

Preemption

Taking the Local Out of Tobacco Control

2003
Updated
Edition

Why Big Tobacco Hates Local Control
What It Will Do to Eliminate It
How Advocates Can Fight Back

American Medical Association
Physicians dedicated to the health of America



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“We could never win at the local level. The reason is, all the health advocates, the ones that unfortunately I used to call ‘health Nazis,’ they’re all local activists who run the little political organizations. They may live next door to the mayor, or the city councilman, and they say ‘Who’s this big-time lobbyist coming here to tell us what to do?’... So the Tobacco Institute and tobacco companies’ first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can’t do that, at least on the state level, because the health advocates can’t compete with me on a state level.” Victor Crawford, former Tobacco Institute lobbyist¹

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What is Preemption?

Preemption is a legislative or judicial scheme in which a higher level of government (state or federal) strips lower levels of government of their authority over a specific subject matter. Preemption is the tobacco industry's top legislative goal, because it concentrates authority at the state (or federal) level, where the industry is stronger and can more readily protect its interests. Over the past 20 years the industry has passed some form of preemption in 32 states, gutting dozens of local tobacco control laws and preventing hundreds more from passing.

“By introducing pre-emptive statewide legislation we can shift the battle away from the community level back to the state legislatures where we are on stronger ground.” Tina Walls, Philip Morris²

Preemption falls under two general categories: **express** and **implied**. Express preemption involves a statute which explicitly asserts the state's (or Congress') intent to occupy the field in a given subject area. Implied preemption occurs when the court interprets a statutory scheme to be so comprehensive as to implicitly occupy the field and preclude local (or state) action.

Whether express or implied, locating the boundaries of preemption is tricky. Preemption clauses are often ambiguous; assessing the extent of implied preemption is even harder. Although the industry often cries preemption, only the courts can make a final determination of the scope and effect (if any) of alleged preemption. Many state judiciaries have strong precedents in favor of home rule and local control, even in the face of seemingly explicit preemption language.

“We Could Never Win at the Local Level...”

City councils and county boards of supervisors generally have broad powers to adopt ordinances designed to protect public safety and health (the specifics vary by state). In addition, some states also grant local boards of health the authority to adopt local health regulations. Since the 1970s communities have used these powers to restrict smoking in enclosed public places and workplaces.³ By December of 2002, 1531 communities had adopted clean indoor air laws, 365 of them with 100% smoke-free provisions.^{4,5}

Industry executives have long bemoaned their relative inability to curb local clean indoor air laws, and fretted over their social and economic implications.

“[A]ccommodation/pre-emption laws shape the real-world environment in which our customers and their non-smoking friends and associates live every day. If smokers are banished to doorways and loading docks in front of buildings, it makes smokers feel like outcasts and gives encouragement to the antis. On the other hand, if we live in a society that accommodates smokers and non-smokers alike, it sends the message that smoking is a viable life-style choice...” Tina Walls, Philip Morris²

“Financial impact of smoking bans will be tremendous. Three to five fewer cigarettes per day per smoker will reduce annual manufacturer profits a billion dollars plus per year.”

Philip Morris Presentation⁶

Local clean indoor air laws offer several advantages over state or federal legislation. They:

- Are easier to enact and strengthen;
- Provide more comprehensive and stronger protections from secondhand smoke;
- Offer more accessible and accountable enforcement mechanisms;
- Serve as the source of innovation and advances in tobacco control policy-making; and,
- Involve public education and grassroots organizing leading to changes in attitudes and social norms.³

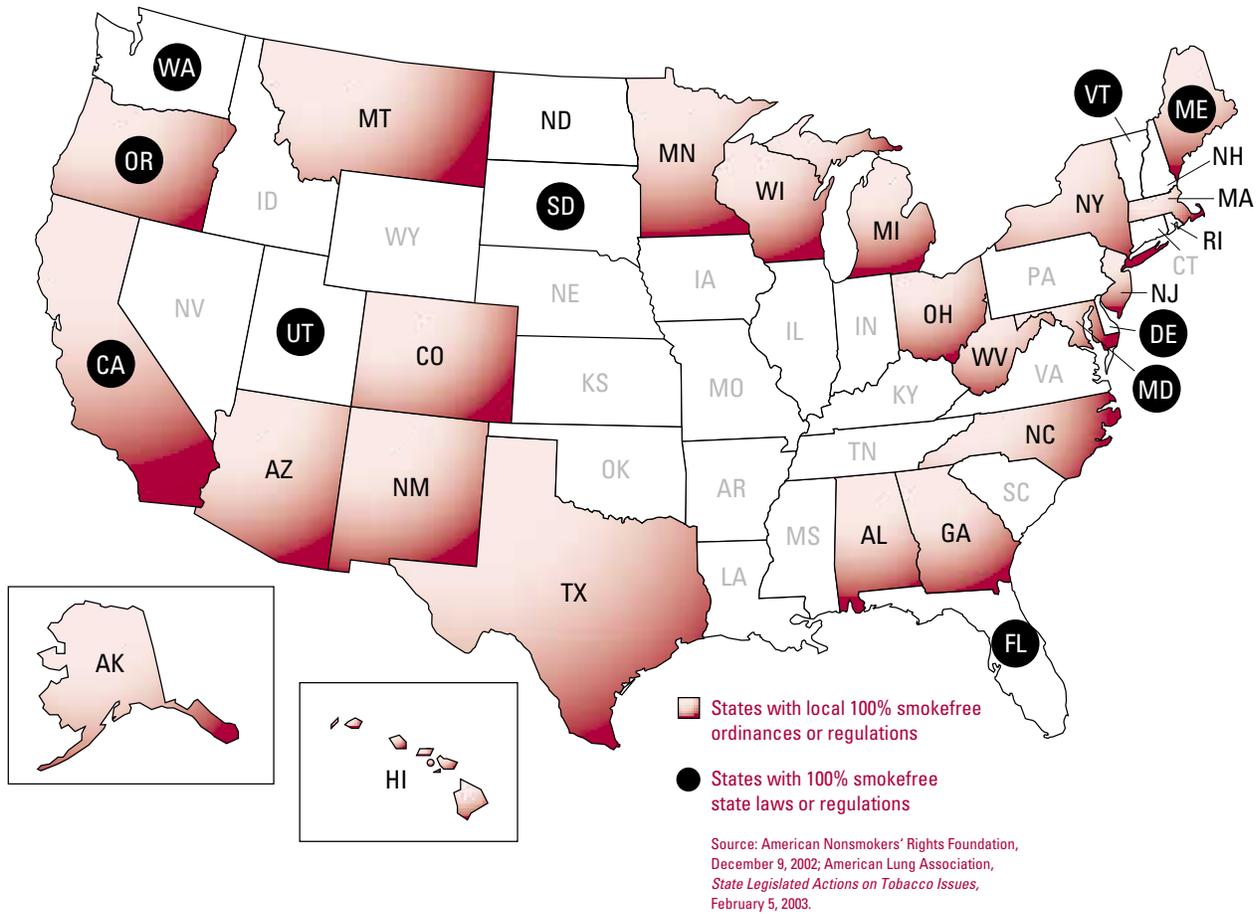
By Any Other Name...

Industry attempts to wipe out local control have taken many forms, among them: legislation doing away with municipal ordinances or board of health regulations; legal challenges against board of health authority; or onerous bureaucratic requirements for communities considering tobacco control laws. While the industry's strategies emerge and change over the years, the goal remains the same: wipe out local tobacco control laws.

