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Enacting tobacco taxes by direct popular vote in the United States: lessons from 20 years of experience

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ABSTRACT

Background: Tobacco tax increases reduce tobacco use, can provide funds for tobacco prevention and enjoy broad public support. Because of tobacco industry influence in legislatures, US public health advocates have shifted the venue for tobacco tax policymaking to direct popular vote 22 times since 1988.

Methods: We combined case studies of individual state campaigns with tobacco industry documents to identify strategies related to outcome.

Results: The tobacco industry developed a voter segmentation model to determine which tobacco tax increases it could defeat. Two industry arguments arising from this model often were raised in losing campaigns—the tax increase did not dedicate enough to tobacco control and hospitals and health maintenance organisations would profit. The industry effectively influenced early voters. Success was associated with building a strong base of public support before the campaign, dedicating sufficient funds to tobacco control, avoiding proposals largely devoted to financing hospitals and other medical service providers, effectively engaging grassroots and framing the campaign with clear justifications for cigarette tax increases.

Conclusions: Tobacco tax ballot measures commonly allocated substantial funds to medical services; tobacco companies are becoming more successful in making this use of funds an issue. Proponents' campaigns should be timed to account for the trend to voting well before election day. Ballot measures to increase tobacco taxes with a substantial fraction of the money devoted to tobacco control activities will probably fare better than ones that give priority to funding medical services.

Tobacco tax increases reduce tobacco use,^{1–3} can provide funds for tobacco prevention and education and other programmes and enjoy strong and broad public support.⁴ As a result, public health interests (and sometimes other interests seeking money for favoured programmes) often seek to increase tobacco taxes. Because increased prices are associated with lower tobacco consumption, the tobacco industry and its anti-tax and other allies^{5–7} oppose tobacco tax increases.

Such tax increases often fail in United States state legislatures because of influence from tobacco industry political contributions and lobbying by the industry and its allies.⁸ This fact has led tobacco control advocates to seek a different venue for policymaking that would be more favourable for those seeking to increase tobacco taxes.⁹ The alternative to legislative enactment for supporters of cigarette tax increases is to use ballot measures to enact the tax by a direct popular vote. The ballot

measure process has often been used to make tax policy.¹⁰

The ballot initiative process is not unique to the US. It began in Switzerland in the 19th century; in 1979 and 1993 Swiss citizens tried unsuccessfully to use initiatives to end tobacco advertising.¹¹ The initiative first appeared in the US in 1898; as of 2009 it was available in 23 states.^{12–15} In 2009, 45 countries (not including the US) had the initiative legislative process at the national level, 12 more (including the US) utilised it at subnational levels,^{14–15} and the European Union was poised to implement the world's first transnational ballot initiative system. Academic,¹⁶ policy^{17–18} and grassroots^{19–20} organisations were working to spread the initiative process to more countries.

Nicholl's²¹ analysis of eight tobacco tax ballot measures between 1988 and 1997 concluded that while the ballot measures enjoyed high levels of voter support before the actual political campaigns started, the clearest factor separating the four successful campaigns from the four losing campaigns was the availability of sufficient financial resources for the public health advocates. Other factors included strong leadership, experienced legal and political consultants, access to public opinion research and advanced planning. This paper, which combines tobacco industry document analysis with qualitative and quantitative analysis of all 22 tobacco tax campaigns in the US through 2008, describes evolving tobacco industry strategies to oppose ballot initiatives and suggests how tax increase advocates can increase success rates in their campaigns.

METHODS

Ballot measure language and arguments, campaign themes and elections outcome were collected from state voter pamphlets, secretaries of state, academic^{8–34–37–41–44–48–51–53} and advocacy⁴ reports and newspaper archives (<http://infoweb.newsbank.com>). To characterise tobacco industry strategies, we searched tobacco industry documents in the UCSF Legacy Tobacco Documents Library (<http://legacy.library.ucsf.edu>) dated between 1986 and 2008. Initial search terms were “ballot measure”, “initiative”, “tobacco tax”, “excise tax” and specific initiative titles and numbers for a particular year (for example, “Proposition 10” or “Prop 10” for California in 1998). Surrounding Bates numbers were searched for useful documents as well as specific names of individuals or groups that were identified (such as “Ballot Issues Committee” or “initiative strategy team”) using standard snowball search techniques.⁵⁴ We used public and private polls (obtained from proponents of the

ballot measures, pollster websites or the tobacco industry documents) to identify early levels of support for the tax proposals and how this support compared with the final election outcomes. We divided the campaigns into four categories based on whether or not there was a substantial opposition campaign and whether voters passed or defeated the ballot measures, then looked for consistent themes.

RESULTS

There was no clear trend suggesting a certain tax increase amount could predict the outcome of a campaign, including whether the total tax would have exceeded that of surrounding states.

