including promotion of nonsmoking through marketing and communication techniques.<sup>8</sup>

As a first step, the advisory committee reviewed the pertinent literature on the tobacco industry’s marketing techniques, which had become available in the early 1980s through a subpoena by the Federal Trade Commission. The committee discovered that the tobacco industry planned to “associate particular brands with a lifestyle that is ‘masculine, contemporary, confident/self-assured, daring/adventurous, mature’”<sup>9</sup>(Bates no. 505774507) and to stress that smoking was an initiation into the adult world.<sup>9</sup> In response to the tobacco industry’s strategies, the committee reasoned that a strategy for marketing nonsmoking should be based on the “problems which are to be solved by the nonsmoking product.”<sup>8</sup>(Bates no. 680581671) These problems include social isolation, knowing the health effects of smoking, the cost of cigarettes and their health effects, and self-image. In addition, an information component would provide regularly to the news media and other communication channels scientific data on smoking and nonsmoking. This strategy was based on the belief that information played a significant role in the promotion of nonsmoking.

The campaign primarily targeted young Minnesota women aged 20–29 years. In the early 1980s, this group was the largest single block of smokers (141,000 of 812,000 total smokers) in Minnesota. Men aged 20–29 years were the second largest block of smokers (110,000) in the state. Overall, among people aged 20–79 years, 390,000 women and 422,000 men were smokers in Minnesota.<sup>8</sup>(Bates no. 680581674)

## Tobacco Industry’s Initial Response to the Minnesota Plan

The Tobacco Institute, the tobacco industry’s then-existing lobbying arm based in Washington, DC, characterized the Minnesota Plan as “a revolutionary attack on our industry.”<sup>10</sup> The Tobacco Institute described the plan as “unnecessary, expensive and impractical”<sup>11</sup>(Bates no. TIMN0140515) and claimed that “much of the underlying research for the plan is inaccurate.”<sup>11</sup>(Bates no. TIMN0140510) The Institute used estimates from advertising and public relations firms to support its position that the Minnesota Department of Health’s estimated costs for the campaign were too low and far more taxpayer dollars would be needed to implement the plan’s recommendations. These cost estimates also were promulgated by Minnesota business and labor coalitions.<sup>11</sup>

Finally, the tobacco industry sought to “identify and remove as supporters of the plan representatives from those groups with whom we have developed working relationships.”<sup>11</sup>(Bates no. TIMN0140511) The tobacco industry mobilized its Tobacco Industry Labor Management Committee to identify contacts with major Minnesota labor unions and its lobbyists to persuade organized labor groups to withdraw their support of the Minnesota Plan.<sup>11</sup>

The tobacco industry anticipated that the Minnesota Plan could have national

### Shifting the Focus from Tobacco

The tobacco industry questioned the financial planning for the Minnesota Plan and worked to shift the debate away from health to “areas in which we have the most credible arguments, e.g., economics, government intervention, etc.”<sup>a</sup> The industry<sup>a</sup> held roundtable discussions with representatives from Minnesota businesses and labor, education, and police groups to

1. Determine the negative consequences of a plan such as the Minnesota campaign,
2. Mobilize voters to demonstrate that members of the public do not want further government intrusion in their lives,
3. Create an information campaign to convince Minnesota taxpayers that numerous national programs already addressed this issue (i.e., nonsmoking among youth), and
4. Indicate “that local efforts are duplicative, a waste of taxpayers’ money and unnecessary.”

<sup>a</sup>Tobacco Institute. [Public relations strategies to address the Minnesota Plan for nonsmoking and health]. Sep 1984. Tobacco Institute. Bates No. TIMN0140510/0525. <http://legacy.library.ucsf.edu/tid/nia92f00>.

repercussions<sup>12</sup> because antismoking advertising would compete with nationwide industry advertisements to discourage youth from smoking.<sup>11,13</sup> Therefore, the industry introduced its own youth education campaign (“Helping Youth Decide” [HYD]) to draw attention away from the Minnesota campaign.<sup>13</sup> This approach was to be implemented in four ways:

- Mailing copies of HYD brochures through the Tobacco Institute and the National Association of State Boards of Education (NASBE) to “state legislators, educators, and allies,”<sup>11</sup>(Bates no. TIMN0140512) along with having the Tobacco Institute make field operation and lobbyist visits to those receiving HYD pamphlets
- Seeking the endorsement of the HYD program from state legislators and educators
- Arranging to have Tobacco Institute and NASBE spokespersons describe the merits of the HYD to state and local education organizations
- Publicizing “reaction to the program via ads in state and local media, including endorsements by Minnesotans, labor unions, national educators, etc.”<sup>11</sup>(Bates no. TIMN0140513)

### Implementing the Public Education Media Campaign

In May 1985, the Minnesota state legislature passed the Omnibus Nonsmoking and Disease Act (Omnibus Act), which outlined funding and administrative responsibilities to implement the activities detailed in the Minnesota Plan. The Omnibus Act included a 5¢ cigarette tax increase to fund both sewer construction (4¢) and public health programs (1¢), including tobacco control programs (1/4¢).<sup>14,15</sup> It also authorized the commissioner of health to run a long-term public communications campaign to promote nonsmoking in Minnesota.<sup>16</sup> The 1985 Omnibus Act generated about \$1.6 million/year (or 37¢ per capita/year) for nonsmoking programs during the first five years. A major objective of these funds was to reduce smoking among Minnesota youth by roughly a third, from 18% in 1986 to 13% in 1990.<sup>14,16,17</sup>

Between 1985 and 1990, the Minnesota Department of Health ran a media campaign to promote nonsmoking among youth aged 8–18 years.<sup>14,16</sup> In addition to television advertisements that aired during the first three years of the campaign, the Minnesota Department of Health expanded the campaign

and began to run radio advertisements during the 1988–89 biennium.<sup>17</sup> However, during the 1991 fiscal year, the media budget was cut from its 1990 allocation of \$1.5 million to \$1 million. This decrease in funding translated to a 42% reduction in Minnesota Department of Health media placements. As a result, several target groups and venues were eliminated, including boys at risk for using smokeless tobacco and cable television advertisements targeting women and high school sport sponsorships.<sup>17</sup>

### Long-Term Efforts Against the First Media Campaign

Beginning in 1988, the tobacco industry recruited new allies from several Minnesota business and labor organizations within specific legislative districts to build grassroots political opposition to the Minnesota Plan and its antismoking media campaign.<sup>18</sup> Michael F. Brozek, Tobacco Institute regional vice president, reported

Our increasingly successful relationship with the Minnesota Grocers Association and our efforts in working with community groups (Iron Range Food Shelf Charities) are two new areas of real potential for the 1988 legislative year.

Never before has the tobacco industry embarked on such a detailed labor effort in the state of Minnesota. We have already met with officials of the Minnesota Teamsters Union, Minnesota AFSCME [American Federation of State, County and Municipal Employees] Organization and parties extremely close to leadership in the entire Minnesota labor movement and are receiving a positive response particularly in the areas of smoking restrictions and their effect on the collective bargaining process.<sup>18</sup>(Bates no. TIMN457503–7504)

In pursuing this strategy, the tobacco industry was neutralizing many of the

constituencies that the original TACNH was designed to recruit. Neither the Minnesota Department of Health nor tobacco control advocates were able to hold these constituencies after the tobacco industry pursued them. With these new allies, the tobacco industry targeted legislative districts of specific House and Senate leaders. According to Brozek, the allies used several strategies specifically targeting legislative districts “with an emphasis on business, social, labor and civic groups. Labor related interactions ... in legislators’ home districts.... Serious and accountable interaction with non-industry persons ‘aggrieved’ by punitive or restrictive actions on their working conditions.”<sup>18</sup>(Bates no. TIMN457499) Using these allies and continuing to frame tobacco control issues primarily as tax issues, the industry had a substantial impact on the long-term implementation of the Minnesota Plan and its media campaign.