“While we're not married to any particular form of pre-emption language, we're dead serious about achieving pre-emption in all 50 states.”

Tina Walls, Philip Morris²

■ States with local 100% smokefree ordinances and regulations*



* Smokefree ordinances do not allow size exemptions, or smoking in attached bars or in separately ventilated smoking rooms.

U.S. Communities with local tobacco control ordinances	
Tobacco control (any coverage)¹	2,318
Clean indoor air¹	1,531
Workplaces, 100% smokefree	176
Workplaces (any coverage)	1,116
Restaurants, 100% smokefree	118
Restaurants (any coverage)	959
Free-standing bars, 100% smokefree	85
Free-standing bars (any coverage)	117
Public Places, 100% smokefree²	365
Public Places (any coverage) ³	721

Source: American Nonsmokers' Rights Foundation, December 9, 2002

¹ Because many ordinances have overlapping provisions, subtotals are not expected to add up to the total of each main category. In addition, the totals will not be equivalent to totals reported on ANRF lists.

² These communities require that the following public places be smokefree: Theater lobbies, bowling centers, retail stores, food markets, public transportation, and bingo parlors.

³ "Any coverage" includes ordinances that have 100% smokefree restrictions for specified public venues, and those that simply require non-smoking sections.

Words to Watch For

The tobacco industry is not wedded to any particular preemption clause; the word preemption may not even appear. Advocates must analyze carefully all legislative, regulatory or administrative proposals to discern their effect on local tobacco control laws. **The best way to prevent preemption is to include explicit anti-preemption language in all state or federal tobacco control legislation or regulations.** Some words to watch for include:

Preempt: “This legislation expressly *preempts* regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.” Florida STAT. ANN. § 386-201 et seq.

Supersede: “This law *supersedes* any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.” Kentucky REV. STAT. § 438.310 *Note: this is an example of a super-preemption clause, eliminating local tobacco control laws on a variety of subjects.*

Occupy the field: “Accordingly, it is the intent of the Legislature to *occupy the field* of tobacco products regulation...” Arizona, SB 1384, defeated 1996

More restrictive or stringent than: “No local agency or political subdivision may impose ordinances or regulations relating to smoking in an office workplace which are *more restrictive or stringent than* this law after September 1, 1993.” Louisiana REV. STAT. § 40:1300.21 et seq.

Uniform statewide regulation: “...*uniform statewide regulation* of smoking in public places, bars, restaurants, and workplaces...is required to maximize public awareness of and compliance with this act...” California, Proposition 188 (the Philip Morris Initiative), defeated 1994

Consistent with [state law]: “When a municipality or county adopts an ordinance pertaining to the sales of tobacco products, the ordinance or regulation shall be *consistent with the provisions of NMSA § 39-49-1 to 39-49-12.*” New Mexico STAT. ANN § 39-49-1 to 39-49-12

A Brief History of Preemption

Federal Level

The earliest example of preemption in tobacco control is the clause contained in the Federal Cigarette Labeling and Advertising Act (FCLAA), enacted by Congress in 1965:

“No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.” 15 U.S.C., Section 5, Cigarette Act, § 1334(b)

The effect of this clause has long been debated, and a number of states and localities have adopted restrictions on tobacco advertising over the years (most under the rationale of reducing enticements for youth to use tobacco). On June 28, 2001 the U.S. Supreme Court struck down regulations in Massachusetts designed to reduce tobacco advertising directed at children. (*Lorillard Tobacco Company et. al. v Reilly, Attorney General of MA, et. al.*) The court ruled 5-4 that the FCLAA preempts such state advertising regulations, and ruled 6-3 that such restrictions violate First Amendment protections of commercial speech. Legal experts recommend that localities keep tobacco advertising restrictions on the books (but not enforce them); if federal law later changes the jurisdiction will not have to pass a new law.⁷ Cities and counties can continue to adopt and enforce advertising restrictions that do not single out tobacco products (e.g. limiting the total amount of signage allowable on storefronts), as well as regulate how tobacco is sold (e.g. eliminating self service displays).⁷

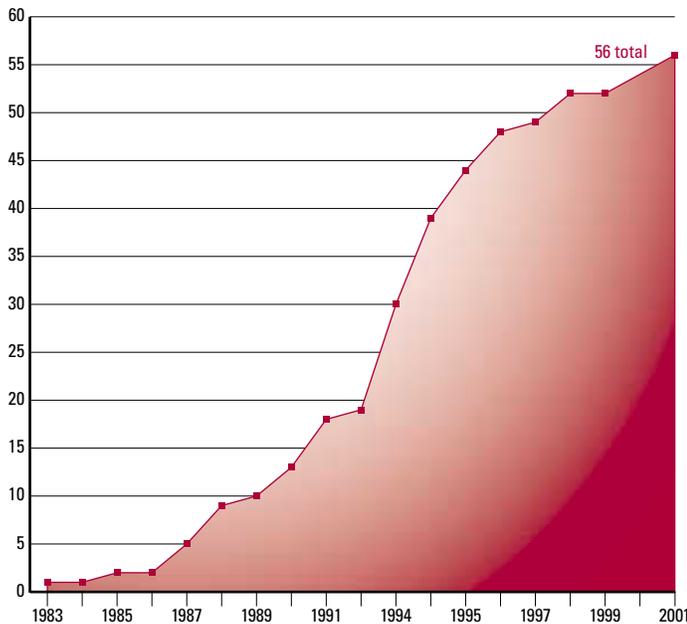
State Level

By the mid-1980s, tobacco industry executives were concerned about the growing number of local tobacco control ordinances, and frustrated by their inability to stem a rising tide.

“Our record in defeating state smoking restrictions has been reasonably good. Unfortunately, our record with respect to local measures... has been somewhat less encouraging... Over time, we can lose the battle over smoking restrictions just as decisively in bits and pieces — at the local level — as with state or federal measures.” Raymond Pritchard, Brown & Williamson⁸

In 1985 the tobacco industry pushed through its first preemptive state tobacco control law, in Florida. At the time, roughly a dozen Florida communities had adopted clean indoor air ordinances. The weaker state law

■ Trends in Enacted Preemption



Cumulative number of enacted preemption bills by year law became effective — United States, 1983–2001.

Source: National Cancer Institute, State Cancer Legislative Database, Bethesda, MD SCLD.

Preemption Is a Many-Splendored Thing (If You're a Tobacco Executive)

The tobacco industry gets plenty of bang for its preemption buck, including:^{9, 18, 19}

- Fewer restrictions on smoking (i.e., smoking allowed in more venues);
- A halt to local policy activity, ending the public discussion, education and social norm changes this activity generates;
- A decrease in enforcement activity, since local enforcement agencies are more likely to enforce local rather than state laws;
- Splits in coalitions over preemption compromises, often to the detriment of their other tobacco control efforts.

In the Industry's Own Words...

Formerly secret internal documents, obtained through the state Medicaid lawsuits against the tobacco industry, reveal its resolve to wipe out local control, and its strategies for doing so. Many of these documents are available on tobacco company websites (see Resources).