Changing tobacco industry strategies on tobacco tax ballot measures

Between 1988 and 1998 the tobacco industry mounted extensive opposition campaigns to all nine tobacco tax ballot measures, but only defeated four (44%) of them^{21 24 25 29 34 55}; from 1998 to 2008 it only challenged five out of 13 of the tobacco tax measures and defeated four out of five (80%) (table 1). A March 1997 industry memo, "Tobacco Industry Ballot Issues Goals and Procedures" stated "there is no reasonable expectation of the lessening frequency of these battles nor can there be any assumption that our chances for victory will be increased due to attitudinal changes in the electorate".⁵⁶ A 1997 draft script for a Philip Morris Issues Management presentation listed the traditional reasons for raising cigarette excise taxes—economic (the need for revenue), social (user fees, luxury taxes), political (smokers make up a minority of votes) and personal (special interests)—but noted that "over the last two years, these traditional reasons for excise tax increases are becoming supplemented by new—more difficult to fight—justifications",⁵⁷ including cigarette tax increases as a deterrent to consumption (particularly youth), a revenue substitute for other types of more unpopular taxes and "Taking on the Evil Tobacco Industry".⁵⁷

By 1997 the Tobacco Institute (the tobacco industry's political and lobbying arm until 1998, when it was dissolved as a result of litigation by state attorneys general) had organised its Tobacco Industry Ballot Issues Committee, which provided "oversight of all prevention, preparation, and execution of tactics relating to ballot issues, as well as the place to discuss new strategies and technologies related to battles in this arena".⁵⁶ The committee suggested that the industry work to "prevent" these initiatives by, among other things, lobbying legislatures to "reform initiative and referendum laws to make qualification of ballot issues more difficult", "encourage[ing] third party ballot issues which threaten our opposition and impede their progress", mounting "legal challenges which complicate opposition progress" and "preventing the opposition from using inappropriate funding sources for their political activities".⁵⁶ They also increased their knowledge of the initiative process, conducted public relations campaigns, conducted benchmark research and built partnerships with other organisations before they would be needed in a campaign.

After its 1996 loss in Oregon, the Tobacco Institute commissioned extensive market research to improve the voter segmentation model used to assess the chance of defeating tobacco tax initiatives.⁵⁸ (Voter segmentation models are based on similar techniques from marketing research to divide potential customers into different "segments" based on their attitudes, beliefs, and needs, which is then used to develop

specific marketing messages to appeal to people within each segment.) This 1997 national survey⁵⁸ explored a wide range of attitudes towards smoking, government regulation, tobacco control policies (not just taxes) and the tobacco industry, as well as personal attitudes and characteristics (including parenthood). Agreement with two statements improved the model's ability to predict election outcome: "Even though I don't smoke, I am pretty much opposed to all tax increases, so I oppose cigarette taxes as well", and "Although I don't like smoking, some of the proposals to reduce smoking just seem to be going too far".⁵⁸ The analysts concluded, "Of these two, the 'I hate all taxes' item did the better job of differentiating between the 'harder core' and 'not so hard core' antis," which led to the algorithm to identify voter segments and the share of each segment that the industry needed to win to prevail in a campaign (table 2).⁵⁸

Another strategy shift came after a 1998 loss in California. An industry poll found that 48% of the voters had made up their minds three weeks before the election, showing the value of early campaigning.⁵⁹ The Tobacco Institute's Initiative Strategy Team also realised in 1999 that "early involvement by the industry in states with threats has had an impact on the decisions by tobacco initiative proponents [emphasis in original]".⁶⁰ Similarly, a July 2001 focus group report to Philip Morris concluded that early opposition would be a crucial factor in the outcome of Washington state's upcoming Measure 773:

The good news: voters *can* be persuaded to our side of this argument. The bad news: their strong, first inclination is to vote *against* us... It will be strategically imperative to frame this debate at the earliest possible juncture: "folks, this is NOT about health care...its [sic] about more money—BIG money—for the HMOs." If we can credibly take their best arguments away early, if we can put them on the defensive early...we're in the ballgame. If not, it will be uphill all the way.⁶¹ [emphasis in original]

The report also noted that having many messages—for example, anti-tax, HMO get-rich schemes, distrust of government—would have a cumulative effect and distract the voter from the initiative's general concept, which voters tended to support.⁶¹

A third strategy decision came after Measure 773 passed with 66.1% of the vote. The Associated Press reported that the industry did not oppose the initiative because they "didn't think it was winnable" and because of the "animosity toward tobacco companies".⁶² A *Seattle Times* story quoting a representative of a national anti-tobacco organisation saying, "I know several states right now that would jump on this [tobacco tax] if they saw that they weren't going to get any opposition"⁶³ caught the attention of a Philip Morris lawyer heavily involved in policy matters, who distributed it two days later with the comment: "The article below suggests that the industry's lack of financial support for fighting the Washington tax may encourage other states to move forward with excise tax increases."⁶⁴ The industry would pass on the next five tobacco tax ballot measures in 2002 (Arizona, Oregon and Missouri) and 2004 (Colorado and Montana). The industry fought and lost in Oklahoma in 2004, but won the next three it opposed in 2006 (California and Missouri) and 2007 (Oregon).

The industry's increasingly sophisticated polling and voting models, and increasing awareness of factors like early involvement and the state's political environment and budget issues, may underlie the shift in the industry's opposition strategy in the 2000s. Whereas the industry often mounted multimillion dollar campaigns, it became much more selective in its

opposition to tobacco tax measures beginning in 2001. In addition to helping public health advocates understand and predict when tobacco companies will oppose initiative campaigns, this voter segmentation could help tobacco control advocates assess their chances of winning.