Beyond outreach to allies, the tobacco industry strengthened its campaign contributions and lobbying budget after the start of the first media campaign in 1986.<sup>19</sup> For example, it contributed \$21,815 to Governor Rudolph G. Perpich’s (D) reelection campaign during 1989–90, the largest contribution to the campaign (1990 was an election year in Minnesota).<sup>19</sup> It previously contributed \$20,905 in 1987–88. On average, the tobacco industry spent about \$63,000 per year for lobbying during 1980–85 and more than three times as much while the first media campaign was in full swing (1987–92), averaging about \$230,000 annually.<sup>19</sup>

### Tobacco Industry’s Success: Budget Cuts

The tobacco industry’s increased campaign contributions and lobbying expenditures appeared to have an effect in 1990 under Governor Perpich, when the legislature cut the tobacco control program’s budget from \$1.5 million to \$1 million.<sup>17</sup>



The governor used the state health department's successes in reducing the rate of smoking to recommend the cut to "meet the state budget shortfall and to pay for drug-prevention efforts."<sup>20</sup> In 1991, Governor Perpich cut the program's budget by nearly one-half million dollars. Assistant health commissioner Mick Finn responded to criticism by arguing that the state still would "spend \$1.1 million next year (i.e., 1991) on nonsmoking programs even if the \$473,000 cut goes through" and argued that "under budget circumstances it makes sense."<sup>20</sup> Governor Perpich's budget reduction for the tobacco control program<sup>21</sup> turned out to be a precursor to further action against it.

During the 1990 gubernatorial race, Republican Arne H. Carlson defeated Democrat Perpich. From the 1989–90 biennium election cycle to the 1993–94 biennium election cycle, Carlson's campaign committee received nearly \$5,000 from tobacco industry contributions.<sup>19</sup> During the 1993–94 election cycle, at least three Tobacco Institute contract lobbyists (Ronald A. Jerich, Thomas A. Kelm, and Allen M. Shofe) became fundraisers for Carlson's reelection campaign committee,<sup>22</sup> and Kelm alone expected to raise at least \$10,000.<sup>22</sup> In addition, in 1993, the tobacco industry spent more than \$250,000 lobbying against tobacco control measures in Minnesota. In 1994, Tom and Doug Kelm's firm, the chief tobacco industry contract lobbyists in Minnesota, received at least \$100,000.<sup>23</sup>

Three years after his election, Governor Carlson eliminated the antismoking media campaign on the grounds that the state faced a fiscal crisis,<sup>19</sup> although the Republican Governor Carlson and the Democratic Party–controlled legislature were debating the size of the state's reserve fund and possible tax rebates. A Minneapolis, Minnesota, *Star Tribune* article suggested that

Even by the Carlson administration's own calculations, the state will be sitting on a sizable nest egg at the end of the two-year budget cycle that runs until June 1995.... The more Carlson cuts DFL [Democratic Farm Labor Party] spending and diverts the money into the reserve, the larger the political weapon he would have at his disposal in 1994.<sup>24</sup>

## Health Advocates' Failure to Respond Effectively

From 1986 to 1989, while the tobacco control program was fully funded, the adult smoking prevalence rate in Minnesota dropped by a relative amount of 16.3%, while the rest of the United States experienced a relative decrease of 8.7%.<sup>21</sup> The Centers for Disease Control and Prevention (CDC) concluded that while the Minnesota Plan, including the first state antismoking media campaign, was in place (1985–92), "the state's per capita tobacco consumption declined 26 percent, a steeper decline than the national average."<sup>25</sup> By comparison, after the program was dismantled (1993–97), per capita consumption in Minnesota increased 3.1%, while the national rate decreased.<sup>25</sup>

Despite such correlations between the Minnesota Plan and lower rates of smoking, health groups appeared to lose confidence in justifying the first antismoking media campaign in the face of the fiscal crisis claims.<sup>26,27</sup> According to Tsoukalas and colleagues,<sup>19</sup> health advocates did not challenge the claim of a fiscal crisis. Rather, antitobacco interests felt that belief in a fiscal crisis was strong enough to preclude sufficient sympathetic support in the legislature to save the antismoking campaign.<sup>26,27</sup> Tsoukalas and colleagues<sup>19</sup> concluded that the campaign also had a very low priority in the Minnesota Department of Health, which seemed unwilling to fight for it in either the legislature or the administration,

and that health groups did little to press the department to give the program a higher priority. These factors enabled Governor Carlson and the legislature to eliminate the funds dedicated to the antismoking media campaign.

## California

The California Tobacco Control Program was created in 1988 as a result of Proposition 99. This proposition was a voter initiative that increased the state excise tax on cigarettes by 25¢/pack and allocated 20% of the revenues to programs to reduce smoking.<sup>28,29</sup> (The remainder of the money went to medical care, research on diseases related to tobacco, and environmental protection.)<sup>29</sup> The California Department of Health Services' Tobacco Control Section administered the program's media campaign with "the goal of reducing tobacco use in California by promoting a social norm of not accepting tobacco."<sup>30</sup> The media campaign included television, radio, print, billboard, and transit venue messages about the tobacco industry, secondhand smoke, addiction, smoking cessation, cigarette additives, smokeless tobacco, general health, pregnancy, and prevention among youth.<sup>31</sup>

In the early years of the program, under Republican Governor George Deukmejian, the media campaign was highly productive, with 113 advertisements produced in the first year. Importantly, in a radical departure from messages used in earlier media campaigns, substantial resources were invested in publicizing the tobacco industry's encouragement of smoking among the public and actions within the policymaking process to create an environment that would support the industry's ability to continue marketing its products with minimal interference by health authorities. The antitobacco campaign also was directed at nonsmokers to reinforce the nonsmoking position

with many messages about secondhand smoke. Cessation messages represented a small fraction of the total campaign.<sup>31</sup> The campaign focused on the general population rather than only youth.<sup>32</sup>

The media campaign's early success came as a result of several favorable conditions. These included toleration from the governor and active and enthusiastic support from the director of health services, Kenneth W. Kizer. First, although Governor Deukmejian had campaigned against Proposition 99, he believed that after the voters passed it, the proposition should be implemented.<sup>33</sup> Second, Governor Deukmejian delegated authority to administer the media campaign to Kizer and did not play any role in message development or advertising approval. Within the California Department of Health Services, Kizer was a strong supporter of the media campaign and was eager to see it make a significant difference in California.<sup>33</sup> He emphasized that the tobacco control program and the media campaign were a high priority of the department and worked to clear bureaucratic impediments to issuing contracts necessary to implement the campaign.<sup>33</sup>

As a result, 59 days after Governor Deukmejian signed the implementing legislation for Proposition 99 (Assembly Bill [AB] 75), the California Department of Health Services released a request for proposals from advertising agencies seeking to create the media campaign (December 1, 1989). The proposals were due six weeks later, on January 10, 1990, and on January 26, 1990, the California Department of Health Services selected a Los Angeles advertising firm to develop the media campaign. The first antitobacco advertisements aired on April 10, 1990, only 65 days after the contract was signed.<sup>29</sup>

In addition to the speed with which the media campaign was launched, the



content of the first advertisement also was important. Rather than conveying a health message, the advertising agency decided to directly address tobacco company practices. Paul Keye, the advertising agency principal, explained

The cigarette companies were never in any of our original thoughts or conversations with one another. You can't find the topic in our first work.... What happened was that—as we dug into each topic—there, right in the middle of everything were the Smokefolk, making their quaint, nonsensical, fraudulent arguments and—by sheer weight of wealth and power and privilege—getting away with it.... Frankly, the tobacco industry [angered us]. They insulted our intelligence.<sup>34</sup>(Bates no. 520697106)

The first antitobacco advertisement aired was called “Industry Spokesman.”<sup>35</sup> It portrayed a smoke-filled boardroom filled with tobacco industry executives and the leader saying

Gentlemen, gentlemen. The tobacco industry has a very serious multibillion-dollar problem. We need more cigarette smokers. Pure and simple. Every day, 2,000 Americans stop smoking and another 1,110 also quit. Actually, technically they die.

