HIDDEN AGENDA:
TOBACCO INDUSTRY INTERFERENCE WITH STATE & LOCAL POLICY

The tobacco industry continues to aggressively fight reasonable and effective public health policies to protect kids and improve health, despite knowing that tobacco use causes cancer, heart disease and respiratory diseases, among other serious health problems, and remains the leading cause of preventable death in the United States, killing more than 480,000 Americans each year.[1,2] At the state level, the industry uses a number of tactics to undermine efforts to adopt effective tobacco control policies, including funding opposition efforts, lobbying, political donations, hiding behind front groups and other organizations, promoting weaker policies, and failing to disclose conflicts of interest.

Funding Opposition Efforts

Because the tobacco industry's financial resources dramatically dwarf those of the public health community, one of their key strategies is to fund efforts to oppose policy change.

- **2017 San Francisco Flavored Tobacco Products Restriction:** In June 2017, San Francisco approved an ordinance to end the sale of flavored tobacco products – including menthol-flavored cigarettes – throughout the city and county. RJ Reynolds Tobacco Company promptly funded a local ballot initiative to overturn the ordinance, spending nearly $12 million.[3] The tobacco industry effort to undo the local ordinance erroneously framed it as a ban that would generate a black market, comparing it to the failed War on Drugs. In reality, the local ordinance only restricts flavored products like grape cigars and mint-flavored cigarettes that are attractive to kids. No other tobacco products are affected. San Franciscans voted 68 percent to 32 percent to keep the policy.
- **2016 Tobacco Tax Increase Initiatives:** In 2016, the tobacco companies spent more than $90 million opposing tobacco tax initiatives in California, Colorado, and North Dakota. In November 2016, California voters approved a ballot initiative to raise the tobacco tax in California by $2.00, despite the tobacco industry contributing more than $70 million to defeat it. The opposition committee claimed to be comprised of a broad "Coalition of Taxpayers, Educators, Healthcare Professionals, Law Enforcement, Labor, and Small Businesses," but in reality was funded almost entirely (more than 99%) by tobacco companies, primarily Altria and Reynolds American.[4] The National Association of Tobacco Outlets (NATO) also urged its California retail members to oppose this ballot initiative.[5] While NATO and convenience stores aligned with Big Tobacco, more than twenty business organizations and local chambers of commerce openly supported the tax increase.[6] The tobacco companies had previously spent $45 million to oppose and narrowly defeat a California tobacco tax increase in 2012.[7]
- **Digital Advocacy:**
  - Altria funds the Citizens for Tobacco Rights to facilitate opposition to tobacco control policies like taxes and restrictions on flavored products that appeal to kids.[8] The website offers a range of resources, including videos, infographics, an advocacy toolkit, and talking points. A recent e-newsletter provided the option to receive monthly cell phone messages with updates on "legislative and regulatory issues."[9] This system was used, in addition to the donations described above, to rally "no" votes on Colorado's 2016 tax initiative, which was defeated 47 to 53.[10]
  - Reynolds American funds New Tobacco Road, a website that purports to raise awareness of the black-market cigarette trade, but that in reality provides arguments and access to digital advocacy alerts to oppose state tobacco tax increases.[11]

Tobacco Industry Political Donations

The tobacco industry uses donations to independent political committees and parties, leadership committees, and to candidates themselves to wield influence, in states both large and small.