Key elements of individual campaigns

Nicholl²¹ provides brief summaries of the salient qualitative features of eight of the early campaigns. We prepared case studies of the remaining 14 campaigns. Table 1 summarises the key elements of these campaigns, including the tax proposals, key campaign messages, campaign budgets, initial levels of support and outcomes. The appendix summarises important qualitative aspects of the campaigns, including the political alliances that came together to work to pass the tax, endorsement or opposition of key political leaders, other issues on the same ballot (sometimes related to tobacco, such as a strong proposal for smoke-free environments in Arizona, sometimes unrelated, such as funding for stem cell research in Missouri, both in 2006) and the broader political environment. These details, while hard to quantify, can exert substantial influences on the outcomes.

Base level of public support

Beginning with Washington's Measure 773 in 2001, the tobacco industry did not contest every tax initiative; all seven that were unopposed between 2001 and 2008 passed (table 1). Strong and early public support for tobacco taxes may have dissuaded the industry from wasting money on opposition campaigns.

Support for tobacco tax initiatives almost always drops as the campaign progresses (table 1). Compared with the first polling conducted a median of 8.0 months (interquartile range (IQR) 4.0–13.0) before the election, the percentage of voters voting Yes fell by a median of 12.5% (5.0%–17.3% drop). The drop in support was larger, 15.0% (10.0%–20.0%) when there was active opposition to the initiative than when there was not (4.0%, 1.0% gain in support to 6.0% drop). Winning campaigns started with a median of 67.5% (64.5%–70.0%) supporting the proposed tax, compared to 59.0% (40.0%–66.5%) in campaigns that went on to lose. Detailed data from early polls that distinguished between “strong support” and “support” were available for 13 elections; the nine for which initial “strong support” was at least 49% all won, while the four that were 44% or lower lost.

DISCUSSION

Faced with hostile state legislatures, advocates for tobacco tax increases, like others seeking to enact tax policies that were blocked in the legislature,¹⁰ have sought to shift the venue⁹ and use ballot measure processes to enact tobacco tax increases. Previous studies,^{65–67} tobacco industry research and our work suggest that tobacco tax initiatives have more successful outcomes when there are substantial revenue allocations to tobacco control efforts. The persuasiveness of an argument criticising a measure for not giving enough tobacco taxes to tobacco control was identified by the tobacco industry's research. Following the tobacco industry's loss in the 1988 California Proposition 99 campaign, RJ Reynolds commissioned a post-election survey that concluded, “A theme that still has potential usefulness was ‘only a small amount of the tax increase will go to education about the hazards of smoking.’ Among the general public 55% agreed, 19% disagreed, and 27% had no opinion. However among proponents 44% agreed, 23% disagreed and 34% had no opinion. Fully one-third were

available to be persuaded on this issue’.⁶⁸ Ten years later, in a post-election survey conducted for the tobacco industry after its narrow loss in the 1998 California Proposition 10 election, 55% of those surveyed agreed, 28% disagreed and only 8% had no opinion on the statement: “It is not fair to single out smokers to pay for programs that are everyone's responsibility and have nothing to do with smoking’.⁵⁹ Proposition 99 (some money for tobacco control) won with a 58% Yes vote, and Proposition 10 (no money for tobacco control) squeaked by with a 50.4% Yes vote.

The tobacco industry also identified themes of “anti-tax/HMO scheme” and “what they aren't telling you” as effective arguments against ballot measures.⁶¹ Our findings are consistent with the industry's results and suggest that advocates need to be careful in choosing their stakeholders and partners. The involvement of hospital associations and HMOs in several measures proved to be fatal moves that were exploited by the industry. The tobacco industry also learned to combine the argument that the tax would primarily benefit hospitals and HMOs with lack of funding for benefits for smokers. When either of the two arguments was used alone, the tobacco industry lost three out of four elections, but when they were combined, they won three out of four elections.

One reason that health groups partner with hospital and physician groups has been the hope that these wealthy interests would provide substantial resources for the campaign (for example, California's Proposition 86 in 2006; see appendix for details). In hindsight, Jack Nicholl, a political consultant to the voluntary health agencies on the campaign, opined in 2007^{48 69} that the decision to work with the hospitals was a mistake and that they could have won their original proposed \$1.50 tax increase by modestly increasing their campaign funding to \$5 million and avoiding the hospitals' baggage and for a substantially higher tax to get more money for their programmes.

A common characteristic of losing campaigns was the failure to effectively mobilise broad grassroots support. Support for a tobacco tax typically drops as the election approaches; proponents need to anticipate this fall in support and ensure that they have built strong public bottom-up support before the election campaign begins. Having “strong” support from 49% of the public early in (or before) the campaign was strongly predictive of success. The criteria the industry developed⁵⁸ (table 2) to decide which campaigns to enter could also be used by health groups to decide where they have a strong chance of winning.