That means that this business needs 3,000 fresh new volunteers every day. So, forget about all that cancer, heart disease, stroke stuff.

We're not in this for our health (script, as recorded).<sup>35</sup>

The tobacco industry reacted quickly. On April 18, 1990, eight days after “Industry Spokesman” first aired, Kurt L. Malmgren, senior vice president of state activities for the Tobacco Institute, wrote to



From “Industry Spokesman” television advertisement.

Samuel D. Chilcote Jr., president of the Tobacco Institute, as follows

As previously reported, [the Tobacco Institute's national legal counsel] Covington & Burling and California legal counsel have been reviewing possible grounds for a legal attack on the ad program. Among the possible bases for suit that have been reviewed are that the ad campaign is an improper expenditure of funds under Prop 99 and AB 75, that it is defamatory, that it is deceptive advertising, and presents First Amendment concerns. Aside from tactical questions as to the desirability of pursuing any legal action, the considered judgment of counsel here and on the ground in California is that there is no basis for a suit which would have a realistic chance of success.

It is also our considered opinion that the industry should not attempt a ‘dollar-for-dollar’ response in the media. Our goal is to keep the advertisements—not the tobacco industry—at the center of the controversy. If the industry attempts to meet the Department of Health Services head on in the media, the controversy is likely to shift from the advertisements to the industry.<sup>36</sup>(Bates no. 87700743)

The tobacco industry realized that a direct public attack on the media campaign would be counterproductive. One month later, in a memorandum to Roger L. Mozingo in the State Government Relations Division

of R.J. Reynolds, Terry Eagan from the Government Affairs Division of Philip Morris wrote

California's growing fiscal crisis has created funding problems that have caused both the Governor's office and the Legislature to scramble for money to maintain existing programs. The estimated revenue shortfall is now \$3.6 billion....

The tobacco industry has decided that the timing is excellent for an attempt to divert money from the anti-smoking media campaign into other programs that are doomed to suffer because of the current fiscal crisis....

Strategy sessions on this issue resulted in the conclusion that it is important that the tobacco industry not be identified as an instigator of any attempt to encourage special interests to seek re-direction of the media money to other programs. It is agreed that under no circumstances can we visibly participate in this process. The press, however, will assume, as they always do, that the industry is behind any 'conspiracy' to change existing funding patterns. We should be prepared for this.

Currently a host of groups interested in chasing the media money have surfaced. These groups include: the counties (from both urban and rural perspectives), the Black Health Network (walk-in clinics), the California Health Federation (clinics), the Department of Education (defending their existing tobacco revenue sources), the doctors, the hospitals, the dentists, and the ambulance operators. Literally dozens of other interest groups can be expected to surface when the money goes into play.<sup>37</sup>(Bates no. 507640368-0369)

The tobacco industry would portray the state's fiscal crisis as an opportunity for third parties to pursue funds previously

earmarked for the media campaign, an approach that was used successfully in Minnesota in 1990.<sup>19</sup>

Although the tobacco industry was unable to remove funding for the media campaign, productivity declined from 113 campaign advertisements in 1990 to 6 in 1991.<sup>31</sup>

The media campaign then received an almost \$2 million increase in funding, from \$14.3 million in 1990-91 to \$16.0 million in 1991-92.<sup>30</sup> In contrast to the earlier removal of bureaucratic impediments to developing and implementing the media campaign, newly elected Republican Governor Pete Wilson hindered the campaign. Text in an April 1990 memorandum between two Philip Morris lobbyists in Washington, DC, specifically identified Governor Wilson (previously a U.S. Senator) as an ally. This was apparent despite the fact that Wilson had returned a campaign contribution check from tobacco industry executives:

Wilson is only sending about 16K of the 100K he collected. This 16K includes checks he received from either a tobacco company or anyone working directly for a tobacco company, i.e., Hamish Maxwell [President of Philip Morris], Mrs. Ehud, Bill Murray [Member of Philip Morris' Board of Directors 1987-1989].

Apparently, he has also done this with other "controversial" industries such as lumber, chemical and others. The decision to do this was Wilson's alone, and in the response to a wave of negative campaigning in California that not only attacks the candidates, but those who give to them as well.

You will be pleased to know that Pete [Wilson] called Hamish [Maxwell] to explain that he was doing this to protect Hamish as well as himself. You will also be pleased to know that Pete is still "pro-tobacco."<sup>38</sup>(Bates no. 2072914862)

Health advocates, including the American Heart Association (AHA) and the American Nonsmokers' Rights Foundation, revealed this memorandum in a full-page advertisement as part of an aggressive public campaign to defend the California Tobacco Control Program. The advertisement ran in the *New York Times* on April 16, 1996, and later in the *Sacramento Bee* and the *Los Angeles Times*.<sup>29</sup>

Governor Wilson's first attempt to eliminate the media campaign occurred on January 10, 1992, when he introduced his fiscal year (FY) 1992–93 budget in which current and future funding for the media campaign was suspended. Governor Wilson said the media campaign was of “secondary” significance<sup>39</sup> and had not been proven effective. Four days after the budget was introduced, results from the California Tobacco Survey conducted by the University of California, San Diego, were made available. The survey findings indicated a 17% relative decrease in the percentage of adult smokers in California since Proposition 99.<sup>40</sup>

Governor Wilson's efforts to halt the media campaign continued. After the California Department of Health submitted the media contract for rebidding in 1991, the Wilson administration declined to sign the contract (personal communication from C. Stevens, head of Tobacco Education Media Campaign, to J. Ibrahim, 2002). On February 21, 1992, the American Lung Association (ALA) countered by filing a lawsuit against Governor Wilson and the director of the California Department of Health Services, Molly Coye. The lawsuit claimed that by preventing the advertising contract from being signed, Wilson and Coye were violating Proposition 99, which stated that the state would run an antitobacco media campaign.<sup>29</sup>

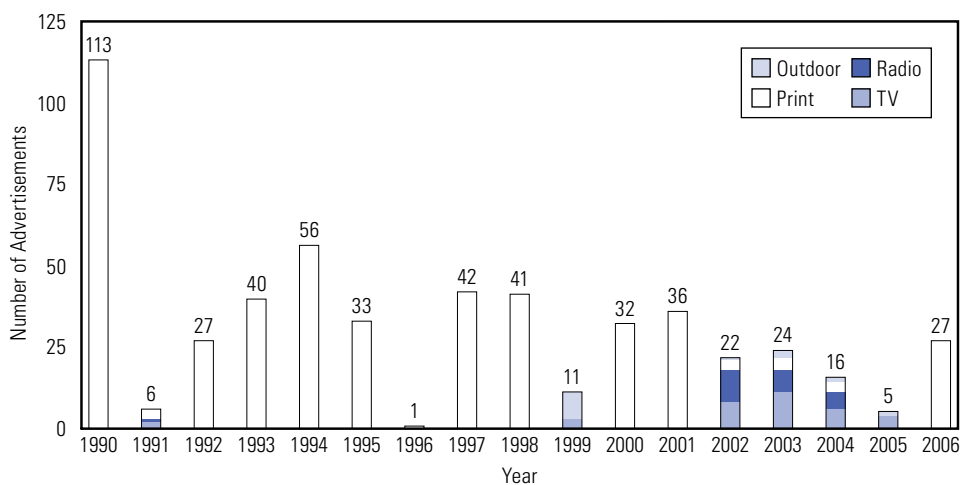
On April 24, 1992, Judge James T. Ford of the Sacramento Superior Court ruled that Governor Wilson did not have the authority to take funds appropriated for one purpose

and use them for another.<sup>29</sup> Following this decision, the California Department of Health Services contracted with the advertising agency on May 29, 1992.<sup>29</sup> In addition, the authorizing legislation, AB 75, required the advertising contract to be rebid every other year. Because the bidding process was delayed, the media campaign contract lapsed for six to nine months, during which time no new advertisements were produced (personal communication from C. Stevens to J. Ibrahim, 2002).