- In California alone, tobacco companies gave nearly $5 million to independent political committees and parties between 2011 and 2016.[12] This amount is roughly three times as much as they gave directly to candidates during this period, according to the Center for Public Integrity.
    - In 2019, JUUL was a major sponsor for the California Democratic convention that was held in San Francisco. While the exact donation is unknown, the acting party chair said to replace the money, the party would "have to raise a few hundred thousand dollars." [13] The convention was held at the same time that San Francisco was considering an ordinance that would ban the sale of e-cigarettes and prevent e-cigarette companies from occupying city-owned property in the future.
    - For years, tobacco industry donations to California state legislators on one committee alone has allowed them to kill tobacco bills without formally opposing them. In the first quarter of 2019, JUUL contributed $23,500 to the Assembly Governmental Organization committee, which later declined to give a hearing to a bill that would restrict the sale of flavored tobacco products statewide.[14] In 2015, the same committee gutted legislation to define e-cigarettes as tobacco products. In the two years prior, Altria and Reynolds contributed $173,100 to members of the committee.[15]
    - The American Lung Association in California's report "Tobacco Money in California Politics" documented that Altria and Reynolds had donated nearly $500,000 to state campaigns, political parties or political action committees through during the two-year 2017-2018 election cycle.[16]
- No state is too small for the tobacco industry when it comes to influencing legislators. In Vermont, one of the least populated states in the country, Altria and Reynolds combined donated roughly $40,000 in the 2016 election cycle, the vast majority of it going to Republican legislators and committees.[17]

Tobacco Industry Lobbying

Tobacco companies' investment in influencing state and local policy is enormous and atypical when compared to other industries.

- In 2020, the Utah state legislature was poised to pass strong legislation to address youth e-cigarette use in the state, but industry interference resulted in a weakening of the policies. Vaping industry lobbyists with close ties to state representatives worked behind the scenes to reduce the impact vaping-related bills, including lowering the level of the originally proposed e-cigarette tax, adding exemptions to a strong proposal to prohibit the sale of flavored e-cigarettes, and amending a proposal so that vape shops could continue to sell products in areas frequented by kids.[18]
- In 2019, JUUL Labs hired more than 80 lobbyists to work in every state.[19]
- In 2019, the tobacco industry's lobbying efforts helped stop a bill that would have asked voters in Colorado to approve a cigarette tax increase and a new nicotine tax. Altria hired at least ten lobbyists and spent thousands of dollars on a social media campaign to defeat the bill. The Vapor Technology Association, JUUL Labs, and other tobacco industry groups also hired lobbyists to oppose the legislation.[20]
- In California in 2019, the tobacco industry successfully led efforts to oppose proposals to restrict the sale of flavored tobacco products in the state. On the Senate side, a bill was pulled after an industry-backed amendment was introduced that would have permitted flavored hookah tobacco and exempted products with patents before 2002. On the Assembly side, all tobacco-related bills died in the Governmental Organization committee, where committee members had received large donations from the tobacco industry, totaling $23,500 from JUUL Labs and $89,300 from RJ Reynolds Tobacco Company through the second quarter of 2019 alone.[21]
- In 2017, Altria Group and RJ Reynolds spent a combined $147,000 lobbying Montana lawmakers in the first three months of the legislative session to kill a tobacco tax bill that started out with bipartisan support.[22] Altria's contribution of $120,000 exceeded all lobby spending in the first three months. One of Altria's lobbyists was the former executive director of the state Republican Party, and eventually 11 of the 13 Republican co-sponsors rescinded support. Montana has not raised its cigarette tax since 2005.[23]
- In 2017, Altria tried to derail a bill to raise the tobacco sale age to 21 in Oregon by hiding its profit interest behind a civil rights argument.[24] Altria hired a former well-known state senator and health-

care advocate who was the first black woman elected to the Oregon legislature to lobby legislators that the bill would lead to increased racial profiling of youth. While Altria almost slowed the bill down long enough to run out the legislative clock, the bill passed both houses and was signed into law.

- In 2017, tobacco companies increased the amount of money they spend on lobbying in Albany, NY, for the first time in years. Altria spent $729,945 on lobbying, followed by Reynolds American at nearly $230,000. JUUL Labs and the New York Vapor Association also spent $80,000 and $100,000 respectively. The lobbying successfully defeated bills that would have banned flavored e-liquids and added a tax on e-cigarette and vaping products.[25]
- In 2016, tobacco companies spent more than $1 million lobbying against a package of tobacco control bills in California.[26] Despite this onslaught, six of the bills passed the California House and Senate. Altria lobbyists attempted to stop the bills by threatening to overturn some of them via ballot initiative. Altria's lobbyists then doubled down by threatening all fall ballot initiatives – regardless of topic – by threatening to pay above-market rates to signature gatherers.[27]
- A Center for Public Integrity analysis of data from the National Institute on Money in State Politics found that Altria and Reynolds American were among only two dozen groups with registered lobbyists in every state at one point between 2010 and 2014. The tobacco companies' networks included more than 450 registered lobbyists at the state level in 2014.[28]

