

**Shifting Tides:
Minnesota Tobacco Politics**

Theodore H. Tsoukalas Ph.D.
Jennifer K. Ibrahim Ph.D.
Stanton A. Glantz Ph.D.



Center for Tobacco Control Research and Education
Institute for Health Policy Studies
School of Medicine
University of California, San Francisco
San Francisco CA 94118

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TABLE OF CONTENTS

Chapter 1: Introduction	1
Chapter 2: Minnesota Clean Indoor Air Act	6
The Evolution of Minnesota's First Tobacco Control Policies	6
Implementing the Clean Indoor Air Act	10
Initial Response from the Tobacco Industry	12
Amendments to the 1975 Minnesota Clean Indoor Air Act	13
Containing Minnesota	15
Conclusion	15
Chapter 3: The Minnesota Plan for Nonsmoking and Health	17
The Tobacco Industry's Response to the Creation of the Minnesota Plan	18
Activities by the Tobacco Industry to Combat the Goals of the Minnesota Plan	22
The Final Bill Emerges as the Omnibus Act	29
The Health Advocates' Response	30
Lessons Learned from the Tobacco Industry's Response to the Minnesota Plan	31
Conclusion	33
Chapter 4: The First Large State Tobacco Control Campaign in the United States	37
The Origins of the Campaign	37
The Media Campaign During the 1985-1986 Biennium	39
The Media Campaign During the 1987-1988 Biennium	41
The Media Campaign During the 1988-89 Biennium	44
1991 Media Campaign	44
Effectiveness of the Anti-Smoking Media Campaign	46
The Tobacco Industry's Long-Term Tactics to Destroy the First Media Campaign	46
The Tobacco Industry's Success: The First Tobacco Control Budget Cuts	48
Elimination of the Tobacco Control Program by Governor Carlson	48
The Health Advocates' Failure to Respond	49
Conclusion	49
Chapter 5: Tobacco Industry's Attack on the Minnesota ASSIST Program	53
Minnesota Grocers Association Campaign against ASSIST	56
Outcome of Tobacco Industry's Complaints Against the Minnesota ASSIST Project	57
Health Advocates Response	59
Conclusion	60
Chapter 6: Youth Access Legislation	64
1994 Youth Access Legislative Developments	64
1995 Youth Access Legislative Developments	65
1996 Youth Access Legislative Developments	67
1997 Youth Access Legislative Developments	69
The Health Advocates and the 1997 Youth Access Fight	73

Chapter 7: The Minnesota Tobacco Trial: Finding the Needle in the Haystack	79
Minnesota Suit is Filed	80
Tobacco Politics in an Election Year	81
Minnesota Declines the National Settlement	82
The Minnesota Tobacco Settlement	83
Chapter 8: The Minnesota Tobacco Settlement	86
The Minnesota State Tobacco Settlement	86
Allocating the State’s Share of the Settlement	88
Creation and Funding of New Tobacco Control Programs: The Tobacco Settlement Endowment Funds	90
Administration of New Tobacco Control Programs	95
The Target Market Campaign	97
The Minnesota Partnership for Action Against Tobacco (MPAAT)	99
MPAAT Funding	103
MPAAT Program Areas	104
The Blue Cross Blue Shield Tobacco Settlement	105
Conclusion	107
Chapter 9: Local Tobacco Control and Clean Indoor Air Legislation in Minnesota	112
Moose Lake	114
Duluth	114
Duluth Ordinance Summary and Conclusions	124
Cloquet	126
Olmsted/Rochester County	126
Little Falls	128
Conclusion	129
Chapter 10: A New Series of Attacks	134
The <i>Minneapolis Star-Tribune</i> Attack on MPAAT	134
The Minnesota Attorney General’s Attack on MPAAT	136
Repeating History	136
The Attorney General’s Motion	137
Health Advocates’ Response	139
The Ramsey County Court Ruling	140
The 2002 Endowments Legislative Fight	144
Tobacco Control Funding in 2003	145
Chapter 11: Lessons Learned	151
The Tobacco Industry’s Power and Tactics	151
The Tobacco Control Advocates Potential for Power	152
Maintain Support and Accountability Among Elected Officials	153
The Need for a Lasting Tobacco Control Infrastructure Independent of Government	154

Chapter 1: Introduction

Minnesota was a pioneer in the tobacco control movement in the United States. Minnesota enjoyed early success with the passage of the Minnesota Clean Indoor Air Act in 1975 which created nonsmoking sections in public places, including workplaces and restaurants throughout the state. While modest by 2003 standards, this act represented a major step forward at the time. It was enacted without any overt opposition from the tobacco industry (1, 2), something that would never happen again.

The tobacco industry was caught off-guard with the Minnesota Clean Indoor Air Act. However, by the late 1970s, individuals within the tobacco industry were working hard to contain the tobacco control effort in Minnesota. When the Minnesota Plan for Nonsmoking and Health was released in 1984 by the Department of Health's Technical Advisory Committee on Nonsmoking and Health (3), the tobacco industry was better prepared to respond. The tobacco industry called this plan a "revolutionary attack on our industry" (4) and quickly moved to prevent its successful implementation. The tobacco industry built the support of allies and created front groups whom it would call upon in future tobacco control altercations (5).

In 1986, the Minnesota Department of Health kicked off the first large state-funded anti-smoking program, including the first major paid media campaign, in the nation (6). Within two years of the inception of the media campaign, the tobacco industry stepped up its campaign contributions and lobbying budget, and worked hard to convince state policy makers to eliminate this program. The tobacco industry also recruited support from new allies such as the Minnesota Grocers Association and the Teamsters Union (7). Ultimately, and despite the fact that the program succeeded at its stated goal of reducing smoking prevalence, Governor Arne Carlson eliminated the media campaign in 1993, claiming that there was a budget crisis (8, 9). Despite the fact that there was not actually a budget crisis, these claims went unchallenged by health advocates and the program was killed.

Rather than fight the cuts, the Minnesota Department of Health and the Minnesota Chapter of the American Cancer Society applied to the US National Cancer Institute for an ASSIST (American Stop Smoking Intervention Study) contract in 1991 (10). ASSIST sought to move beyond individual smoking cessation efforts and test the effectiveness of public policy interventions to reduce tobacco use. Minnesota was one of 17 states that received the competitive ASSIST contracts; it was also one of the states whose ASSIST funded programs would be severely attacked by the tobacco industry. Key ingredients to the tobacco industry's approach included attempts to discredit any and all tobacco control efforts; the tobacco industry even went so far as to implement their own "tobacco prevention programs" for youth (11). More specifically, the tobacco industry used the Minnesota Grocers Association to make unsubstantiated allegations of illegal lobbying and misuse of federal funds (12).

In 1994, tobacco control efforts in Minnesota went back on the offensive. In August 1994, Minnesota Attorney General Hubert Humphrey III announced Minnesota's lawsuit against the tobacco industry charging the tobacco industry with misinformation on the adverse health effects of tobacco use and withholding the development of a safer cigarette (13). While the trial waged on, tobacco control efforts in Minnesota concentrated on enacting legislation to make it harder for youth to purchase cigarettes. In 1997, Minnesota passed its first youth access

legislation to prevent illegal tobacco sales despite an aggressive phone bank campaign by the tobacco industry and testimony from the Minnesota Retailer Merchants Association and the Minnesota Grocers Association that such legislation would impose economic hardship (14, 15).

Tobacco control advocates won a major victory the following year. On May 5, 1998 the State of Minnesota, Blue Cross and Blue Shield of Minnesota, and the tobacco industry announced a settlement of the lawsuit brought against all major U.S. tobacco companies (16). The monetary and non-monetary benefits of the settlement mark the beginnings of building a court-ordered, state-of-the-art tobacco control infrastructure in Minnesota: The Minnesota Partnership for Action Against Tobacco (MPAAT). MPAAT was created as a private foundation under the terms of the Court-approved settlement in an effort to insulate it from political pressures and tobacco influences (17).

A year later, in 1999, the Minnesota state legislature authorized the use of settlement dollars to create two endowment accounts, one of which is managed by the Department of Health (18) to implement a tobacco control program. The two endowments were called the Tobacco Prevention and Public Health endowment and the Medical Education and Research endowment. Similar to the design of MPAAT, the idea behind the endowments was to create a funding stream for tobacco control activities that would insulate them from politics.

Like every other step in the tobacco control movement, the establishment of the endowments did not come without heated debate. Independent Governor Jesse Ventura, Republican and Democratic members of the state legislature each had their own ideas about how the settlement dollars should be spent, ranging from the creation of a children's health endowment to tax rebates. In the end, however, the two endowments were created totaling \$968 million (18). A total of \$25 million annually (interest from the endowment) was to be used for statewide and local tobacco prevention programs.

The local clean indoor air movement in Minnesota gained momentum on April 5, 2000 when Moose Lake became the first locality in the state to prohibit smoking in its restaurants (19). In 2001, Duluth became the first major city in Minnesota to secure 100% smokefree restaurants (20). Recognizing the powerful support that smokefree environments provided for smoking cessation, MPAAT made several grants to community organizations to support the movement for clean indoor air.

Despite the state level progress seen in the late 1990s and the local level progress seen in 2000 and 2001, the tides turned and a severe blow was dealt to Minnesota's tobacco control program. In January 2002, major attacks erupted against MPAAT and the Tobacco Use Prevention Endowment, particularly for support of creating smokefree restaurants. In the Fall 2001, reporters from the Minneapolis *Star Tribune* accused MPAAT of abandoning the guiding principles that governed its spending, inadequately funding youth prevention programs, spending too much time on clean indoor air ordinances which was not in keeping with its guiding principles, dividing communities through the use of local smoke free ordinance campaigns, unfairly evaluating grant proposals and housing internal conflicts of interest (21).

Soon after, Attorney General Mike Hatch launched an assault on MPAAT (22, 23) and the endowments using the same kind of allegations (21, 24) earlier tobacco industry agents and

allies had made against ASSIST. Attorney General Hatch filed a motion with the Court, based on the poorly documented claims presented in the Minneapolis *Star Tribune*, to dissolve MPAAT, shifting the responsibility of administering these funds to the Minnesota Department of Health where they would be subject to control by political forces that were susceptible to influence from the tobacco industry. While MPAAT was not dissolved, a Ramsey County District Court judge ordered MPAAT to freeze all grant making activities until it had provided an equal amount of funding for cessation programs and environmentally-based programs (local clean indoor air ordinances), as well as to submit a plan to restructure MPAAT's board to deal with the claims of internal conflicts (25, 26). This requirement, at a minimum, would compel MPAAT to replace highly cost-effective community- and policy-based interventions, with less effective and more expensive interventions directed at individual smoking cessation.

In February 2003, Judge Michael Fetsch approved MPAAT's plan to restructure its Board of Directors and to increase its cessation programs (27, 28). MPAAT is currently moving forward with the restructuring of its Board of Director and new focus on cessation services. However, it is still early to determine the impact of the restructuring on the potential for MPAAT to be the leading force in the development of a tobacco control infrastructure in Minnesota.

Despite the survival of MPAAT at the hand of the Court, the endowments created as a result of the Minnesota Tobacco Settlement are under attack. With the election of Republican Governor Tim Pawlenty who has historically wanted to use the endowments for tax relief, a Republican majority in the House, the fact that the tobacco industry is a major source of campaign contributions for the Republican Party, and a \$4.6 billion state budget deficit, it should not be surprising that the endowments are being eyed as a way to reduce the state's deficit (29). In addition to losing more than \$1 billion from the endowments, Governor Pawlenty has said, repeating well-established tobacco industry rhetoric, that he will not raise the tobacco tax because it is too regressive in nature. Minnesota's 48 cent tobacco tax now falls below the national average of 60 cents, ranking Minnesota 26th in the nation (29).

Perhaps MPAAT, as a private body with some insulation from politics, is the body that could move forward as the guiding force for all of the tobacco control interests in Minnesota. (It might even help save the endowments.) Without the development of a tobacco control infrastructure, without a system of agenda setting by the tobacco control community, and without leadership from outside government capable of holding both the politicians and bureaucrats accountable, it is not possible to wage a successful campaign against the tobacco infrastructure that is the tobacco industry. The tobacco industry works in back rooms, hides behind the mask of third party allies, thrives on conflict and confusion, and uses all of these tactics to influence policy making in Minnesota. Rather than fueling the fire through internal inconsistency and a lack of accountability, the tobacco control community must recognize these tactics and fight against these attacks with a strong voice to direct the future of tobacco control in Minnesota.

Between 1975 and 2003, there have been victories in tobacco control, particularly when political figures have shown leadership. Individuals and organizations outside government have often rallied to support this leadership that is necessary to sustain an effective tobacco control program in the long run in the face of strong opposition from the tobacco industry and its allies (30). These organizations, however, have not developed an independent leadership and agenda-

setting capability. As a result, when the politicians in power adopt positions hostile to tobacco control and supportive of the tobacco industry, the “advocates” for tobacco control tend to retreat in the face of political attack. The series of victories and defeats are often associated with a sense of complacency that success was accomplished, rather than a vigilant preparation for the next attack.

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Chapter 2: Minnesota Clean Indoor Air Act

In 1975, Minnesota passed the first comprehensive clean indoor air act of its kind in the United States, which would become model legislation for future states (1). Arizona had passed a limited law in 1973 which “restricted smoking in most public places, such as government buildings, health facilities, [and] public places through the establishment of designated smoking areas” (2). Minnesota's law went one step further, prohibiting smoking in any public place or meeting with the exception of smoking designated areas (3). In addition to being a pioneer in this area, Minnesota’s experience in passing a Clean Indoor Air Act was the last time that the tobacco industry did not play a major role to defeat such activities. In the early to mid 1970s, the tobacco industry did not interfere with tobacco control efforts in Minnesota. It was not until the late 1970s that the tobacco companies realized the impact of the Clean Indoor Air Act and the subsequent amendments and began to oppose them. While modest by 2003 standards, the Minnesota Clean Indoor Air Act was landmark legislation for its time.

The Evolution of Minnesota’s First Tobacco Control Policies

In Minnesota in the early 1970s, there were only a few health advocacy groups that were actively pursuing clean indoor air regulations. In February 1973, the American Lung Association of Hennepin and Ramsey counties sponsored the creation of the Association for Non-Smokers Rights (ANSR) with the goal of creating and supporting a cleaner indoor environment (4). Former state Senator Edward Brandt was also involved in the organizing of ANSR as a result of his frustration with committee rooms filled with smoke: “I tried desperately to find a place where I’d be free from it, but it didn’t work” (5). Brandt became the President of ANSR, which was the first single-issue tobacco control organization in Minnesota and one of the first groups of its kind in the United States (6).

In 1973, ANSR began to survey restaurants in the Twin Cities to determine if they discouraged smoking in any form, such as not placing ashtrays on the tables or creating separate areas for nonsmokers. Many restaurant owners indicated that they would be willing to offer nonsmoking accommodations; however, they also indicated that their willingness to do so was dependent upon demand from their customers (7). Hence, there was no opposition from the restaurants, rather a need to prove that designated nonsmoking areas were popular among the general public.

Support for the nonsmoking movement grew early in January of 1974, as the city of Monticello held D-Day (Don’t Smoke Day), a day during which smokers pledged to refrain from smoking for the day. This was the first event of its kind in Minnesota. Publicity for the event got a boost when State Representative Bob McEarchern made a public commitment to quit smoking at Christmastime 1973 (8). A survey conducted 100 days after D-Day found that almost 10% of the individuals who pledged to quit smoking had remained tobacco free (9). This was just the beginning of larger tobacco control efforts that would advance in 1974.

In 1974, two pairs of nonsmokers' rights bills were introduced in the state legislature (Table 2-1). SF 917, sponsored by Senator Mel Hansen (R-Minneapolis) and its companion bill

in the House, HF 966 sponsored by Representative Knickerbocker (DFL¹-Richfield), required that nonsmoking sections be available in all public structures which have room for 40 people, with the exception of thoroughfares (10). The bills passed the Senate Health, Welfare, and Corrections Committee but was ultimately stopped by senators who either wanted a stronger bill or did not want the bill at all (10). There was no overt opposition to these bills by the tobacco industry. Despite the death of this set of bills, a second set was introduced at about the same time that were considerably stronger.

Table 2-1: Evolution of Minnesota’s First Tobacco Control Policies

Bill	Sponsor	Provision	Disposition
SF 917	Sen. Mel Hansen (R)	Require nonsmoking sections in public places with room for 40 people	Passed Senate Health, Welfare, & Corrections Committee; returned by senators looking for a stronger bill or others not wanting any bill
HF 966	Rep. Gerald Knickerbocker (DFL)	Require nonsmoking sections in public places with room for 40 people	Passed Senate Health, Welfare, & Corrections Committee; returned by senators looking for a stronger bill or others not wanting any bill
SF 2889	Sen. David Schaaf (DFL)	“Minnesota Clean Indoor Air Act” - prohibits smoking in public places or meetings, except in smoking designated areas	Introduced too late in the session; no action taken in 1974
HF 2801	Rep. Phyllis Kahn (DFL)	“Minnesota Clean Indoor Air Act” - prohibits smoking in public places or meetings, except in smoking designated areas	Introduced too late in the session; no action taken in 1974

Senator David Schaaf (DFL-Fridley) introduced SF 2889 and Representative Phyllis Kahn (DFL-Minneapolis) introduced HF 2801 in the Spring of 1974. The proposed bills were intended to “protect the public health, comfort and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas” (10). The bill required proprietors of public places, state and local boards of health, and law enforcement with the duty of enforcing this act, as it was largely driven by complaint of violations. Furthermore, a fine would be imposed on individuals who violated the law and for proprietors who neglected to enforce it. Driven by complaints, local boards of health and the Department of Health’s Division of Environmental Health would be responsible for enforcement (10). These bills were introduced late in the legislative session and no action was taken in 1974.

Despite the lack of a smokefree policy passing the legislature early in 1974, there was

¹DFL is the Democratic Farmer Labor party which is the Democratic party in Minnesota.

still strong public support for a policy to create smokefree public areas. In June 1974, the Minnesota State Medical Association “voted to urge hospitals in the state to restrict smoking and to ban the sale of all tobacco products in their institutions” (11). The Medical Association noted the dangers associated with smoking, but also the dangers of exposure to tobacco smoke among nonsmokers. Hence, visitors and staff would only be allowed to smoke in restricted areas and patients would be allowed to smoke “only with their physicians’ approval, and in multiple-bed rooms, with the approval of the other patients’ doctors, too” (11).

In Fall 1974, the state of Minnesota echoed the actions of Monticello earlier in the year with a statewide D-Day to be held on October 7 (9). Organizations involved with this effort included the Minnesota Division of the American Cancer Society, the Minnesota Lung Association as well as other health and education groups, the Minnesota Newspaper Association and the Minnesota Interagency Council of Smoking and Health (9). The purpose of the day was to get all smokers in the state (approximately 850,000) to refrain from smoking for the day and to encourage them to stay tobacco-free, as well as to draw greater public attention to the health hazards of smoking (12).

With the election approaching, ANSR President Ed Brandt, sent letters to the Minnesota legislative candidates in late September asking each candidate to make a formal public commitment to “support legislation to protect the non-smoker’s right to breathe smoke-free air” (13). ANSR published the responses received from the legislators and urged the public to support those candidates that would favor smokefree legislation in the upcoming election. The 51 candidates and incumbents who supported policies to protect nonsmokers’ rights are listed in Table 2-2 (13).

Table 2-2: Candidates and Incumbents in Support of Smokefree Policies, September 1974

-
- | | | |
|---------------------------|-----------------------------|----------------------------|
| • Robert Myers (R) | • Bud Anderson (R) | • Arne Carlson (R) |
| • Jack Olsen (R) | • Howard Smith (DFL) | • Ken Nelson (DFL) |
| • Norman Prahl (DFL) | • Roy Carlson (R) | • Hobart Mitchell, Jr. (R) |
| • Glen Sherwood (DFL) | • Doug Carlson (R) | • Janet Clark (DFL) |
| • H.O. Mortenson (R) | • Marvin Edwin Ketola (DFL) | • David Nash (R) |
| • Herbert F. Pfremmer (R) | • Milton Pelletier (I) | • Dick Ramberg (R) |
| • John Spanish (DFL) | • Allen Smith (R) | • Norman Selby (R) |
| • Joseph Begich (DFL) | • Walt Whitson (DFL) | • Wesley Skoglund (DFL) |
| • Douglas Johnson (DFL) | • Edmond J. Hunstiger (R) | • Charles Stenvig (R) |
| • Mathias Hapsch (R) | • Al Patton (DFL) | • Walter Hanson (DFL) |
| • Mike Jaros (R) | • John Laeder (R) | • Ray Faricy (DFL) |
| • Edward Willie (R) | • James Casserly (DFL) | • William Bahl (R) |
| • Abdul Ahmad (DFL) | • Tom Berg (DFL) | • Jean Druker (DFL) |
| • James Ulland (R) | • Judith Hansing (DFL) | • Ron Sieloff (R) |
| • Neil Wohlwend (R) | • William Dean (R) | • Tom Stohoff (DFL) |
| • Keith Langseth (DFL) | • Rae Anderson (I) | • John O’Neill (R) |
| • Lyle Freer (R) | • Art Reynolds (DFL) | • Robert Pottratz (I) |

Source: (Association for Nonsmokers Rights, 1974)

Bipartisan support was seen for such policies. Additionally, this public declaration by potential future elected officials would allow ANSR to hold these individuals accountable for future decisions on smokefree policies. For example, while Arne Carlson responded favorably to tobacco control policies in 1974, ANSR saw a different side of Governor Arne Carlson in 1993 as he worked to dismantle the state's tobacco control program (see Chapter 4). ANSR continued to lobby in support of the proposed legislation for clean indoor air.