"Our top priority in fighting the proliferation of smoking bans and restrictions can be summed up in two words: 'accommodation' and 'preemption.'" *A presentation detailing Philip Morris' preemption strategies in the New England states.*¹¹ <http://www.pmdocs.com/getallimg.asp?DOCID=2040236685/6706>

"This [preemptive] legislation is unlikely to be enacted; it is intended to dissipate the energies of the anti-tobacco forces and put them on the defensive." *A collection of the industry's 1991 "pro-active" legislative plans for all 50 states.*²⁰ <http://www.tobaccoinstitute.com/getallimg.asp?DOCID=T1OR0019460/9814>

"Industry leaders have recognized that state laws which preempt local anti-tobacco ordinances are the most effective means to counter local challenges." *A proposed blue-*

*print for eliminating local control, based on RJR's experiences in California, Massachusetts and Washington.*¹²

http://www.rjrtdocs.com/rjrtdocs/image_viewer.dms?DOC_RANGE=513331953+1965

"The bad news is that the most favorable states for preemption are already onboard. In many of the remaining states we're going to have to fight like hell to get a preemption law we can live with." *This presentation spells out strategies for achieving preemption in targeted states.*² <http://www.pmdocs.com/getallimg.asp?DOCID=2041183751/3790>

"We need to make sure that the businesses understand that [a] statewide uniformity bill, while it may contain some level of increased restriction, will also set a fair playing field at the state level and eliminate the threat of local legislation..." *This presentation describes how Philip Morris' Accommodation Program is used to recruit the hospitality industry to promote preemption legislation.*¹³ <http://www.pmdocs.com/getallimg.asp?DOCID=2045517337/7347>

Support for Local Control

All the major health and tobacco control organizations oppose preemption.

American Cancer Society: “RESOLVED: That the American Cancer Society opposes any preemption clauses that are intended to remove or restrict power and authority from a unit of local government to regulate clean indoor air and/or other tobacco control laws.” *State Preemption of Local Tobacco Control Laws*, March 1992

American Heart Association: “[T]he Association supports public policies in accordance with the following set of core principals for federal legislation: ...oppose federal preemption of state and local statutes.” *American Heart Association Public Policy Agenda for the 107th Congress*, 2001-2002

American Lung Association: “The American Lung Association/American Thoracic Society oppose all forms of preemption of state and local tobacco control authority. The ability of any government entity to enact tobacco control legislation is a cornerstone of an effective tobacco control policy. There is no trade-off worth the price of preempting a state or community’s right to pass tobacco legislation.” *Policy Principle on Tobacco*, April 1999

American Medical Association: “(1)(e) Congress should not preempt state or local laws that are stronger than federal laws.” *AMA Policy H490.931*, 1997 “(7) The American Medical Association supports the right of local

jurisdictions to enact tobacco regulations that are stricter than those that exist in state statutes.” *AMA Policy H490.964*, 1995

Americans for Nonsmokers’ Rights: “The tobacco industry clearly recognizes preemption as its best tactic against tobacco control. ... The only answer is **no preemption**, ever. There’s never any benefit to the public from preemption, and there’s always a cost.” *UPDATE*, Winter 1992

Association of State and Territorial Health Officials: “Advocate for the preservation of local government autonomy in tobacco control ordinances and regulation. Be prepared to counter legislative strategies of the tobacco industry by withdrawing support from bills that have been weakened by the addition of preemptive language.” *Policy Statement on Tobacco Use Prevention and Control*, 1996

Campaign for Tobacco-Free Kids: “Any state-level tobacco control legislation should contain language expressly allowing local government authority to take stronger measures if necessary. Local control should be viewed as a public health tool to be protected and encouraged.” *Actions Speak Louder than Words*, 1996

U.S. Department of Health and Human Services: “Reduce to 0 the number of States that have clean indoor air laws preemptive of stronger clean indoor air laws on the local level.” *Healthy People 2000 Review*, 1997

Promoting Preemption: The Tobacco Industry’s Bag of Tricks

The industry has used a variety of tactics to shut down local tobacco control. These include legislative and legal strategies and they don’t always invoke traditional preemption clauses. Although they are described separately below, the industry usually combines one or more tactics to move a bill through a state legislature.

Opportunism

Making Lemonade from Lemons: The tobacco industry has an uncanny ability to take ostensibly positive policy developments and turn them to its advantage. In 1992 Congress passed the Synar Amendment, requiring states to reduce tobacco sales to minors or risk losing federal substance abuse block grant funds; the tobacco industry lobbied Congress to leave implementation of the mandate

to the states.²¹ The industry then used this mandate to promote preemption in the states. In 1996, the year Synar implementing regulations were issued, the industry pushed 16 “Synar compliance bills” containing broad preemption clauses.¹⁸ Industry lobbyists told legislators that passage of the bills was necessary to avoid losing federal block grant funds.^{22,23} The Department of Health and Human Services (DHHS) published a clarification in the Federal Register rejecting this industry claim:

“In no way should they [Synar Regulations] be considered as limiting, or requiring States to limit, the powers of local governments to enact or enforce tobacco control laws. ... The Department encourages States to allow localities the flexibility to enact stricter laws or to more rigorously enforce tobacco control laws.” 61 Fed Reg at 1496.

By creating potential sources for tobacco control funding, the 1998 Master Settlement Agreement (MSA) ironically offers the industry new opportunities to promote preemption. During the 2001 legislative session, industry allies in Oregon attempted to attach \$17.5 million in tobacco control funding to a preemption bill.²⁴ Although the ploy to hold tobacco control funding hostage to preemption failed in Oregon, similar deals may be proposed in other states. Advocates worry that the industry's strategy may cause state coalitions to dampen their opposition to preemption or create divisions in the coalition over the relative priorities of fighting preemption vs. securing funding.

Hitching a Ride: Advocates must keep a watchful eye on more than just tobacco-related bills. In Colorado, the Sierra Club alerted tobacco control advocates to a growth control bill with potential ramifications for local clean indoor air laws. Developers amended the bill with a clause limiting the authority of local jurisdictions to adopt environmental and health laws. The preempted subject areas included air quality and pollution control — subjects that could be interpreted to cover clean indoor air legislation. Advocates later learned that the lobbyist for the Home Builders Association also represented the Smokeless Tobacco Council.²⁵

Hijack a Tobacco Control Bill

Another industry tactic is to hijack a bona-fide tobacco control bill introduced by health groups, amending the bill with weaker provisions and adding a preemption clause. This is frequently attempted in the waning hours of a session as the legislative clock ticks down.⁹ A Tobacco Institute memo spells out this tactic in detail:

“Smoking restriction legislation has been filed regularly in Colorado [by the state tobacco control coalition]... The tobacco industry enjoys sufficient support in the Senate and House that such legislation can be controlled. Amendments to the 1991 legislation will be sought through direct lobbying, with the goal of making the bill a marginal regulator of public smoking, and preempting local smoking restrictions, as well as possibly securing preemption in areas such as vending, sampling and age restrictions. With this accomplished, the bill's sponsors will have to choose between passage of the amended bill, or the defeat of the entire measure.”

Tobacco Institute Report²⁶

Introduce a “Wolf in Sheep’s Clothing”

A kissing cousin to the hijacked bill is to introduce a pseudo-tobacco control bill. In this scenario, the industry introduces its own bill, containing enough pro-health provisions to give cover to legislators. A 1991 Smokeless Tobacco Council memo memorializes the genesis of this tactic:

“[T]he Speaker [Willie Brown, then-Speaker of the California Assembly] made clear a significantly more proactive tobacco control effort would be needed to secure preemption. Out of those discussions the notion of a Comprehensive Tobacco Control Act (that would provide preemption) evolved. The Speaker believes the trick to doing this would be that such an act would have to have the ‘appearance’ of a comprehensive scheme.” Michael Kerrigan, Smokeless Tobacco Council²⁷

“Practical Preemption”

Stripping Board of Health Authority: In some states, boards of health are the primary venue for adopting local tobacco control policy. The industry's response is to eliminate or substantially limit the boards' authority to adopt tobacco control regulations; these bills don't contain traditional preemption clauses.