Promoting Weaker Policies

In addition to trying to combat the public health community's tobacco control efforts, the industry also promotes its own legislation or substitute programs and policies at the state and federal levels that are less effective, in order to distract attention from proven effective tobacco control interventions. Altria provided language to federal lawmakers in 2016 to weaken FDA authority over e-cigarettes, and the bill introduced by Congressman Tom Cole (R-OK) "pulled verbatim from the industry's draft."[29] Below are examples at the state level.

- **Tobacco 21 Policies:**
  - In 2018, after widespread public criticism for fueling the youth vaping epidemic and facing the introduction of stringent tobacco policies by states and localities in response, JUUL announced it would support and lobby for laws to increase the minimum legal tobacco sales age to 21. Once the movement had gained traction across the country, Altria also began to back Tobacco 21 legislation in order to divert legislative efforts to pass tougher tobacco control measures. The tobacco industry has a history of using youth access laws to improve their public image and working to pass weaker laws that can benefit their business. In the 1990s, Philip Morris USA stated, "We have two objectives for the ITL [It's the Law] program -- 1) to provide an alternative to legislative/mandated policy actions; and 2) to improve PM's image regarding the youth issue" and "if we don't do something fast to project that sense of industry responsibility regarding the youth access issue, we are going to be looking at severe marketing restrictions in a very short time." Indeed, these companies didn't support Tobacco 21 until they had little choice because of tremendous pressure from the public and policymakers over the e-cigarette epidemic. They have also actively pushed weak Tobacco 21 bills that, for example, lack enforcement or penalize youth instead of retailers, and insert language preempting local governments from enacting stronger tobacco control laws, like restrictions on the sale of flavored tobacco products.
  - In 2019, JUUL successfully lobbied for T-21 legislation in Arkansas that included language preempting local governments from enacting any laws on the manufacture, sale, storage or distribution of tobacco products, including restrictions on flavored tobacco products.[30]
  - In 2019, JUUL—along with Altria and the Vapor Technology Association—supported a T-21 bill in Arizona that would preempt local governments from enacting restrictions on the sale or marketing of tobacco products, including flavor restrictions.[31]
- **Age Verification and Marketing Restrictions:**
  - In 2019, San Francisco passed an ordinance that suspended the sale of all e-cigarettes in the city. In response, JUUL supported a ballot measure that would have overturned city law by

allowing the sale of e-cigarettes, including flavored e-cigarettes, while advocating for weaker policies, including age verification requirements, additional restrictions on sales, and marketing regulations.[32] Juul donated $19 million to support the ballot measure before ending its support for the measure in late September. [33] The measure remained on the ballot and was overwhelmingly defeated by voters in November by a margin of 82%-18%.

- In 2019, tobacco industry efforts to derail Sacramento, CA's plan to restrict the sale of flavored tobacco products failed. The tobacco industry, including JUUL, worked with convenience store and vape shop owners to lobby against the ban and presented a weaker replacement proposal to the City Council that included age verification technology requirements and prohibiting the use of cartoon-like characters and celebrity figures instead of banning the sale of flavored tobacco. The Law and Legislation Committee unanimously rejected the industry proposal and instead, continued moving forward with the strong flavor ban ordinance.[34]