Governor Wilson also implemented a formal review process for the media campaign by the Health and Welfare Agency (which includes the California Department of Health Services) and the governor's office, further slowing the process. Once the campaign was reestablished, the program produced only 20 advertisements each year from the fall of 1992 through 1995 (figure 13.2).<sup>31</sup> By the mid-1990s, the tobacco industry denormalization advertisements were disappearing.

In summer 1996, the California Department of Health Services, under the Wilson administration, prohibited the media campaign from using the following four terms in antitobacco messages: “tobacco industry,” “profit,” “nicotine addiction,” and “lies.”<sup>29</sup>(p. 340) This new constraint on terminology coupled with new contract startup time resulted in the production of one advertisement in 1996, which focused on youth access to tobacco products (personal communication from C. Stevens to J. Ibrahim, 2002). The number of advertisements increased somewhat in the following two years and included several anti-industry advertisements.<sup>31</sup>

The weakening of the media campaign under Governor Wilson was seen by some as reaching beyond the number of advertisements to the number of cigarettes smoked. The reduced size and aggressiveness of the campaign was associated with a decrease in the rate of decline in cigarette

**Figure 13.2 Total Number and Type of Advertisements for the California Tobacco Control Media Campaign, 1990–2006**

Note. From California Department of Health Services, Tobacco Control.

consumption (and a reduction in the rate of decline in associated deaths from heart disease).<sup>41</sup> As noted in chapter 12, this reduction in effectiveness after 1994 was associated with 840 million packs of cigarettes (worth about \$1.2 billion) smoked between 1994 and 1998 and an additional 15,000 deaths from heart disease. Potentially, the 840 million packs of cigarettes smoked and the 15,000 deaths could have been avoided if the program had remained as effective as it was between 1989 and 1994.<sup>29,41</sup>

The results of a 1998 independent evaluation indicate that the media campaign increased young people's belief that the tobacco industry was working to make youth addicted to cigarettes. The Independent Evaluation Consortium recommended that the media campaign "should continue to educate the public, including youth, about the negative influence of tobacco advertising and promotions."<sup>42(p.xv)</sup> A second evaluation found that almost all youth and adults were exposed to the media campaign in 1998, when funding was \$31.9 million, and that the exposure was significantly greater than in 1996,<sup>43</sup> when funding was \$12.2 million.<sup>44</sup>

In 1998, exposure to campaign messages was associated with more negative attitudes toward the tobacco industry and more support among youth for policies restricting tobacco marketing.<sup>42</sup> Youth had more beliefs about the negative consequences of smoking and fewer beliefs about the benefits of smoking.<sup>42</sup> Despite funding cuts and toned-down messages, California's media campaign continued to positively influence youth, but not as effectively as in its initial years.

Governor Wilson's efforts to eliminate or scale down the media campaign continued until his last days in office, in the summer of 1998. At that time, he did not approve placement of produced advertisements, leaving them to newly elected Democratic Governor Gray Davis, who took office in January 1999 (personal communication from C. Stevens to J. Ibrahim, 2002). Following complaints from health advocates, Davis nominally reversed Wilson's ban on attacks on the tobacco industry. Nonetheless, only a few advertisements focused on the tobacco industry's actions, and Governor Davis let stand Wilson's process for approving advertisements.<sup>45</sup>

### Keeping a Strong Message Off the Air

In 1994, an advertisement called “Nicotine Soundbites” used footage of tobacco industry executives testifying in April 1994 at congressional hearings conducted by Rep. Henry Waxman (D-CA), stating that they did not believe nicotine was addictive. The industry reacted negatively. Legal counsel for R.J. Reynolds stated that the advertisement represented defamation of the executives and threatened to sue the California Department of Health Services.<sup>a,b</sup> Initially, several television stations refused to run the advertisement because of its controversial nature. However, the advertisement aired in fall 1994, and California Department of Health Services director Kimberly Belshé publicly defended it. The television stations backed down and ran the advertisement.<sup>b</sup>



Ultimately, however, the Wilson administration removed “Nicotine Soundbites” from television amid requests to keep it on the air from health advocates and the California Tobacco Education and Research Oversight Committee.<sup>b</sup> The latter is the state-mandated independent oversight committee for the program. This reaction from television stations and the governor indicates the effectiveness of tobacco companies’ influence in limiting the broadcast of strong antitobacco messages.

<sup>a</sup>Balbach, E. D., and S. A. Glantz. 1998. Tobacco control advocates must demand high-quality media campaigns: The California experience. *Tobacco Control* 7 (4): 397–408

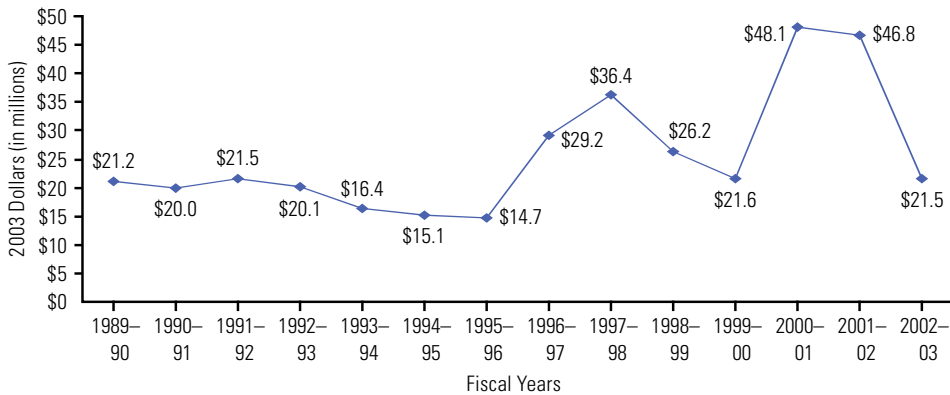
<sup>b</sup>Glantz, S. A., and E. D. Balbach. 2000. *Tobacco war: Inside the California battles*. Berkeley: Univ. of California Press.

The media campaign’s budget decreased from \$23.3 million in 1998–99 to \$19.6 million in 1999–2000, due in part to declining revenues from Proposition 99 associated with lower cigarette consumption. Governor Davis did not attempt to cut revenues allocated to the media campaign, but he refused to use funds from the \$500 million the state received annually from the tobacco industry through the MSA to compensate for the declining purchasing power of the funds from the Proposition 99 tax on cigarettes. (The tax had been set in 1988 and was not indexed to inflation.) Figure 13.3 illustrates the trend in funding for the media campaign with annual budgets using adjusted 2003 dollars to compensate for inflation and allowing comparisons across time.

In March 2001, the AHA and Americans for Nonsmokers’ Rights launched a

lobbying and newspaper campaign to strengthen the California Tobacco Control Program, specifically the media campaign, to counter the effects of the tobacco industry’s marketing and promotion. Governor Davis increased the media campaign’s funding to \$45.3 million for FY 2000–2001 and FY 2001–2002, by releasing funds that had been tied up in litigation due to challenges brought by health groups against the diversion of funds from health education during the Wilson administration.<sup>46,47</sup>

The augmented funding dwindled as Governor Davis withdrew the additional support in his 2002–2003 budget,<sup>48</sup> reducing the media campaign’s budget allocation to \$21.1 million. As a result of declining revenue from Proposition 99 and no new dedication of funds, the governor’s

**Figure 13.3 Budget Allocations for the California Tobacco Control Media Program, 1989–2003**

Note. From California Department of Health Services, Tobacco Control.