It is also increasingly important to begin campaigns early, before most voters form opinions.⁷⁰ Most states now have extended voting periods beginning up to 4 weeks before election day.⁷¹ This fact has an impact on the timing of media campaigns for ballot measures. In the tobacco industry post-election survey following its narrow loss in the November 1998 California Proposition 10 election,⁵⁹ 21% of the voters had made up their minds before September, 12% during September, 34% 1–4 weeks before the November election and only 26% during the last week. Likewise, a July 2001 poll conducted for Philip Morris on the Washington state tobacco tax in anticipation of the November election identified the significance of early voting by mail: “We clearly start out and end up with more “No” votes among people who prefer to vote at their precinct polling place than we do among people who prefer to vote by mail; high mail voting hurts’.⁶¹ Because the tobacco industry has essentially unlimited financial resources, it will be active from the outset in shaping public perceptions of key issues in the campaign. Public health advocates, however, are devoting substantial resources to

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Table 1 Ballot initiatives and legislative referenda to raise the state tobacco excise taxes, 1988–2008

Year	State	Tax increase amount (\$)	Amount allocated to tobacco control (\$)	Purpose	Campaign messaging								
					"No" campaign								
					Tax is unfair	Tax is regressive	Programme unsustainable	Not benefitting smokers	No spending accountability	Creates more bureaucracy	Promotes smuggling	Physician hospital/HMO money grab	
1988	California Proposition 99 ²²	0.25	0.06	Create and fund tobacco control programme including health education, scientific research and healthcare programmes	X	X						X	X
	Oregon Measure 5	0.01	0.00	Fund intercollegiate athletics		X							
1990	Montana Initiative 115 ^{21 24}	0.25	0.14	Tobacco education and health care (58%), capital expenditures, and debt service on prior building projects	X	X		X		X			
1992	Massachusetts Question 1 ^{21 25}	0.25	0.25	Tobacco education programme	X	X							
1994	Arizona Proposition 200 ^{21 26 27}	0.40	0.11	Medicaid services for low income families, tobacco use and prevention programme and tobacco disease research	X	X		X		X			X
	California Proposition 186 ²⁸	1.00	0.00	Health benefits through a "single payer" plan						X			
	Colorado Amendment 1 ^{21 31 32}	0.50	0.20	Tobacco use education and research on tobacco-related disease, health care for the poor and economic development	X				X	X		X	
1996	Oregon Measure 44 ²²	0.30	0.03	Tobacco use reduction and health care	X				X	X			X
1998	California Proposition 10 ³⁴	0.50	0.02	Early childhood development, smoking prevention	X	X	X			X		X	
2001	Washington Measure 773 ³⁶	0.60	0.06	Low-income health services, tobacco control	X	X							
2002	Arizona Proposition 303 ^{35 37}	0.60	0.02	Low income/indigent health services, emergency health reimbursement, tobacco control, research on preventing disease									
	Missouri Proposition A ³⁹	0.55	0.04	Hospital trauma care and emergency preparedness, prescription drug assistance for seniors, healthcare services for low income women and children, medical research, tobacco control, early childhood care/education	X		X	X		X			X
	Oregon Measure 20 ^{35 41}	0.60	0.01	Medicaid services for low income families	X							X	
2004	Colorado Amendment 35 ⁴⁰	0.64	0.12	Health services, tobacco control		X	X					X	
	Montana Initiative 149 ⁴⁴	1.00	0.13	General fund, children's health insurance, Medicaid services for low income families, veteran's nursing homes, long-term building programme						X			
	Oklahoma Question 713 ⁴²	0.80	0.01	Health programmes, new cancer centre, trauma care, long-distance medical care, substance abuse, hospital and ambulance services, state/county/local governments	X							X	
2006	Arizona Proposition 201 ³⁷	0.02	0.02	Smokefree workplaces and public places (including small tax for implementation, then anti-tobacco education)									
	Arizona Proposition 203 ³⁷	0.80	0.00	Early childhood development and health programmes	X	X	X						
	California Proposition 86 ⁴⁸	2.60	0.31	Emergency room services, nursing education, children's health insurance, tobacco control, disease prevention				X	X	X		X	X
	Missouri Amendment 3 ⁴⁹	0.80	0.14	Low-income healthcare services and administrative costs, tobacco control	X	X	X	X				X	X
	South Dakota Measure 2 ⁵⁰	1.00	0.25	General fund, tobacco control, property tax offset, healthcare trust fund, education enhancement fund	X		X					X	
2007	Oregon Measure 50 ⁴³	0.845	0.04	Children's health care, health services for low-income adults and medically underserved, tobacco control	X		X		X	X			X
Median (IQR)													

Campaign messaging					Campaign budgets (\$ millions)		Pre-election polling data (%)		
"Yes" campaign					Proponents	Opponents	All "support"	"Strongly support"	% "yes" vote
Reduces youth smoking	Tobacco industry is misleading	Supports underfunded health services	Reduces consumption	Reduces tobacco-related health costs					
	X	X		X	1.6	20.0	73 ²¹	57 ²¹	58
	X				0.4	1.2	42 ²³	23 ²³	37
X		X			.04	1.5	62 ²¹		41
X			X	X	1.0	7.3	68 ²¹	54 ²¹	54
X	X	X	X		3.0	6.0	71 ²¹	56 ²¹	51
	X	X			3.2	9.0	38 ²⁰	20 ²⁰	27
X		X	X		0.7	5.1	70 ²¹		39
X	X				0.65	4.8	63 ²¹		56
	X	X			7.05	29.4	56 ²⁵		51
X		X	X		1.80	0.22	65 ²⁵	54 ²⁶	66
					1.60	Nil	64 ²⁵		66
X		X	X	X	5.50	0.10	70 ²⁵		49
X			X		0.27	0.05	65 ⁴²	49 ⁴²	64
X		X		X	2.03	0.14	67 ⁴³		61
	X	X		X	0.10	Nil	69 ²⁵	50 ²⁵	63
X		X	X	X	1.40	2.10	68 ⁴⁵	59 ⁴⁵	53
	X				1.80	8.80	70 ⁴⁷	58 ⁴⁷	55
		X			3.20	0.07	70 ⁴⁷	56 ⁴⁷	53
	X	X	X		16.8	66.6	63 ²⁵		48
		X	X		7.00	6.00	59 ³⁹	44 ³⁹	49
X			X		0.35	0.07	65 ⁵⁰	52 ⁵⁰	61
X	X	X			3.70	12.1	59 ⁵²	41 ⁵²	41
							65.0 (59.0–69.3)	52.0 (41.0–61.0)	52.0 (41.0–61.0)