- **Excluding E-Cigarettes from Tobacco Control Laws:**
  - In Texas, the industry attempted a last-minute change on a proposed tax on e-cigarettes in 2019. The new language was drafted by Altria lobbyists and brought to the governor's staff the night before the vote. The change would have imposed a nominal tax on e-cigarettes that would have had no impact on public health. Ultimately, the bill died due to an administrative technicality.[35]
  - Reynolds and Lorillard have separately promoted their own language to define e-cigarettes apart from other tobacco products at the state level. As the industry no doubt knows, excluding e-cigarettes from the tobacco products definition can exempt e-cigarettes from policies that should apply to all tobacco products, including e-cigarettes. An investigative report from the Center for Public Integrity found at least 11 instances in which proposed legislative language was pulled almost verbatim from Reynolds' template language.[36]
  - Another study found that in 2014, tobacco industry representatives promoted product definitions that would weaken oversight of e-cigarettes in tax and smoke-free laws in Iowa, Florida, and Oklahoma.[37]

- **Tobacco Harm Reduction Policies:** Tobacco companies have promoted a so-called "tobacco harm reduction strategy" in a number of states, including Indiana, Kansas, Nebraska and Oklahoma. Industry harm reduction proposals have included asking states to promote smokeless tobacco as less harmful than smoking, taxing smokeless tobacco at a lower rate that cigarettes, and even diverting state tobacco prevention funding to study or implement this approach. There is little, if any, evidence that this approach will reduce the number of people who smoke or the death and disease caused by tobacco use. Instead, it is an industry ploy to keep smokers smoking, maximize profits and divert attention from evidence-based tobacco control interventions.

  The American Legislative Exchange Council (ALEC), an organization that facilitates communication and information sharing between state legislators and industry representatives and that received money from Altria as recently as 2016, promotes a model resolution on its website that discourages taxes on smokeless tobacco in the name of harm reduction:[38]

  > ***WHEREAS,*** *{insert state} counsels against use of excise taxes, but if they are imposed on tobacco products, they should reflect a harm reduction principle without increasing any existing excise tax rate…."*[39]

- **Smoke-Free Policies:** In 2006, RJ Reynolds attempted defeat of two 2006 smoke-free ballot initiatives in Arizona and Ohio by running its own pro-tobacco ballot initiative in each state.[40] The company partnered with state licensed beverage associations in each state, but paid for virtually all of the campaign. The purpose of this strategy was to confuse voters into voting for the pro-tobacco version because they thought it was more moderate. In reality, the two pro-tobacco initiatives favored industry by exempting some hospitality workplaces from worker indoor air protections and imposing preemption, which would block localities' ability to pass stronger laws. The tobacco industry's strategy failed, but demonstrated how far it will go to try to derail public health efforts.

Front Groups and Other Organizations

Because of their negative reputation, tobacco companies know that policymakers can be uneasy about being seen as doing the industry's bidding. Therefore they enlist—and fund—other organizations to oppose tobacco control policies on their behalf.[41]