2003–2004 budget proposal reduced the media campaign budget to \$16.7 million.<sup>49</sup>

After losing several lawsuits brought by ill smokers in California, R.J. Reynolds and Lorillard sued the state on April 1, 2003. The lawsuit claimed that the media campaign had violated the companies' First Amendment rights, interfered with their right to a fair trial, and tarnished their reputations.<sup>50,51</sup> The case was dismissed on July 22, 2003. R.J. Reynolds and Lorillard appealed the ruling, and health groups responded. On February 12, 2004, attorneys for the AHA, the ALA, and the American Cancer Society (ACS) filed an *amicus curiae* brief (a brief filed with a court by someone who is not a party in the case) in support of the state. On September 28, 2004, the Ninth Circuit Court of Appeals rejected the tobacco companies' argument. The court stated, "A mere link between an excise tax and a government-sponsored advertising campaign, absent a claim that either the tax or the advertising is unconstitutional, does not violate the First Amendment."<sup>52(p.5)</sup> The tobacco companies' other arguments were rejected as well.

In summary, strong and repeated political and legal interventions by health advocates

in California were required to keep the program effective. This was true even though voters' enactment of Proposition 99, which created the health education account and the media campaign, nominally protected the California Tobacco Control Program. These political and legal steps involved monitoring the budget process in both the administration and legislature and working to press the administration to produce high-quality advertisements in a timely manner. As in Minnesota, claims of budget limitations were the purported reasons for cutting or eliminating the program in California. Health groups successfully defended the program by rejecting these explanations and learning that they needed to monitor the bureaucratic procedures surrounding advertising message development and execution.

## Arizona

Arizona provides an example of tobacco industry efforts to limit the scope of tobacco control from program inception. Encouraged by the experiences in California (1988) and Massachusetts (1992), voters in Arizona passed Proposition 200 on November 8, 1994, to increase the cigarette



### The Massachusetts Tobacco Control Program

The Massachusetts Tobacco Control Program (MTCP) began after a 1992 ballot initiative raised the cigarette excise tax by 25¢ per pack to fund the program.<sup>a,b</sup> The comprehensive tobacco control program, launched in October 1993, included a media campaign, workplace and community programs, cessation services, school-based education programs, and health professional education and assistance for tobacco intervention. For almost a decade, the MTCP was associated with a drop in per-capita adult cigarette consumption and smoking prevalence. From 1993 onward, per-capita consumption in Massachusetts showed a consistent annual decline of more than 4%, while in other U.S. states (except California), the downturn leveled off, decreasing by less than 1% a year. From 1992 to 1999, the prevalence of adult smoking in Massachusetts declined significantly each year (by 0.43 percentage points) compared with virtually no change in the comparison states (see chapter 12).<sup>b,c,d</sup> In 2002, the program's funding was severely cut, a decision attributed to state budget crises. Although the MTCP was active, its funding was appropriated to fund other programs, so the program did not achieve the intended amount of funding.<sup>a</sup>

The tobacco industry was working in Massachusetts to divert funding away from the program, but its response was less aggressive than that observed in California.<sup>e</sup> Among attempts to divert tobacco tax money, the most public was Acting Governor Jane Swift's invocation of unilateral emergency "9C" powers in early 2002 to cut the MTCP by \$22 million. When she defended these cuts as necessary in the face of a state deficit, tobacco control advocates sued, arguing that the administration's action was unconstitutional in the context of a program with a dedicated revenue source.<sup>f</sup> In the spring of 2002, the court ruled in favor of the Swift administration, ultimately leading to the removal of almost all MTCP funding. The 2005 fiscal year program budget was \$3.2 million, a 93% decrease from \$48 million at the start of 2002.<sup>b</sup> Long-term tobacco industry lobbying (\$690,000 spent in Massachusetts in 2002),<sup>g</sup> the budget crisis, lukewarm legislative support in the face of severe fiscal constraints, and the loss of the lawsuit against the Swift administration all appear to have contributed to the de-funding of the program. The state's innovative policy measures, such as the ban on tobacco advertising near schools and playgrounds and the tobacco product disclosure law, were legally challenged by the tobacco industry.<sup>b</sup>

<sup>a</sup>Ritch, W. A., and M. E. Begay. 2001. Smoke and mirrors: How Massachusetts diverted millions in tobacco tax revenues. *Tobacco Control* 10 (4): 309–16.

<sup>b</sup>Koh, H. K., C. M. Judge, H. Robbins, C. C. Celebucki, D. K. Walker, and G. N. Connolly. 2005. The first decade of the Massachusetts Tobacco Control Program. *Public Health Reports* 120 (5): 482–95.

<sup>c</sup>Biener, L., J. E. Harris, and W. Hamilton. 2000. Impact of the Massachusetts tobacco control programme: Population based trend analysis. *British Medical Journal* 321 (7257): 351–54.

<sup>d</sup>Smith, S. 2002. Tobacco foes hit cuts in budget. *Boston Globe*, October 12.

<sup>e</sup>Siegel, M., and L. Biener. 1997. Evaluating the impact of statewide anti-tobacco campaigns: The Massachusetts and California Tobacco Control Programs. *Journal of Social Issues* 53 (1): 147–68.

<sup>f</sup>Associated Press. 2002. SJC backs Swift cut in antismoking programs. *Boston Globe*, June 15.

<sup>g</sup>Massachusetts Secretary of the Commonwealth. Massachusetts Lobbyist and Employer Search System Database. <http://db.state.ma.us/sec/pre/search.asp>.

excise tax by 40¢/pack and dedicate 23% of the new revenues to a health education account for tobacco prevention and education programs.<sup>53</sup> Republican Governor John Fife Symington III and Senate President John Greene (R-Phoenix) were two main opponents to the creation of the

Arizona Tobacco Education and Prevention Program (AzTEPP).<sup>53</sup>

After passage of Proposition 200 but before program implementation, both the governor and the senate president expressed their opinions that the initiative process

should not override public policymaking and that the legislature, not the public, should handle fiscal issues such as the tax proposed by Proposition 200.<sup>54</sup> In an April 1994 meeting with health advocates, Governor Symington and Senator Greene threatened retaliation by removing the groups' nonprofit status and by blocking future legislation proposed by the health advocates who spearheaded Proposition 200.<sup>55-57</sup> These groups included the ACS, the AHA, the ALA, and the Arizona for a Healthy Future Coalition.

After failing to defeat Proposition 200, Governor Symington and Senator Greene worked to weaken AzTEPP through membership on the Tobacco Use Prevention Advisory Committee (TUPAC), the state commission overseeing Arizona's tobacco control program. House Bill (HB) 2275, the implementing legislation for Proposition 200,<sup>58</sup> required that the TUPAC be composed of the director of the Arizona Department of Health Services, two individuals appointed by the governor, four individuals appointed by the president of the senate, and four individuals appointed by the speaker of the house.

Four of the 11 TUPAC members had clear ties with the tobacco industry. Governor Symington's appointees were from the Arizona Retailers Association and Golden Eagle Distributors.<sup>54</sup> Senator Greene appointed Senator Gus Arzberger (D) and Senator Janice K. Brewer (R), both of whom were known among health advocates as supporters of the tobacco industry.<sup>53</sup> However, Speaker of the House Mark Killian (R-Mesa) was an ally of health advocates and had worked against bills containing preemption language related to tobacco control.<sup>59,60</sup> Representative Killian selected Representatives Andrew W. Nichols (D-Summerhaven) and Sue Gerard (R-Phoenix). While Representative Gerard was a friend of Philip Morris lobbyist Rip Wilson, she was known within the public

health community as an ally of tobacco control efforts.<sup>53</sup> Representative Killian followed the recommendation of the Coalition for Tobacco-Free Arizona in selecting the two nonelected appointees to the TUPAC.<sup>54</sup>