The original bill introduced by Representative Phyllis Kahn in 1974 (HF 2801) was introduced again as HF 79 in February 1975. The future of the bill looked bright as both House Speaker Martin Sabo (DFL-Minneapolis) and House Minority Leader Henry Savelhoul (R-Albert Lea) signed onto the bill as co-authors (14). The bill, which became known as the "Minnesota Clean Indoor Air Act," was designed to "protect the public health, comfort and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas" (3). During roll calls on the issue, 90 out of 131 Representatives voted in favor of restricting smoking; a lesser degree of acknowledgment of the need for restrictions on smoking was even seen among the dissenting members (14). On March 10, 1975, HF 79 passed in the Minnesota House of Representatives by a vote of 78-54. The final text of the bill stated that:

No person shall smoke in a public place or at a public meeting except in designated smoking areas. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. Furthermore, this prohibition shall not apply to factories, warehouses and similar places of work not usually frequented by the general public, except that the Department of Labor and Industry shall, in consultation with the State Board of Health, establish rules to restrict or prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees (3).

Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent non-smoking areas. In the case of public places consisting of a single room, the provisions of this law shall be considered met if one side of the room is reserved and posted as a no-smoking area. No public place other than a bar shall be designated as a smoking area in its entirety. If a bar is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public (3).

Prior to its passage in the House, the bill was amended to remove any monetary penalty assessed on proprietors who chose not to enforce this law; however, individuals in violation of the law were still subject to fines and the violation would be considered a petty misdemeanor (3). The responsibilities enforcing the Clean Indoor Air Act lie in the hands of the State Board of Health, driven primarily through complaints (3, 15). While this amendment did weaken the bill, there was also a provision in which the "state board of health, a local board of health, or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of...the act" (3). The bill passed the Senate shortly thereafter. Finally, on June 2, 1975, Governor Wendell Anderson (DFL) signed HF 79 into law as Chapter 211 of the 1975 Minnesota Session Laws, going into effect on August 1, 1975.

The individual in charge of the public place is responsible for designating the smoking area. The Act did not specify the portion of the public place to be designated as smokefree; however, only a bar could be designated completely as a smoking area. Individuals who violate this law are to be fined up to \$100. While the fine against the proprietor of a public place that does not follow this law was removed from the final piece of legislation, court injunctions may be sought by local boards of health or affected individuals to see that this offense is remedied (16).

Representative Kahn was pleased with the passage of this important piece of legislation and explained the logic behind the victory: “One of the strengths of this law is the simplicity. The regulations were left to be set by the Department of Health” (5). Representative Kahn also cited the effort of ANSR and the transition in the legislature, from older smoking members to younger nonsmoking members, as major factors in the success of the Act (17). The combined support of the American Lung Association and the American Cancer Society, as well as the lack of involvement on the part of the tobacco industry were all key to the passage of this tobacco control legislation (6).

Implementing the Clean Indoor Air Act

Following the passage of the Clean Indoor Air Act in June, the Minnesota Department of Health outlined recommendations for implementing the Clean Indoor Air Act. The recommendations included all public places of work, with the exception of factories, warehouses and other similar places, which would follow regulations set forth by the Minnesota Department of Labor and Industry (18). The implementing regulations were very clear as to who could and could not claim exemptions. Restaurants that served alcohol could not claim to be only a bar; bars were defined as establishments with capacity for 50 or fewer diners. Second, the acceptable smokefree areas in public spaces had to meet one of the following requirements: a) a barrier of at least 56 inches in height to separate the smoking and nonsmoking areas; b) a four foot separation between the smoking and nonsmoking sections; c) a ventilation system to provide at least six air changes per hour; d) a concentration of carbon monoxide in the nonsmoking area not to exceed the concentration of the outside area by more than 10 : g/m³. Third, areas to be used by smokers and nonsmokers alike, including entrances, hallways, and elevators, could not be designated as smoking areas. Fourth, the area designated as a smoking area had to be proportionate to the preferences of the patrons of the establishment. Fifth, recommendations were made to either post signs indicating the nonsmoking sections or comply with the preferences of the patrons. Sixth, in places of employment where there were smoking and nonsmoking sections in the same room, the nonsmoking sections were required to be at least 200 ft² and acceptable to the nonsmoking workers. Finally, smoking was not to be allowed in patients’ rooms in health care facilities, except in a smoker’s room or with the patient’s express consent (18). ANSR was in support of these recommendations (19), on the grounds that the Clean Indoor Air Act did not establish nonsmoking areas, but rather restricted the areas in which smoking was permitted (20).

The public awareness for this Act was growing quickly and ANSR was tracking compliance. Minneapolis-St. Paul International airport was praised by ANSR for doing an outstanding job posting signs and enforcing the no smoking areas, particularly in the entrance ways, restrooms, and shops; the University of Minnesota began posting signs and posted bulletins indicating that “no smoking is permitted in University buildings except in private

offices or designated areas” (21). The Public Awareness Committee from ANSR assigned twelve people to inform and educate the people of Minnesota about the Clean Indoor Air Act and the health dangers of second hand smoke. In 1975, surveys of offices and companies conducted by the Public Awareness Committee found that 77% of the people surveyed were not smokers but 66% of the nonsmokers surveyed were affected by smoke, complaining of headaches and irritation of the eyes, nose, and lungs (22). When asked their preferences on a variety of smoking policies, 94% of individuals surveyed felt there should be no smoking in hospitals, 87% felt that smoking should be banned in doctor’s offices, 92% felt that smoking should be prohibited in schools, 84% believed that smoking should be prohibited in theaters, and 35% felt that bars should be smokefree (23). In addition to the growing awareness and publicity of the Act in Minnesota, the nation was made aware of the new policy when *Time* magazine published the following on August 18, 1975:

Year by year it becomes harder to find a place to light a cigarette legally. Now Minnesota has passed the nation’s most sweeping state law to date: ‘No person shall smoke in a public place or in a public meeting except in designated smoking areas.’ Possible fine: \$100. The statute even extends to offices, which must be nonsmoking areas unless all employees smoke, though smoking rooms can be set aside. But it does not include bars, and one legal opinion holds that any restaurant that serves liquor can be considered a ‘bar.’ Still, the law shifts the balance of power between smoker and non-smoker. It puts the burden on the smoker to find a smoking area, rather than on the nonsmoker to find a spot of clean air (24).

In the Fall of 1975, the Department of Labor and Industry proposed regulations for the Clean Indoor Air Act which would apply to factories, warehouses and similar places of work. The regulations included: a) in the lunchroom, lounge or rest area, the person in charge would reserve one side of the room as a nonsmoking area; b) upon complaint of smoke pollution that is detrimental to employees’ health and comfort, reasonable efforts would be made to determine the source of the smoke; c) if it is determined that the smoke pollution is due to inadequate ventilation or being too close to a fellow worker (who was smoking) reasonable efforts would be made to minimize the toxic effects; and d) measures to remedy the situation could be denied if it was determined to be ‘detrimental to the employment status of either the nonsmoking or smoking employee’ (25). ANSR charged that the proposed regulations were “an open invitation for employers to evade their responsibility and to violate the intent of the law to protect the health and comfort of non-smoking employees” (25). ANSR strongly suggested that these regulations be revised to be more strict than even the regulations for restaurants and other public places since employees spent 40 hours per week in their work environment, whereas patrons to public establishments spent a much shorter period of time (25). Despite this disapproval, the regulations proposed by the Department of Labor and Industry stood.

Initial Response from the Tobacco Industry

The evolution and ultimate passage of the Minnesota Clean Indoor Air Act occurred without interference from the tobacco industry. The creator of the Act stated that, “Our biggest advantage is that we were the first state to pass this kind of comprehensive law. The tobacco industry did not pay any attention to it. In general, the problem that other states have run into is the incredible pressures and interest of the tobacco industry” (5). While there was some opposition from the restaurants, the first indication of the tobacco industry’s involvement came in 1976 in a letter from Joseph Robbie (President of the Minnesota Candy and Tobacco

Association) to Stephen Bergerson (Attorney with Fredrikson and Byron Law Firm in Minneapolis) which referred to conversations between Larry Horist of the Tobacco Institute with Chum Bohr of the Hotel and Restaurant Association and Oliver Perry of the Minnesota Association of Commerce and Industry (26). It was not until 1976, after the Act was being implemented, that the Tobacco Institute began to respond. In response to the American Lung Association's support and promotion of nonsmokers' rights, the Tobacco Institute sent out Public Relations representatives across the country, spreading the message that the nonsmokers' rights were "an infringement on smokers' rights" (27). The Tobacco Institute was concerned with the "social and economic implications of groups such as ANSR, which, in asserting nonsmokers' rights, are ultimately working toward making smoking socially unacceptable and confined to consenting adults in private" (27). A 1978 study conducted by the Roper Organization for the Tobacco Institute concluded that the nonsmokers' rights movement was "the most dangerous development to the viability of the tobacco industry that has yet occurred" (17).

It was not until the late 1970s that Philip Morris began to realize the economic impact of the Clean Indoor Air Act on sales in Minnesota (28). In September of 1980 it was reported in the Tobacco Institute's newsletter, the *Tobacco Observer*, that if every smoker in the United States smoked one less cigarette everyday, this would result in a \$500 million annual loss for the tobacco industry (17). Furthermore, a Minnesota Poll in 1980 reported that "92% of smokers and 87% of heavy (two pack a day) smokers favored the law" (17).

In May 1980, a letter from John D. Kelly, Senior Vice President of State Activities for the Tobacco Institute, to Larry Bewley, Manager of State Public Affairs for R.J. Reynolds Tobacco Company, indicated for the first time that the tobacco industry was working with the Minnesota Restaurant Association. The memo also explains the mistakes made by the tobacco industry in their efforts to defeat tobacco control legislation:

It appears that while our lobbyists were aware that proceedings to amend the regulations were taking place in May and June 1979 that they did not fully understand that their assignment from us extended to regulatory proceedings as well as legislative actions. That situation has been rectified and will not reoccur...As always, we are chagrined when not fully on top of any matter affecting our interest (29).

While the tobacco industry's advocates were not fully aware of the initial progress being made in Minnesota to restrict smoking and to respect the rights of nonsmokers in their efforts to avoid exposure to second hand smoke, the tobacco industry would not allow the mistake to continue. Future efforts in Minnesota would take advantage of the tobacco industry's ties with the Restaurant Association and the Minnesota Chamber of Commerce.

Amendments to the 1975 Minnesota Clean Indoor Air Act

In the Fall of 1976, with support from the local Minnesota chapters of the American Lung Association, the Association for Nonsmokers Rights expanded (30). In addition to the increased public support, the Minnesota Lung Association hired Alan Wass to work half time with ANSR and half time on smoking health education programs for the Lung Association (30).

Over the course of the next twenty years, the Minnesota Clean Indoor Air Act would be amended amidst increased protest from the tobacco industry. In 1980, the Minnesota Department of Health adopted and implemented a revised regulation which required a minimum of 30% of a restaurants' capacity be reserved for nonsmokers (31). In 1987, prohibition on smoking in licensed day-care and health care facilities was passed (6). In 1988, a new law was enacted requiring state agencies to implement restrictive indoor smoking policies (6).

In 1989, however, a bill was introduced by Rep. Phyllis Kahn to strengthen the Clean Indoor Air Act to restrict smoking in common areas of apartment buildings and condominiums. The bill did not even receive a hearing in the House Health and Human Services Committee. The Senate companion bill, sponsored by John Brandl, was also killed as a result of the effective opposition of tobacco lobbyists (6).

In the early 1990s, the tobacco control advocates received a boost of help from a lobbyist from Opperman, Heins and Paquin who did pro-bono work for the tobacco control effort (6). Despite the added support and resources, an attempt to tighten up smoking restrictions in workplaces was soundly defeated by the Tobacco Industry and their allies, the Teamsters. Wes Lane, lobbyist for both the Teamsters DRIVE (Democratic Republican Independent Voter Education) campaign between 1988 and 1994, and later discovered to be an unregistered lobbyist for the Tobacco Institute during the same time period (32, 33), was credited with being "probably the prime reason" for the defeat of the improvements to the Clean Indoor Air Act being championed by Rep. Phyllis Kahn (33). Lane was also accused by "state lawmakers who had been lobbied by Lane on tobacco issues and who thought he was representing the Teamster position" of "failing to disclose he took money to lobby in the Minnesota Legislature for tobacco interests," although he would never face criminal charges because the statute of limitations had expired (32).

Ultimately, the proposed legislation was defeated in the House Health and Human Services Committee in 1993 (6). However, in addition to the tobacco industry's ties with the Teamsters, there were also ties to the Steel Workers Union. The deciding vote, which killed the proposed legislation was cast by Tom Huntley (DFL-Duluth) who was following the wishes of his constituency, largely composed of steel workers. Marc Asch, former Minnesota Legislator and Chair of Advocacy for the American Heart Association between 1994 and 2001, shed some light on the backroom politics by the tobacco industry:

He voted the way he did because of pressure from the steel workers. So you have a secret agent of the Tobacco Institute switching the key vote, switching the vote on the committee to kill the bill. I actually talked with Huntley, later as in years later, after the Wes Lane stuff came out, and he said that if he had realized that he wouldn't have voted that way. He ordinarily was very good on health issues. He actually was a medical school professor (34).

The efforts of Rep. Phyllis Kahn to restrict smoking in apartments surfaced again in 1992. While the proposed bill passed the Senate, it was killed in the House. In 1993, the same bill was reintroduced, but would not even receive a hearing during this legislative session. (6). In 1994 law was passed which extended the protections of the Minnesota Clean Indoor Air Act to common areas, although the provisions for condominiums that had been included in earlier versions was dropped; however, building managers could designate nonsmoking areas (6)

In 1996 a law was passed to end smoking in Minnesota prisons, which became effective in August 1997. This law was driven by concerns for the cost of care to the state (6) as expressed by sponsor Senate Dave Kleis (R-St. Cloud): “Since we pay 100% of inmates’ health care costs, if they choose to smoke, we pay a higher premium” (6). Therefore, by ending smoking in the prisons, the law would decrease death and disease caused from tobacco, both through direct smoking and exposure to second hand smoke.

The Minnesota Clean Indoor Air Act was amended in 2002, to regulate ventilation requirements in areas in which smoking is permitted within offices, factories and warehouses. The goal of this new requirement is to control the drift of secondhand smoke outside of the smoking permitted areas. The requirements specifically states that

All smoking-permitted areas must meet the following requirements: the area must be at a negative pressure compared to nonsmoking areas...air from the smoking-permitted area must not be re-circulated into nonsmoking areas, the air from the smoking-permitted areas must be exhausted directly to the outdoors, and the smoking-permitted area must have one of the following: a wall with closed doors, except to permit necessary entry and exit, that separates the smoking-permitted area from areas where smoking is not allowed or a ventilation system that ensures that all air that crosses the boundary between the nonsmoking and smoking-permitted areas only flow from the nonsmoking to the smoking-permitted area (also known as unidirectional airflow) (35).

The new requirements of the Clean Indoor Air Act, enforced by the Minnesota Department of Health, go into effect September 23, 2003.

Containing Minnesota

The tobacco industry learned from its previous mistake and did not hold back anything in future legislative fights. In 1985, Rep. Kahn said, “I have testified in a couple of states trying to pass laws like ours, and the tobacco industry goes in full force, and uses campaign contributions, and strong lobbying” (31). In addition to the use of financial influence, the tobacco industry worked to publicly lessen the impact of the Clean Indoor Air Act. In 1985, “Walker Merryman, spokesman for the Tobacco Institute, said that there has been ‘no scientific demonstration that [smoking] has a cause and effect relationship with any of the diseases with which it has been associated statistically’ and that ‘no conclusions can be drawn about the chronic health effects of environmental smoke on nonsmokers’ [and went on to say] that the tobacco industry is managing to defeat bills similar to Minnesota’s in most states where they come up” (31).

Conclusion

The Minnesota Clean Indoor Air Act formed the basis for many tobacco control efforts in Minnesota. Because the tobacco industry did not recognize how damaging it would be, the initial legislation passed without significant opposition from the industry. This situation was never repeated.

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Chapter 3: The Minnesota Plan for Nonsmoking and Health

While efforts to amend and expand the restrictions set forth in the Clean Indoor Air Act continued, the public health community in Minnesota was moving forward with a bold next step. In 1982, the Minnesota Commissioner of Health, Sr. Mary Madonna Ashton convened the Technical Advisory Committee on Nonsmoking and Health, a committee with a wide range of public health expertise (Table 3-1), in hopes that the resulting report would find broad political support.

Table 3-1: Composition of the Technical Advisory Committee On Nonsmoking and Health

Member's Name	Title/Affiliation	Expertise/Industry
Andrew Dean, M.D.	Minnesota Department of Health, Chair	Professional/Medical
Steve Erickson	Chairman/Minnesota Food Retailers Assn	Wholesale/Retail Sales
Dan W. Gustafson	Secretary Treasurer/ Minnesota AFL-CIO	Labor
Norman G. Hepper, M.D.	Internal Medicine and Thoracic Disease/ Mayo Clinic	Medicine
Arnold J. Hewes	Executive V.P./ Minnesota Restaurant, Hotel and Resort Association	Hotels, Resorts, Restaurants
Charles O. Howard	Attorney	Law
L.E. (Larry) Joines	Executive Director of Human Resources Center, 3M Corp.	Business
Tom Kottke, M.D.	University of Minnesota	Professional/Medical Ed.
Robert L. Miller	Superintendent of Schools - Stillwater, Minnesota	Education/Administration
Thomas A. Nelson	Minnesota State Senator	Legislation
Barbara O'Grady	Director/ Ramsey County Public Health Nursing Service	Nursing
Gayle L. Osterhus	President/ Courseware International	Small Business
Terry F. Pechacek, Ph.D.	Asst. Professor/ Division of Epidemiology, U. of Minnesota	Cessation & Prevention
Cheryl L. Perry, Ph.D.	Asst. Professor/ Division of Epidemiology, U. of Minnesota	Education/Research
Robert P. Provost	President/ Minnesota Insurance Information Center	Insurance
Leonard M. Schuman, M.D.	Mayo Professor Emeritus, Division of Epidemiology, U. of Minnesota	Health Effects of Smoking
John J. Waelti	Dept. of Agricultural and Applied Economics, U. of Minnesota	Economics
Charles C. Wanous	Executive Vice President/ Kerker and Associates	Advertising
Howard E. Warnberg	County Commissioner/ Morrison County, Minnesota	Local Government
Jeanne Weigum	Association for Nonsmokers Rights	Community Action
Marti Zins	President/ Minnesota Education	Education

The Commissioner of Health appointed the Advisory Committee with the directive to formulate recommendations for the promotion of nonsmoking and health for individuals, communities and the state of Minnesota as a whole. Moreover, the Advisory Committee was asked to examine the effects of each option on health and the economy of the state in order to develop implementation plans that embraced the most practical and cost effective methods available. The overall objective was to "produce a set of ideas which will be adopted and carried out by appropriate groups and individuals-not merely admired and put on the shelf " (1). The Advisory Committee envisioned a "program [that] would improve the quality of life in Minnesota by eliminating the number of smoking-related deaths, improving health, and reducing economic costs of medical care and lost income from premature death and disability" (1).

The Committee concluded that "cigarette smoking is one of the nine unsolved health problems in Minnesota" (1). Noting that more than 70% of Minnesota's smokers had attempted to quit at least once, the Advisory Committee observed that "Minnesota is ready for further

well-planned steps to promote nonsmoking" (1). The Committee also documented the cost of smoking in Minnesota, stating that in 1983, smoking cost the state of Minnesota "at least \$374,600,000 in direct medical costs," which breaks down to \$91 per Minnesotan, \$446 per Minnesota smoker over the age of 18, and 82 cents per pack of cigarettes (1). Combined with an additional \$303,300,000 annually in lost lifetime income costs, smoking cost the state of Minnesota \$677,900,000 in 1983 .

The Advisory Committee's report, published September 14, 1984, called the *Minnesota Plan for Nonsmoking and Health*, proposed "a coordinated statewide program to prevent young people from starting to smoke, to encourage and assist smokers to quit, and to promote clean indoor air" (1). The *Minnesota Plan* made recommendations for the creation of multiple components of a program, including school and youth education, promotion of nonsmoking through marketing and communications techniques, public and private regulatory measures, economic incentives and disincentives, and system to research and educate the community on smoking and tobacco control (1). Although the Committee did not propose dollar amounts, it recommended that "funding needs for the promotion of nonsmoking should be obtained from multiple sources including legislative appropriation" (1). Funding for the implementation of the Minnesota Plan was later found in the form of a cigarette tax increase of seven cents/pack proposed by the Minnesota Department of Health in 1985.

The Tobacco Industry's Response to the Creation of the Minnesota Plan

The tobacco industry quickly mobilized and developed a series of five steps to respond to the organization of the Technical Advisory Committee and the Minnesota Plan for Nonsmoking and Health (Table 3-2). First, the tobacco industry deployed the Tobacco Institute, the tobacco industry's political and lobbying arm in the U.S., to monitor the Committee from its creation in November 1983 (2).

Table 3-2: The Tobacco Industry's Plan to Respond to the Creation of the Minnesota Plan

1. Deploy the Tobacco Institute to monitor the Technical Advisory Committee
2. Introduce its own "youth tobacco prevention" program, titled "Helping Youth Decide,"
3. Prepare to fight the introduction of legislation to implement the Advisory Committee's recommendations
4. Develop a two-tier strategy in September 1984 to destroy the Minnesota Plan:
 - a) Attack the Minnesota Plan's underlying research, claiming "Much of the underlying research for the plan is inaccurate.
 - b) Shift the debate away from health to "areas in which we have the most credible arguments, e.g., economics, government intervention, etc
5. Identify working relationships with current supporters of the Plan and remove that support

Source: Brozek, Sept. 27, 1984.