- **State Policy Network:** The State Policy Network describes itself as "the only organization in the county dedicated solely to building and mobilizing a durable state-based infrastructure for freedom."[42] It is comprised of 66 independent state think tank affiliates and over 80 associate partners. It has a documented history of serving the interests of the tobacco industry.[43] In 2019, Altria gave money to the State Policy Network itself and at least 30 of its members.[44]
- **The Heartland Institute:** The Heartland Institute states that its mission is to "discover, develop, and promote free-market solutions to social and economic problems."[45] Heartland has a long history of accepting tobacco company donations. Altria has been giving charitable contributions to Heartland since the 1990s and as recently as 2018 (the most recent year available).[46, 47] Heartland has been active at the state-level in opposing e-cigarette regulation and supporting tobacco harm reduction. Heartland has been distributing "policy tip sheets" to legislators around the country to oppose the regulation of e-cigarettes and other tobacco products. These documents advocate for harm reduction policies and argue against legislative action on flavors by focusing on the economic impact of the vaping industry while minimizing the epidemic of youth use of e-cigarettes and the role that flavors play in youth initiation of tobacco products.
- **The Reason Foundation:** The Reason Foundation is a libertarian organization that is supportive of tobacco industry interests. The Reason Foundation has a long history of receiving tobacco industry funding, dating back to the 1980s.[48] More recently, Altria has given charitable contributions to the foundation throughout the last two decades, most recently in 2019.[49, 50] In its "Consumer Freedom" work, Reason has consistently argued against proven tobacco control measures such as raising tobacco taxes, plain packaging, and increasing the minimum legal sale age of tobacco products to 21, in favor of tobacco harm reduction. It has actively fought the prohibition of flavors in tobacco products, especially e-cigarettes, arguing that flavors are "more effective in helping smokers switch.[51] In addition to publishing policy studies and commentary, Reason circulates a monthly "Nicotine Harm Reduction" newsletter in which it attempts to undermine recent developments in tobacco control and advocates for policymakers to take a harm reduction approach to tobacco products.[52]
- **Convenience Store Industry Groups**
    - **New York State 2017 Cigar Minimum Price Proposal:** The New York Association of Convenience Stores and the Cigar Association of America helped block efforts to raise the price of cheap two-packs of cigars in New York state. Altria, Reynolds, and Swisher International hold director seats on the advisory board of the NYACS, and Altria and Reynolds were recognized as 2017 "Spirit of NYACS" members.[53]
    - **North Dakota 2016 Tobacco Tax Increase Initiative:** Tobacco companies Altria and Reynolds American are members of the North Dakota Petroleum Marketers Association (NDPMA), which helped to defeat a November 2016 ballot initiative to raise tobacco taxes in the state.[54] The tobacco tax increase would have reduced youth and adult smoking and the revenue generated by the tax would have supported veterans' services and community health programs.[55] Mike Rud, president of the NDPMA, chaired the North Dakotans Against the 400% Tax Increase committee to oppose the ballot initiative. The NDPMA itself contributed over $33,000 and independent convenience and gas stores contributed another $40,000, but the vast majority of the funding – $3.8 million of the total $4 million in contributions – came from Altria Client Services and RJ Reynolds Tobacco Company.[56] The NDPMA opposed the initiative under the guise of government overreach into small business while overtly claiming that it "does not support or promote the use of tobacco."[57] Both stances help Big Tobacco hide behind the "small business" image of the NDPMA to oppose a tax that would cut into its profits. Some of the industry's opposition materials deceptively omitted the mention of tobacco, touting the proposal as simply a 400 percent tax increase.

  - o **Indiana 2016 Tobacco Tax Increase Campaign:** Similarly, during the 2016 legislative session in Indiana, an infrastructure funding bill that included an increase in the cigarette tax was thwarted in part by opposition from tobacco industry-sponsored retailer associations including NATO[58] and the Indiana Petroleum Marketers and Convenience Store Association (IPCA).[59] Altria and RJ Reynolds are members of the "President's Council" of IPCA.[60] NATO testified against the bill at a hearing claiming it would be bad for business, and the IPCA publicly opposed the bill claiming it would reduce Indiana's tax-advantaged status with consumers from other states. Other retailer groups opposed the bill, including the Indiana Grocery and Convenience Store Association.[61] Conversely, other prominent business groups, such as the Chamber of Commerce, supported the bill, including the cigarette tax increase.