“So while our pre-emption bill is tied up in the legislature, we've introduced an amendment to a pending 100% ban on smoking in restaurants... [which] requires that any restaurant smoking ordinance on the local level must go through the city council. We call this ‘venue restriction language’...” Jim Pontarelli, Philip Morris²

This type of “venue restriction language” has shown up several states that authorize local board of health regulations, including Massachusetts, West Virginia and Ohio. Perversely, proponents of such legislation claim that these proposals to strip board of health authority actually support local control.²⁸ A Philip Morris spokesman defended a ‘venue restriction’ bill during the 2001 Ohio legislative session, saying “[e]lected officials are in the best place to make decisions about local smoking regulations.”²⁹

“A Bureaucratic Nightmare”: Where a direct attack on board of health authority is infeasible, the industry promotes legislation to tie the boards up in bureaucratic knots.

“The legislation doesn’t prevent boards of health from proposing bans, and it doesn’t violate home rule; *it just imposes a bureaucratic nightmare of hoops boards must jump through before they can get their smoking ban proposals on the books...* [P]rior to enacting a smoking ban, the board must adopt a “resolution of intent,” hold three separate hearings at least 7 days apart on the resolution of intent, and then publish the resolution of intent in every newspaper serving every corner of its jurisdiction twice before each hearing — at two weeks and one week — for a total of six times [the document goes on for a full page describing additional requirements]....This may not be classical pre-emption, but it’s practical pre-emption.” Jim Pontarelli, Philip Morris²

This ‘death by bureaucracy’ tactic also has been used to attack local ordinances. In 2001 the Missouri State Legislature enacted youth access legislation that includes guidelines for compliance inspections. The guidelines are so restrictive as to make it virtually impossible for local authorities to conduct inspections and enforce local youth access ordinances. Although it began as a health bill supported by the Missouri Partnership on Smoking or Health, the tobacco industry hijacked the bill, introducing a flurry of hostile amendments on the floor of the Senate. This late-hour attack was difficult for health advocates to track and respond to, and created tension among Partnership members (some withdrew support, others took a neutral position).³⁰

Claim Preemption in Court

Lawsuits are an early tobacco industry response, most often appearing as the first jurisdictions in a state begin considering local tobacco control ordinances or regulations.

“[H]ere is a summation of the steps that we will take...in order to achieve state-wide preemption...We will file a lawsuit on February 1 against the City of San Francisco over the jurisdictional issue of whether or not the city has the authority to ban workplace smoking.” Ellen Merlo, Philip Morris¹⁵

Local restaurateurs and the Rhode Island Hospitality Association attempted to overturn Rhode Island’s first smokefree restaurant ordinance, adopted by the East Greenwich Town Council. The plaintiff’s lawyer, a lobbyist for Philip Morris, argued that a local jurisdiction could not enact regulations without express approval of the General Assembly.³¹ A Superior Court judge upheld the ordinance.

“Third Party Sources To Help Carry our Baggage”

Knowing it has a credibility gap, the tobacco industry tries to hide its activities behind more credible groups.

“We try to keep Philip Morris out of the media on issues like taxation, smoking bans and marketing restrictions. Instead, we try to provide the media with statements in support of our positions from third party sources, which carry more credibility than our company and have no apparent vested interest...[W]e create coalitions of third party sources to help carry our baggage on issues.” Tina Walls, Philip Morris³²

Legislation: Sometimes the industry co-opts legitimate organizations, generally associated with the retail and hospitality industries, to help push for preemption (e.g., the Food Marketing Institute, the National Association of Convenience Stores, the National Grocers Association, the National Licensed Beverage Association and many state restaurant associations).^{13, 18, 33} Sometimes the industry creates its own front-groups. The Minnesota Coalition of Responsible Retailers, an ostensibly independent trade association, aggressively promoted a preemption bill in 1996. A Coalition memo leaked to the press revealed that lobbyists for the Tobacco Institute and five major tobacco manufacturers dominated the group’s membership.³⁴ After the Coalition’s industry ties were exposed, the preemption bill was withdrawn.³⁵

Legal Challenges: Local businesses and/or state trade associations file most preemption lawsuits. However, lawyers and law firms representing these clients often have ties to the industry. In California, Munger, Tolles & Olson represented a mom-and-pop vending company in its lawsuit against a local ordinance; the law firm’s clients included the Tobacco Institute.³⁶ The National Smokers’ Alliance (a front group created by Philip Morris) joined local restaurateurs in a lawsuit filed against a restaurant ordinance adopted by the Princeton (NJ) Regional Health Commission.³⁷ A lobbyist for the tobacco industry represented local business owners challenging a Mid-Ohio Valley (WV) Health Department regulation.³⁸

Fighting the Good Fight: Lessons from Arizona, West Virginia and Michigan

Arizona

“**Arizona.** Industry representatives are working with legislative leadership on a draft omnibus smoking/sales enforcement bill that includes local preemption. Support has been offered from the Licensed Beverage Association and the Restaurant Association.” Tobacco Institute, *1993 Local Preemption Targets*¹⁶

Between 1995 and 1997, the tobacco industry waged an all-out campaign in the Arizona State Legislature to enact preemption. These battles were played out against the backdrop of setting up the state’s Tobacco Control Program, established after Arizona voters passed Proposition 200 in 1994. Prop 200 increased the tobacco excise tax and earmarked a percentage of the funds for tobacco prevention, education and research. These funds supported the creation of local tobacco control projects and coalitions, infrastructure for the development of a cadre of grassroots tobacco control advocates.

Arizona was a pioneer in the nonsmokers’ rights movement.³⁹ In 1966 advocates formed Arizonans Concerned About Smoking (ACAS). ACAS’ advocacy efforts led to the nation’s first statewide smoking restrictions law, passed by the Arizona Legislature in 1973. Nonsmokers, Inc. formed in Tucson in 1976, the year Tucson first adopted a clean indoor air ordinance. Thanks to the efforts of ACAS, Nonsmokers, Inc., and other local groups, by the time Prop 200 passed in 1994 at least 41 Arizona communities had adopted tobacco control ordinances.³⁹

The 1995 Session

In 1995 the Coalition for Tobacco Free Arizona (CTFA) had its hands full, lobbying the Legislature to ensure first-time appropriation of the Prop 200 funds earmarked for tobacco control. In the midst of this, the Coalition was forced into a battle to block passage of a preemptive tobacco retail licensing bill. HB 2429 died in committee, but was resurrected again under other names.³⁹ The tobacco industry overplayed its hand when Republican National Chairman Haley Barbour urged Mark Killian (R-Mesa), Arizona House Speaker, to schedule the bill for a floor vote; offended by the pressure, Killian instead blocked the bill.⁴⁰

The 1996 Session

In 1996 preemption legislation resurfaced, this time in the Senate. SB 1384, sponsored by the Senate Majority Leader, was a tobacco licensure bill which also preempted clean indoor air, advertising and promotion ordinances. The Coalition alerted the press, and launched a grassroots letter writing and phone call campaign targeting key legislators.^{39, 41} In February the *Arizona Republic* editorialized against SB 1384 as “hopelessly flawed.”⁴² The *Republic* also ran articles tracking the bill’s progress, noting the “stable...of highly paid lobbyists” pushing the bill for the tobacco industry.^{43, 44}