Winning campaigns in italics. *Uncontested by the tobacco industry. ‡Legislative referendum. HMO, health maintenance organisation.

Table 2 Tobacco industry voter segmentation for tobacco tax election planning⁵⁸ (%)

Group	Definition	Share of vote		
		National	Oregon	Vote goal
Smokers	All people who smoke	21	18	80
Prime persuadables	Non-smokers who think enough is being done or too much is being done about smoking and who hate all taxes	18	12	70
Secondary persuadables	Non-smokers who think enough is being done or too much is being done about smoking, but who do not hate all taxes	15	13	40
Soft-core antis	Non-smokers who think more needs to be done about smoking, but who hate all taxes	13	17	50
Untouchables	Non-smokers who think more needs to be done about smoking and who do not hate all taxes	30	36	20

these tax campaigns (table 1), so it should be possible to have some media presence early in the campaign to present their framing of the issues, as well as continuing to advertise through election day to reach people who make their voting decisions at the last minute.

The fact that the tobacco industry generally substantially outspends tobacco tax advocates does not appear to explain the outcome of the elections. This situation may reflect the facts that pro-tax advocates devoted substantial resources to their campaigns and that advertising in support of initiatives seems to be more effective (measured in terms of percentage change in the vote per advertising dollar⁷³).

In the three elections where both smoking restrictions and tax increases were on the same ballot, the tobacco industry gave priority to opposing the smoking restrictions, perhaps because the reduced social acceptability of smoking codified in smoke-free policies reduces cigarette consumption more than a tax increase reduces cigarette consumption.^{73 74}

Limitations

The largest limitation of this research is that the campaigns we analysed took place over 20 years, during which time many elements of the larger social and political environment were changing and that, except for Missouri in 2002 and 2006, no two campaigns were the same.

Conclusion

Ballot measures are an important venue for making tobacco tax policy by tobacco control advocates. Health groups have succeeded in passing cigarette taxes devoted to a variety of purposes and the tobacco companies have become more selective in the tax increases they oppose. The degree to which tobacco control advocates can build public support for cigarette tax increases well in advance in a way that anticipates tobacco industry arguments, may play a part in discouraging the industry from investing in an opposition campaign. In addition, tobacco tax advocates may be able to use the voter segmentation algorithm that the industry developed to assess their ability to prevail in campaigns (table 2). While ballot measures have commonly allocated substantial funds from cigarette taxes to provide medical services, the tobacco companies seem to be becoming more successful in making this use of funds an issue.

Direct democracy is spreading around the world, making initiatives available to tobacco control advocates in many countries. As countries that have ratified the WHO Framework Convention on Tobacco Control⁷⁵ move to implement Article 6's tax increase provisions, the lessons learnt in tobacco tax ballot initiatives in the United States should prove instructive on the tactics to expect from the tobacco industry and the pitfalls to be avoided by the proponents of a tobacco tax

increase initiative. Just as the tobacco industry has done with efforts to eliminate secondhand smoke exposure,⁷⁶⁻⁸⁰ it could be expected to utilise tactics developed in the US in other countries.

Our results suggest proposing tax increases with a large fraction of the money devoted to tobacco control activities or, for larger taxes, allocating the "first dollars" to tobacco control programmes may increase the likelihood of success. The Centers for Disease Control and Prevention's *Best Practices for Comprehensive Tobacco Control Programs—2007*⁸¹ provides an independent authoritative source for the US and provides an approach that could be adapted to other countries. US states that failed to pass tobacco tax increases in 2006 and 2007 could have fully funded state tobacco control programmes with smaller cigarette tax increases than those proposed. For example, a cigarette tax increase in 2006 of only 58 cents in California would have brought the \$77 million it spent on its state tobacco control programme up to the CDC's recommended level of \$442 million^{48 81-83} (in 2007). Likewise, in Oregon a cigarette tax increase of only 31 cents would have increased the \$7 million Oregon spent to the CDC recommended level of \$43 million.⁸¹⁻⁸⁴ Including an inflation adjustment (perhaps tied to the medical component of the consumer price index) would maintain the effect on consumption and purchasing power of the tax to finance the tobacco control programme over time as prices rise.⁸⁵ This solution provides ongoing funding for a tobacco control programme that saves lives,^{86 87} prevents billions in healthcare costs⁸⁵ and avoids the tobacco industry's argument that the tax increase is "unfair"

What this paper adds

- ▶ Previous research on tobacco tax ballot measures provided only case studies of nine US ballot measures from 1988 through 1997 and highlighted the need for a well-organised well-financed campaign for these ballot measures. This study did not include data on campaign messaging or benefit from insights on tobacco industry strategies now available from tobacco industry internal documents.
- ▶ This study includes all US tobacco tax ballot measures from 1988 through 2007, and provides a much clearer picture of how the tobacco industry responds to the threat of ballot measure tax increases and how tobacco control advocates should structure such ballot measures to improve the chances of success. Ballot measures to increase tobacco taxes with a substantial fraction of the money devoted to tobacco control activities will probably fare better than ones that give priority to funding medical services.

because it fails to provide funding for programmes to help smokers and other tobacco users quit and prevent new people from starting.