The Tobacco Institute also understood the significance of the composition of the Technical Advisory Committee on Nonsmoking and Health: “. . . citizen representation from a broad spectrum of interests including labor, law, nursing, insurance, advertising and local government served as the Advisory Committee to review subcommittee recommendations and observations” (2).

While the tobacco industry was unsuccessful in influencing the work and recommendations of the Committee (3), it did permit the tobacco industry to remain closely informed and thus recognize the potential power of the Minnesota Plan for Nonsmoking and Health and the Department of Health’s ability to advance these recommendations. An internal Tobacco Institute memorandum from Michael Brozek to Michael Kerrigan states:

Although representatives of the Technical Advisory Committee maintain that the report concentrates on educational aspects of smoking and health, significant policy, marketing, legislative and economic ramifications are visible throughout the entire report. . . . Commissioner Sister Madonna Ashton is intent on introducing legislation in order to enact state laws consistent with the recommendations found in the Technical Advisory Committee

Study. . . legislators such as State Representative Kahn [author of the 1975 Minnesota Clean Indoor Air Act], have indicated an almost ‘Pavlovian’ desire to introduce the recommendations found in this study as an omnibus bill during the next session of the Minnesota legislature. . . . Due to the high credibility of the Department of Health, several other legislators will feel compelled to join in as coauthors. . . . Governor Perpich may find several recommendations in the study to be politically acceptable and attractive (4).

Within months of the release of the Minnesota Plan, the Tobacco Institute characterized the Minnesota Plan as “a revolutionary attack on our industry” (5), and noted the tobacco industry’s swift move to counter that attack: “The ink was not yet dry on this report before our lobbyists initiated an aggressive and focused effort in communication with legislative leadership and targeted key legislative activists. This effort was successful in preventing a majority of the report from seeing its way from the drafting board to a legislator’s hand” (5).

In addition to the tobacco industry’s concerns within the state of Minnesota, it also realized that the Minnesota Plan would have repercussions at the national level (2). One of the implications for the tobacco industry was that the anti-smoking media campaign of the Minnesota Plan would be supplanting its own national advertisements to discourage youth from smoking (6, 7). Therefore, the tobacco industry introduced its own youth campaign (“Helping Youth Decide”) in an attempt to de-legitimize the utility and significance of the entire Minnesota Plan (7, 8). By 1991, and while the Minnesota Plan’s media campaign was still in operation, a close variant of the Helping Youth Decide campaign called Help Youth Say No, (HYSN), received the endorsement of the Catholic Archbishop of St. Paul/Minneapolis and was recommended for use in Minnesota Catholic school districts (9).

Beyond working to offset the effects of the release of the Minnesota Plan, the tobacco industry had to prepare to fight against the implementation legislation for the Advisory Committee’s recommendations, which would result in the first ever comprehensive tobacco control program (4, 6). The tobacco industry sought and prepared for outright war. An internal Tobacco Institute memorandum from Michael Brozek to Bill Buckley states

Every possible legislative, political, social and theoretical angle is being utilized in our efforts to get out of this session unscathed. Since Minnesota has been fit to designate itself, as Surgeon General Koop stated, 'a model for the country' with regard to anti-smoking legislation, our only choice in this matter is a complete victory. Anything less could be used against us in other states. We will employ all means to secure that victory (10).

Thus the tobacco industry was determined to use all means possible to fight the Minnesota Plan and all legislative initiatives that would have led to its implementation. More specifically, the tobacco industry intended to destroy the Minnesota Plan by claiming that it was "unnecessary, expensive, and impractical" (6). "Our strategies," stated the Tobacco Institute, "seek to refute the plan's underlying research, concentrating on those areas in which we have the most credible arguments; e.g., economics, government intervention, etc." (6). While the tobacco industry was very private about the development of its plan to combat the Minnesota Plan on Nonsmoking and Health, it was extremely public in its strategy to de-legitimize the plan by claiming "Much of the underlying research for the plan is inaccurate" (6). The tactics were to use estimates from advertising and public relations firms to demonstrate that the Health Department's estimated costs for the campaign were too low. Therefore, the tobacco industry would be able to make the statement that far more taxpayer dollars would be needed to implement the recommendations of the Plan. These cost estimates would be promulgated by using third parties such as Minnesota business and labor coalitions (6). (Businesses under consideration for membership in the tobacco industry's anticipated coalition against the Minnesota Plan included Pillsbury, 3M, Honeywell, Northwest Orient Airlines, Cargill and Blue Cross/Blue Shield; labor unions included from United Food and Commercial Workers International Union (UFCW), Steelworkers, the International Brotherhood of Electrical Workers (IBEW), the American Federation of Teachers and the International Association of Machinists (6).) By the late 1980s, the Teamsters' Union lobbyist was recruited to lobby on behalf of the tobacco industry at the Minnesota Capitol.

In addition to discrediting the financial planning for the Minnesota Plan, the tobacco industry also worked to shift the debate away from health to "areas in which we have the most credible arguments, e.g., economics, government intervention, etc." (6). To do so, the tobacco industry used editorial roundtables with representatives from Minnesota businesses, labor, education, and police groups, in order to a) assess from an individual point of view "the negative effects of such extreme steps" (6); b) mobilize the "model voter registration poll" to demonstrate Minnesotans do not want further government intrusion in their lives (6); c) create an information campaign to convince Minnesota taxpayers that numerous national programs were already addressing this issue (i.e., nonsmoking among youth); d) indicate "that local efforts are duplicative, a waste of taxpayers money and unnecessary" (6); and e) use statements by Gov. Rudy Perpich (D) to argue that anti-regulation statements he made indicated that he opposed smoking regulations and did not believe that "any new anti-smoking measures should be aimed at young people in school" (6). Gov. Perpich was not a friend of the tobacco industry, but it is not uncommon for the tobacco industry to take statements out of context.

Finally, beyond creating doubt about the logistics of the Plan, the tobacco industry sought to "Identify and remove, as supporters of the plan, representatives from those groups with whom we have developed working relationships." (6). To that end, the tobacco industry mobilized the Tobacco Industry Labor Management Committee (TILMC) to identify contacts with major Minnesota labor unions. Once those contacts had been developed, the TILMC used those

contacts, along with AFL-CIO anti-tax and anti-public smoking restriction statements, to persuade its supporters to remove organized labor groups from the list of supporters of the Minnesota Plan's. Finally, the TILMC mobilized staff from the Tobacco Industry's headquarters and field operations, as well as lobbyists, to identify non-labor supporters of the Minnesota Plan and remove them as well (6).

Activities by the Tobacco Industry to Combat the Goals of the Minnesota Plan

The tobacco industry's strategies to attack the implementation of the Minnesota Plan were organized around three principles: 1) create doubt regarding the research and accuracy of the Minnesota Plan's goals and recommendations, 2) use third parties to promulgate that doubt, and 3) create fear among two groups: labor and hospitality. The tobacco industry used these principles to devise a public relations plan (Table 3-3) which featured multiple strategies to attack each goal and recommendation of the Minnesota Plan (6).

Promotion of Nonsmoking Through School and Youth Education

To attack the Minnesota Plan's school and youth nonsmoking education goal, the tobacco industry used two specific approaches. First it called for direct involvement to intercept the implementation of the school and youth nonsmoking education goal by promoting the tobacco industry's Help Youth Decide program. This approach was to be carried out using four tasks: a) mailing copies of the HYD brochures through the Tobacco Institute and the National Association of State Boards of Education (NASBE) to "state legislators, educators, and allies," along with the Tobacco Institute's field operation and lobbyist visits to those receiving the HYD pamphlets; b) seeking the endorsement of the HYD program from state legislators and educators; c) arranging to have the Tobacco Institute and NASBE spokespersons describe the merits of HYD to state and local education organizations; and d) publicizing "reaction to the program via ads in state and local media, including endorsements by Minnesotans, labor unions, national educators, etc." (6).

The second tobacco industry attack on the school and youth anti-smoking education goal of the Minnesota Plan was to "persuade officials that the education portion of the program is unnecessary because it is based upon faulty research, and would be costly and difficult to implement" (6). The tobacco industry deployed four tactics to carry out this strategy: a) use an education group, such as NASBE, or NEA, or AFT, evaluate the accuracy of research used by the Minnesota Plan, which pointed to the finding that nonsmokers are better students in school most likely to go to college, "are less rebellious and less likely to use *other drugs* [emphasis added]" (6); b) use third party promotion of any errors in this part of the Minnesota Plan to legislators and educators; c) develop cost estimates for this component of the Minnesota Plan and ask parents and teachers "if they want their tax money spent for *unnecessary education programs* or for textbooks, teachers salaries and other basics [emphasis added]" (6); and d) persuade teachers and parents about whether the "six or more hours of . . . nonsmoking education' cited in the plan might preclude six hours of education in *another area* (such as basic skills, driver and/or sex education [emphasis added]" (6). The tobacco industry became very concerned with the school and youth anti-smoking education goal of the Minnesota Plan; this was the only goal of the Minnesota Plan for which industry used more than one strategy approach to discredit it.

Promotion of Nonsmoking Through Public Education

To attack the marketing and communication technique goal of the Minnesota Plan, the tobacco industry devised a strategy to discredit it by claiming that it was “unnecessary, expensive, and impractical” (6). To implement this strategy, the tobacco industry used multiple tactics based on claims of cost inaccuracy, greater taxpayer burdens, promulgation of inaccuracies to business and labor groups in Minnesota, organizing and discussion of roundtables made up of business, labor, education, policemen groups to advance the view that the communications component of the Minnesota Plan was “an extreme step” (6).

Promotion of the Role of Private and Regulatory Measures

To attack the public and private regulatory measures of the Minnesota Plan, the tobacco industry used a strategy to “promote questions, problems and/or concerns with plan recommendations addressing the public smoking, fire, and advertising issues” (6). The tobacco industry devised several tactics to implement this strategy: 1) use of industry sponsored economic surveys to “demonstrate to businesses the costs workplace legislation imposes on them”(6) via “third party dissemination of information,” such as a labor union official; 2) use of industry workshop material to “demonstrate that the question of nonsmoker health harm from cigarette smoke is not yet proven” and that “there is no support for public smoking regulation based on the idea that ambient cigarette smoke harms the nonsmoker” (6); 3) “use of voluntary workplace and restaurant policies to block potential legislation” (6); 4) use of contacts and sports promoters to “demonstrate that discontinuation of cigarette sponsorship of sporting and cultural events would result in large ticket price increases, thus making such events less affordable for the general population” (6); 5) promotion of the manufacturers’ code of cigarette sampling practices through Tobacco Institute field staff and lobbyists to suggest that industry “opposes the distribution of cigarettes to children” (6); 6) and use of tobacco industry friendly Minnesota fire officials to fight the Minnesota Plan’s recommendations for the marketing of self-extinguishing cigarettes in Minnesota (6).

Promotion of Nonsmoking Through Economic Incentives and Disincentives

To attack the Minnesota Plan’s goal of promoting nonsmoking through economic incentives and disincentives, the tobacco industry prepared to discredit data used by the Technical Advisory Committee on Nonsmoking and Health which supported the Plan’s claim that smoking imposed extra economic costs on taxpayers and employers: “the assumption that smoking imposes economic burdens on the taxpayers and on employers is not supported by the data” (6). The tobacco industry’s tactics to implement this strategy were premised on the use of findings from its own studies, which in turn would be disseminated by third parties in order create doubt about the efficacy and validity of the data used by the Advisory Committee and fear about the consequences of implementing the Plan’s goal. Moreover, the tobacco industry sought (and later secured) the use of organized labor groups, including the AFL-CIO to promulgate claims of “regressivity” and “unfairness, “ as well as fear about a “potential bootlegging problem” (6).

Promotion of Nonsmoking Through Information and Evaluation Needs

The tobacco industry's final response was to befriend key Department of Health personnel in order to gain advance knowledge of implementation developments of the Minnesota Plan (11-13). Key Department of Health staffers (Mark Skubic, Admin. Assistant to Commissioner Ashton, and Daniel McInerney, Assistant Commissioner) extended an unusual level of access to the tobacco industry (12). Tobacco lobbyists reported that Mark Skubic, a smoker at that time, had a "close relationship" (14) with contract tobacco lobbyist William McGrann, and that Dan McInerney was a "personal friend," (14) of McGrann's.

Legislative Developments Toward the Enactment of the Minnesota Plan

Despite a clearly designed strategy to handle the Minnesota Plan on Nonsmoking and Health, the tobacco industry feared that the positive media attention given to the Plan (2) and the high credibility of MDH would lead to legislation to implement these recommendations. They were afraid that the circumstances would encourage State Representative Phyllis Kahn, author of the Minnesota Clean Indoor Air Act, and other legislators to "introduce the recommendations found in this study as an omnibus bill during the next session of the Minnesota legislature. It is felt that Representative Kahn is not alone in that desire" (2). Indeed, within two years after the Tobacco Institute's Midwestern Region Vice President Michael Brozek predicted the coming of numerous legislative initiatives to implement the recommendations of the Minnesota Plan (2), his prediction came true: "A raft of legislative issues in the form of taxation, regulation and prohibitions have found their way through the Minnesota legislative process" (5).

In the Spring 1985, just a few short months after the release of the Minnesota Plan for Nonsmoking and Health, several tobacco-related proposals were introduced (5). There were initiatives from the Minnesota Attorney General's office to create health warnings on smokeless tobacco products, a proposal from the Minnesota Department of Health to work on employer compliance assistance with the Minnesota Clean Indoor Air Act, school curriculum changes to promote the reduction of tobacco use experimentation among adolescents, community-wide grants to Community Health Services agencies to promote nonsmoking in local buildings, enforcement of MCIAA, and the evaluation of nonsmoking programs (5). In addition, there were several legislative proposals that were introduced. SF 38, sponsored by Sen. Diessner (DFL-Afton), proposed a 54 cent increase in the cigarette excise tax to generate revenues for the State Medical Assistance Fund; "tobacco related illnesses," were also designated at this time as conditions to be covered under Assistance Fund. SF 92 and SF 442, sponsored by Sen. Bertram (DFL-Paynesville), proposed to take 2.5% of existing cigarette tax revenue to create a "Fire Safety Account." SF 472, sponsored by Sen. D. Johnson (DFL-Cook), and companion bill, HF 556, sponsored by Rep. Dempsy (R-New Ulm), proposed a 72 cent tax on sample cigarettes, removal of the enforcement provision from the Unfair Cigarette Sales Act, and the repeal of the stamping requirements on Indian reservation sales of cigarettes. HF 662, sponsored by Rep. Hartinger (R-Coon Rapids), proposed the requirement of all smoking and nonsmoking spaces of public places to be aesthetically equal. HF 1058, sponsored by Rep. D. Carlson (R-Sandstone), proposed a 5 cent tax increase to generate revenues for the Minnesota Commission on Natural Resources (5).

Table 3-3: Goals, Objectives and Recommendations of the Technical Advisory Committee on Nonsmoking and Health’s Minnesota Plan for Nonsmoking and Health, September 1984

Goals	Objectives	Recommendations	Tobacco Industry Response
Promotion of nonsmoking through school and youth education			<ul style="list-style-type: none"> Promote the tobacco industry’s Help Youth Decide program. Persuade officials that this segment of the program is unnecessary because it is based upon faulty research, and would be costly and difficult to implement.
	Changing the school curriculum	<ul style="list-style-type: none"> Expose students in grade seven to at least six curriculum hours of nonsmoking education. Encourage and evaluate new approaches to nonsmoking education. 	
	Changing the school relationship with the community	<ul style="list-style-type: none"> Regulate smoking in schools in a manner which de-emphasizes the Design informational, regulatory and economic measures to promote nonsmoking in the community and to reinforce school programs. 	
Promotion of nonsmoking through public education			<ul style="list-style-type: none"> Discredit the media campaign by making claims that it is unnecessary, expensive and impractical.
	Promoting nonsmoking through marketing and communications techniques	<ul style="list-style-type: none"> Sponsor a long-term communications campaign, coordinated with regulatory, economic and health information approaches, to promote nonsmoking using social marketing principles (by MDH). Continue to provide the news media and other channels with scientific information on smoking and nonsmoking (by MDH). 	
	Promoting the health care system as teacher and role model	<ul style="list-style-type: none"> Treat smoking as a serious preventable/curable health problem and physicians must apply the same level of expertise used for other medical conditions. 	
	Changing the role of the community	<ul style="list-style-type: none"> Conduct community-wide campaigns for promotion of nonsmoking (by community organizations). 	

Promotion of the role of private and regulatory measures

Encourage businesses and other organizations to promote nonsmoking

- Establish a visible and successful nonsmoking policy for MDH employees which may be used as a model for other organizations (by MDH).
- Establish smokefree buildings in hospitals, clinics, physicians offices, long term care institutions, voluntary health organizations, MDH, and Community Health Service Agencies.
- Encourage nonsmoking workplaces in the worksite which go beyond the minimum requirements of the Clean Indoor Air Act (by employers).
- Increase the effectiveness of health care institutions serving as educational resources or image makers.
- Reject contributions and sponsorships which result in advertising for cigarettes and other tobacco products.

Making the Minnesota Clean Indoor Air Act more effective

- Prepare and distribute informative materials in the form of questions and answers on the provisions of the Act (by MDH).
- Expand MDH consultation, information, and enforcement program for the Act in the workplace.
- Provide a uniform set of rules to all workplaces (by MDH).
- Encourage restaurant owners to increase the size of nonsmoking sections beyond the minimum requirement of 30%.
- Stress the importance of legislation that would require cigarettes to self extinguish within five minutes.
- Enact national legislation that removes the restrictions on state regulation of tobacco advertising, and require cigarette labels be clear, specific and periodically rotated.

Controlling access to tobacco

- Enact a state law forbidding the distribution of free cigarettes.
- Ask Federal Government to establish administrative policies that are consistent with the MN Clean Indoor Air Act for federal properties in MN.

- Promote questioning or doubt and raise concerns with recommendations addressing the public smoking, fire, and advertising issues.

Promotion of nonsmoking through economic incentives and disincentives

Raising the cost of smoking

- Increase the existing 18¢ cigarette tax by 10¢ in FY 86 and increase the tax annually by 5¢ for the next five years.
- Send letters to MN congressional delegation recommending that the 8¢ federal tax on cigarettes become permanent and new legislation to increase the tax should be introduced.

Financing nonsmoking programs

- Obtain funding sources from multiple sources, including legislative appropriation.

Lower insurance costs for nonsmokers

- Communicate to the public nonsmokers' discounts on individual insurance policies through public health messages and insurance industry advertising (by Chief Executives and Medical Directors of insurance companies).
- Encourage property/casualty companies to consider giving discounts to nonsmoking households (by MDH and MN Insurance Information Center).
- Distinguish between smokers and nonsmokers for financially rewarding options, incentives or bonuses for employee benefits.
- Make business leaders aware of the reduction in insurance and employee benefits costs which are possible due to reduced smoking rates among employees.

Education about economic benefits of nonsmoking

- Inform employers about the excess costs incurred by smokers in the workforce, based on current research literature.
- Inform employers of strategies to encourage nonsmoking among employees through differential benefits and financial incentives favoring nonsmokers and by offering smoking cessation programs to smokers.
- Advise smokers to inquire if their life/health insurance plans cover the cost of smoking cessation programs.
- Inform employers and public about energy and financial savings from reduced ventilation costs where smoking is prohibited.

- Discredit data used to support claims that smoking imposes additional economic burdens on taxpayers and employers.

Promotion of nonsmoking through information and evaluation needs

Coordinating information resources

- Maintain a research database of scientific literature on cigarette smoking, including information on health consequences, patterns of smoking, prevention of smoking onset, smoking cessation, health economics of smoking and policies related to smoking (by MDH).
- Identify and facilitate access to educational materials related to smoking by educators, health professionals, and the public (by MDH).

Program impact evaluation

- Conduct annual telephone surveys (random digit dialing) to provide ongoing information on smoking prevalence, public knowledge and opinions, the penetration of programs to evaluate the state nonsmoking program (by MDH).
- Provide assistance to communities in conducting survey research prior to and after community nonsmoking campaigns (by MDH).
- Maintain resources to conduct or contract for other types of survey research such as to determine the location of programs, observation of behavior, compliance with Clean Indoor Air Act, placement of no-smoking signs and additional survey needs.
- Use a formal research design whenever possible to systematically implement recommendations in the Minnesota Plan.

- To create and maintain contact with key personnel in the Department of Health to stay alert with regards to developments of the Minnesota Plan.

The tobacco industry monitored these proposals closely and moved them from committee to committee in order to kill them (5). In addition to a sophisticated plan to defeat the Minnesota Plan, the tobacco industry also won influence with elected officials through campaign contributions. During the 1985-1986 legislative session, the tobacco industry reported contributed a total of \$5,600 to Minnesota elected officials; \$400 to Republicans and \$5,200 to Democrats. All of this occurred without action from the health advocates. There was, however, one set of legislative proposals that were more successful. SF 776, sponsored by Sen. Nelson (DFL–Austin), and HF 810, sponsored by Rep. Quist (R–St. Peter), proposed a 15 cent cigarette tax increase to generate revenues for youth education, community ‘stop smoking’ programs, workplace initiatives, a sampling ban, advertising bans, sewer construction, and mosquito control. Upon further debate and amendments to the proposal, this later became the 1985 Omnibus Act.

The Final Bill Emerges as the Omnibus Act

On May 18, 1985, the Minnesota Senate voted 36-28 to pass a 7 cent cigarette tax with 1 cent dedicated to tobacco control. However, on May 20, the last day of the legislative session, the House twice rejected the 6-cent tax increase for sewer projects, but passed the 1-cent tax increase for tobacco control programs on a 96-39 vote. On May 21, since the Senate and the House versions of the bill differed, Gov. Perpich called for a special legislative session (15), which approved a compromised Omnibus Act, which included a 5-cent cigarette tax increase to fund both sewer construction (4 cents) and tobacco control programs (1 cent) (16).