A smokefree restaurant ordinance passed by Mesa voters in the spring of 1996 provided vital ammunition against SB 1384. And once again the industry’s hardball tactics backfired. In March the *Arizona Daily Star* ran an editorial — “Spurn the tobacco hustlers” — exposing a duplicitous phone-banking scheme targeting elderly voters. A telephone bank contacted the senior citizens, telling them that SB 1384 would keep youth from smoking (failing to mention the bill’s preemption provision or the major health groups’ opposition), then offering to patch the recipient through to their legislator; several legislators reported receiving dozens of such calls.⁴⁵

SB 1384 squeaked out of the Senate by two votes. The Coalition worked closely with House Speaker Killian; when it became clear SB 1384 could not be “fixed” (i.e., preemption eliminated), Killian killed the bill.³⁹

The 1997 Session*

After the close of the 1996 session, the Coalition immediately began preparing for the 1997 session; it knew that the tobacco industry would capitalize on the departure of Speaker Killian. With financial support from the Campaign for Tobacco-Free Kids (CTFK), the St. Lukes Charitable Health Trust, and the voluntary health agencies, the Coalition developed Project Rolling Thunder.³⁹ Project Rolling Thunder’s goals were to support development of local tobacco control ordinances and to fight preemption. These new resources spurred the Coalition to develop a plan to fight preemption in the next session, an instrumental step to the Coalition’s eventual defeat of six preemption bills in the 1997 session.⁴⁶

The plan’s central strategy was to develop grassroots pressure on the Legislature:

- **Grassroots Database and Organizing:** The Coalition increased the size of its grassroots database and coded it by legislative district, allowing for quick, targeted action alerts. Staff met with local tobacco control coalitions, identifying team leaders to coordinate local anti-preemp-

*Material relating to the 1997 session is drawn from a report prepared for the Coalition and the CTFK, *The 1997 Arizona Legislative Battle to Preserve Local Control*.

tion activities (e.g., pass local resolutions opposing preemption, editorial board visits, petition drives, calls and letters to legislators, etc.). The Coalition worked with the League of Arizona Cities to arrange for legislators to hear from local elected officials in their districts.

- **Media Events at the Capitol:** During the session, the Coalition organized a press conference to expose a Tobacco Institute-paid congressional junket. In tandem with this press conference, Full Court Press (a Robert Wood Johnson Foundation project based in Tucson) held a youth rally and press conference. The Coalition later staged a statewide youth rally; youth set up display boards on the capitol mall, met with legislators and held a press conference.
- **Media:** The major daily newspapers consistently editorialized against preemption, and ran articles about the issue throughout the session.⁴⁷⁻⁴⁹ The Coalition ran a single paid ad, in the *Arizona Capitol Times* (a weekly paper serving political community), targeting three active preemption bills.

The plan coordinated grassroots efforts with an inside-the-capitol strategy:

- **Hiring a Lobbyist:** The three voluntary health agencies (ACS, ALA, and AHA) hired a contract lobbyist and met with him on a weekly basis.
- **Contacting Legislative Leadership:** The Coalition met with Republican and Democratic leaders on key committees. The Coalition also foiled an industry attempt to collect endorsements from powerful state and local elected officials (e.g., the Attorney General, the Mayor of Phoenix and the Maricopa County Sheriff). After the Coalition's lobbyist caught wind of the industry's plan, the Coalition alerted the targeted officials; none lent their name to the industry's bills.

At the start of the legislative session, the tobacco industry introduced three tobacco licensing bills, two in the House (HB 2239 and HB 2240) one in the Senate (SB 1230). The industry hired at least six lobbyists to work the bills.⁵⁰ The Coalition organized lobbying visits, phone calls and letters targeting the Chairs of the committees to which the bills were assigned; the Chairs held the bills in their respective committee until the legislative deadline ran out. As the three bills stalled in committee, the Governor approached the Legislature to put together another licensing bill (SB 1366). Negotiations with the sponsor (previously honored by the Coalition for his support on tobacco issues) fell apart over inclusion of a preemption clause and the sponsor pulled the bill.

Following the deaths of HB 2239, HB 2240 and SB 1230, the industry created new vehicles for preemption by hijacking non-tobacco bills, using a procedural maneuver

called a "strike-all amendment". As in 1996, the Coalition's anti-preemption efforts were galvanized by a newly enacted local tobacco control ordinance, this time in Tucson.³⁹ With preemption legislation looming over their heads, Tucson council members moved quickly to pass their ordinance, and then called upon their colleagues in the state legislature to stand up for local control.⁵¹ With help from a Tucson legislator, the Coalition successfully lobbied to remove preemption from the first striker bill (HB 2456) during floor debate. HB 2456 was referred to the Senate Government Reform Committee, where the Chair killed the bill. A second striker bill (SB 1333) immediately surfaced in the House.⁵² At the hearing before the House Government Operations Committee (its last meeting day), the Coalition packed the chamber with opponents wearing *Just Say No To Tobacco Preemption* buttons. The bill's original sponsor contacted the strike-all sponsor, asking him to withdraw the amendment.⁵³

No on H.B. 2239 + No on H.B. 2240 + No on S.B. 1230

Legislators: You Don't Like It When Washington D.C. Ties Your Hands.

Why Would You Do the Same Thing to Arizona's Cities and Towns?

H.B. 2239 would strip local communities of their right to decide for themselves and their children how tobacco products will be sold, advertised, and used in their hometown. This is classic manipulation by the tobacco industry, a powerful special interest group. Don't let them get away with it! Vote no on Big Tobacco's Anti-Local Control Bills.

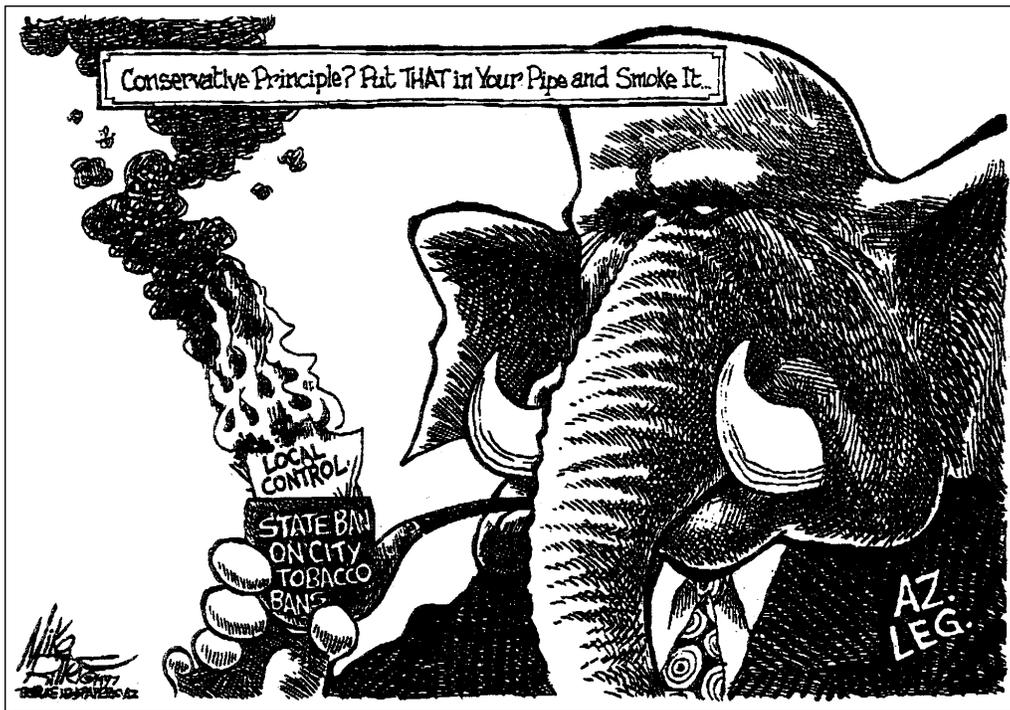
Tobacco vs. Kids. Where Arizona draws the line.