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APPENDIX: MINI-CASE STUDIES OF 14 TOBACCO TAX BALLOT MEASURE CAMPAIGNS

Uncontested initiatives

In addition to the initial level of support, other factors may have created unfavourable environments for opposition campaigns. In Oregon, legislators referred the cigarette tax increase to the 2002 ballot to pay for the state's Medicaid programme during a state budget crisis.⁵¹ In June 2004, before the November vote in Colorado, the American Lung Association released a report on the tobacco industry's behind-the-scenes political involvement in Colorado, including the defeat of a 1994 tobacco tax initiative.⁵¹ South Dakota's initiative in 2006 may have gained additional support by being the least controversial of 12 measures on the ballot, which included banning gay marriage, outlawing abortion and legalising marijuana.⁸⁸

Arizona's Proposition 203 in 2006 was the only uncontested ballot measure that had a close race.³⁷ It was on the same ballot with two other tobacco control measures: a comprehensive statewide smoke-free law (Proposition 201, which included a 2 cent tobacco tax to fund enforcement) sponsored by health groups that passed and a competing weak "look-alike" proposal by RJ Reynolds Tobacco Company that lost.^{37, 89} Tobacco interests gave priority to fighting the smoke-free law over the tax increase; virtually no money was spent opposing the Proposition 203 tax increase.

Contested initiatives that passed

California 1998

In November 1998, California voters passed the Proposition 10 tobacco tax to support early childhood education. The initiative was a project of actor-director Rob Reiner, and most of the Yes on 10 Committee's \$7.1 million came from Hollywood interests.^{34, 90} The tobacco industry spent \$29.4 million opposing it. The industry did its first poll in Fall 1997 showing a 50 cent tobacco tax increase winning by 68% if used for education.⁹¹ The industry advertisements argued that the tax was unfair, hit low income smokers the hardest and would create a huge unaccountable bureaucracy.⁹² Proponents countered with advertisements featuring then recent news footage of cigarette executives swearing that cigarettes are not addictive in a congressional hearing.⁹³ Famous actors and liberal and conservative politicians appeared together in advertisements attacking the tobacco industry.⁹³ By late October, a few days before the election, the margin had narrowed to 50% to 41% (9% undecided).⁹⁵

Late in the campaign, some African-American and Hispanic leaders denounced Proposition 10 as hitting hard at minority low-income smokers, sending out a mailer stating that the measure was "the brainchild of a bunch of social engineers who DO NOT share our culture or our heritage".⁹⁴ (The industry has a long history of engaging minority communities through money to their organisations.)⁹ In June and July 1998,

research by tobacco industry consultants showed that African-Americans and Hispanics were broadly supportive of smoking prevention and early childhood development programmes⁹⁵; this support dropped dramatically with messaging focused on minorities' distrust of wealthy people, local politicians and bureaucrats.⁹⁵ Proposition 10 squeaked to victory with 50.5% of the vote.⁹⁶

Oklahoma 2004

Oklahoma voters passed Question 713, which dedicated just 1% of newly generated revenues to tobacco control and most of the rest to healthcare services and disease research,^{97, 98} by a 53.4% vote. To increase support for the tobacco tax, the referendum also reduced the income tax from 7% to 6.65%, cut capital gains taxes and increased the amount of tax exempt retirement income.^{99, 100} Supporters argued that the tax would benefit all Oklahomans, reduce youth smoking, diminish the burden of tobacco-related diseases and support underfunded health services.^{97, 101–103} The RJ Reynolds, Philip Morris and the Cigar Association of America campaign argued that the tax was unfair, a tax break for the rich, would not pay for health care and would promote black market and illegal internet sales.^{101, 104}

Arizona 2006

As noted above, Arizona Proposition 201 in 2006 was a comprehensive clean indoor air law that also included a 2 cent tobacco tax to pay for implementation.^{37, 89} The industry hotly contested this initiative,^{37, 89} but the tax was a minor issue.