The legislature used HB 2275<sup>58</sup> as the vehicle to adjust the funding levels for AzTEPP from the estimated \$27 million and \$29 million in tobacco tax revenues for FY 1996 and FY 1997, respectively, to \$10 million for FY 1996 and \$15 million for FY 1997.<sup>54</sup> The remaining \$37 million intended for antitobacco education remained in a reserve account that could be used after July 1, 1997. The FY 1996 and FY 1997 spending caps were to remain in place for two years, at which point the program would receive the intended 23% of the tobacco tax revenues. Representative Gerard introduced several pieces of legislation to remove the caps. In April 1997, she successfully removed the caps and backfilled the missing funds for FY 1996 and FY 1997.<sup>54</sup> Also in 1997, Governor Symington waged an unsuccessful campaign to divert \$34.7 million from the tobacco control program.<sup>54</sup>

The media campaign was implemented in December 1995. Under HB 2275,<sup>58</sup> the Arizona Department of Health Services was charged with authority for the campaign, which it significantly limited both in audience and message. The health services department determined that the media campaign should not address nicotine addiction and that the "target population of the media program during the first year of the contract shall be pre-adolescents and adolescents, pregnant women and their partners."<sup>61(p.5-1)</sup>

This focus was not the most efficient use of funds for influencing populationwide smoking as only a small fraction of the Arizona population is pregnant at any given time (about 104 women per 1,000 women

according to U.S. data),<sup>62</sup> and youth-focused advertising is unlikely to influence the majority of smokers who are adults.<sup>63</sup> Targeting adolescents and lacking discussion of nicotine addiction compromised the media campaign's effectiveness from the onset, in contrast with the California campaign's approach a few years earlier.

The first tobacco control expenditures were for contracts with the Phoenix Suns, a professional basketball team, and the Arizona Cardinals, a professional football team, to promote antitobacco education through players, team mascots, radio and television spots, and stadium billboards. After contract approval, attorney Steve Duffy represented the Tobacco Institute in filing a memorandum claiming that the contracts violated state policymaking and were illegal.<sup>54</sup> Protobacco members of the TUPAC said they had not been consulted on the contracts before signing. These issues slowed down the program and encouraged it to be cautious.

In 1998, under the administration of Governor Jane Dee Hull (R), the media campaign broadened its scope, particularly by addressing adult cessation in addition to pregnant women and children, in response to smokers' complaints that their taxes were not paying for services to help them.<sup>53</sup> Despite the early narrow focus of the campaign, Proposition 200 was associated with a decline in Arizona's tobacco use prevalence from an estimated 23.1% in 1996 to 18.3% in 1999,<sup>64</sup> although no data were available to compare that trend to other states not subject to the campaign.

In summary, the tobacco industry worked to weaken the media campaign by influencing the placement of tobacco-friendly representatives on TUPAC.<sup>54</sup> Hence, the efforts of health advocates in Arizona to create a tobacco control media campaign took place in an environment in which the tobacco industry made numerous attempts to prevent such progress.

## Florida

In 1995, the attorney general of Florida, following the lead of the Minnesota attorney general, filed a lawsuit against the tobacco industry to cover the costs of treating Florida's Medicaid patients for illnesses related to tobacco, fund smoking cessation programs, restrict tobacco marketing, and fund an antitobacco education program.<sup>65</sup> The case was settled on August 25, 1997 (before the MSA). The tobacco industry agreed to pay \$11.3 billion to the state of Florida over 25 years and to provide \$200 million for a two-year Tobacco Pilot Program, "the elements of which shall be aimed specifically at the reduction of the use of Tobacco Products by persons under the age of 18 years."<sup>66</sup>

Having learned a lesson in California, the tobacco industry sought to limit the scope of the tobacco control campaign aimed at youth by including language in the settlement stating, "The \$200 million amount payable by Settling Defendants in support of the Pilot Program shall be used only after approval by the Court and at the rate of approximately \$100 million per 12-month period for general enforcement, media, educational and other programs directed to the underage users or potential underage users of Tobacco Products."<sup>66</sup> The industry sought to prevent the tobacco control media campaign from negatively characterizing tobacco companies by including a "vilification clause" that stated that funds "shall not be directed against the tobacco companies or any particular tobacco company or companies or any particular brand of Tobacco Products."<sup>66</sup>

Governor Lawton Chiles (D), who enthusiastically supported the lawsuit against the tobacco industry,<sup>67</sup> worked to create a Tobacco Pilot Program within the governor's office in 1998 in an effort to deter efforts by the tobacco companies or

other protobacco interests to undermine such an initiative.<sup>47</sup> As in the initial California program, this high priority in the administration cleared the bureaucratic way for quickly establishing an aggressive program.

The first step in the program's creation was the Governor's Teen Summit on Tobacco Education, attended by more than 600 youth. The result was the approval of four goals for the Tobacco Pilot Program: changing youth attitudes about tobacco use, empowering youth to work in their communities against tobacco use, reducing the availability of tobacco products to youth, and reducing youth exposure to secondhand smoke.<sup>47</sup> In June 1998, representatives of a newly formed group, Students Working Against Tobacco (SWAT), along with four at-large representatives from the community, met in St. Petersburg, Florida, to discuss the means of implementing the Tobacco Pilot Program. Following the four guidelines created at the governor's summit, the group decided on five program components: youth programs and community partnerships, education and training, marketing and communications, enforcement, and research and evaluation.<sup>47</sup>

The marketing component was to focus on maintaining tobacco-free youth, informing youth of the risks of secondhand smoke and the addictive nature of tobacco, creating awareness of the Tobacco Pilot Program, linking popular athletes and teams with antitobacco messages, deglamorizing tobacco use, developing a communications network on the Internet, and demonstrating that peer pressure to use tobacco can be effectively countered.<sup>47</sup> An advertising firm in Miami, Florida, worked with youth to develop a campaign that would effectively speak to youth. The result was that youth clearly stated that they wanted the truth and facts and did not want to be manipulated by marketing by the tobacco industry.<sup>68</sup>

Although prohibited by the vilification clause from directly attacking the tobacco industry,<sup>66</sup> the campaign adopted "truth" as its theme with the tagline "Their brand is lies. Our brand is Truth."<sup>47</sup> Who "they" were was purposefully left vague. Moreover, the campaign featured telephone calls asking tobacco industry spokespersons questions intended to embarrass them and directly attacked the tobacco industry's network, including advertising agencies and scientists who supported the tobacco industry.<sup>47</sup>

The vilification clause was lifted in September 1998 when Texas settled its lawsuit against the tobacco industry without such restrictive language.<sup>69</sup> The Florida settlement contained a "most favored nation" clause indicating that more favorable terms in subsequent settlements would apply retroactively to Florida: "The terms of this Settlement Agreement will be revised so that the State of Florida will obtain treatment at least as relatively favorable as any such non-federal governmental entity."<sup>66</sup> Therefore, the vilification clause was removed from the Florida settlement.

Florida's "truth" campaign began in April 1998 with print and broadcast advertisements and expanded in June 1998 with billboard advertisements. In July 1998, the "Truth Train," filled with youth, toured the state for 13 days to build awareness of the campaign and to recruit new members for SWAT as well as to call for Hollywood to refuse to glamorize tobacco in the movies.<sup>67</sup> In September 1998, Florida State University released the results of a survey assessing youth awareness of the Florida "truth" campaign. Since the Florida "truth" campaign began, 57% of youth who were surveyed reported being aware of the campaign, 87% reported being aware of specific messages, and 47% believed that tobacco companies used deceptive practices in their advertising.<sup>70</sup>

From 1988 to 1999, current smoking dropped from 18.5% to 15.0% among middle school students and from 27.4% to 25.2% among high school students.<sup>71,72</sup> Over two years, prevalence among middle school students dropped further to 11.1% and among high school students dropped to 22.6%.<sup>73</sup>

Despite this strong initial sign of success, Florida House General Appropriations Committee chair James E. King Jr. (R-Jacksonville) called for reduced program funding.<sup>74</sup> (King was among the top 25 recipients of tobacco industry campaign contributions during the 1997–98 election cycle.)<sup>47</sup> Claims of ineffectiveness were made despite the September evaluation<sup>70</sup> reporting broad exposure and awareness among youth and a spread of the belief that tobacco industry advertising was deceptive.