CAMPAIGN for TOBACCO-FREE Kids

This ad sponsored by: The Church of Jesus Christ of Latter-Day Saints; The Intemligious Coalition on Smoking or Health; United Church of Christ; The Catholic Church; The Coalition for a Tobacco-Free Arizona and American Cancer Society, Southwest Division.

The National Center for Tobacco-Free Kids
1707 L Street NW, Suite 800, Washington, DC 20036

The National Center for Tobacco-Free Kids. 1997. Reprinted with permission.



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West Virginia

“West Virginia. Smoker accommodation and preemption legislation has been prepared for introduction. Committee assignments will be made in organizational session January 13, and sponsorship will be finalized then. As the Municipal League is expected to pose major opposition, the bill should be moved quickly in the early part of the session...” *Tobacco Institute, 1993 Local Preemption Targets*⁵⁶

West Virginia has a long history of local clean indoor air policy, enacted almost exclusively via local board of health regulations. Monongalia County passed the state’s first smoking regulation in 1991.⁵⁴ Over the years, the state Department of Health provided solid legal footing for local regulations by seeking legal opinions from its own General Counsel and the state Attorney General (all supported board of health authority to adopt tobacco-related regulations).⁵⁵⁻⁵⁸ By the time West Virginia’s ASSIST project was up and running in 1994, 10 counties were covered by local board of health regulations.⁵⁴ ASSIST continued the emphasis on local policy development; by 2001, 45 of the state’s 55 counties were covered by a local clean indoor air regulation (some of which were 100% smokefree).⁵⁹

Battles in the Legislature

Since the early 1990s legislation to restrict or eliminate board of health authority has appeared in almost every legislative session.^{60, 61} According to state Coalition

members, legislation attacking local control is a “trump card” and preemption a non-negotiable issue. The Coalition for a Tobacco Free West Virginia will drop everything to fight preemption, even at the possible expense of other tobacco control legislation (e.g. excise tax, tobacco control funding).^{54, 62, 63} The Coalition has adopted a formal position on local control and preemption:

“The Coalition for a Tobacco Free West Virginia supports the expansion of local clean indoor air regulations and ordinances and opposes any state legislation or other policy which limits the authority of local governments, including local boards of health, to restrict tobacco use within their local jurisdictions.”⁶⁴

On several occasions the industry has attempted to sneak preemption through via non-tobacco bills that deal with the section of state public health code granting boards of health authority to regulate tobacco.⁶³ This strategy almost succeeded in 1994, when a preemption clause was tacked on to a bill regulating bingo games during the last hours of the session.⁶⁰ The bill passed and was on the Governor’s desk awaiting signature when the Coalition discovered the preemption language. The Coalition immediately alerted the Governor, and asked several supportive legislators for help; the preemption clause was removed in a special legislative session.^{60, 61}

The industry attempted this stealth strategy in later sessions using bills with subject matter ranging from well-digging standards to restaurant placemats.^{62, 63} To combat this strategy, several Coalition members

carefully monitor all bills, particularly those that mention the relevant section of the state public health code.⁶²

A SmokeLess States grant awarded in 1994 gave the Coalition resources to develop a statewide network of teen advocates. In 1996, as almost 200 teens gathered in the capitol for their annual anti-tobacco summit, a preemption bill was making its way through the legislature. The teens held a press conference and met with legislators, to talk about tobacco issues. The next morning a member of the House asked to address the teens at their summit; he thanked them and announced that due to their efforts, the bill was dead.⁶²

As in Arizona, the industry has tried the blitzkrieg approach. During the first three weeks of the 1998 session six bills were introduced limiting or eliminating local board of health authority over tobacco.⁶⁵ *The West Virginia Gazette* editorialized against the measures — “Clean Air: Don’t Gut Indoor Regs” — noting the industry had 10 lobbyists pushing the measures.⁶⁶ The bills — none of them traditional preemption bills — ranged from ‘venue restriction’ proposals that local health rules be adopted only as city or county ordinances, to various iterations of the ‘bureaucratic nightmare of hoops’ boards of health must follow before adopting regulations.⁶¹

The Coalition recently added a new maneuver to its game plan, tracking tobacco industry campaign contributions to all state legislators.⁶² The Coalition’s commitment to preserving local control has created a legislative stalemate for the industry. One Coalition member, reflecting on the preemption bills of the past years, notes:

“[M]ost of them [preemption bills] have been made at the last minute, without full recognition by members of the legislature of what the issue is, or buried in a bill (like the Bingo bill). I suspect this means that the tobacco interests realize that they could not overturn the clean-air ordinances in a full and fair fight.”⁶¹

Battles in the Courts

The industry has not limited itself to legislative attacks on local control in West Virginia. After the Mid-Ohio Valley board of health adopted clean indoor air regulations in 1994, local business owners threatened a lawsuit. The Senate President (friendly with the Coalition) asked the Attorney General for an opinion on the validity of local smoking regulations under state law.⁶⁷ Despite the AG’s favorable opinion, the plaintiffs forged ahead with their lawsuit, represented by a lobbyist for R.J. Reynolds.³⁸ The state Health Department provided the board of health with funds to seek outside legal counsel.⁵⁴ A Circuit Court rejected the plaintiff’s attacks on board of health authority in a scathing ruling dotted with references to earlier

legal opinions sought by the state Health Department. (*Goldsmid-Black, Inc. vs. Mid-Ohio Valley Health Department*).

This solid legal precedent in favor of local board of health authority did not dissuade opponents from filing a lawsuit against a Preston County smoking regulation passed in 2001. Among the plaintiffs was the mayor of Kingwood (county seat of Preston County); both the mayor and his wife have lobbied for Philip Morris.⁵⁴ A Circuit Court upheld the regulation, and the State Supreme Court refused to hear the plaintiff’s appeal. (*Mountaineer Contractors, Inc. vs. Preston County Board of Health*).

Lessons Learned from Legislative Battles

Successful campaigns to fight preemption had:

- Local tobacco control laws and regulations on the books, and more in the pipeline. Local tobacco control projects and coalitions were an important source of grassroots advocacy.
- State Coalition consensus to oppose preemption, and a willingness to commit significant resources to the battle.
- Plans that included both grassroots and inside-the-capitol strategies, strategically targeting efforts on key legislators. Youth advocates played important roles.
- Press editorials against preemption bills and articles exposing tobacco industry tactics and activities. This kept preemption in the public eye, and made it a controversial issue that most legislators wanted to avoid supporting.
- Local officials that lobbied state legislators and spoke to the press — protesting industry attacks against their authority.

Marquette, Michigan

When reading a law for its potential effect on local control, keep in mind that a clause is not preemptive unless and until the courts say it's preemptive.