The Act’s key provisions were to promote nonsmoking through school programs, assistance to employers to comply with Minnesota’s Clean Indoor Air Act, grants to local health departments for community programs, and authorized the Commissioner of Health to “conduct a long-term coordinated public information program” to promote nonsmoking (see Chapter 4 for detailed discussion of the public information campaign). The Omnibus Act divided the nonsmoking programs between the Department of Education (school-based programs) and the Department of Health (compliance with MCIAA, grants to local health departments, public information).

Specifically, through the authority of the Commissioner of Education, the Omnibus Act provided state assistance to school boards for : a) in service training for public and private school staff, b) development of nonsmoking/tobacco use curricula and materials, c) community and parent awareness campaigns, and d) nonsmoking curricula and tobacco use prevention evaluation. Moreover, the Omnibus Act authorized the allocation of 52 cents per student in 1986 and 54 cents per student in 1987 fiscal years for nonsmoking education programs. Finally, the Omnibus Act authorized the Commissioner of Education in consultation with the Commissioner of Health to a) offer technical assistance to school districts for the development, implementation, and evaluation of nonsmoking education curricula and programs, b) disseminate the results of the evaluation of various nonsmoking curricula from the scientific literature to school districts, and c) to gather data from school districts about prevention programs and evaluation results (17).

In the Department of Health, the 1985 Omnibus Act authorized the Commissioner of Health to a) assist employers with the development of nonsmoking policies consistent with the MCIAA; b) assist local health departments with technical information (design, evaluation methods, materials) and training to local health departments, and other organizations that embark

on programs to promote nonsmoking; c) gather and distribute data and materials to prevent smoking; d) evaluate new and ongoing nonsmoking programs; e) conduct surveys in school-based populations to assess the epidemiology of smoking behavior, knowledge, and attitudes related to smoking, and the “penetration of statewide smoking programs; and f) report to the legislature on a biennial basis, on the implementation of the Act’s provisions, smoking rates in the population and in subgroups of the total population, evaluation activities and their results, and recommendations for additional activities (18). Finally, the Omnibus Act authorized the Commissioner of Health to do a long-term public communications campaign to promote nonsmoking in Minnesota (19). All of these provisions were based on the Advisory Committee’s recommendations.

The 1985 Omnibus Act generated about \$1.6 million/year (or \$0.37 per capita/year) for nonsmoking programs during the first five years. A major objective of these funds was to reduction of smoking among Minnesota youth by 30%, from 18% in 1986 to 13% in 1990 (20-22).

The Health Advocates’ Response

Three groups of health advocates—the newly formed Minnesota Coalition for a Smoke-Free Society 2000 (Coalition), the Association for Nonsmokers Rights (ANSR), and the Minnesota Medical Association (MMA)-- became active supporters of the 1985 Omnibus Act (23, 24). Specifically, in mid-spring 1985, responding to one of these procedural fights, Stuart A. Hanson, MD, president of the newly founded Minnesota Coalition for a Smoke Free Society 2000, pleaded with the Republican Speaker of the House, David Jennings to schedule a hearing on the Omnibus Act proposals:

We don’t understand why there has been no Hearing in the House. We don’t understand why it was buried in the Tax Committee instead of being referred to the Health and Human Services Committee. We don’t understand why smoking issues can’t be addressed in the House. . . We do understand that this bill is important to Minnesota citizens. We are asking Speaker Jennings to re-refer the bill and assure voters that there will be action (23).

In May, five days before the special legislative session that determined the outcome of the Omnibus Act, the MMA and the Coalition held a press conference to announce their support for a separate 1 cent cigarette tax increase for nonsmoking programs and to distribute 500 signed support petitions to the Legislature in hopes that the Act would pass (25).

Additional supporters included various state and local chapters of the American Lung Association and the Minnesota Medical Association Auxiliary. Since the cigarette tax increase was linked to the construction of sewer projects and nonsmoking programs, the health groups involved in the campaign to pass the Omnibus Act formed alliances with groups promoting environmental pollution control, maternal and child health programs, lead poisoning monitoring, and mosquito control promoters, all of whom were destined to receive funds from the cigarette tax increase (26).

ANSR played the most strategic role of all groups as the Department of Health relied on it

to organize the lobbying effort in the Minnesota Legislature to pass the Omnibus Act. Specifically, Mike Moen (the MDH official in charge of implementing the Minnesota Plan) sought out the help of ANSR and even coached ANSR on strategies and tactics involving the legislature (27). Because it had an extensive membership list, and because of its involvement with the development and political support that culminated in the passage of the Minnesota Clean Indoor Air Act ten years earlier, ANSR had the necessary grassroots infrastructure for legislative advocacy in support of the Omnibus Act. So, when the Minnesota House author of the Omnibus Act, Rep. Brad Stanius (Independent Republican-55A), removed his endorsement for the Act, ANSR surveyed members of the Legislature to find potential new sponsors (27, p.65). According to Jeanne Weigum, ANSR's Executive Director, "Moen ran off with [the survey results] into the night someplace. And based on people's answers on the survey started calling people and found an author" (27, p.65). The new sponsoring author was State Representative Allen Quist. With the exception of the Smoke Free Coalition, the other health groups (ACS, ALA, AHA) had grave concerns with becoming legislatively involved, because they feared they might lose their nonprofit status. As Jeanne Weigum has stated elsewhere, "[They] were concerned that their organization would be jeopardized financially, or their nonprofit status would be jeopardized. And I think that probably Mike [Moen] picked up that there was enough fear, that they [the voluntaries] weren't going to take any leadership anywhere" (27, p.64). ANSR's nonprofit status was never challenged. ANSR's grassroots resources were used by the Minnesota Department of Health to develop a legislative advocacy strategy to promote the passage of the Omnibus Act.

During the debate on the proposed 1985 Omnibus Act, it seemed that everywhere on the Capitol the health groups would turn to, they faced insurmountable challenges from legislative committees, Weigum observed:

[the Omnibus Act] did pass, in almost the form we wanted it. It was horrific work. We went to more committees than it was possible to imagine. We just kept going to more and more committees and that was part of industry's strategy to kill it. But we just somehow kept squeaking by (28).

In short, the Minnesota Coalition for a Smoke Free Society 2000 and ANSR recognized and defended the significance of the health frame of the Omnibus Act, pursued a persistent and convincing legislative strategy that outmaneuvered the tobacco industry's legislative influence, and led to the passage of one of the first comprehensive tobacco control statutes in the nation.

Lessons Learned from the Tobacco Industry's Response to the Minnesota Plan

The tobacco industry's response to the Omnibus Act illustrates three tactics used to fight the Department of Health's proposed cigarette tax increase. All of these tactics were used to promote the tobacco industry's basic claim that "the basis of this legislation is flawed, inequitable and downright incorrect when estimating revenue levels and economic impact" (5).

First, the tobacco industry used its experienced contract lobbyists to stimulate procedural fights in the Legislature to move the Omnibus Act proposal (SF 776/HF 810) from committee to committee so that it would miss the April 4, 1985, deadline for final committee clearance and subsequent floor debate (5). Specifically, in the Senate, while the tobacco industry was unable to

stop passage of the Omnibus Act proposal (SF 776), in the Health and Human Services Committee, it instigated its re-referral to the Senate Education Committee, and from there it was prepared to re-refer it to the Senate Finance Committee and then to the Senate Tax Committee so it could try to stop the Omnibus Act proposal at the Senate Finance Committee (5). In the House, HF 810 was first considered in the House Health Committee; industry (through House Speaker Jennings) re-referred it to the more tobacco industry friendly House Tax Committee, whose chair, Bill Schreiber (R-Brooklyn Park), refused to schedule a hearing for several months. Fearing that it would be impossible to kill HF 810 in the House Health Committee, tobacco industry lobbyists were recommending that it be moved through the following House Committees: House Education, House Appropriations, and House Taxation (5). Michael Moen, head of the Department of Health's Section on Nonsmoking and Disease Prevention, observed, "Procedural fights were raised to dull out and kill the legislation without having to debate its merits" (29).

The second tactic used by the tobacco industry to fight the 1985 Omnibus Act proposal was mobilization of Minnesota smokers and of Minnesota-based tobacco employees to oppose the Act. One such mobilization involved the legislative counsels from Minnesota tobacco wholesalers and RJ Reynolds as well as retailers who generated phone calls and letters to House Tax Committee Chair Bill Schreiber (R-Brooklyn Park) (5). The result was referral of HF 810 to the House Tax Committee by Speaker Jennings and refusal by House Tax Committee chairman Schreiber to schedule a hearing for it. Subsequently, he scheduled a hearing after health advocates pressured his office with phone calls. In another mobilization attempt, prior to the Senate Finance Committee hearing, RJ Reynolds, Inc. mobilized Minnesota smokers by mailing postcards pre-addressed to Senators on the committee expressing opposition (26). Philip Morris mobilized its Minnesota employees to call or write their state representative or senator – without being identified as a Philip Morris employee – to oppose the bill on grounds that it violated smokers' rights and imposed excessive taxation on cigarettes (30-33). On May 8, 1985, Dale E. Miller, of Philip Morris's sales field office in Minneapolis, wrote the following to State Senator William Bellanger and State Representative John Himle:

As a smoker, I am fed up with the proposals for additional taxes on cigarettes. If anti-smoking groups wish to develop or increase anti-smoking education, let them formulate a program that is equally supported or paid by nonsmokers. Their current actions are hypocritical, biased and completely unbalanced. Particularly in a year with major state surpluses and proposed tax cuts of \$800 million to \$1 billion. I also opposed a cigarette tax increase of any kind and most particularly to pay for sewer reconstruction in one city for the same reasons. As a constituent, I would expect my Senator and Representative to oppose any such bills (31).

Miller did not mention his affiliation to Philip Morris, and instead listed his address as one of a constituent from "4001 Heritage Hills Drive, Apt. # 203, Minneapolis, MN 55437" (31, 32).

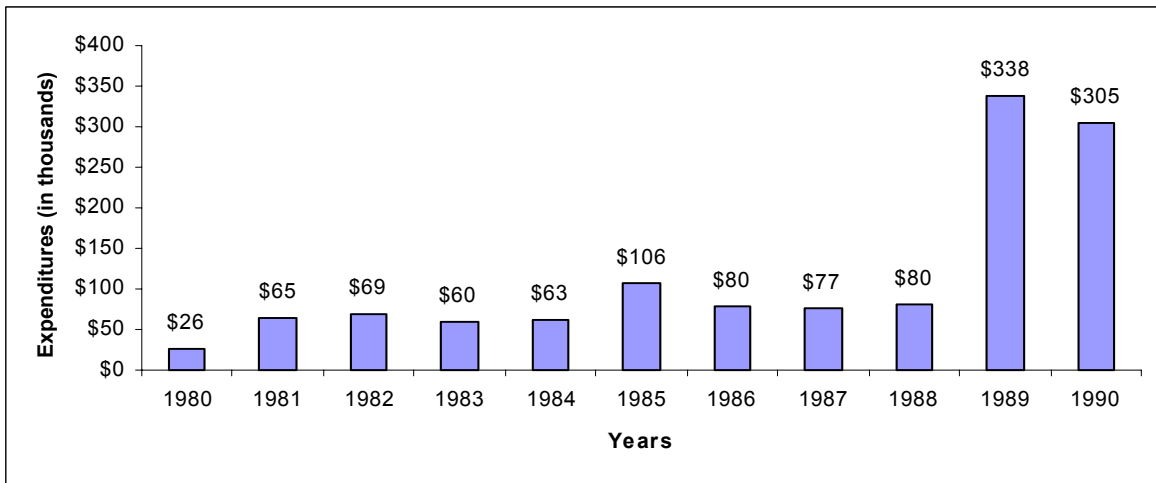


Figure 3-1: Tobacco Industry Expenditures in Minnesota Before and After the Passage of the 1985 Omnibus Nonsmoking and Disease Prevention Act (in thousands of dollars) Source: Tobacco Institute Budgets, 1980-81, 1982-86, 1987-88, 1989-90

Notes: 1980-1984 average annual expenditure=\$56,600; 1986-1990 average annual expenditure=\$175,900

The third tactic was to use campaign contributions to influence the legislative outcome of the 1985 Omnibus Act proposal. During the 1985-1986 legislative session, through its contract lobbyists in Minnesota, the tobacco industry contributed \$1,750 to the Republican Party and about \$4,800 to the Democratic Party. In addition, it contributed at least \$700 to state representatives and over \$4,000 to state senators. (See Appendix C for all political expenditures by the tobacco industry in Minnesota.) In 1985, the Tobacco Institute budgeted \$63,000 for its chief Minnesota contract lobbyist (Thomas Kelm) as well as additional funds for the two Minnesota tobacco wholesale trade groups (Minnesota Candy and Tobacco Distributors Association and Northwest Candy and Tobacco Distributors Association) for lobbying purposes (34). While, on average, the tobacco industry budgeted \$56,600 per year to protect its market in Minnesota prior to the 1985 Omnibus Act, it tripled its annual average budget to nearly \$176,000 after 1985 (Figure 3-1). A similar budget trend can be observed in the tobacco industry’s budget to fund the two major tobacco wholesale associations in Minnesota: while before the passage of the 1985 Omnibus Act the tobacco industry spent, on average, about \$25,500 per year to fund these wholesale groups, after 1985 it spent \$31,500 per year. Despite these efforts, the tobacco industry lost the fight against the 1985 Omnibus Act.

Conclusion

The publication of the Minnesota Plan for Nonsmoking and Health marked the beginning of a new era in tobacco control policy and politics in Minnesota and in the United States. The tobacco industry’s extensive and sophisticated campaign to derail the funding and implementation of the recommendations of the Technical Advisory Committee, the author of the Minnesota Plan, illustrate clearly how rapidly the tobacco industry was able to adapt to “revolutionary” policy developments in order to protect its consumer base and its tobacco sales in Minnesota. Thus, the

development, publication, and implementation of the Minnesota Plan served as a training ground for the tobacco industry, and also for health advocates to radically revise their strategies and tactics to promote two diametrically opposed goals: the protection of the tobacco industry's market prerogatives, and the protection of public health from the consumption of a very addictive and socially costly commodity.

The tobacco industry took a multiple strategy approach to gauge the significance of the Minnesota Plan, to fight funding for its implementation, and to engage in a long term tactic of removing labor and business organizations from the list of supporters for the Plan. To fight the funding proposals that culminated in the 1985 Omnibus Act, the tobacco industry engaged in procedural fights that resulted in the moving of the Omnibus proposed legislation from committee to committee until it failed to meet the deadline of committee clearance and floor debate. In addition, the tobacco industry mobilized letter writing campaigns among smokers, tobacco retailers and wholesalers, and even tobacco company employees to kill funding for the implementation of the Minnesota Plan. To fight the long-term implementation of the recommendations of the Technical Advisory Committee, the tobacco industry drafted an extensive public relations campaign to discredit the research basis of the Plan, to organize opposition from the ranks of tobacco retailers and wholesalers in Minnesota, to organize a small town newspaper editorial campaign to promote the argument that the Plan contained extreme measures against smoking, and to attack legislators supportive of the Plan in Minnesota within their own legislative districts.

The development and funding of the implementation of funding for the Minnesota Plan served as a training ground for the health advocates. The Minnesota Department of Health's initiative in the mobilization of legislative advocacy among the health advocates, and most notably, the early recruitment of ANSR to gauge the legislative pulse of support for funding the Plan among its members and legislators served as the quintessential approach to ensure the success of that mobilization. Thus, ANSR, MMA, and the newly formed Coalition for a Smoke Free Society 2000, actively supported the lobbying effort toward the passage of the Omnibus Act. And although only 1 cent of the 5 cent cigarette tax increase that was required by the Omnibus Act went to support nonsmoking school based education and the a public communications campaign, the implementation of the Plan was effective in nearly achieving the smoking prevalence reduction that it sought in the first place. Had the Department of Health and the health advocates pursued a more refined set of strategies that would have secured the passage of a 7 cent tax increase (the original tax increase sought by MDH), full funding for the implementation of the Plan would have been extended beyond the five years span and therefore generated a more robust evaluative data to show more clearly the effectiveness of the Plan.

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Chapter 4: The First Large State Tobacco Control Campaign in the United States

Upon the passage of the Minnesota Plan for Nonsmoking and Health, the Department of Health now had the task of implementing the Plan. One piece of the Plan was the development of a media campaign “coordinated with regulatory, economic and health information approaches, to promote nonsmoking” (1). The tobacco industry clearly was threatened by the media campaign. A September 1984 Tobacco Institute document stated: “The [Minnesota] plan recommends an aggressive communications campaign aimed at smokers, nonsmokers, the medical and health community, and civic organizations” (2). As noted in Chapter 3, the tobacco industry used a long term set of strategies to fight the implementation of the Minnesota Plan and its paid media campaign. Even though the anti-smoking media campaign almost met the original objectives (reduction of youth smoking rates by 30% by 1990) (3), the campaign was eliminated. The tobacco industry knew that the Minnesota Plan, including its media campaign, was a long-range plan, so it adapted its strategy by fine-tuning its tactics of framing tobacco control issues in terms of economics, government intrusion into individual rights, and excessive regulation (2). The tobacco industry succeeded mainly because health advocates did not successfully defend the anti-smoking campaign against claims of a budget crisis, largely due to the loss of leadership when Sister Mary Ashton and Michael Moen left the Department of Health. Second, the Department of Health underestimated the power of the tobacco industry and its Minnesota-based lobbying force.

The Origins of the Campaign

The first media campaign, formally known as the “Promotion of Nonsmoking through Marketing and Communication Techniques,” was one of five components of the Minnesota Plan (see Chapter 3 for the other components of the Minnesota Plan). The Advisory Committee promoted a cooperative spirit in carrying out its recommendations and called on the Minnesota state government, health care facilities, business, labor, voluntary organizations, communities, and individual smokers and nonsmokers to join forces towards the implementation of these recommendations (1).

The Public Education Plan: Promotion of Nonsmoking

The public education component of the Minnesota Plan on Nonsmoking and Health (Minnesota Plan) focused on five areas: promotion of nonsmoking through marketing and communication techniques; the health care system as a teacher and role model; the role of the community; advice for smokers; and advice for nonsmokers. The Advisory Committee reviewed the pertinent literature on the tobacco industry's marketing techniques (which had become available in the early 1980s through a subpoena by the Federal Trade Commission), and learned that, among other things, the tobacco industry planned to "associate particular brands with a life style that is 'masculine, contemporary, confident, daring, adventurous, mature' " (1, 4). In addition, the Advisory Committee became cognizant of one tobacco industry plan which advised that to teach young 'starters,' "present the cigarette as one of the few initiations into the adult world," and "relate the cigarette to 'pot', wine, beer, sex, etc." (1, 4). Tobacco industry advertising stressed images of virility, sex appeal, athletic prowess, relaxation, and wilderness scenes in association with cigarettes.

Premised on an understanding of the tobacco industry's marketing strategies, the Advisory Committee reasoned that a strategy for marketing nonsmoking should be based on the "problems which are to be solved by the nonsmoking product" (1). Moreover, the Advisory Committee used the research available at that time to suggest that smokers and potential smokers seeking to solve or attempting to cope with at least four main problems-"smokers have the problem of social isolation; smokers have the problem of knowing the health effects of smoking; smokers have the problem of cost of cigarettes and their health effects; and, smokers and nonsmokers want an enhanced self-image" (1). The Advisory Committee concluded that nonsmoking and smoking cessation provide very attractive alternatives to the problems smokers have; therefore they may be marketed in the same manner as other products and behaviors through "modern communication techniques to strengthen the images in the public's mind of nonsmoking as a solution to one or more of the four kinds of problems"(1).

As a condition for a successful campaign, the Advisory Committee suggested that the marketing of nonsmoking should be based on a long-term program with continuity of messages, images, goals, and implementation. The Advisory Committee called for continuous funding and for the incorporation of background survey research and evaluation into the program so that solid information is secured and the results are demonstrable within a reasonable amount of time. The ultimate objective was to generate results showing attitudinal changes in the short run and increased nonsmoking behavior in the long term (1). This condition was also premised on the distinction between marketing and information. The latter had an intellectual understanding direction while the former was directed toward feelings and action. Therefore, traditional approaches, such as public service announcements (PSAs), were not enough. The planners of this campaign recognized that a marketing strategy, not an information campaign, was needed to promote the desired nonsmoking lifestyle in Minnesota. It was important "to associate nonsmoking with popular teenage themes, including an element of rebellion against the (by implication-- older 'smoking' generation)" (1).

The campaign targeted primarily young Minnesota women ages 20-29 because at that time this group comprised the largest single block of smokers in Minnesota (141,000 of 812,000 total smokers). Minnesota men in the age group 20-29 made up the second largest block of smokers (110,000). Overall, 390,000 women (ages 20-79) and 422,000 men (ages, 20-79) were smoking in Minnesota. Among the people who quit, 262,000 were women and 404,000 were men ages 20-79. The Advisory Committee also noted that the highest smoking rates occurred in certain occupational groups such as the unemployed, managers/administrators, male sales workers, female clerical workers, operations, crafts, laborers, and service workers. Professional/technical workers and farmers had the lowest smoking rates. The Minnesota Plan did not target white or blue-collar workers (1).