On December 11, 1998, Governor Chiles died suddenly of a heart attack, removing the Tobacco Pilot Program's primary champion. In January 1999, Jeb Bush (R) was sworn in as governor. Despite the program's success and popularity,<sup>73,75–77</sup> Governor Bush proposed cutting its funding. His budget submitted to the legislature included \$61.5 million as opposed to the \$70.5 million allocated the previous year.<sup>78</sup> The Senate Budget Subcommittee on Health and Human Services proposed cutting the program to \$50 million.<sup>79</sup> The House Health and Human Services' budget panel for appropriations proposed eliminating the program, claiming that it was not working.<sup>80</sup> As noted earlier, the tobacco industry supported such funding cuts in Minnesota in the early 1990s.<sup>20</sup> Health advocates accepted Governor Bush's budget proposal.<sup>67</sup> However, the American Nonsmokers' Rights Foundation responded by running a newspaper campaign urging the public to hold Governor Bush accountable for "truth" campaign budget cuts.

In April 1999, the House and Senate agreed to give the Tobacco Pilot Program \$45.2 million

for 1999–2000, a 36% reduction from the previous year's \$70.5 million. In May 1999, Governor Jeb Bush cut the program further to \$38.7 million.<sup>67</sup> The Jeb Bush administration then disassembled the program by laying off staff members and youth workers and reassigning responsibilities to spread the program over several different administrative divisions. In essence, this was the end of the program.

In summary, the tobacco industry found some success in the limitations placed on the Florida media campaign from its inception. The antivivification clause was lifted in Florida when Texas settled its lawsuit with the tobacco companies,<sup>69</sup> but the Florida program's restriction to target only youth under 18 years<sup>66</sup> remained in place. Health advocates and officials effectively responded to this limitation by creating the cutting-edge "truth" campaign. Despite the campaign's documented success in reducing youth smoking,<sup>71–73</sup> its funding was severely cut. In their analysis of events leading up to and during the Florida campaign, Glantz and colleagues concluded that the tobacco industry's efforts also benefited from financial donations to political allies who criticized the campaign's value, thus contributing to its eventual demise.<sup>47,67</sup>

## American Legacy Foundation

On November 23, 1998, attorneys general for the remaining 46 states, the District of Columbia, and five territories that had sued the tobacco industry over Medicaid costs related to smoking and other issues announced the Master Settlement Agreement.<sup>7</sup> The MSA resolved the remaining state litigation against the tobacco industry, providing the states with money in perpetuity based on their estimated Medicaid costs due to smoking, cigarette sales, and inflation and imposing



# Will Governor Jeb Bush protect our children from Big Tobacco? Here's how you can hold him accountable.

Florida won a \$13 billion court settlement last year from Big Tobacco to pay some of the public medical bills that tobacco disease and death cost Florida taxpayers. But Big Tobacco just won't quit...

Big Tobacco has slipped more than \$1.5 million to Florida's major political parties over the last ten years, two-thirds to the State Republican Party.

Thousands of dollars more have gone directly to state candidates and office-holders over in Tallahassee.

The objective, no matter what anybody says, is to influence public policy in Big Tobacco's favor. Case in point? Florida's pioneering "Truth" campaign.

This anti-tobacco effort designed by Florida teens for teens has "attitude." It says straight out what every adult knows: that Big Tobacco and its allies are lying to them.

That truthfulness is why the "Truth" campaign has worked so well.

Last year, in fact, the number of Florida teen smokers fell by 31,000. In the long run, that saves tens of thousands of lives and tens of millions in public health costs. Not bad for a bunch of teenagers.

Naturally, Big Tobacco detests the "Truth"...which may be why, this year, Tallahassee voted to cut the "Truth" campaign budget in half and slash its staff by 75 percent. (They took special care to fire the teens working on the campaign.)

The key public officials involved are identified on this page. Right now, the most important are Governor Bush and his Secretary of Health, Bob Brooks.

Governor Bush claims he supports the "Truth". But it was



his man Brooks who fired the campaign's director, broke up the program, and toned it down.

Maybe the politicians who cut back on the "Truth" really think they won't hurt our kids.

Or else they think you won't draw the connection between Big Tobacco's big money and how our public officials behave.

But we all know the truth when we see it. If Governor Bush wants to protect our kids from Big Tobacco, he should do the following:

- Put the anti-tobacco program back together and give it the same



Rep. Debra Sanderson (D-Ft. Lauderdale) and House Speaker John Thrasher (R-Orange Park) have taken the lead in slaying the tobacco industry's dirty work by slaying the "Truth" campaign funding and Governor Bush is bringing them get away with it.

high profile former Governor Lawton Chiles did.

- Instruct the new campaign director, Debra Bodenstine, to keep anti-tobacco efforts tough and truthful.

- Bring back the hard-working, uncompromised teens fired by Brooks...and let them run their "Truth" campaign again without political interference.

- Finally, fight to get \$221 million for tobacco prevention efforts next year from Florida's \$13 billion Tobacco Settlement, and start telling the "Truth" to adults, too, as the U.S. Centers for Disease Control have recommended.

Start here. Start now. Mail the coupon, call toll-free, or e-mail Jeb Bush and Bob Brooks.

Big Tobacco can't stand the truth. But with your help, even big politicians can learn to like it.

### Governor Bush:

Show the voters you have their interests at heart. Keep the anti-tobacco "Truth" campaign truthful and tough, and use your discretionary funds to save Florida taxpayers hundreds of millions down the road. These kids can teach Tallahassee a thing or two.

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/STATE/ZIP \_\_\_\_\_

Mail to: Governor Jeb Bush, The Capitol, Tallahassee, FL 32399  
 Call his office at 850.488.4441 or fax: 850.487.0807 or e-mail: R.governor@fl.gov

### Hold Governor Bush accountable!

I wondered what happened to that amazing and extremely effective "Truth" campaign. Now that I know, keep me posted. Don't let up on Big Tobacco. Big money, or the big politicians. I'll contact Governor Bush.

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY/STATE/ZIP \_\_\_\_\_

Mail to: American Nonsmokers' Rights Foundation  
 P.O. Box 998, Berkeley, CA 94701  
 Website: www.no-smoke.org

Sponsored by the American Nonsmokers' Rights Foundation, a national organization committed to local action, and Smoke-Free Kids, Inc.

Print advertisement from the American Nonsmokers' Rights Foundation urging the public to hold Governor Jeb Bush accountable for "truth" budget cuts.



some limitations on tobacco industry advertising to youth. A national public health foundation, later named the American Legacy Foundation, was established with \$250 million paid over 10 years. A national public education campaign was established with \$1.45 billion over the next five years. The attorneys general who negotiated the payments to the education fund agreed to a clause stating that the settling tobacco companies could end their payments to the public education fund if their aggregate market share dropped below 99.05% of the total domestic cigarette market, potentially ending funding for a substantial national tobacco control campaign after five years.<sup>7</sup>

The American Legacy Foundation's purposes were "to support (1) the study of and programs to reduce Youth Tobacco Product usage and Youth substance abuse in the States and (2) the study of and educational programs to prevent diseases associated with the use of Tobacco Products in the States."<sup>7</sup> The tobacco industry pursued, and the attorneys general granted, several important restrictions in the MSA on Legacy's activities. These included no "political activities or lobbying, including, but not limited to, support of or opposition to candidates, ballot initiatives, referenda or other similar activities."<sup>7</sup> This restriction was significant because it barred Legacy from supporting public advocacy for smokefree and other tobacco control policies that otherwise would have been permitted by a private foundation. As public policy interventions are the most effective way to reduce cigarette consumption,<sup>81,82</sup> tobacco industry interests benefited from Legacy's restriction from pursuing them.