While revising Michigan Public Health Code in 1983, the State Legislature inserted the following language:

“A county, city, village or township shall not regulate those aspects of food service establishments...which are subject to regulation under this part except to the extent necessary to carry out the responsibility of a local health department pursuant to sections 12906 and 12908. This part shall not relieve the applicant for a license or a licensee from responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances not in conflict with this part.”
MCL 333.12915; MSA 14.15(12915)

The language was included at the request of local businesses; advocates don't believe that the tobacco industry was involved (it pre-dates the earliest known industry-sponsored preemption bill in Florida).⁶⁸ According to the House Legislative Analysis Section, the purpose of the clause was to prohibit the practice of charging local licensing fees that were duplicative of state fees.⁶⁹ As local coalitions began considering clean indoor air ordinances, advocates worried that the clause's subject matter could be broadly interpreted to include restaurant smoking restrictions. Legal analyses conducted for the American Lung Association and the Marquette County Prosecuting Attorney both concluded that the clause did not preclude adoption of restaurant smoking restrictions at least as strong as state law.^{70,71}

In 1997, the city of Marquette passed Michigan's first 100% smokefree ordinance, covering public places and workplaces, including restaurants. Marquette officials were prepared to defend the ordinance against a promised preemption challenge, duly filed by a group of businesses including the Michigan Restaurant Association (which had ties to Philip Morris).³³ The voluntary health agencies (Heart, Cancer and Lung), the Michigan Municipal League and Americans for Nonsmokers' Rights filed *amicus* briefs in support of the Marquette ordinance. Although the Michigan Court of Appeals struck down Marquette's restaurant smoking ban (*Michigan Restaurant Association et al v City of Marquette*), advocates considered the ruling a partial victory. First, it did not affect the ordinance's smokefree public places and workplaces provisions (in effect since January 1999). Second, the ruling may allow for some types of smoking restrictions in restaurants, such as separately enclosed and ventilated smoking areas.⁷²

Drawing Down Lightning — Lessons Learned from Legal Challenges

Advocates preparing for a potential legal challenge should:

- Seek legal analysis as to the scope and nature of any potentially preemptive language.
- Based on that analysis, draft ordinance language to best withstand a preemption challenge.
- Work closely with elected officials and city staff (in particular the legal staff). Before moving forward, make sure officials are committed to defending, rather than repealing, the ordinance if faced with a legal challenge.
- Garner support from health groups to provide the jurisdiction with financial or in-kind help if a lawsuit is filed (e.g. legal analysis, expert witnesses, media advocacy, amicus brief).

By clarifying the parameters of preemption the appellate court ruling cleared the way for other local jurisdictions to take action. Shortly after the ruling, the Ingham County Commissioners began discussing a smokefree public places and workplaces ordinance, including some restrictions on smoking in restaurants.⁷³ The *Marquette* ruling also provided advocates with new ammunition to repeal the preemption clause.

'Have I Got a Deal for You...'

While most tobacco control advocates can appreciate the devastating effects of a weak clean indoor air preemption law, their resolution may founder in the face of a preemptive bill offering 100% smokefree protection. Some advocates may consider it a fair trade to accept preemption in exchange for such a law. In light of recent legislative battles, it's likely that more and more state coalitions will face just such a dilemma.

Bills and Laws Can Be Weakened

Just because a bill includes a 100% smokefree provision doesn't guarantee that it will pass in that form, or that it will stay in that form once on the books.

“We already have state-wide preemption in Vermont, but it’s not exactly what we had in mind. Right now it is pretty much illegal to smoke anywhere in public in Vermont except bars and restaurants... We will be attempting to add exemptions to the state smoking law, softening it wherever we can.” Ellen Merlo, Philip Morris¹¹

State-of-the Art Tobacco Control Policy Evolves

Preemption locks in the status quo, based on today’s perceived political realities. But as time passes, standards change, and measures that once seemed out of the question become politically possible. The bold proposals made by nonsmokers’ rights groups in the early 1980s (i.e., smoking and non-smoking sections) — fiercely opposed by the industry at the time — are now promoted by Philip Morris Executives.

“[W]e support reasonable accommodation for both smokers and non-smokers, in separately designated areas where it is appropriate.”

Ellen Merlo, Philip Morris¹¹

Good Neighbor Policy

Preemption, like secondhand smoke, has a tendency to drift. When one state legislature passes preemption, it makes it easier for the industry to promote similar bills in other states. In 2002, advocates in West Virginia watched warily as a bill to strip board of health authority moved through the legislature in neighboring Ohio. If the bill had passed, they worried that progress on smoking regulations in West Virginia towns bordering Ohio would have faltered. And they worried that their ability to stave off similar legislation in West Virginia would have been weakened.^{54, 62}

Restoring Local Control

Once it gets preemption on the books, the industry is tenacious in preserving its muzzle on local control.

“[C]lass A states, which as I described are places where statewide uniformity bills have been enacted. Here our objective is to work... to insure that we maintain the environment of accommodation and that we are positioned to fend off attempts to remove preemption or strengthen the level of statewide restriction.”

Philip Morris Report¹³

The first state to repeal preemption in tobacco control was Maine, which restored local control over tobacco displays, placement and time of sale provisions in 1996 (the preemptive language was included in a youth access bill passed a year earlier).¹⁷ In 2002, Delaware became the first state to repeal preemption of local clean indoor air ordinances, simultaneously adopting a comprehensive smokefree state law.

The campaign launched by the IMPACT Delaware Tobacco Prevention Coalition was a strategic, multi-year effort to mobilize grassroots support and cultivate dedicated legislative sponsors.⁷⁴ Key elements of the campaign included:

- A campaign plan that dedicated a year to conduct a public education campaign on secondhand smoke and to develop grassroots support, *before* taking the battle to the legislature.
- Effective collaboration amongst IMPACT organizational members, playing to the strengths and capabilities of the state health department and the voluntary health agencies.
- Focusing on the health issues. Polling showed the public responded strongly to health issues; when confronted with opposition arguments about economic impact or smokers’ rights, the Coalition returned the focus to the message of ‘protecting health, saving lives’.
- Strong grassroots support. The Coalition created infrastructure to activate local supporters, targeting efforts by district, and offering many opportunities for supporters to communicate with legislators and the media.
- Committed sponsors, from the majority party in their respective chambers, who considered the bill a priority and worked closely with the Coalition.

(Please refer to the American Lung Association publication *Clean Indoor Air: The Delaware Campaign Model* for more specifics about the IMPACT Coalition’s campaign.)

For further insight into repealing preemption, we can look to the experiences of activists working in the field of alcohol prevention:⁷⁵

- **New Mexico state law preempts local alcohol taxes and restrictions on drive-up windows.** A McKinley County coalition organized a 200 mile March of Hope to the capitol, with 2000 participants demanding local control. After preemption was lifted in 1989, McKinley County voters passed a five-percent alcohol tax and closed drive-up windows.

- **Maryland state law preempts local alcohol advertising restrictions.** Activists in Baltimore lobbied the state legislature to grant the city authority to restrict alcohol billboards. Grassroots activities included sending busloads of senior citizens to the capitol to meet with their representatives. Enabling legislation passed in 1993, and in 1994 Baltimore passed restrictions on alcohol (and tobacco) billboards.

The McKinley County and Baltimore campaigns share three key elements:

1. Both **began** with broad-based community coalitions advocating for local legislation that found themselves stymied by preemptive state law.
2. Both sought support from state and national organizations, but direct action organizing by local advocates was the key to their success.
3. After winning in the state legislature, both coalitions returned to their communities and organized to pass local legislation.

(Please refer to the American Medical Association publication *Alcohol Issues Policy Briefing Paper: The Perils of Preemption* for more details on these and other campaigns.)

Preparing to Protect Local Control

The following steps can help state tobacco control coalitions reduce their vulnerability to preemption and other threats to local control.