The implementation plan of the campaign featured a number of tasks. First, a market situation analysis to gather, analyze, and segment relevant marketing information from a wide variety of published sources. Second, research to search for available nonsmoking behavioral research to be used as a framework for the development of custom-made behavioral research; this research was to assist planners in the determination of "what communication stimuli will cause a literal change in smoking behavior [of Minnesota youth]" (1). This work was to become the foundation of the communication program; the Advisory Committee envisioned that this research would enable the planners to figure out "what people will actually do, not what they say they will

do" (1). The Advisory Committee wanted to create specific and measurable goals, use a coordinated marketing approach for all Minnesota Department of Health communications, integrate resources and energies uniformly across all nonsmoking activities, and keep them focused on the same goals. In addition, implementation tactics were expected to be premised on specific communication activities which were to be also specific by content, cost, and timing. The techniques to be used included advertising, direct mail, seminars, public relations, literature, audio/visual, display material, white papers, training materials, promotions, and media liaison. The Minnesota Plan also envisioned the use of specific measurement tools to monitor the success of the program. The Advisory Committee estimated that in order to develop and implement a complete communication program across the state, a budget of about \$1 million would be necessary. The time line for the development and research of this program would take about half a year and involve outside consultants as well. Finally, the Advisory Committee projected that in order to have a successful marketing communication program in place, the State of Minnesota must be committed a) to a long-term anti-smoking campaign, and b) to the allocation of adequate resources toward the effective implementation of the program (1).

The Scientific Information Plan: The Power of 'Black Ink' Information

While the Public Education Plan was premised on a marketing communication program to promote nonsmoking as the basis for a healthier lifestyle in Minnesota, the Advisory Committee recommended that "The Minnesota Department of Health should continue to provide scientific information on smoking and nonsmoking on a regular basis to the news media and other channels" (1). This recommendation was premised on a two things: a) information must be a necessary minimum condition for behavioral change, as witnessed from the power of 'black ink' information to reduce substantially the smoking rate of physicians and other professional with postgraduate education from 1964 to 1984, b) availability of continuous information on new findings from studies through the news media, voluntary organizations, speaking opportunities and community health agencies, play a significant role in the promotion of nonsmoking (1). All this information should be released through different media and formats from "positive images" and should "shift toward methods of quitting and other 'how-to do its' whenever possible" (1). Next, we turn to a description and discussion of the marketing communication campaign during three legislative biennia (1985-86, 1987-88, and 1989-90).

The Media Campaign During the 1985-1986 Biennium

During the 1985-1986 biennium the Minnesota Department of Health (MDH) sought to promote nonsmoking through a public communications and education program using sound marketing principles and coordination with additional regulatory, economic, and informational programs (5). The mission of the program was to market a tobacco-free lifestyle to Minnesotans. Thus, in the spring of 1986, MDH added market research and mass media messages to promote nonsmoking to Minnesotan youth (ages 10-18) and pursued an extensive baseline survey to measure tobacco use among them. In addition, MDH staff became very involved in the conceptualization of a basic frame for conducting market research and for producing their own paid media messages for adolescent, as well as to build upon PSAs (i.e., free public service announcements) created earlier in 1984 by "A Smoke-Free Generation" program in Sweden. However, an outside agency edited preexisting video footage, bought TV airtime for paid spots, and trained MDH staff on how to do their own media buying (5).

The first campaign took place between May and June 1986 with the dual goal of promoting nonsmoking among youth and collecting market research data via offers through the ads for a free "Smoke-Free Generation" T-shirt. This campaign resulted in the creation of a large dataset with 42,000 respondents on the viewing habits of Minnesota youth including variables on age, tobacco use, gender, and location of the viewing youth. In addition, MDH received over 660,000 phone calls in response to the non-smoking campaign. This response showed the superiority of purchasing television air time strategy over use of free donated PSAs. MDH attributed such success to cooperation between governmental agencies, non-profits, private industry, and TV media. The goal of the campaign was to reach all geographical locations of the state using TV ads and targeting the 8 to 18 year olds. MDH chose television because at that time, on the average, American adolescents were spending 6 hours daily and 30 hours weekly watching television. The media messages were determined on the basis of MDH guidelines and followed a paid airtime placement strategy, a major innovation in the field at that time.

MDH planners reasoned that the message, content and development must be positive so as to promote nonsmoking and not denigrate smokers. The rationale was premised on the notion that campaign messages were promoting nonsmoking as a solution to teenage problems (need to belong). Cigarettes and smoking were not to be displayed anywhere in the messages (no need to promote the "product"). Design of messages did not portray the delivery by an authoritative entity such as a health department. Additional sources of information that supported this rationale included research on the failure of factual and fear based information, and research suggesting teen perceptions of invulnerability to adult health risks. Message development was founded on the following criteria: a) message must be based on knowledge of what the audience already knows, and must use language the audience understands; b) message's motivational structure must be realistic, appeal to what the audience is most inclined to do and what the audience already knows; c) message must establish a proper action structure and state with clarity what is expected from the audience (1). Moreover, MDH planners used focus groups to gather information on the target audience, to facilitate decisions about which role models and which TV spots to use, and to help in the evaluation of the conceptual framework of the campaign. The expected outcome was to create measurable campaign results which can be used in future campaigns.

MDH planners designed messages that adhered to the following criteria: a) show youth in their "natural habit" wearing clothes they "always wear," saying things the "always say," b) use no authority figures but popular role models such as athletes, TV/movie stars, and musicians to encourage behavior change as well as "average neighborhood kids" delivering nonsmoking messages, c) use upbeat, commercial styles with popular music, strong graphics, and fast paced editing, and d) messages were "designed to compete with the highest quality commercials on television" and were aired next to ads by McDonalds and Coca Cola (1). The result was the creation of five-30 second and two-15 second TV spots. The nonsmoking campaign was premised on the testing of the hypothesis that media-based health education efforts could be vastly improved if equal priority was assigned to encouraging message reception as is assigned to message content and style. To secure that reception however, "funds were budgeted for the purchase of commercial television airtime." The media placement strategy called for the facilitation of TV ratings services that helped place the first two-week long placement. Two additional placements were premised on actual viewer responses and phone orders for T-shirts (Respondents were asked what show they were watching when they saw the ads, subsequent ads were placed in a more effective manner. MDH bought airtime from 23 TV stations permitting

coverage of the entire state. TV stations were held accountable for confirming in writing the exact time each spot was broadcasted and give explanations for failing to do so, as well as offering a comparable time to broadcast the spot. Twin Cities TV stations received over half of the funds allocated to buying airtime because they had a higher coverage area than non-metro TV stations. Finally, in terms of training, MDH's goal was to use campaign to train its staff on how to purchase media time for health education messages.

Funding for the campaign, which came from the 1985 Omnibus Act, was allocated to nonsmoking programs in two departments. During the 1985-1986 biennium, total allocations for Minnesota Department of Health was \$2,657,900 (Table 4-1) (5). The Department of Education received \$1,324,000 “to provide technical assistance and financial support to school boards for tobacco-use prevention programs including training of teachers and staff, curriculum materials, community and parent awareness programs, and evaluation of curriculum programs” (5).

Table 4-1: Funding for Nonsmoking Programs During the 1985-1986 Biennium

Program	Total Funding
Total Allocation for the Minnesota Department of Health	\$2,657,900
Public Communications and Education	\$1,500,000
Statewide and Community Nonsmoking Grants	\$500,000
Evaluation	\$352,900
Minnesota Clean Indoor Air Act worksite assistance	\$65,000
Administration and Technical Assistance	\$240,000
Total Allocation for the Minnesota Department of Education	\$1,324,000
TOTAL Funding in 1985-1986 Biennium	\$ 3,981,900

Source: Minnesota Department of Health, 1987

The Media Campaign During the 1987-1988 Biennium

November 1988 marked the beginning of MDH's fifth market research and advertisement project campaign. These campaigns represented the largest committed use of mass media to promote tobacco-free lifestyles in the US. Their source of funding for this biennium continued to originate from the one cent cigarette excise tax passed in 1985. MDH's 1989 report states that the purchasing of paid ads had two advantages: a) MDH could place them when they have the largest impact, and b) negotiate unpaid "bonus" time for equally advantageous time slots (3). In July 1988, MDH selected Cambell-Mithun Advertising for the two year contract; at the same time, this agency merged with William Esty Co. of New York which had a huge contract with Brown and Williamson Tobacco. As a result of this conflict of contracts, MDH awarded the contract to Martin-Williams instead. The campaign advertisements focused on youth who were not yet regular tobacco users. The campaign's objective was to prevent "the onset of use and the transition from experimentation or occasional use to habitual use."

Department of Health's Emphasis on Research

In its 1989 report to the Minnesota Legislature, MDH continued to emphasize the role of research in the development of the media campaign strategies (3). MDH developed its own research strategies by focusing on target groups and testing first what messages and production styles work best. This research on strategies was prompted from the lack of information in the literature. Beginning in the spring of 1987, MDH used behavioral risk assessment questions in its media campaign, including asking about tobacco use among family and friends, individual respondent's tobacco use, and his/her intention to use tobacco in the future. In focus groups arrangements, MDH used behavioral risk questions to produce a maximum fit between the study participants and the profile of the target group. Mall intercept studies were used to place participants into risk groups according to their attitudes, behaviors and environmental factors relative to tobacco use. The end result, according to MDH, was the ability to determine if these groups respond to the ads or ad concepts differently (i.e if specific ads had different behavioral impacts on youth smoking habits) and use that information to plan future campaigns (3).

Target Groups and Approaches

From 1986 to 1987 the media emphasis moved from a general focus on 8-18 year old boys and girls to boys and girls 12-13 at risk for smoking and boys 12-13 at risk for using chewing tobacco. The approach has avoided "an authoritarian approach to prevention." The 1986 Smoke Free Campaign's theme was "being a nonsmoker is fun, cool, hip, and smart and makes you part of a smoke-free generation." However, during the 1987 Athletic Tournaments Campaign, which focused on two separate groups -- adolescent and pre-adolescent groups a) at risk for smoking and b) at risk for using chewing tobacco different themes were developed. These themes emphasized the social and personal consequences of smoking and chewing-bad breath, stuck chewing tobacco in one's teeth, clothes and hair smell like smoke, tobacco-stained teeth; also emphasis was placed on personal consequences such as addiction and spending a lot of money on tobacco. We list the 1987-1988 advertisements and their specific emphases in the next section.

1987-1988 Advertisements

During the 1987-1988 biennium, illustrations of billboards: "Hair Pollution," "Smoking is a Colorful Habit," "Get Bad Breath in Two Flavors," "Kiss the Girls and Make Them Cry," "The Only Brownie Points You Get For Chewing Tobacco." In addition to billboards, television and radio advertisements emphasized different themes, which are displayed in Table 4-2 (3). The advertisements chosen for this biennium continued to emphasize that smoking is a socially undesirable behavior and that such behavior should not be part of a healthy lifestyle for Minnesotans.

Table 4-2: Themes from the 1987-1988 Tobacco Control Advertisements

Advertisement	Media Type	Message
Clothes	Television	Smokers' clothes smell
Coin Drop	Television	Emphasis on cost of smoking
Dominoes	Television	Emphasis on smokers have bad breath
Shake	Television	Like alcohol and drug addictions, addiction to cigarettes is hard to shake
Doesn't	Television	Emphasis on youth underestimates of the number of people who smoke
Harmless	Radio	Emphasis on harm of chewing tobacco
Pressure	Radio	Emphasis on peer pressure in the initiation of smokeless tobacco use
Sliding Hill	Radio	Emphasis on addiction-smoking is hard to stop even when you try
Divided Parties	Radio	Emphasis on how smoking is becoming socially less desirable over time

1987-1988 Campaign Media Strategies

The overall goals of the 1987-1989 campaign were a) to achieve statewide advertising coverage with the least money; b) to plan to use the best media, the best times and locations, and amount of advertising needed; c) to assess degree of reaching target groups vs. advertising options; to make maximum use of "bonus" placements (free ads aired during day and prime-time); to use of local media (3). To that end advertisement agencies were used as brokers to buy air time and space. In 1987, MDH focused on two specific campaigns: an Athletic Tournaments Campaign and a Billboard-Radio Campaign. The Athletic Tournaments Campaign focused on the televising of the State High School Hockey Tournament, the State Girls's High School Basketball Tournament, and the State's Boys' High School Basketball Tournament. In addition, MDH bought TV air time during the opening game of Minnesota Twins baseball game-high adolescent viewership; 65% of those contacted by phone said they would or they had watched the Hockey Tournament (3).

During the 1987-1988 biennium, the media campaign used television as the primary medium for the adolescent target audience. In its report to the 1989 Legislature, MDH suggested that it relied heavily on television ads because a) of the strength of its visual presentation of the campaign with teenagers, b) because it is the most frequently used medium, and c) because television carries the message to the largest possible number of people in the target audiences (3). Advertisements were placed during prime time and at times that ensured the highest viewing teen audiences in order to link teen identification of the ads with "their" programs. Campbell-Mithun reserved television time for the ads during special high school athletic events and concerts. In the summer of 1987 MDH ran a combination of billboard and radio campaign. The radio spots cost \$116,276 and to that an additional \$62,967.32 was contributed as bonus radio spots (3, p.57). The billboard medium was selected because it has high visibility during the summer months and represented a counter strategy against the tobacco industry's extensive use of billboards. The Campbell-Mithun agency found that the younger the adult the more likely to watch billboards; post-buy analysis showed that 92% of the target group saw the billboards (almost saturation) (3).

Radio was selected as a secondary medium because of its capability to reach specific segments of the audience; 71% of the target audience heard the radio (3) with a frequency of 14.5 (MDH defined "reach" as "the percent of the target group who have been exposed to a media campaign" and "frequency" as "the average number of times a target group member has been exposed to an ad campaign's message" (3). The rationale for this choice was premised on the notion that "people are loyal to the radio station formats they listen to," and therefore, if advertisers place ads on the correct radio stations their target groups are most likely to hear those ads. Moreover, radio was chosen because national poll surveys such as the Rand Youth Poll ranked radio as "first across all media" (3). Overall, during the 1987-88 TV-Radio campaign, the four week reach for teens was 71% with a frequency of 14.5, while the reach for women, for the same period, was 59% and the frequency was 7.5 " (3).

The Media Campaign During the 1988-89 Biennium

During the 1988-89 biennium MDH ran several radio and television advertisements some of which were linked to earlier campaigns. Two radio and five television spots targeted boys and girl at risk for smoking; three radio spots were targeted at boys at risk for chewing tobacco; two radio spots targeted young women. Martin-Williams, the advertising agency, purchased advertising air time according to MDH defined priorities which placed teens at risk at the top spending category (6). Martin-Williams bought radio air time that maximized the listening time of the targeted audiences-young teen listen mostly to teen-formatted radio stations and listener-ship is highest after school, early morning, and on weekends. Young women, on the other hand, prefer to listen to "contemporary hit radio," and "album-oriented rock" formats, with the highest listener-ship during commuter driving times, evenings, and Saturday mornings and afternoons. Moreover, Martin-Williams bought television air time between 3:30 pm and 10:00 pm, a period that receives the highest Nielsen ratings for this target audience. Additionally, the ad agency bought cable tv time in order to increase the frequency of exposure to spots among teenagers that watched cable tv. Finally, the ad agency negotiated free bonus placements of radio and TV spots in January and February 1989, and avoided purchasing air time during Thanksgiving and the week after it (6).

During the 1989-1990 media campaign the Minnesota Department of Health targeted different audiences for its tobacco control ads. In 1989 tobacco control ads reached 95% of boys and girls at risk for smoking (frequency 50.6 times), 65% of boys at risk of using smokeless tobacco (frequency 23.9 times), and 70% of young women at risk for smoking (frequency 31.5 times). In the 1990, the campaign focused on boys and girls (reach 95%, frequency 48.0 times) and on boys at risk for using smokeless tobacco (reach 69%, frequency 19.4 times)" (6). In addition to varying the advertisement target groups, the Minnesota Department of Health also varied the budgetary allocations. In the fiscal year 1989, the \$500,000 media campaign budget was allocated as follows: teens/nonsmoking 62%; women/smoking 24%; teens/smokeless 14%. In the fiscal year 1990 the media budget was based on a different allocation: teens/smoking 58%; women/smoking 30%; teens/smokeless 12% (6).

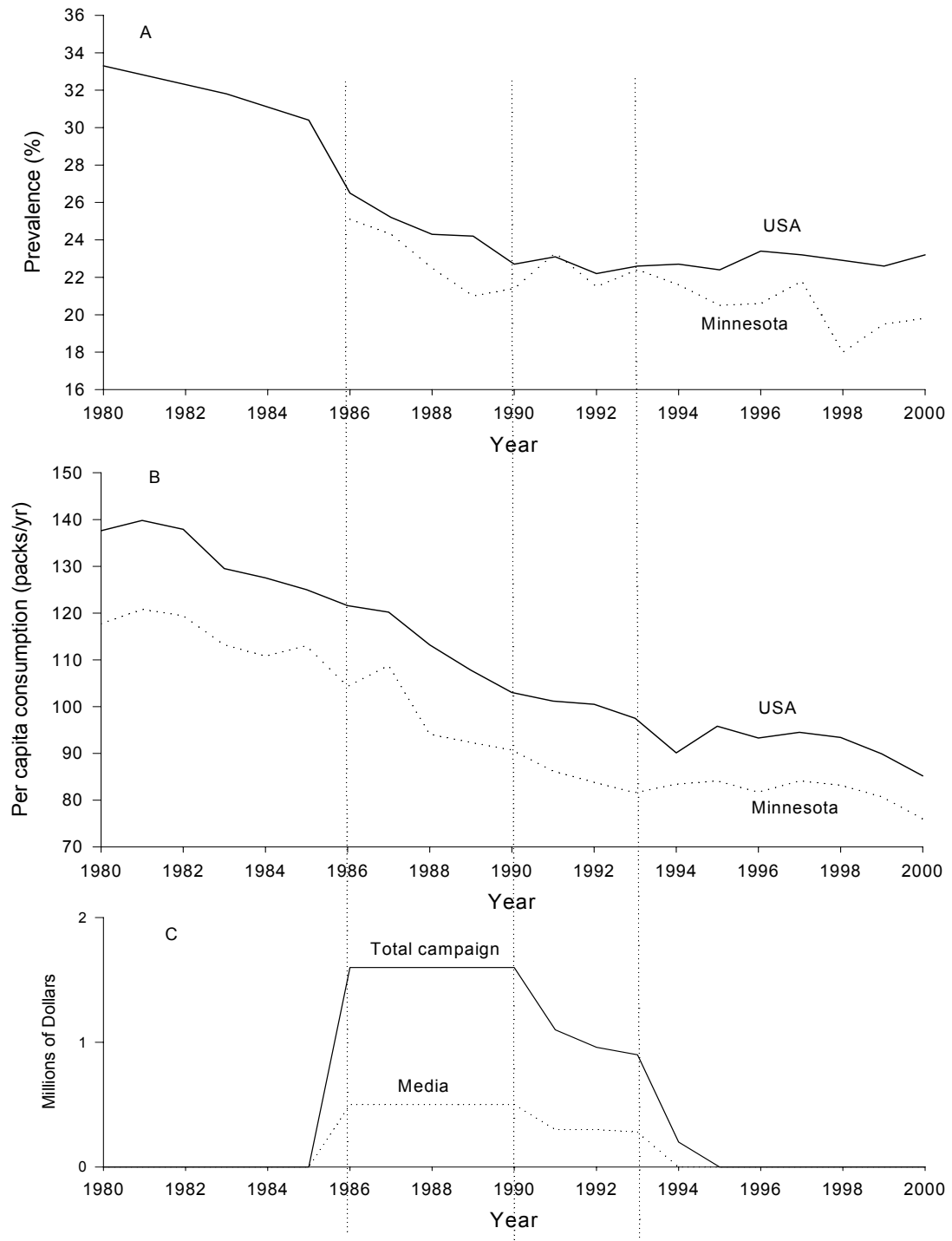


Figure 4-1: (A) Smoking prevalence (MMWR, 1991); (B) Per capita cigarette consumption (The Tobacco Institute, 1998 and Orzechowski and Walker Inc., 2001); (C) Appropriations to the Minnesota Department of Health for the tobacco control program and its media component (MN Dept. of Health, 1987-1989)

1991 Media Campaign

During the 1991 fiscal year the media budget experienced a 34% cut from its 1990 allocation which meant a 42% reduction in the Minnesota Department of Health media placements. As a result several target groups were eliminated: the boys at risk for using smokeless tobacco, as well as the cable tv ads targeting women and high school sport sponsorships. Overall the 1991 fiscal year media budget allocated 57% of its funds for ads targeting teens at risk for smoking, and 43% to women at risk for smoking (6). Furthermore, the 1991 media campaign for teens spent 60% of its budget to buy "early fringe hours" and 40% to buy prime air time. For women, 50% of the budget was spent to buy daytime hours, 35% in prime time, and 15% in late fringe hours (6). This cut compromised the efficacy of the first media campaign.

Effectiveness of the Anti-Smoking Media Campaign

From 1986 to 1989, while the tobacco control program was fully funded, the adult smoking prevalence rate dropped 4.1% (from 25.1% to 21.0%), while the rest of the US experienced a decrease of only 2.3% (Figure 4-1A) (7). From 1986 to 1991, smokeless tobacco use among youth decreased from 9% to 3%. Per capita cigarette consumption also fell rapidly while the campaign was running (Figure 4-1B) (8). After the elimination of the media campaign and the tobacco control program, Minnesota smoking generally followed the rest of the nation.

The Tobacco Industry's Long-Term Tactics to Destroy the First Media Campaign

Phillip Morris had recruited Minnesota smokers to fight the Democratic Governor Rudy Perpich's proposed a new cigarette tax hike of 18 cents in 1987. They distributed form letters and stamped envelopes to Minnesota smokers to mail to their legislators to protest the tax hike. The letters contained a variety of messages with the names and addresses appearing on different locations on the letterhead using different color papers to give the impression that they were independently written letters. State Representative Wes Skoglund (DFL, District 61B) exposed the fact that Philip Morris was behind this letter writing campaign (9). The proposed cigarette tax increase was passed in June 1987 as a 15-cent increase.