- **National Association of Tobacco Outlets (NATO):** With the support of tobacco manufacturers, NATO began in 2001 as an association of tobacco outlet stores. In 2009, it expanded to include any retailer who sold tobacco, including convenience stores. NATO continues to receive industry funding and maintains membership on its board of directors from every major tobacco company. Since 2012, NATO has focused specifically on blocking local tobacco prevention ordinances in the retail environment. NATO, with cigar and smokeless tobacco manufacturer Swedish Match, even launched a website specific to this project in 2016, called "Tobacco Ordinances – Take Another Look" (TOTAL). The website provides talking points and materials for retailers to frame local tobacco prevention ordinances as anti-business, anti-free speech, and as irresponsible government intrusion. What TOTAL is really doing is preparing retailers to protect the interests of the tobacco industry.[62] As a Reynolds spokesperson noted, "NATO is not only one of the best grassroots organizations in the industry, but they have also been a great asset in helping shape favorable outcomes at the state and local level."
- **The Mackinac Center for Public Policy:** The tobacco industry has funded the Mackinac Center since the 1990s, and the Center continues to receive money from Altria, which it uses to wage a misinformation war on the impact of tobacco tax increases. In collaboration with the Tax Foundation, the Mackinac Center releases annual reports on cigarette tax smuggling that claim that increasing state cigarette taxes will increase crime and terrorism. The tobacco industry uses the Mackinac Center's reports to lobby against state tobacco taxes. However, the National Research Council and Institute of Medicine's (NRC-IOM) 2015 report, *Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences,* found that "industry-sponsored estimates of the size of the illicit market tend to be inflated. More generally, concerns have been raised about the quality and transparency of industry-funded research on the illicit tobacco trade." The Mackinac Center is on Altria's 2019 of charitable contributions, along with the Tax Foundation.[63] Altria was a "platinum sponsor" of Tax Foundation's 2016 annual fundraising event.
- **African-American Organizations:** Tobacco company Reynolds American has supported high-profile leaders to create controversy in the black community around the issue of banning menthol cigarettes. Reynolds sells Newport menthol cigarettes. Reynolds supported community events around the country under the brand of Al Sharpton's National Action Network (NAN), with religious, law enforcement, and political leaders, including former Congressman Kendrick Meek. The events promoted the idea that banning menthol cigarettes would result in harassment by law enforcement and be counter to the goals of criminal justice reform, without regard for the toll of tobacco use on the black community.[64] In 2019, Sharpton and NAN led pushback against a proposed ban on menthol cigarettes in New York City, testifying at a hearing that the measure would hurt police-community relations.[65] In 2016, Reynolds donated at least $50,000 to the Law Enforcement Action Partnership which has been active in opposition to menthol bans because they will harm police-community relations.[66] In 2015, Reynolds donated $250,000 to an association of black newspapers, the National Newspapers Publishers Association, which subsequently held a forum at its meeting: "Panel Discussion, Criminal Justice Reform–Hosted by RAI Services Company."[67]

Lawsuits and Threats of Litigation

- In response to a local flavor ban in Los Angeles County, CA, that passed in September 2019, RJ Reynolds filed a lawsuit claiming that the County's ban on flavored tobacco flavored products is a tobacco product standard and is thus preempted by the federal Family Smoking Prevention and

Tobacco Control Act of 2009 (FSPTCA). Reynolds' lawsuit followed an earlier suit challenging the ordinance by the trade group CA Smoke and Vape Association (CSVA). CSVA also argued that the County's ordinance was preempted under federal law, while also claiming that the ordinance failed to clearly state what activity is and isn't allowed, making it "unconstitutionally vague." Judge Dale Fischer dismissed both lawsuits, holding that the sales restriction was not a tobacco product standard, and thus providing an important victory for the County and rejecting federal preemption of local flavor bans.[68] RJ Reynolds has appealed this decision and the case is current pending in the U.S. Court of Appeals for the Ninth Circuit.

  - RJ Reynolds filed a similar lawsuit in San Diego County, CA, with its subsidiaries American Snuff Co. and Santa Fe Natural Tobacco Co., to challenge an ordinance in San Diego County that bans the sale of all flavored smoking products (with an exception for hookah). The tobacco companies are again claiming that the ordinance is preempted by federal law and stands as an obstacle to the purposes of federal law.[69] The Neighborhood Market Association has also filed a similar lawsuit challenging the San Diego county ordinance.[70] The lawsuits are currently pending.

- After the city of Edina, MN passed an ordinance to prohibit the sale of flavored tobacco products on June 16, 2020, RJ Reynolds and its subsidiaries, American Snuff Co. and Santa Fe Natural Tobacco Co., joined two convenience stores in the city to file a lawsuit to block the ordinance. The industry argued that the ban on menthol-flavored vaping products and other flavored tobacco products was a tobacco product standard that was preempted by existing federal laws. U.S. District Judge Patrick J. Schlitz dismissed the lawsuit, finding that 1) the ordinance was not expressly preempted under the FSPTCA because the ordinance falls within the scope of the "savings clause" in the statute, and 2) the ordinance is not impliedly preempted because it does not conflict with Congress' or FDA's requirements.[71]