Contested ballot measures that failed

Oregon 1988

The effort to pass Measure 5 began in November 1987, when two legislators proposed an initiative for a 1 cent/pack cigarette, 10 cent/gallon beer tax increases to raise \$9 million for intercollegiate athletic programmes (to take the financial pressure off of men's programmes because of the federal mandate¹⁰⁵ requiring funding of women's programmes).^{106–108} A petition for a very broad smoking restriction initiative, that would become Measure 6 on the 1988 ballot, was also circulating.¹⁰⁸ By February 1988, the Tobacco Institute was planning its campaigns against both initiatives¹⁰⁹ in cooperation with the beer industry,¹⁰⁹ with tobacco providing one-third of the money for the anti-tax campaign^{109, 110} so it could concentrate on opposing the smoking restrictions. In March, tobacco industry polling data showed just 42% supported the tax; support dropped to 39% after respondents heard arguments against it.²³ Oregonians for College Athletics^{111, 112} spent \$400 000¹¹³ on their campaign. The opposition's \$1.3 million (\$900 000 from beer¹¹³ and \$266 000 from tobacco^{114, 115}) campaign started in early October,^{106, 115} two weeks before the proponents.¹¹⁶ Opposition advertisements focused on two messages: well-off athletic boosters were deciding who should pay for college sports and with all the needs facing the state, why should \$9 million in new taxes be raised for college sports?¹¹³ Measure 5 lost with only 37% voting "Yes".¹¹⁷ Measure 6, the smoking restrictions hotly contested by the tobacco industry, also lost.¹¹⁷

California 1994

Proposition 186 to create a single-payer health plan for Californians^{29, 55} was supported by a broad coalition of healthcare reform and labour groups as Californians for Health Security (CHS). The plan was financed with several taxes, including a \$1.00 cigarette tax,⁵⁵ which would have been the largest single tobacco tax increase in history.¹¹⁸ CHS undertook this initiative in a hostile environment. The California Medical Association (CMA) had sponsored a more modest initiative in 1992 that lost by a 2–1 margin. A CMA survey showed that any measure that included new taxes and an expanded role for government faced stiff opposition,²⁹ primarily from the insurance, healthcare companies and business interests, allied under the name Taxpayers Against Government Takeover (TAGT).⁵⁵ CHS relied primarily on grassroots efforts to get their message to voters.⁵⁵ TAGT, in contrast, began its \$5 million media campaign in August, before traditional Labor Day (early September) start of election campaigning.⁵⁵ With such low support at the outset and a relentless opposition campaign, Proposition 186 received only 27% of the vote.

The tobacco industry was notably absent; it was trying to pass an initiative to replace the state's strong smoking restriction bill with a weak law that pre-empted the local laws that had been the backbone of achieving smoke-free venues in California.^{90, 119} Its benchmark polling data in August 1994 had also shown there was little support for Proposition 186.³⁰

Missouri 2002

Missouri Proposition A lost even though the tobacco industry spent less than \$100 000 compared to the \$5.5 million proponents spent. The initiative planning started in March 2002 after a request from Governor Bob Holden (Dem) to increase tobacco taxes to ease a severe fiscal crisis.¹²⁰ The campaign was further delayed when Secretary of State Matt Blunt (Rep), who opposed the tax, disqualified some petition signatures. In September, the court finally approved the measure for the November ballot. A postmortem analysis³⁹ identified other contributing factors, including their choice of campaign manager as the key spokesperson (instead of

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people that the public trusted) and advertising with anti-smoker instead of anti-tobacco industry messages. There was a failure to use grassroots capacity in rural areas. Last-minute opposition by the Missouri Right to Life claiming, incorrectly, that Proposition A could support abortion clinics just two weeks before the election¹²¹ (when the measure was still supported by 59.1% of voters) had a dramatic effect. Proposition A narrowly lost, with 49.1% voting "Yes".

Missouri 2006

Unlike the 2002 proposal mounted by many of the same stakeholders, 2006 Amendment 3 was a constitutional amendment in an attempt to increase accountability measures and address voters' fears of revenues being redirected by legislators.¹²²⁻¹²⁴ It also dedicated more money to tobacco control. The primary decision-makers of the Coalition for a Healthy Future (CHF) were hospital and medical associations and the voluntary health agencies.⁴⁹

The initial proposal allocated 17.5% to funding tobacco prevention and cessation programmes, with the rest going to increasing physician Medicaid payment rates and health care for the uninsured.⁴⁹ After supporters started gathering signatures, the Missouri Alliance for Health and Justice, a coalition of healthcare and citizen-activists groups, announced a competing ballot initiative to allocate the money for medical services differently (maintaining 17.5% for tobacco control).^{49 125} Although CHF accepted most of the Missouri Alliance's changes,¹²⁶ doing so required CHF to throw out 150 000 valid signatures, raise an additional \$350 000 and start anew.⁴⁹ In August 2006, three months before the election, a legal challenge by the Secretary of State drained resources from the media campaign, which began nearly a month after the Vote No campaign started.⁴⁹

The tobacco industry's opposition campaign's consistent and clear messages emphasised the "outrageous 470% tax increase" and played on public distrust of politicians.⁴⁹ The industry media campaign began in August, and messages were communicated by influential community spokespeople specifically chosen for their resonance with the African-American community.⁴⁹ Confusion tactics paired opposition to the tobacco tax with a controversial stem cell initiative. Message saturation in the media enabled the tobacco companies to dominate the issue,⁴⁹ despite the fact that the industry spent \$1 million less than the tax proponents (\$6 million vs \$7 million). Just as in 2002, in the final weeks of the campaign, Missouri Right to Life opposed the tax on the abortion issue, despite the fact that Missouri law prohibited using state funds for abortions.⁴⁹

Stakeholders in the Missouri tobacco tax campaign cited several problems leading to the initiative's failure, including poor coordination with an \$800 000 "Show Me Health" public education campaign (an effort that ran from January 2006 until November 2006¹²⁷ led by the American Lung Association to build support among the voting public for tobacco tax increases in general) and failure to justify the need for a constitutional amendment, to engage rural and grassroots support, and to employ consultants with tobacco control experience.⁴⁹

The coalition ignored an analysis of the 2002 campaign,³⁹ and repeated many of the same mistakes,⁴⁹ particularly failing to engage grassroots and rural support and poor selection of spokespeople. The initiative lost again, with 48.6% voting "Yes".