A new tactic, beginning in 1988, was the successful recruitment of new allies within specific legislative districts to build up grass roots political opposition to the Minnesota Plan and its anti-smoking media campaign (10). The tobacco industry allies came from several Minnesota business and labor organizations. Michael Brozek, Tobacco Institute Regional Vice President, reported to his superiors that "our increasingly successful relationship with the Minnesota Grocers Association and our efforts in working with community groups (Iron Range Food Shelf Charities) are two new areas of real potential for the 1988 legislative year"(10). Brozek reported additional support came from labor: "Never before has the tobacco industry embarked on such a detailed labor effort in the state of Minnesota. We have already met with officials from the Minnesota Teamsters Union, Minnesota AFSCME [American Federation of State, County, and Municipal Employees] organization and parties extremely close to leadership in the entire Minnesota labor movement and are receiving a positive response particularly in the areas of smoking restrictions and their effect on the collective bargaining process" (10).

In pursuing this strategy, the tobacco industry was neutralizing many of the constituencies that the original Technical Advisory Committee on Nonsmoking and Health (Table 3-1) was designed to recruit into tobacco control. Neither the Department of Health nor the tobacco control advocates appear to have worked to hold these constituencies as the tobacco industry pursued them. The tobacco industry used these allies to target legislative districts of specific House and Senate leaders. According to Brozek, targeting methods included “Media support activity in legislative districts with an emphasis on business, social, labor, and civic groups; Labor-related interactions, where applicable, in legislators’ home districts; ... Serious and accountable interaction with non-industry persons ‘aggrieved’ by punitive or restrictive actions on their working conditions” (10). Using these allies and continuing to frame tobacco control issues primarily as tax issues, the tobacco industry inflicted substantial damage to tobacco control policy-making in Minnesota and specifically the long-term implementation of the Minnesota Plan and its media campaign.

The tobacco industry also intensified its campaign contributions (Figure 4-2) and lobbying budget (Figure 4-3) after the start of the first media campaign in 1986. For example, it contributed \$21,815 to Governor Perpich’s reelection campaign during 1989-90, the largest contribution to the campaign (1990 was an election year in Minnesota). It had also contributed \$20,905 in 1987-88. On average, whereas the tobacco industry spent about \$63,000/year for lobbying between 1980 and 1985, it spent more than three times as much while the first media campaign was in full swing (1987-1992), averaging about \$230,000 annually (Figure 4-3).

The tobacco industry also increased the total amount of campaign contributions made to individual elected officials. While the tobacco industry contributed \$5,200 to elected officials during the 1985-1986 legislative cycle, the industry increased to \$11,135 (\$750 to Republicans and \$10,385 to Democrats) during the 1987-1988 legislative cycle, \$15,403 (\$1150 to Republicans, \$13,878 to Democrats and \$375 to the Freedom Party) during the 1989-1990 legislative cycle, and \$17,700 (\$850 to Republicans and \$16,850 to Democrats) during the 1991-1992 legislative cycle.

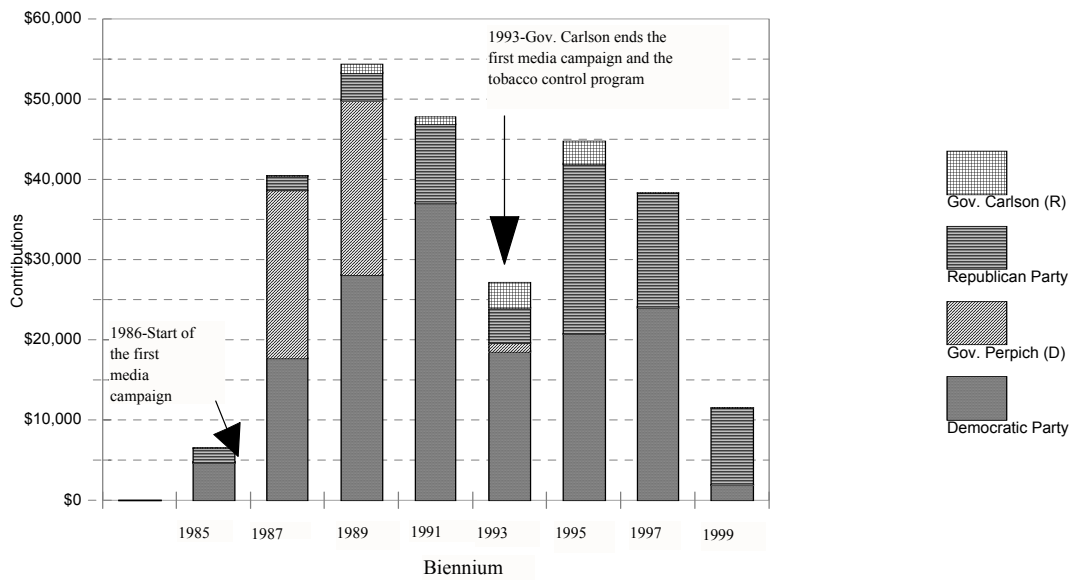


Figure 4-2. Tobacco industry campaign contributions. (Minnesota Campaign Finance and Public Disclosure Board, 1985-2000) (Note: Corporate contributions are prohibited in Minnesota. Instead, lobbying organizations and political action committees (PACs) made contributions to political parties candidates through individuals. Tobacco companies and tobacco organizations whose lobbyists made individual contributions included the following: Minnesota Candy and Tobacco Distributor Association., Northwest Candy and Tobacco Distributors Association., North State PAC, Philip Morris, RJ Reynolds, Tobacco Institute, Brown and Williamson, Smokeless Tobacco Council, SuperValu Stores, Cigar Association of America, and Pipe Tobacco Council

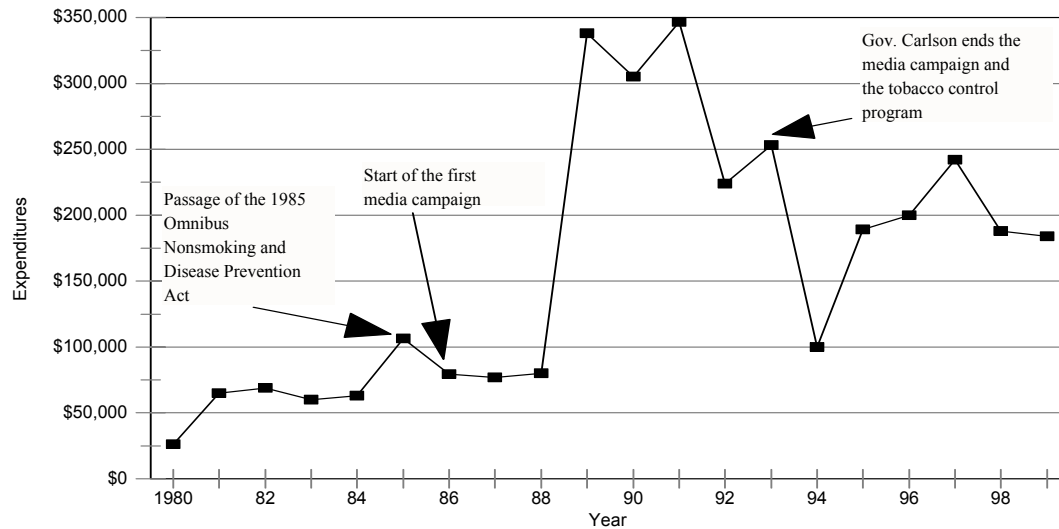


Figure 4-3. Tobacco industry lobbying expenditures in Minnesota, 1980-1999 (Tobacco Institute, 1980; Tobacco Institute, 1982; Tobacco Institute, 1982; Tobacco Institute, 1983; Tobacco Institute, 1984; Tobacco Institute, 1985; Tobacco Institute, 1987; Tobacco Institute, 1990; Tobacco Institute, 1992; Tobacco Institute, 1993; Tobacco Institute, 1995; Tobacco Institute, 1996; Tobacco Institute, 1998).

The Tobacco Industry’s Success: The First Tobacco Control Budget Cuts

The tobacco industry’s increased campaign contributions and lobbying expenditures began to have an effect in 1990 under Gov. Perpich, when the legislature cut the tobacco control program’s budget by one-third, from \$1.5 million to \$1 million (Figure 4-1C) (6). The Governor used the State Health Department’s successes in reducing the rate of smoking to recommend the cut in order to “meet the state budget shortfall and to pay for drug-prevention efforts” (11). In 1991, Gov. Perpich cut the program’s budget (his last budget as Minnesota governor) by nearly half-a-million dollars. The assistant commissioner of health, Mick Finn, observed that the state will “spend \$1.1 million next year (i.e., 1991) on nonsmoking programs even if the \$473,000 cut goes through” and argued that “under budget circumstances it made sense” (11). Gov. Perpich’s budget reduction of an effective tobacco control program compromised both the integrity and the legitimacy of the program and also paved the way for further assaults on it.

Elimination of the Tobacco Control Program by Governor Carlson

During the 1990 gubernatorial race, Republican Arne Carlson defeated Democrat Rudy Perpich. From the 1989-1990 biennium election cycle to the 1993-1994 biennium election cycle, Arne Carlson’s Campaign Committee received nearly \$5,000 from tobacco industry contributions (Figure 4-2). More significantly, during the 1993-1994 election cycle, at least three known Tobacco Institute contract lobbyists (Ronald Jerich, Tom Kelm, and Allen M Shofe) became

fundraisers for Carlson's re-election campaign committee (12). Tom Kelm alone expected to raise at least \$10,000 (12). In addition, in 1993 the tobacco industry spent over \$250,000 lobbying against tobacco control measures in Minnesota (Figure 4-3). In 1994, Tom and Doug Kelm's firm North State Advisors, the chief tobacco industry contract lobbyists in Minnesota, received at least \$100,000 (13).

Three years after his election, Gov. Carlson eliminated the anti-smoking media campaign. Later he vetoed new anti-tobacco legislation, including two 1994 bills that would have created a \$250,000 campaign to protect children from exposure to second-hand smoke (14). Carlson justified these vetoes with claims that the state was in fiscal crisis.

In fact, there was no fiscal crisis. Governor Carlson and the Democratically controlled legislature were fighting over the size of the state's reserve fund and the size of possible tax rebates. The Minneapolis *Star-Tribune* reported that "the more Carlson cuts DFL (Democratic Farm Labor Party) spending and diverts the money into the reserve, the larger the political weapon he would have at his disposal in 1994 ... even by the Carlson administration's own calculations, the state will be sitting on a sizable nest egg at the end of the two-year budget cycle that runs until June 1995" (15).

The Health Advocates' Failure to Respond

Despite its documented success, fearing the weight of the fiscal crisis claims, health groups lost confidence in justifying the first anti-smoking media campaign. They felt that the claim of a fiscal crisis was so strong that they did not have any sympathetic support in the legislature, and therefore they could not have done anything to save the anti-smoking campaign (16, 17).

The campaign also had a very low priority in the Department of Health, which was not willing to fight for it either in the Legislature or administration and the health groups did nothing to press the Department to give the program higher priority. The Department's actions were surprising since the tobacco control campaign represented a small fraction of the Department's budget – the media campaign ran on an annual average budget of about \$500,000, compared with the Department of Health's \$75 million annual budget – since the campaign had been demonstrated to be effective. In particular, the US Centers for Disease Control and Prevention (CDC) concluded that while the Minnesota Plan, including the first anti-smoking media campaign, was in place (1985 to 1992), "the state's per capita tobacco consumption declined 26%, a steeper decline than the national average" (18). By comparison, after the program was dismantled, during the 1993 to 1997 period, per capita consumption in Minnesota increased 3.1%, whereas the national rate decreased (18).

Conclusion

The first large anti-smoking campaign in Minnesota and in the US emerged because in the early 1980s the Department of Health placed tobacco use and its health effects on the very top of its priority list. The Department of Health did a thorough job of researching this topic in the planning phase of the campaign and also involved a wide range of Minnesota-based health, advocacy, business, and labor experts, as reflected in the composition of the Advisory Committee.

However, the first anti-smoking media campaign, and the entire Minnesota Plan, was compromised during the implementation phase. Three major factors led to the termination of the first anti-smoking media campaign: the tobacco industry's extensive financial resources and powerful influence on state-level policy making, the Department of Health's policy inexperience with the implementation of complex programs, and health advocates' unwillingness to defend the program by questioning political authority and political claims. Despite the fact that the original Advisory Committee was constructed to broaden the political constituency for tobacco control in Minnesota, the health groups failed to maintain these alliances or critique claims of fiscal crisis and defend the program based on its demonstrated success.

The tobacco industry adapted quickly to the threat posed by the emergence of the Minnesota Plan and anti-smoking media campaign. Specifically, through the mobilization of contract lobbyists in Minnesota, the tobacco industry was able to gain substantial access to and early knowledge of the new anti-smoking program. It also gained substantial access to legislators and used its legislative knowledge to oppose the proposals that funded the first media campaign, and it almost succeeded in preventing that campaign. The tobacco industry lobbyists and consultants organized opposition to all anti-smoking legislation at the local level and targeted the districts of key legislators. In addition, the tobacco industry searched for and made alliances with Minnesota labor and business groups, which it used as third parties to fight the first media campaign on its behalf under the guise of excessive taxation and government interference with individual rights to smoke, while systematically avoiding the health question. Moreover, the tobacco industry used an extensive political contributions program to Minnesota-based political parties and the campaigns of two governors totaling over \$175,000, and an aggressive lobbying war chest of over \$2 million to fight the media campaign by indirectly diverting its funds to other programs. The tobacco industry's fight against the first media campaign served as a testing ground for the creation of a template to fight similar programs that arose later in other states (19-21).

Despite its innovative planning, the Department of Health did not develop the political infrastructure necessary to support the program over the long term. Instead, the Department allowed tobacco lobbyists, but not health advocates, substantial access to its anti-smoking operations. While the strategy of tying the funding of the tobacco control campaign to a major sewer project was able to bring non-health advocacy groups (environmental, housing development, and construction) that are often more sophisticated and willing to take political risks than the health groups into the effort to secure funding for the program, there was no effort to maintain this broader coalition. Instead, the coalition reverted back to the weak and timid health voluntaries represented by the Smokefree Coalition that never questioned either the politicians' claims of fiscal crisis or pressed the Department to support the program more strongly.

When the program was aggressively attacked by the new Republican governor, Arne Carlson, based on unsupported claims of a fiscal crisis, health advocates essentially abandoned the state program and instead concentrated on the Minnesota ASSIST program, a federally funded program to support local policy change (22). (The tobacco industry also successfully attacked the Minnesota ASSIST program; see Chapter 5). The health advocates' never questioned the political claims of fiscal crisis made by Governor Carlson and the Minnesota legislature. There was no real fiscal crisis, only a debate on the claims to state's reserve funds. However, the legitimization of these claims and the coalition's inability to question them enabled Governor Carlson and the Legislature to remove the funds dedicated to first anti-smoking media campaign's annual budget and place its funds in the state's general fund.

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Chapter 5: Tobacco Industry's Attack on the Minnesota ASSIST Program

In September 1990, in the wake of funding cuts for the implementation of the Minnesota Plan for Nonsmoking and Health and in anticipation of more severe funding cuts in the future, staff members of the Minnesota Department of Health along with the Minnesota Chapter of the American Cancer Society, wrote a proposal to the American Stop Smoking Intervention Study (ASSIST) federal program to secure funding for future tobacco control programs in the state (1). The ASSIST program was created in 1990 as a collaborative effort of the American Cancer Society (ACS) and the National Cancer Institute (NCI). ASSIST sought to evaluate the effects of policy interventions as a strategy for reducing smoking prevalence and cigarette consumption (2). A total of 17 states were funded, after a national competition, based on consideration to geographical diversity and smoking prevalence, including Colorado, Indiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Rhode Island, South Carolina, Virginia, Washington, West Virginia, and Wisconsin (2). The program included a planning and an implementation phase: 1) between October 1991 and September 1993, each state was to conduct a needs assessment which was to assist in the development of a plan for the program; and 2) from October 1993 through September 1998, the five year interventions were to be implemented and their impact evaluated (2). The goals of the ASSIST program are listed in Table 5-1 (2).

Table 5-1: Goals of the ASSIST program

1) Community Environment:	Increase cues and messages supporting nonsmoking and decrease pro-smoking cues and messages Strengthen public support for policies which a) mandate clean indoor air; b) restrict access to tobacco by minors; c) increase economic incentives to discourage the use of tobacco products; and d) restrict the advertising and promotion of tobacco
2) Community Groups:	Involve major community groups and organizations that represent the priority populations and have broad-based statewide reach in ASSIST activities
3) Worksites:	Increase by at least 75% the proportion of worksites with a formal smoking policy that prohibits or severely restricts smoking at the workplace
4) Schools:	Ensure that 100% of the schools serving grades K through 12 and public vocation/technical/trade schools are tobacco free Ensure that 100% of the schools serving grades K through 12 use a tested, efficacious tobacco use prevention curricula
5) Health care settings:	Increase to at least 75% the number of primary medical and dental care providers who routinely advise cessation and provide assistance and follow up for all of their tobacco-using patients Ensure that all public health facilities, both outpatient and inpatient enforce smoke-free policies

Source: Manley, 1997

The ASSIST program awarded a total of \$114.5 million for seven years and the American Cancer Society pledged an additional 15% match (3). ASSIST was a multifaceted, comprehensive program that placed considerable emphasis on the building of a tobacco control infrastructure, an attribute the tobacco industry was both aware of and very concerned about (4, 5). A February 1996 Philip Morris internal report revealed that the tobacco industry was cognizant of its weaknesses to fight against local tobacco control developments: "ASSIST will hit us in our most vulnerable areas—in the localities and in the private workplace" (6). In 1992, one year after

ASSIST began, the tobacco industry had in place a strategy to “disrupt ASSIST funding” (3). Joshua Slavitt, Issues Manager at Philip Morris, wrote in January 1992 that tobacco industry allies in the U.S. Congress and the President’s office should embark on an investigation to look into “the NCI/ACS relationship and the use of federal funds for state and local lobbying purposes” (3), using “various tax and fiscally-responsible organizations” (3). In addition, the tobacco industry made use of “injunctive challenges. . .to determine whether the program violates Federal or state ethics/lobbying laws” (3). These challenges included questioning: a) the activities of ASSIST contractors under the nonprofit charter; b) use of non-tobacco control health advocacy groups to divert tobacco control funds to other health programs; c) use of local anti-tax groups to fight staffing ASSIST within state health departments; and d) introduction of tobacco-industry sponsored youth anti-tobacco campaigns such as “Help Youth Say No” (7) to fight ASSIST’s goal of reducing youth smoking rates (3).

The tobacco industry sought to achieve two specific goals related to the ASSIST program in Minnesota: 1) disruption of ASSIST funding and 2) the halting of tobacco control activities. At the national level, the strategy was to deploy front groups created by the tobacco industry, such as the National Smokers Alliance (NSA). The NSA was created by the public relations firm of Burson-Marsteller for Philip Morris (8, 9) to lobby against tobacco control legislation across the United States. NSA used the Freedom of Information Act (FOIA 5 U.S.C. §§ 552, As Amended By Public Law No. 104-231, 110 Stat. 3048) to gather documentation in support of the tobacco industry’s allegations of ASSIST contractor illegal lobbying, for the purpose of harassing and attempting to discredit tobacco control efforts (4).

At the state level, the strategy was to create state-wide and local coalitions of tobacco wholesalers, tobacco retailers and other businesses to use FOIA in order to gather ASSIST contractor documents from state health departments and more ASSIST contractor documents from state agencies regulating lobbying activities. When the use of the National Smokers Alliance was not adequate, the tobacco industry recruited specific allies within individual ASSIST states.

In Minnesota, the tobacco industry used third party allies to file FOIA requests with the Minnesota Department of Health and the Minnesota Ethical Practices Board. The Minnesota Ethical Practices Board (later renamed the Minnesota Campaign Finance and Public Disclosure Board) oversees and regulates lobbyist registration and campaign finance records for candidates, parties and political action committees. The Minnesota Grocers Association, the Minnesota Candy and Tobacco Association, and the Minnesota Wholesale Marketers Association (a tobacco products wholesale group) began filing requests for documents in September 1993. In fact, the Tobacco Institute even filed FOIA requests to obtain contract documents for the national program and for the 17 state programs (10). Starting at the end of September 1993, Thomas Briant, the tobacco industry’s Minnesota contract lobbyist, began inspecting all ASSIST documents at the Minnesota Department of Health (11). Briant reported to Al Shofe (Regional Vice President of the Tobacco Institute) that he identified a number of major issues the Minnesota ASSIST contractors were focusing on, among them, efforts to decrease youth access to tobacco, increase the number of smokefree workplaces, restaurants and government buildings, decrease tobacco advertisements, increase media knowledge of the adverse health impacts of smoking, increase local city ordinances to ban cigarette vending machines, place tobacco behind counters, increase tobacco sale licensing fees, use minors in tobacco underage sting operations, and train high school students to lobby legislators to instantly remove the licenses of tobacco retailer violations

of underage cigarette sales (11). All of these efforts were in line with the objectives of the ASSIST program (2).

Thomas Briant became the tobacco industry's coordinator and Minnesota strategist in the fight against the Minnesota ASSIST Project. Briant was coordinating communications from Philip Morris and the Tobacco Institute to Minnesota tobacco retailers (12) and to the Minnesota Grocers Association, the Minnesota Retail Merchants Association, and the Minnesota Petroleum Marketers Association (13). In 1996, Briant requested a \$45,000 payment from the Tobacco Institute to the Minnesota Wholesale Marketers Association, Inc. (MWMA). This was a group of Minnesota wholesale tobacco groups founded by Briant, who wrote that MWMA "served as the lead organization to make Data Practices Act requests (i.e., Minnesota Freedom of Information Act Requests) for Minnesota ASSIST documents from the Minnesota Department of Health" (14). In 1995, the Tobacco Institute spent over \$22,000 to fight the ASSIST program in Minnesota, of which \$5,000 was paid to Briant (15). Between 1996 and 1997, the Tobacco Institute spent \$30,000 to fight the ASSIST program in Minnesota (16). Thus between 1995 and 1997, the Tobacco Institute spent over \$52,000 to attack the ASSIST program in Minnesota, with Thomas Briant receiving payments for coordinating that attack.