- In response to a nationwide outbreak in e-cigarette or vaping product use associated lung injury (EVALI), as well as skyrocketing youth use of e-cigarettes, governors around the country took emergency actions to ban the sale of flavored e-cigarettes. These actions were challenged by vaping associations, vape shops, and industry allies across the country. The industry successfully challenged the bans in Michigan, New York, Oregon, and Utah. Meanwhile, their challenges failed in Massachusetts, Montana, Rhode Island, and Washington. Examples of industry interference in these executive actions include:

  - In Michigan, Governor Gretchen Whitmer was the first governor to take action by issuing an emergency order to prohibit the sale of flavored e-cigarettes.[72] Michigan vape shops sued to stop the state's ban from taking effect. The plaintiffs argued that the rules were procedurally and substantially invalid and argued that the state should have followed the regular rule-making process.[73] The Court of Claims found that the record "did not substantiate the declaration of an emergency which necessitated dispensing with the APA's normal rule-making procedures." The lawsuit successfully blocked the emergency order and in May 2020, the Michigan Court of Appeals upheld a Court of Claims preliminary injunction against the ban, leaving the emergency order unenforceable.[74] Michigan attempted to appeal to the Michigan Supreme Court, but the Court declined to hear the case and issued an order denying leave to appeal on September 21, 2020.[75]

  - The Vapor Technology Association successfully blocked an emergency order to ban the sale of flavored e-cigarettes in New York in September 2019. The court granted a preliminary injunction and blocked enforcement of the emergency rule based on its finding that the state appeared to have "exceeded the scope of its authority" in adopting the emergency regulation "that embodied a policy-based trade-off between the competing ends of limiting the attraction of vaping products to minors and allowing former or current combustible cigarette smokers the option to continue to consume tobacco- and menthol-flavored liquids."[76] While the appeal for this case was pending, the New York State legislature later passed a law prohibiting the sale of flavored e-cigarettes, effective May 18, 2020,[77] thus making the appeal moot.

  - In Montana, the Montana Smokefree Association and three vape shops in the state filed a lawsuit to overturn the Governor's emergency ban on flavored e-cigarettes. The group argued that the order was "arbitrary and capricious" and argued it would put them out of business. While a judge granted a temporary restraining order that delayed the ban's enforcement from October to December 2019, the Montana Department of Health was able to enforce the emergency rule after the court denied a preliminary injunction. The court found that the "flavor ban has a rational relation to decreasing youth vaping and thus decreasing cases of EVALI in minors…the agency decision was supported by the evidence at the hearing which established the main impetus for youth vaping is the availability of flavored vaping liquid, and the use of vaping devices exposes person to the risk of acute lung injury."[78]

- o In Washington, the Vapor Technology Association and one of its members filed a lawsuit against the Washington State Board of Health after it had approved an emergency ban on flavored e-cigarettes, following Governor Inslee's request to adopt the emergency ban. The suit claimed that the rule would destroy the industry and cost workers their jobs. The suit also stated that the rule exceeded the board's statutory authority and violated free speech. The court held that the petitioners were not likely to prevail on the merits, the rule was not arbitrary and capricious, and it did not violate any free-speech rights and thus denied the motion for a preliminary injunction in November 2019 and allowed the ban to go into effect.[79]

- In 2014, Healdsburg, California, took action to protect youth by raising the minimum legal sale age to 21, but dropped enforcement of the law when NATO threatened a lawsuit.[80] NATO issued a similar threat to another California jurisdiction that had adopted the issue, Santa Clara County.[81] California later adopted a statewide law.

Failing to Disclose Conflicts of Interest

The interests of tobacco companies are incompatible with health and consumer protection. Investigative reporting recently revealed that six lobbyists working in North Dakota and Minnesota were registered to represent both tobacco companies, including Altria, and health groups.[82] Any lobbying conducted on behalf of a tobacco company is fundamentally at odds with promoting health.

Campaign for Tobacco-Free Kids, October 2, 2020

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