- **Support local clean indoor air campaigns** in your state. The more local laws on the books, the more motivated grassroots supporters you can activate. The presence of local ordinances can in effect “preempt” enactment of state preemption.
- Reach consensus that preemption or any other threat to local control is unacceptable before the issue comes up during the legislative session. **Adopt a formal policy statement or resolution supporting local control and opposing preemption.**
- **Educate lobbyists** that local control is sacrosanct; preemption is never a negotiable item.
- Always include an explicit **non-preemption clause** in proposed legislation.

- Establish a system to **closely monitor bills** in the State Legislature. Make sure that more than one person reviews legislation for its potential impact on local tobacco control ordinances and regulations. Keep an eye on both tobacco and non-tobacco bills.
- **Be vigilant for last-minute parliamentary maneuvers** by the tobacco industry to hijack or amend bills during the waning hours of the legislative session.
- **Build an infrastructure for grassroots activity** — recruit supporters, develop databases that sort by legislative district, and set up systems to run phone banks/trees, direct mail, action alerts, e-mails, blast faxes, etc.
- **Limit your coalition’s legislative agenda** — set reasonable, achievable goals. Don’t introduce bills just for their symbolic value, they may be hijacked by the industry.
- **Secure commitments from supportive legislators** to consider preemption a deal-breaker, especially those legislators who are likely to introduce or sponsor legislation. Educate the legislative leadership and the Governor on the importance of protecting local control.

Anti-Preemption Clauses

“Nothing in this law shall preempt or otherwise affect any other Federal, State, or local tobacco control law which provides protection from health hazards from environmental tobacco smoke.” H.R. 3434, introduced in the 103rd United States Congress

“Sec. 3. Smoking may not be permitted where prohibited by any other law, rule, or regulation of any State agency or any political subdivision of the State, nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this Article.” New York State Public Health Law, Chapter 244

“Sec. 25946. Legislative intent; local regulations. The Legislature declares its intent not to preempt the field of regulation of smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate such smoking in any manner not inconsistent with this chapter or any other provision of state law.” California Health and Safety Code, Division 20, § 25946

(Adapted from Americans for Nonsmokers’ Rights, 1998)

- Reach out to **activate allies who are naturally opposed to preemption** (e.g. city and county leagues, board of health associations, alcohol and gun control coalitions, local jurisdictions with tobacco control laws, environmental and growth control groups, etc.). Ask these organizations to adopt formal resolutions in support of local control.
- **Conduct a statewide poll** on preemption and local control, if possible break the results down by district. Opinion polls consistently find strong support for local control. A 2002 Delaware poll found that 70% of registered voters thought local jurisdictions should have the right to pass their own smokefree laws.⁷⁶ A nationwide poll by the Campaign for Tobacco-Free Kids found identical levels of support for local control.⁷⁷ Release poll results to the press and share with legislators.
- **Track and expose the tobacco industry.** Monitor the industry's campaign contributions, lobbying, and front group activities. Search the tobacco industry document websites (see Resources) for tobacco industry connections and plans for your state. Share this information with the media and legislators.
- **Educate the media** about the importance of local control and the industry's preemption strategies. Meet with editorial boards and cultivate relationships with

Sample Resolution in Support of Local Control

2002-11. Local Regulation of Tobacco Use

Whereas, secondhand smoke has been associated with health problems such as heart disease, lung cancer, respiratory tract infections, asthma, middle ear infections, sudden infant death syndrome, and decreased lung function; and

Whereas, the most effective way to protect the public from the hazards of secondhand smoke is to create smoke-free environments; and

Whereas, local governments are responsible for protecting the public health and safety in North Dakota's cities;

Now, therefore, be it resolved that the North Dakota League of Cities will work to insure that any state or federal regulation of tobacco will recognize and preserve the right of local government to adopt more restrictive measures to protect citizens.

Adopted by the North Dakota League of Cities,
September 28, 2002



Protect Montana Kids. 2003. Reprinted with permission.

Knowing that the tobacco industry would push preemption in the 2003 Montana state legislative session, the Protect Montana Kids coalition ran this ad in the statewide dailies in early January.

reporters covering the state political scene and/or tobacco issues. Organize media events to draw attention to the issue (e.g. rallies, vigils outside legislative offices, etc.) Some coalitions have run paid ads to generate awareness of and opposition to preemption.

- **Frame the issues to win:** Polling consistently shows the public's support for home rule/local control, and its disdain for tobacco industry political interference (once it is exposed).

- **Develop accountability mechanisms** to praise supportive legislators and identify pro-industry legislators. Issue a legislative report card each session, noting each legislator's votes on tobacco-related bills and industry-linked campaign contributions.
- **Seek help from national experts** on preemption (Americans for Nonsmokers' Rights, SmokeLess States, the Campaign for Tobacco-Free Kids, the voluntary health organizations). They can help you develop strategy, analyze legislation, develop polling questions, provide sample media and advocacy materials, offer expert testimony at hearings, or provide financial support.

(Adapted in part from materials developed by Americans for Nonsmokers' Rights and by the Preemption Education Project.)

Resources

Organizations

American Cancer Society

202 661-5700

www.cancer.org

American Heart Association

202 785-7900

www.americanheart.org

American Lung Association

202 785-3355

www.lungusa.org

Americans for Nonsmokers' Rights

510 841-3032

www.no-smoke.org

Campaign for Tobacco-Free Kids

202 296-5469

www.tobaccofreekids.org

National Association of County and City Health Officials

202 783-5550

www.naccho.org

National Association of Local Boards of Health

419 353-7714

www.nalboh.org

SmokeLess States National Tobacco Policy Initiative

312 464-4903

www.ama-assn.org/smokelessstates

Other Resources

Preemption Survival Kit

This binder contains case studies from Indiana, Minnesota, and Texas as well as campaign materials, including letters, fact sheets and testimony, media materials, action alerts, resolutions and petitions, polling results, and veto messages. For a copy, contact the ANR Foundation at **510 841-3032**.

Tobacco Industry Internal Documents

The UCSF/Legacy Tobacco Documents Library contains over 6 million internal tobacco industry documents. It includes documents posted on the tobacco industry websites (per the Master Settlement Agreement), as well as other collections of industry documents. To search to database go to: <http://legacy.library.ucsf.edu/>

Tobacco Industry Tracking Database©

The ANR Foundation maintains a database of materials by, for and about the tobacco industry and its allies. This can help coalitions connect the dots and expose industry activity in their state. To search the database go to: www.no-smoke.org/tidbase.html

Information on Enacted State Tobacco Control Legislation American Lung Association, *State Legislated Actions on Tobacco Issues*

A searchable database with comprehensive information on state tobacco control legislation, including preemption. To search the database go to: <http://slati.lungusa.org/default.asp>

Centers for Disease Control and Prevention Website

An online database of state tobacco control legislation (STATE). To access, go to: www2.cdc.gov/nccdphp/osh/state/index.htm choose *Browse Topics* under Legislation, then choose *Preemption* to search legislation by state.

National Cancer Institute State Cancer Legislative Database (SCLD)

An online database of state legislation and regulation addressing cancer-related topics, including tobacco control. To access, go to: www.sclcd-nci.net/ and choose *Legislative Summary*.

Information on Enacted Local Tobacco Control Laws

The American Nonsmokers' Rights Foundation publishes lists of local tobacco control ordinances and regulations, using data from their Local Tobacco Control Ordinance Database©. These are available at <http://www.no-smoke.org/lists.html>. For more detailed information or tailored database runs, call **510 841-3032**.

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