Not only was Thomas Briant the first to inspect all of the ASSIST related documents at the Minnesota Department of Health, he was also the creator of the Minnesota Local Response Project (MLRP) which linked all tobacco retailers to him to coordinate communications regarding ASSIST funded local tobacco control ordinances throughout Minnesota (17) MLRP was approved by the Philip Morris Government Affairs Division in order to coordinate "the response of tobacco retailers to local ordinances and state legislation that seeks to regulate tobacco products" (17). "A significant part of the Project is the development of a communication network between you and myself," wrote Briant (17). From 1993 to 1995, Briant's MWSM made four FOIA requests for ASSIST documents to the Minnesota Department of Health. During the same period, another group represented by Briant, the Minnesota Candy and Tobacco Association (MCTA) filed five FOIA requests against ASSIST. (See Table 5-2 for a timeline of the Minnesota ASSIST program.)

Table 5-2 : Timeline of ASSIST Program in Minnesota

Sept. 7, 1993	FOIA request filed by Minnesota Candy & Tobacco Association, Inc. against Minnesota ASSIST.
Sept. 15, 1993	FOIA filed by Minnesota Candy & Tobacco Association, Inc. against Minnesota ASSIST.
Sept. 23, 1993	FOIA filed by Minnesota Candy & Tobacco Association, Inc. against Minnesota ASSIST.
July 26, 1994	In-person inspection of FOIA material at Minnesota Department of Health by representative of Minnesota Candy & Tobacco Association, Inc. Copies of documents mailed to Minnesota Candy & Tobacco Association on August 17, 1994.
Oct. 21, 1994	FOIA by Minnesota Candy & Tobacco Association, Inc. against Minnesota ASSIST.
June 30, 1995	Attorneys from Larkin, Hoffman, Daly & Lindgren, Ltd. write to Mr. Richard Welch, Director of Minnesota ASSIST, alleging violation of FASA (18).
July 26, 1995	Attorneys for Larkin, Hoffman, Daley & Lindgren, Ltd. write to Mr. Richard Wexler, Assistant Attorney General, alleging illegal use of ASSIST funds (19).
Aug. 9, 1995	Dick Welch, ASSIST Project Director, writes to Ms. Donna Grande, NCI Project Officer for ASSIST, seeking clarification of applicability of FASA (20).
Aug. 14, 1995	FOIA filed by Minnesota Wholesale Marketers Association, Inc. against Minnesota ASSIST.
Sept. 18, 1995	FOIA filed by Minnesota Wholesale Marketers Association, Inc. against Minnesota ASSIST.
Oct. 18, 1995	Minnesota Grocers Association writes to Governor Arne Carlson and State Auditor Judy Dutcher alleging "Unlawful Use of Federal Taxpayer Dollars By Minnesota Department of Health and Violations of State Lobbyist Registration and Reporting Laws" (21). Minnesota Grocers Association writes to Ethical Practices Board alleging that "Minnesota Department of Health ASSIST Project Groups" have violated state law(22).
Oct. 31, 1995	Minnesota Grocers Association writes to Ethical Practices Board lodging formal complaint against "Minnesota Department of Health ASSIST Project Groups" (22).
Nov. 6, 1995	Minnesota Ethical Practices Board notifies tobacco control groups of accusations against them. Groups are asked to respond by Nov. 18, 1995 (23, 24).
Nov. 20, 1995	Governor Arne Carlson responds to Minnesota Grocers Association (25).
Nov. 20, 1995	Minnesota Department of Health responds to Governor Arne Carlson explaining that allegations made by Minnesota Grocers Association are unsubstantiated (26).
Nov. 22, 1995	FOIA request delivered to Minnesota Wholesale Marketers Association, Inc.
Nov. 28, 1995	Minnesota Grocers Association files additional complaints against Minnesota ASSIST.
Nov. 28, 1995	FOIA filed against ASSIST by Wholesale Marketers Association, Inc.
Dec. 8, 1995	State Ethical Practices Board meets.
Dec. 15, 1995	FOIA requests from September 18 and November 28, 1995 delivered.
Dec. 15, 1995	State Ethical Practices Board requests additional information from some respondents.
Jan. 26, 1996	State Ethical Practices Board dismisses complaint in all respects against 14 respondents. Minnesota Coalition for a Smoke-Free Society 2000 was found to have committed a \$40 bookkeeping error that was quickly corrected (27, 28)
May 1996	Tobacco industry financial ties to Minnesota Grocers Association reported (29)

Minnesota Grocers Association Campaign against ASSIST

The Minnesota Grocers Association (MGA) filed two types of complaints against the Minnesota ASSIST Project. First, in the middle of October 1995, in a letter sent to the Minnesota Ethical Practices Board, and coordinated by Covington and Burling – one of the tobacco industry’s major law firms - MGA announced that it had filed a complaint with the Minnesota Governor’s office and the State Auditor’s office alleging that ASSIST contractors were engaging in illegal lobbying (illegal because federal dollars were being used) to promote local tobacco control programs and that the Minnesota Department of Health allowed its contractors to do so (30, 31). Covington and Burling has played a major role of coordinating and editing the work of tobacco industry consultants, devising scientific studies that favored the political, public relations, and economic interests of the tobacco industry, and organizing and grassroots groups in support of tobacco industry policy positions (32, 33). In November 1995, the MGA, assisted by Covington and Burling, wrote another letter to the Minnesota Ethical Practices Board. In the letter, the MGA accused ten Minnesota ASSIST contractors of violating federal FASA procedures and Minnesota lobbying laws as a result of their involvement in local tobacco control activities to restrict youth access to tobacco products, to ban billboard tobacco advertisements, and to promote cigarette tax increases (30). FASA is the Federal Acquisition Streamlining Act of 1994 which “was designed to overhaul the cumbersome and complex procurement system of the federal government” and which included language designed to prevent defense contractors from billing the government for lobbying expenses related to the defense budget (34). The complaint did not cite specific violations of FASA procedures.

The second type of complaint filed by the MGA alleged of biased reviews of its ASSIST application to the Minnesota Department of Health that sought to train tobacco grocery retailers across the state to identify underage buyers of tobacco products. This set of complaints was coordinated through Thomas Briant’s office (35) and accused the Minnesota Department of Health of using two biased individuals in their reviews of ASSIST contracts (35). The complaint alleged that the Department of Health used reviewers that were biased and in conflict of interest since the reviewers in question were also serving on the staff of volunteer tobacco control organizations in Minnesota. Parts of this complaint were written on February 4, 1996 by Thomas Briant, on behalf of the tobacco industry (complaint of reviewers being ASSIST contractors, ignoring the funding recommendations of outside--non MDH-- reviewers, and having two ASSIST contractors on MDH’s Executive Committee that made the final decision) (36).

From 1989 to 1999, the Minnesota Grocers Association received \$31,000 from the tobacco industry (37-39). Despite a lack of evidence of violations of illegal use of funds and lobbying by ASSIST contractors, Thomas Briant continued to strategize “options” to impede ASSIST activities (36).

Outcome of Tobacco Industry’s Complaints Against the Minnesota ASSIST Project

Allegations of illegal lobbying and a biased review of its ASSIST application made by the tobacco industry and MGA were adjudicated by the Minnesota Department of Health and the Minnesota Ethical Practices Board. In the matter of MGA’s allegations, on November 20, 1995, MDH Commissioner Ann Barry wrote to Governor Carlson: “After extensive and careful review

of all available information, we believe that all federally funded ASSIST activities have been undertaken by the MDH and its ASSIST subcontractors in good faith compliance with the law and find the MGA allegations to be unsubstantiated” (26). More specifically, MDH cleared a number of tobacco control and related organizations accused by MGA for illegal lobbying.

MDH found that the Minnesota Prevention Resources Newsletter “Impact” did not ask its readers to engage in lobbying activities on behalf of tobacco control activities in Minnesota (26). The Dakota County Public Health Department did not violate any lobbying laws by sponsoring a group of teens to rally on the State Capitol to demonstrate their concern about the problem of youth access to tobacco products (governmental entities were not prohibited from lobbying) (26). The transportation of these youth to the Capitol did not constitute a violation of federal lobbying laws either (26). MDH’s ASSIST staff did not violate federal lobbying laws by giving a 25-minute presentation to the Minnesota League of Cities titled “Tobacco Free Communities For Children” (26). MDH concluded in this instance that its staff was not prohibited from giving technical presentation to persons with legislative responsibilities at the state and local levels (26). Moreover, MDH found no wrongdoing by the Hennepin County Community Health Department’s “Young Rebels” advertisement campaign, which sought to inform the public of tobacco industry’s strategies and encourage people to take action (26). Finally, MDH found that allegations made by James Larkin, a Minneapolis-based tobacco industry lawyer representing the MGA, claiming violations of the Federal Acquisition Streamlining Act (FASA) of 1994 were unsubstantiated (26). Even so, the tobacco industry succeeded in disrupting the program. While MDH was in communication with NCI to clarify and resolve Larkin’s complaint, “MDH delayed its announcements regarding the awards for FY96 ASSIST subcontracts” (26). Minnesota health advocates understood tobacco industry’s tactics very well: “They wanted people such as myself,” noted Jeanne Weigum of ANSR, “to be intimidated and fearful and confused—and at least to some extent they succeeded. Truly, we did nothing in the way of tobacco control for about three months” (40).

On January 26, 1996 the Minnesota Ethical Practices Board (MEPB) issued a final ruling absolving the ASSIST contractors from violating Minnesota lobbying laws (41). MEPB found that 15 of the 16 groups named in MGA’s complaint had not violated any lobbying regulations (Table 5-3) (41).

Table 5-3: Parties Named in MGA’s Complaint Found Not Guilty of Violating Lobbying Regulations

<ul style="list-style-type: none"> • Brian Bates • Chicago County Public Health Department • Dakota County Public Health Department • Mille Lacs County Health Nursing Services • Polk Community Health Services • Itasca Heart Project • Minneapolis Urban League • MN Prevention Resource Center 	<ul style="list-style-type: none"> • MN River Valley Tobacco Control Task Force/Wright to the Heart of Health Coalition • Community Health Foundation of Wright County • Rochester/Olmsted County ASSIST Coalition • Washington County Department of Health, Environment and Land Management • Assoc. for Nonsmokers Rights Minnesota [<i>sic</i>]
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Source: Minnesota Campaign Finance and Public Disclosure Board, 1996

Specifically, the MEPB found that the following respondents (ASSIST contractors) named in MGA's complaint had not violated Minn. Stat. Chapter 10A (State Lobbyist Registration and Reporting Laws).

However, the MEPB found that "there was probable cause to believe that the Respondent [Minnesota Coalition for Smoke-Free Society 2000 (MCSF2000)] had failed to disclose a \$40.00 disbursement to its lobbyist for reporting purposes" (41). Accordingly, without issuing a penalty of any kind, the MEPB ordered MCSFS2000 to make a proper disclosure and file an amended lobbyist disbursement report (41). To respond to MGA's request for investigation, state officials estimated that they spent over 300 hours to discover a \$40 reporting mistake that was corrected without penalties (40). And if the expense incurred in Colorado (\$50,000 to \$60,000) is an indication of tobacco industry's financial impact on the budgets of state agencies across the 17 ASSIST states, then to spend that much public money to discover a \$40 correctable mistake, as in the case of the Minnesota ASSIST Project, truly indicates the lengths the tobacco industry is willing to go to in order to protect its lucrative market. As we discuss in the next section, tobacco industry's attack on ASSIST created substantial disruption.

Health Advocates Response

As soon as the MGA filed its complaint against the 16 ASSIST contractors with the Minnesota Ethical Practices Board on November 8, 1995, health advocates did what they could to defend themselves. Health advocates used primarily the news media to inform the public that the intent of this attack was to discredit the work of the voluntary tobacco control groups in Minnesota. The Association of Nonsmokers Rights (ANSR) of Minnesota president, Jeanne Weigum understood what MGA was after when she stated: "They want to silence us. If they can't tar the message, they'll tar the messenger. If they can smirch our credibility, they've won the war" (24). Other groups, such as the Minnesota SmokeFree Coalition 2000 (MSFC2000) suspected that the tobacco industry was involved behind MGA's allegations of illegal lobbying. MSFC2000 executive director Judy Knapp stated that there is a difference between educating legislators on the value of tobacco control policies and lobbying them to vote in a certain way: "we've worked with an attorney to make sure we know the line between educating and lobbying" (24). Moreover, MSFC2000 suspected that because the ASSIST funds were the biggest sum of money available for tobacco control in Minnesota in the mid 1990s and because the tobacco control activities of ASSIST contractors would damage the cigarette market in Minnesota, tobacco companies would "love to get rid of it" (24). Knapp also pointed out that there appeared to be a tobacco industry trend to go after ASSIST in several states as was revealed in the case of a Washington state shop owner who accused tobacco control ASSIST contractors of misusing federal funds. In that case the shop owner also revealed that his legal expenses were paid by the Tobacco Institute (24). Health advocates understood that the goal of MGA's allegations was to produce anxiety and to slow down their tobacco control policy activities (24).

After the Minnesota EPB absolved the 16 ASSIST contractors from MGA's illegal lobbying charges on January 26, 1996, health advocates charged MGA as a front group for the tobacco companies (24). As Jeanne Weigum of ANSR-Minnesota stated: "The Ethical Practices Board has been manipulated by the tobacco industry. It was a fairly bogus complaint. They didn't care what the facts were. They just wanted to keep us busy," (24). Former Minnesota

attorney General Hubert Humphrey III also observed the tobacco industry's hand in MGA's allegations: "The board's findings that none of these groups should be fined bears out what many suspected –This is nothing but a smear campaign to divert the energies of those trying to keep tobacco away from our kids. It was a well-funded industry attempt to silence the opposition, but their strategy fell flat"(42). Therefore, the impact of MGA's allegations was to confuse and reduce the tobacco control activities of health advocates in Minnesota. A year later, in March 1997, the Minneapolis *Star-Tribune* reported that in 1996 MGA had received \$2,000 from the Tobacco Institute, thus vindicating the suspicions of ANSR and the MSFC2000 (43). (See Table 5-3 for a timeline of the Minnesota ASSIST program.)

Conclusion

In the early 1990s, the tobacco industry became aware of the policy impact of the ASSIST program and sought to disrupt it. The industry used two strategies. At the federal/national level it sought to stop funding for the project by encouraging its allies in Congress to hold hearings to question the relationship between NCI and the American Cancer Society, the two organizations that collaborated on the ASSIST project. At the state level, the tobacco industry used allies and third groups to use FOIA to accuse ASSIST contractors of illegal lobbying and misuse of federal funds. As other research on the tobacco industry's strategy to derail the efforts of the ASSIST project have shown (44), the industry succeeded only in halting tobacco control efforts in the 17 states chosen to participate in the project, at least temporarily. The tobacco industry did intimidate ASSIST contractors in 11 of the 17 ASSIST states. These state programs reported that they increased their levels of self-censorship due to tobacco industry's actions: "these actions did not imply a cessation of policy work but rather the avoidance of activities that could be perceived as lobbying by the public, even legal under lobbying restrictions" (44).

In Minnesota, the tobacco industry used the Minnesota Grocers Association and two state-wide tobacco trade groups (MCTA and MWMA) to gather documents from all Minnesota Department of Health ASSIST contractors in order to build a case of illegal lobbying and misuse of federal funds. The health advocates--ANSR and MCSFS2000 fought these accusations by suggesting to the news media that such tactics were the tobacco industry initiated. The Minnesota ASSIST contractors, did not, however, go far enough. They did not directly challenge the tobacco industry, as did some of the California local lead agencies which took the harassment tactics of pro-tobacco groups directly to the press (4).

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Chapter 6: Youth Access Legislation

In Chapter 3, we discussed the genesis and demise of the Minnesota Plan for Nonsmoking and Health (Minnesota Plan), the first comprehensive state tobacco control program in the United States. In 1990, Republican Gubernatorial candidate Arne Carlson beat Democratic incumbent Rudy Perpich. Three years later, Governor Carlson eliminated the Minnesota Plan, which was designed to prevent youth from smoking, to encourage quitting, and to promote clean indoor air (1). Despite the loss, tobacco control efforts in Minnesota continued, albeit at a much lower level, with federal funds, primarily through an ASSIST contract to the Minnesota Department of Health (Chapter 5). As a result, Minnesota tobacco control efforts abandoned their emphasis on clean indoor air and prevention using the mass media campaign and focused primarily on the much more limited goal of implementing local and statewide programs to reduce youth access to tobacco products, notably through restrictions on cigarette vending machines (2).

In part, these efforts represented an attempt to comply with the 1992 Synar Amendment. The Synar Amendment is federal legislation which ties block grant funding of mental health and substance abuse programs to meeting targets on reducing the sale of tobacco products to minors (3). Efforts to curb tobacco use among youth in Minnesota failed as evidenced by a general increase in the smoking rates among youth between 1992 and 1998 (4). This came as the result of the inherent weaknesses of youth access programs (5) and the tobacco industry's successful destruction of the larger comprehensive tobacco control programs.

1994 Youth Access Legislative Developments

In Spring 1994, State Senators Ellen Anderson (DFL-District 66), William Bellanger (R-District 40), Dean Johnson (DFL-District 13), John Marty (DFL-District 54), and William Luther (DFL- District 47), authored and introduced Senate File 342 (SF 342) (6). In the House of Representatives, Geri Evans (DFL-District 52B), Ann Rest (DFL-District 46A), Bob Haukoos (IR-District 27A), Jim Ferrell (R-District 30), and Betty McCollum (DFL-District 55B), authored and introduced a companion bill, House File 791 (HF 791) (6). The legislative proposal was introduced to reduce illegal sales of tobacco products to minors by requiring all communities to license tobacco vendors. The legislation required compliance checks using underage person twice each year, with vendor in violation of the law being fined. Support for this bill was garnered, in part, because of the 1992 federal Synar Amendment which required Minnesota (like all other states) to reduce illegal sales to minors by 20% between 1995 and 2003; failure to meet this goal would cost Minnesota 40% of federal funds from the state's Substance Abuse Prevention and Treatment block grant award (7). For the Minnesota Department of Health, that meant that if the state was not in compliance with the law, it would lose \$14.6 million in federal drug education funds (8). The Synar Amendment proposed rules that included a model law which directed states to create a tobacco licensing infrastructure, to inform tobacco retailers of their obligations, to develop hearing procedures, to organize inspection campaigns, and to impose monetary fines on violating tobacco retailers (8).

The tobacco and retail lobbies opposed HF 791, so Rep. John Sarna (DFL-District 59A) chair of House Committee on Commerce, Tourism, and Consumer Affairs, instructed House author Geri Evans, to work out differences with the tobacco lobby (8). Representative Evans

found no common ground with the tobacco lobbyists, because the tobacco industry objected to the licensing requirement, and the tobacco retailers objected to fines and regular compliance checks (8). Furthermore, Representative Evans could not even get a hearing for the bill. According to Common Cause Minnesota President Marc Asch, this was because of the influence of the tobacco industry not just through lobbyists, but also through financial contributions to the DFL caucus. “The comments that [Jim] Wafler [Executive Director of the DFL Caucus] made to her [Geri Evans] was that the investor’s don’t want it. The investors being the contributors to the Caucus. Ron Jerrick and Tom Kelm,” both major tobacco industry lobbyists (9).

The tobacco industry presented its own version of the bill. The tobacco industry’s proposal did not require licensing, but called for unspecified number of compliance checks, and no penalties on retailers for illegal sales. Instead, the tobacco industry’s proposal required merchants to train employees on legal age-of-sale and impose \$100 fine if clerks were not trained. The tobacco control advocates thought at first that it would be best to kill the tobacco industry’s bill, but instead tried to transform the bill into a good one (8).

The final bill required annual compliance checks by local units of government using teens between the age of 14 and 17 who would be attempting to purchase tobacco products. However, the training provision remained in the bill. Only compliance information was required, so that the bill still provided for no penalty on vendors and therefore tobacco retailers had little incentive not to sell to minors. The bill still did not meet the requirements of a model law from the Synar Amendment, and therefore Minnesota still risked losing up to 40% of its federal drug education funds (8). Similar tobacco industry fights over the implementation and enforcement of the Synar amendment and youth access have surfaced in other states (10).

On May 9, 1994, Gov. Arne Carlson vetoed the Human Services appropriations bill which included the youth access provisions. The tobacco control advocates vowed to try again in 1995.

1995 Youth Access Legislative Developments

On January 19, 1995, Rep. Wayne Simoneau (DFL- District 52A), introduced HF 108 in the House Committee on Commerce, Tourism, and Consumer Affairs. On February 16, 1995, Sen. Dallas Sams (DFL-District 11) introduced a companion bill with preemptive language to the Senate Committee on Commerce and Consumer Affairs (11) (12). On March 7, 1995, the Minnesota House Commerce Committee approved, on a voice vote, HF 108 which called for cities and counties to perform random checks on tobacco retailers using underage tobacco buyers, training of tobacco retailers and employees, and a fine of \$100 on retailers for failure to train employees [State of Minnesota Senate - 79th Legislature, 1995 #22](13). Tobacco retailers and allies, such as the Minnesota Grocers Association, the Minnesota Retail Merchants Association, and the Minnesota Petroleum Marketers Association supported both HF 108 and SF 558 (14), suggesting that the bill was fair because it focused on training (15).

Tobacco control advocates quickly noticed that this bill did not penalize retailers for selling cigarettes to teens, and therefore believed that it would not reduce or eliminate the number of illegal sales to teens (13). Doug Blanke, Assistant Attorney General, stated that Simoneau’s bill was a failure because “it puts no responsibility on the retail establishment itself” (15).