Equally important, the attorneys general agreed that funds from the education account would be used only for "public education and advertising regarding the addictiveness, health effects, and social costs related to the use of tobacco products and shall not be used for any personal

attack on, or vilification of, any person ... company, or governmental agency, whether individually or collectively."<sup>77</sup> This broad vilification clause constrained Legacy's use of advertising portraying the tobacco industry as deceptive. Even so, Legacy acted aggressively in adopting Florida's successful "truth" campaign. Although Florida's "truth" media campaign was waning because of decreased funding under the Jeb Bush administration,<sup>67</sup> Legacy turned the strategy into a national campaign. Continuing the course set in Florida, the national "truth" campaign effectively reduced smoking among teens<sup>77,83</sup> and increased antitobacco attitudes and beliefs.<sup>84</sup> Between 1999 and 2002, youth smoking prevalence decreased from 25.3% to 18.0%, and 22% of this decline was attributed to the Legacy "truth" campaign.<sup>83</sup> (See chapter 12.)

Although Legacy was established as part of the national settlement with the tobacco companies, it is not exempt from actions brought by tobacco companies, particularly in areas subject to the MSA vilification clause.<sup>51</sup> For example, on January 18, 2002, Lorillard gave Legacy 30-day notice (required under the terms of the MSA) that it would file suit against the foundation in Wake County, North Carolina, alleging that the Legacy "truth" antismoking advertising campaign violated the terms of the MSA through personal attacks and vilification of the company.<sup>51</sup> In response, Legacy filed a preemptive suit against Lorillard in New Castle County, Delaware, on February 13, 2002,<sup>85</sup> arguing that, because it was not itself as an organization a signatory to the MSA, the terms of the MSA did not apply, and the 30-day notice was unnecessary.<sup>85</sup> With knowledge of the nature of Lorillard's complaints, Legacy asked the court for a declaratory judgment.

On January 31, 2003, after reviewing documents from both parties, the Delaware Chancery Court denied Legacy's motion for summary judgment, moving the case to

### The Tobacco Industry and the Youth Smoking Message

While the American Legacy Foundation's media efforts were under way, the tobacco industry launched its own updated youth smoking prevention programs, which in the past had been thought to displace more effective tobacco control efforts.<sup>a</sup> As noted earlier, in Minnesota in the mid-1980s, the tobacco industry introduced its youth campaign, "Helping Youth Decide," considered by some to be an attempt to delegitimize the utility and significance of the Minnesota Plan for Nonsmoking and Health.<sup>a,b</sup> Similarly, in 1998 Philip Morris introduced its national "Think. Don't Smoke." campaign, later shown to be associated with an increase in youths' intention to smoke within the next year.<sup>c</sup> This program was discontinued in 2002.<sup>d</sup> From 1999, however, Philip Morris developed and ran a media campaign directed at parents, encouraging them to talk to their children about smoking.<sup>d</sup> Lorillard also launched a youth smoking prevention program in 1999 called "Tobacco Is Whacko if You're a Teen." Chapter 12 discusses studies that have evaluated these campaigns.

<sup>a</sup>Landman, A., P. M. Ling, and S. A. Glantz. 2002. Tobacco industry youth smoking prevention programs: Protecting the industry and hurting tobacco control. *American Journal of Public Health* 92 (6): 917–30.

<sup>b</sup>Mozingo, R. Confidential information on new TI program. 13 Aug 1984. Tobacco Institute. Bates No. TIMN0150840. <http://legacy.library.ucsf.edu/tid/poy82f00>.

<sup>c</sup>Farrelly, M. C., C. G. Heaton, K. C. Davis, P. Messeri, J. C. Hersey, and M. L. Haviland. 2002. Getting to the truth: Evaluating national tobacco countermarketing campaigns. *American Journal of Public Health* 92 (6): 901–7.

<sup>d</sup>Farrelly, M. C., J. Niederdeppe, and J. Yarsevich. 2003. Youth tobacco prevention mass media campaigns: Past, present, and future directions. *Tobacco Control* 12 Suppl. 1: i35–i47.

trial.<sup>47</sup> The court stated that Lorillard had the right to pursue legal action against Legacy to enforce the provisions of the MSA. The court ruled in favor of Legacy, finding that simply criticizing the tobacco industry did not amount to vilification. It also provided a clear definition of the term *vilification*, allowing Legacy to continue its "truth" campaign by ensuring that it continued to avoid the now-defined practice of vilification. Lorillard appealed to the Delaware Supreme Court, which upheld the lower court decision.<sup>86</sup>

On March 21, 2003, Lorillard announced that it would place its share of MSA payments in escrow to prevent the funds from going to Legacy.<sup>87</sup> Following correspondence between Vermont Attorney General William H. Sorrell, chair of the Tobacco Committee of the National Association of Attorneys General, and Lorillard, the tobacco company reversed its decision and made its annual payments on time on March 31, 2003.<sup>88</sup> However, Lorillard

also revised its initial claim for damages against Legacy from \$1 to a complete return of the MSA payments made by Lorillard since 1999.<sup>87</sup> The implications of such action by Lorillard in the decision in the case against Legacy were significant. If Lorillard won, the decision could serve as a precedent for other tobacco company signatories to the MSA to collect their payments as well, thereby leading to Legacy's financial demise.

In June 2004, Lorillard dropped the claim that it was unjustly accused of adding urea to its cigarettes (the use of urea as a cigarette additive was the subject of a Legacy advertisement), stating, "We are not complaining that they [Legacy's "truth" campaign] are saying urea is in cigarettes. What we are complaining about is the implication that Lorillard puts the equivalent of dog urine in cigarettes or that Lorillard would consider doing something like that." (Personal communication from E. Vargyas, General Counsel, American Legacy

Foundation, to J. Ibrahim, 2004). Counsel for Lorillard indicated that the company had no intention of challenging the credibility of the comments about adding urea and that its focus was to challenge the vilification clause (personal communication from E. Vargyas to J. Ibrahim, 2004). On August 22, 2005, Judge Stephen P. Lamb ruled against Lorillard, stating that Legacy’s “truth” advertisements did not violate the MSA.<sup>51</sup>

## Summary

In the past, the tobacco industry has worked to influence tobacco control media campaigns and diminish their impact.<sup>37,89</sup> This chapter examined four primary strategies employed by the tobacco industry: preventing the creation of media campaigns, de-funding media campaigns through efforts such as claims of a fiscal crisis, weakening the message or limiting the audience of a campaign, and claiming that tobacco control efforts duplicate the tobacco industry’s own youth smoking prevention programs.

Tobacco industry strategies constantly evolve and adapt, as discussed further in chapter 6, making it more difficult for the public to differentiate between goodwill efforts from the tobacco companies to prevent smoking by youth and diversionary tactics to prevent meaningful efforts to reduce tobacco consumption. The benefits of tobacco control media campaigns can be reinforced among the public and elected officials where supported by the evidence, and health advocates can anticipate the nature of the above-mentioned counterefforts that could diminish the effectiveness of their campaigns.

## Conclusions

1. Tobacco industry efforts to impede tobacco control media campaigns include attempts to prevent or reduce their funding. Examples include opposition to a tobacco tax increase intended to fund media campaigns in California and claims that a “budget crisis” precluded spending on tobacco control media campaigns in Minnesota.
2. Efforts to weaken the messages or reduce the size of the target audience in tobacco control media campaigns include restricting the scope of Arizona’s Proposition 200 initiative to address specific topics such as nicotine addiction and to target only children and pregnant women and, in the American Legacy Foundation’s “truth” campaign, disallowing public policy advocacy and vilification of the tobacco industry.
3. The tobacco industry has cited its own media campaigns—such as “Helping Youth Decide,” “Think. Don’t Smoke,” and “Tobacco Is Whacko if You’re a Teen”—to argue that government-funded campaigns duplicate these efforts and waste taxpayer dollars. This strategy was seen first in Minnesota and leading up to and following the 1998 signing of the Master Settlement Agreement.
4. Increasing consumer awareness of tobacco industry activities to counteract public-health-sponsored campaigns designed to reduce tobacco use can be an important component of effective media interventions.

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