California 2006

In 2003, when the voluntary health agencies initially formulated a tobacco tax increase plan to be placed on the ballot in 2006, it included all the elements of a successful campaign.^{21 48} The original plan was for a \$1.00 tax increase with 35% for tobacco control and 65% for tobacco-related disease prevention, treatment and research; polling showed 56% "definitely yes" for the \$1.00 tax.⁴⁸ After the governor vetoed two bills in September 2005 promoted by The Children's Partnership (a national children's advocacy organisation) to fund health insurance coverage for all California children, the voluntary health agencies agreed to partner with The Children's Partnership on a \$1.50 tax with 20% for tobacco control, 33% for tobacco-related disease prevention, treatment and research, 32% for children's health insurance, 6% for health services for the uninsured and the remaining 9% for other programmes. The new partnership

conducted a poll in September 2005 that showed 63% supporting the \$1.50 tax increase^{48 128} (42% definitely yes, 21% probably yes).

In spring 2005, the voluntary health agencies had approached the California Association of Hospitals and Health Services (CAHHS) to join the initiative, hoping that CAHHS would provide substantial funding for the campaign. Previous CAHHS initiatives to fund emergency and trauma services with increased taxes on alcohol in 1990 and telephone services in 2004 had failed by 3-1 margins. CAHHS wanted substantially more than 6% of the money for medical services. Protracted negotiations extended beyond the August 2005 date for filing the initiative to allow the maximum time to gather signatures.⁴⁸ In September 2005, the CAHHS walked out of negotiations and filed its own \$1.50 cigarette tax initiative, with 70% for emergency and trauma services and only 9% for limited tobacco use prevention.⁴⁸ The voluntary health agencies filed their original \$1.50 proposal the following week.

Both sides realised that the likely result of having both initiatives on the ballot would lead to both losing, and reopened negotiations. Rather than compromising on allocating a \$1.50 tax, they settled on a \$2.60 tax increase, with 43% to emergency and trauma services, 19% to children's health insurance, 11% to tobacco control and the balance to disease research and prevention. July 2006 public polling showed Proposition 86 had 63% voter support.^{35 48} The voluntary health agencies put \$4.1 million and CAHHS put \$11.4 million into the Yes campaign.

The industry countered that the tax increase was unfair to smokers, that hospitals would receive over \$1 billion and that too little went to tobacco control. Polling a few days before the election showed the unfairness argument (32% of voters) and the assertion that the money would not "go to the right places [tobacco control], where it is supposed to go" (25%) as major reasons for voting "No".³⁵

Proposition 86 narrowly failed with a 48.3% "Yes" vote.

The "Yes" and "No" campaigns ran 6477 and 17 146 advertisements, respectively.¹²⁹ The "Yes" campaign started its media campaign shortly after the "No" campaign started in mid-August,¹³⁰ but suspended it from mid-September to mid-October.¹³⁰ Voting by mail, which begins 4 weeks before election day and is popular in California (42% of ballots cast in the 2006 general election¹³¹), was under way while the "Yes" campaign was off the air. Over four million absentee ballots were cast on Proposition 86, which lost by less than 290 000 votes.

Oregon 2007

Measure 50, a legislative referendum on a constitutional amendment, proposed to fund health services for uninsured children (Healthy Kids) and low-income Oregonians, with 5-10% of the revenues for tobacco control.⁵¹ Before being placed on the ballot, several bills to fund Healthy Kids with an 84.5 cent tobacco tax increase lacked the three-fifths vote in the legislature needed to pass tax increases. Healthy Kids was then turned into a legislatively referred ballot measure, which only required a simple majority vote in the legislature.

The "Yes" coalition consisted of the voluntary health agencies, tobacco control advocates, hospitals, healthcare providers, and labour and education groups and spent \$3.7 million.⁵¹ Philip Morris and RJ Reynolds opposed the tax in separate campaigns, spending \$12.1 million, the costliest campaign in Oregon history. The concurrent consideration of a 61 cent federal cigarette tax increase to fund the expansion of the State Children's Health Insurance Program may have also contributed to the industry's significant opposition in Oregon.

The media campaigns for both sides began in late August. The tobacco companies argued that product taxes had no place in the constitution, the tax was regressive and would not support the Healthy Kids programme, that HMOs would get all the money, and that lawmakers were unaccountable—messages that resonated with voters.⁴¹ The "Yes" campaign messages shifted from tobacco control arguments (tobacco industry deception, higher taxes reduce smoking) to the health predicaments of uninsured children,⁴¹ which did not counter the "No" campaign's arguments. Amending the constitution with a tobacco tax increase was unpopular in Oregon; public support fell throughout the campaign, from 59% in March, to 53% in August, to only 40.7% on election day.¹³²