Tobacco control advocates, along with the office of Minnesota Attorney General Hubert Humphrey III (15), were promoting a bill (H.F. 903) authored by Rep. Ann Rest, Chair of the House Tax Committee (13). The provisions of HF903 included a) a required license to sell tobacco products; b) use of the license fees for enforcement operations; c) license suspension or a fine imposition on a tobacco retailer violating the law; d) \$50 fine to the clerk that sells tobacco products to teens; and e) one unannounced compliance check per year at each location that issues a tobacco sale license (16).

Next, Rep. Rest introduced HF 903 to the House Commerce Committee on March 14, 1995 where it was defeated (17). Sen. Ember Reichgott-Junge introduced a similar bill in the Senate (SF 703) which used language proposed by the Minnesota Attorney General's office calling for mandatory licensing of retailers, unannounced compliance checks, fines against violating retailers, and no preemption (11, 18). The Minnesota Attorney General's involvement in this fight brought credibility and legitimacy to the youth access legislative developments and the bill passed in the Senate (18). In the end, two key provisions of SF 703 were added to SF 558 (the tobacco industry's bill): a ban of display allowances and no preemption. The tobacco industry sought preemption in Minnesota during the youth access fights in order to eliminate the authority and capacity of localities to enact stronger tobacco control policies than state-wide legislation. At the end of the 1995 session, the Senate passed SF 558, but since the House did not take action on the bill, there was no youth access legislation enacted during that legislative session.

Rep. Rest blamed the failure of her bill on "intensive lobbying by the tobacco industry and retailers" (17). Tom Kelm, a tobacco industry contract lobbyist in Minnesota, endorsed Simoneau's bill (H.F. 108) because it did not penalize retailers (17). An editorial in the *St. Cloud Times* captured the significance of the defeat of HF 903 when it stated: "The House Commerce Committee killed an effort to correct that glaring gap in law [i.e., lack of penalties for tobacco retailers] on a 12-12 tie vote this week. It may be the most outrageous example of abdicating legislative responsibility and pandering to lobbyists in this session" (19). On March 19, 1995, the *St. Paul Pioneer Press* called Rep. John Sarna, chair of the House Committee on Commerce, Tourism, and Consumer Affairs, "turkey of the week" for "cutting off the testimony of Desta Hunt, a Fergus Falls resident and concerned citizen who drove three hours to testify on a bill to protect children from tobacco use" (20). Rep. Sarna had endorsed HF 108, the weak youth access bill supported by tobacco retailers and the tobacco industry lobbyists.

The lines in the fight to pass a youth access bill in 1995 were drawn over two issues: penalties against violating tobacco retailers and the preemptive provisions of the tobacco industry-backed proposals. The tobacco industry and its allies pushed for no penalties against retailers and for preemptive language to eliminate stronger local tobacco control legislation. The health advocates with the support of the Minnesota Attorney General's office promoted youth access legislation that allowed for unspecified penalties against violating tobacco retailers and no preemptive language. In the end, it appears that despite the threats made by the retailers against the tobacco control advocate backed bills, the tobacco industry lost its support both in the House and in the Senate because it overreached. The tobacco industry adamantly pushed for a preemption clause in both the House and the Senate, a move that was not well accepted by the Minnesota Legislature. Minnesota's tobacco control advocates also stood on firm ground

opposing the tobacco industry's preemption requirements. Thus, when the 1994-95 session was over in May 1995, the tobacco industry's bill did not reach the House floor for debate and it died (21).

The health groups did not get their bill through either.

1996 Youth Access Legislative Developments

A few days before the opening of the 1996 session on January 16, the tobacco industry had in place a strategy to pass its own youth access bill, modeled after Philip Morris's Action Against Access (AAA) program (18). The tobacco industry had two goals. The first was to push through the Legislature a bill that mirrored Philip Morris's AAA program (22). The second was to include in that bill "uniformity," (i.e., preemption) (23). All the language for HF 108, which became the tobacco industry's AAA youth access bill was drafted by Tom Briant, a major tobacco contract lobbyist in Minnesota, and Covington and Burling, a Washington, D.C. law firm used by the tobacco industry to organize grassroots campaigns for the tobacco industry (24). The tobacco industry's youth smoking prevention programs had one major objective: to forestall legislation that would restrict the tobacco industry activities. The tobacco industry programs portray smoking as an adult choice and fail to discuss how tobacco advertising promotes smoking or the health dangers of smoking. The tobacco industry has used these programs to fight taxes, clean-indoor air laws, and marketing restrictions worldwide (25).

Philip Morris's Minnesota AAA game plan

On January 10, 1996, Philip Morris had finalized its strategy to pass its own youth access bill that included preemption provisions. The tobacco industry's bill (HF 108) called for removal of the duration of training for tobacco sales clerks, added limitations to the licensing authority of the local governments by allowing only for "reasonable license fees," and added "uniformity language" (i.e., preemption) (24). Relying heavily on its legislative ally, Rep. Loren Jennings (DFL-District 18B) (26), Philip Morris sought to use legislative procedural fights - moving the bill from committee to committee until the time for a floor debate was exhausted and the merits of the bill were never heard (27). During the 1995-1996 legislative cycle, the tobacco industry contributed a total of \$3,630 (\$1,250 to Republicans and \$2,380 to Democrats), which was an increase from the \$1,700 total in campaign contributions from the previous legislative cycle. Also, it is important to remember that these numbers are the reported campaign contributions and that the tobacco industry has many other ways in which to influence policy.

One of those other ways was to use third parties, such as the Minnesota Grocers Association, the Minnesota Retail Merchants Association, the Petroleum Marketers Association, the Minnesota Licensed Beverage Association, the Coalition of Responsible Retailers, and the Minnesota Wholesale Marketers Association to pressure legislators to pass the tobacco industry's youth access bill (27). All of these groups received funding from the Tobacco Institute throughout the 1990s (28-36).

The tobacco industry encouraged Rep. Loren Jennings to amend SF 558, which had passed the Senate during the 1995 session, to remove the ban on display allowances and insert

preemption language (27). From there, the tobacco industry planned to have its bill to move on to the Senate, where it anticipated a fight from the tobacco control advocates and Attorney General Humphrey. The tobacco industry knew that the bill would end up in a conference committee, at which point the tobacco industry's task was to "secure a conference [committee] that can work together" (27). Given the time limitations of the legislative session, the tobacco industry was relying on such a conference committee to put additional pressure on the Minnesota Senate to pass the tobacco industry's bill (27). The tobacco industry attempted to recruit the Minnesota Sheriffs' Association and the Minnesota Chiefs of Police Association to get their "support on the issue of uniformity and enforcement [in order to] help off-set the impact of the AG's efforts" (27) to promote preemption legislature.

As tobacco control advocates regularly pointed out during the spring 1996 debate on the youth access legislation, Rep. Loren Jennings engaged in a campaign of misinformation to argue that he was promoting a pro-health bill. When Jennings brought the bill (HF 108) to the House Commerce Committee, he announced that it was a "compromise bill" and implied that the health advocates had agreed with his point of view. Later he implied that the health advocates failed to carry out their unconfirmed promise to support his bill. In addition, he characterized his bill as the "toughest" in the nation and claimed that it protected children. He also claimed that preemption was key to passing HF 108 (37). Jennings regularly consulted with Tobacco Institute and Philip Morris lobbyists, but denied that his bill had their support, claiming carrying it for retailers (26). Jennings also often repeated the false claim that Attorney General Humphrey had agreed that HF 108 included 90% of what the Attorney General wanted (26).

Tobacco Industry's Non-Legislative Procedural Tactics

In addition to maneuvering inside the Minnesota legislature, the tobacco industry used two other tactics. The first was to target specific legislative districts with a phone bank that used the database of the Minnesota Coalition of Responsible Retailers, an organization created by the tobacco industry (38). The objective of the phone bank was to call 1,080 tobacco retailers in 36 Minnesota legislative districts and remind them to call the targeted legislators (Table 6-1) to support the tobacco industry's youth access bill, a move that would have generated 22 calls to each targeted legislator (38). On February 5, 1996, Thomas Briant (a major Minnesota-based tobacco industry contract lobbyist) reported to Philip Morris and R.J. Reynolds that 62 legislative districts had been designated to be targeted by the phone bank, 37 of which were designated for calls by R.J. Reynolds and 25 for calls by Philip Morris (39). The second tactic was to use brochures to persuade Minnesota tobacco retailers to call their state representative in support of Rep. Jennings bill (SF 558) and specifically to support the "uniformity" or preemption provision of the proposed bill. The brochures were written and mailed by Philip Morris, and were used to argue that the uniformity provision of Rep. Jennings' bill will eliminate unfair competition by creating a "level playing field" (40).

Table 6-1: Philip Morris' Phone Bank to Target Minnesota House Legislative Districts to Amend SF 558 with Preemption, 1996

Peterson (DFL - Dist 13B)	McElroy (IR - Dist 36B)	Luther (DFL - Dist 47A)
Opatz (DFL - Dist 16A)	Pawlenty (IR - Dist 38B)	Carruthers (DFL - Dist 47B)
Koppendrayner (IR - Dist 17A)	Mahon (DFL - Dist 40A)	Haas (IR - Dist 48A)
Schumacher (DFL - Dist 17B)	Knight (IR - Dist 40B)	Johnson, Alice (DFL - Dist 48B)
Ness (IR - Dist 20A)	Seagren (IR - Dist 41A)	Carlson, Skip (- Dist)
Dorn (DFL - Dist 24A)	Erhardt (IR - Dist 42A)	Mares (IR - Dist 55A)
Ostrom (DFL - Dist 24B)	Workman (IR - Dist 43A)	Holsten (IR - Dist 56A)
Bradley (IR - Dist 30A)	Sykora (IR - Dist 43B)	Garcia (DFL - Dist 63B)
Pelowski (DFL - Dist 32A)	Kelley (DFL - Dist 44A)	Etenza (DFL - Dist 64A)
Van Dellen (IR - Dist 34A)	Rhodes (IR - Dist 44B)	Dawkins (DFL - Dist 65A)
Molnau (IR - Dist 35A)	Abrams (IR - Dist 45A)	Mariani (DFL - Dist 65B)
Kelso (DFL - Dist 35A)	Carlson (DFL - Dist 46B)	Farrell (DFL - Dist 67A)

Source: Briant, 1996

Near the end February 1996, SF 558 went to the House floor for a debate on Special Orders (41). During the debate Rep. Ann Rest, a tobacco control supporter, Chair of the House Tax Committee, inserted an amendment which, by a vote of 76-54, successfully removed the tobacco industry's "uniformity" preemption provision from SF 558 (41). Once SF 558 was without the preemption provision, Rep. Jennings, withdrew the entire bill from the House Floor and kept it in General Orders for possible future re-activation. "This motion is key to opportunities in the future," wrote Jack Lenzi, chief Midwest lobbyist for Philip Morris (41). The tobacco industry's youth access bill died (26).

These 1996 youth access legislative developments suggest that thus far, the youth access battleground in Minnesota had little to do with protecting youth from the tobacco industry's marketing tactics, and much more to do with preemption. The tobacco industry fought hard to promote its "uniform standard" during the 1996 legislative year, while it failed in that effort, it succeeded in stopping the passage of any meaningful youth access laws in Minnesota at the state level.

1997 Youth Access Legislative Developments

On January 16, 1997, HF 117 was introduced by Rep. Ann Rest and referred to the House Committee on Commerce, Tourism, and Consumer Affairs (42). A similar bill was introduced in the Senate (SF 6) by Senator Ember Junge (DFL-District 46). HF 117 and SF 6 provided licensure requirements for all tobacco retailers in the state; at least two compliance checks per year; administrative fines against violating tobacco vendors; prohibition of tobacco display payments to vendors by tobacco manufacturers; a total ban of self service displays and vending machines, except in adult only establishments; and continuation of allowing localities to enact

stronger ordinances (43). The last provision of this bill became the most contested aspect of the 1995-1996 legislative session youth access developments.

Tobacco Industry Tactics to Defeat the 1997 Youth Access Bill

A few days after HF 117 was introduced, the tobacco industry put in place a plan to have what it called “a retailer alternative” bill to refer to the House Commerce Committee (44). The tobacco industry’s troops on this were the Minnesota Grocers Association, the Minnesota Retailers Association, and the Minnesota Petroleum Marketers Association (45, 46). By January 24, 1997, Philip Morris had in place a script for a phone bank to call Minnesota retailers with claims such as “HF 117 could severely restrict your ability to sell tobacco to your adult customers,” and “If this bill becomes law, it could have a negative economic impact on your business” (47). The phone bank surveyor was then directed to urge the tobacco retailers to call their state representative to oppose HF 117 (Philip Morris’ phone bank objective was to have the retailers target the entire State House of Representatives) (47). Another tactic Philip Morris used was to have its chief midwest lobbyist, Jack Lenzi, place calls to all House Commerce Committee members using them to oppose HF 117 (48).

The Retailers’ Opposition

On a January 30, 1997, the House Committee on Commerce, Tourism, and Consumer Affairs, held a public hearing which was attended by the Minnesota Retailer Merchants Association (MRMA), and the Minnesota Grocers Association (MGA) (45). Nancy Christensen, MGA’s executive director, and Judy Cook, MRMA’s executive director, opposed four provisions from HF 117. They opposed prohibition of “slotting allowance” (i.e., direct or indirect payment to a retailer or distributor in compensation for displaying tobacco in a prescribed location (46)) to tobacco retailers, they opposed the restriction of self-service sales, private right of action, and the lack of a “statewide standard” on grounds that without such a standard, tobacco retailers will be forced to enforce a multitude of local ordinances, and therefore compromise the effectiveness of training to reduce compliance violations (49). The tobacco industry’s ally in the House, Rep. Loren Jennings (DFL - District 18B), successfully inserted (on a 70-62 vote) an amendment in HF 117 which replaced the self service display ban provision with “line of sight” language (50), which is what the tobacco industry and its third group allies (MRMA, MGA) wanted (51). “Representative Jennings’ amendment,” wrote Cook and Henkel “replaced the ban on self-service with a requirement that tobacco be in line of sight of store employees and a provision for federal conformity of self service” (50). Similar opposition surfaced by MGA, MRMA, and Bob Krogman, Executive Director of the Minnesota Petroleum Marketers Association (MPMA) during a March 5, 1997 Senate Committee hearing to consider SF 6 (46). In addition to testifying at House and Senate hearings against HF 117/SG6, the retailers also sent alerts to their members in opposition to this bill, and especially in opposition to the self service ban and the lack of penalty to minors who bought cigarettes (52, 53). MRMA protested the SF 6 (a tougher version of the youth access bill than HF 117), and consistently attempted to frame the issue as something other than youth access: “These are not youth access issues but designed to make it more costly and difficult for retailers to sell tobacco to all customers” (54). MRMA targeted the entire Senate Committee membership to fight the bill (Table 6-2).

Table 6-2: Minnesota Senate Commerce Committee Members (February 17,1997)

Sam Solon (DFL - Dist 7), Chair	Dave Kleis (R - Dist 16)	Linda Runbeck (R - Dist 53)
Bill Bellanger (R - Dist 41)	Cal Larson (R - Dist 10)	Don Samuelson (DFL - Dist 12)
Dick Day (R - Dist 28)	John Marty (DFL - Dist 54)	Linda Scheid (DFL - Dist 47)
Dick Cohen (DFL - Dist 64)	Jim Metzen (DFL - Dist 39)	Allan Spear (DFL - Dist 60)
John Hottinger (DFL - Dist 24)	Ed Oliver (R - Dist 43)	Deanna Wiener (DFL - Dist 38)

Source: Cook, 1997

Note: The Minnesota Retail Merchants Association was opposed to SF 6 original provisions of prohibition on vendor payments, ban on self-service sales of cartons and packs of cigarettes, and private right of action (i.e. bringing individual consumer suits against Minnesota tobacco retailers violating the youth access law)

In addition to these alerts, a Philip Morris phone bank was set up to call tobacco retailers in Minnesota to remind them to call their legislators to press them to enact what Philip Morris called “a uniform statewide law [that] would allow retailers to compete on a level plain field and eliminate the confusing patchwork of regulations that vary from one locality to the next” (55). Philip Morris’ phone bank sought to encourage retailers to push their legislators to adapt preemptive laws to eliminate local government’s ability to enact tougher youth access related ordinances. On February 6, 1997, the Minnesota House passed HF 117 with the preemption exclusion intact (51).

On March 3, 1997, the Minnesota Senate Commerce Committee passed SF 6, which provided for stricter local government policies (a move that was consistent with the health group’s opposition to preemption) to prohibit youth access to tobacco products, banned the self service of individual cigarette packs, allowed cartons to be sold if placed at the level of sales clerk’s eyes, and allowed “slotting allowance,” from manufacturers (provided that they file an annual report to the Minnesota Commerce Department on such allowances).

On April 7, 1997, the Minnesota Senate, considered SF 6 and during the four hour debate on the bill, the following amendments were considered: a) Senator Hottinger successfully amended, on a 64-1 vote, SF 6 to ban payments of “slotting fees” involving self-service tobacco by tobacco companies to tobacco retailers; b) Senator Vickerman attempted to delay the implementation of SF 6 provision to place single packs of cigarettes behind the counter (failed on a vote 31-34); c) Senator Murphy attempted to amend SF 6 to provide for retailers to place self-service displays at the “line of sight” of sales clerk as opposed to requiring the placement of these displays behind the counter, and therefore to a place inaccessible by youth (failed on a 25-40 vote); and d) Senator Kiscaden attempted to amend SF 6 to remove the provision of mandatory compliance checks (failed on a vote of 23-40) (46). In the end, the Minnesota Senate voted 55-6 to pass SF 6 (56).

Since the House version of the bill (HF 117) and the Senate version (SF 6) were different, the bills headed to a conference committee, whose task was to resolve those differences.

On May 13, 1997, MRMA, was alerting its members of the conference committee's agreement (the alert was monitored by RJ Reynolds and Philip Morris) (57). A short version of the retailers concerns with HF 117, protesting the self service ban, the requirement for manufacturers to report their "slotting allowances" to the Minnesota Commerce Department, and the deletion of provisions to allow cities to waive penalties levied against tobacco retailers violating the youth access law, was coordinated through Philip Morris and was circulated by MRMA, MGA, MPMA, and the Minnesota Licensed Beverage Association (MLBA) (58).

A longer version of the alert, also coordinated through Philip Morris, but excluding MLBA as its sponsor, called legislators to support HF 117 as was passed by the House and urge them to use their vote to reject the conference's committee version of HF 117 and to have it heard all over again by the conference committee (59).

In addition to the retail merchants fronting for the tobacco industry and fighting, among others, the ingredients listing requirements, in coordination with the R.J. Reynolds tobacco company (60), another tobacco industry ally opposed HF 117-- the Minnesota Agri-Growth Council and its Executive Director, Thomas O. Cochrane. (As we discuss below, this activity was monitored by tobacco lobbyist Chuck Brown.) On May 27, 1997 Cochrane wrote a letter to Gov Carlson to express his opposition to the ingredients disclosure provision of HF 177 which directed tobacco manufacturers to disclose the presence of five toxic ingredients in the burned and unburned state of tobacco products (arsenic, cadmium, ammonia, formaldehyde, and lead) (61). Cochrane claimed that at least two of these substances - formaldehyde and ammonia - are naturally occurring substances, and as to the rest, anybody using this law might start flooding the courts with lawsuits that would unnecessarily arouse the public's anxiety over the safety of agricultural products. Cochrane's letter to Governor Carlson and his opposition to HF 117 was coordinated through Chuck Brown, a contract tobacco lobbyist for Philip Morris (61). A few days before the end of the legislative session (May 19, 1997), the House voted 86-47 in support of the conference committee report. The bill provided for the provision of mandatory "sting operations" to check on tobacco retailer compliance, the provision of mandatory reporting of an ingredients list, and exempted "smoke shops" from the ban on self service sales of tobacco products.

On May 30, 1997, Governor Arne Carlson (R) wrote a letter to House Speaker Carruthers protesting, among others things, the inclusion in the bill of provisions that violated owners rights, the provision of mandatory "sting operations" to check on tobacco retailer compliance, the provision of mandatory reporting of an ingredients list, and the exemption of "smoke shops" from the self service sales of tobacco product (62). Nevertheless, Governor Carlson signed HF 117 into law.

The Health Advocates and the 1997 Youth Access Fight

The fight for the passage of a strong comprehensive youth access bill in 1997 was led by the Minnesota Smoke-Free Coalition. About 100 statewide organizations were involved in the fight. Major health organizations, governmental agencies, civic, religious, law enforcement, and business organizations were involved. From the start of the 1997 legislative session, the Coalition realized that the Minnesota House of Representatives and more specifically, its Committee on Commerce, Tourism, and Consumer Affairs, had been unfriendly to enacting legislation that would restrict youth access to tobacco products (63). However, in part because new Speaker Phil Carruthers (DFL-47B) had come to power who was pro-tobacco control, and in part because the Coalition had recruited a bipartisan and credible group of authors to sponsor the youth access legislation (63), the Coalition was able to take a pro-active, rather than reactive role in this fight. Therefore, the Coalition embarked on a systematic campaign that, according to Carrie Sullivan of the Smoke Free Coalition, “involved informational packets and organizational letters of support for key audiences, editorial board visits in key areas of the State, a press conference on the day of the bill’s first hearing [HF 117], and grassroots support from across the state. The campaign was successful and passed out of the House Commerce Committee on a strong vote” (63). In addition to this positive and systematic campaign to promote a strong youth access bill (one that did not preempt localities from stricter tobacco control regulations, and included penalties for violating vendors, mandatory compliance checks, and allowed for disclosure by tobacco manufacturers of the five toxic ingredients in tobacco products) Coalition members publicly confronted Gov. Carlson during his May 21, 1997 trip to Duluth and pressed him to answer whether he was intending to sign the youth access bill (64). The Coalition played a most critical and positive role in the passage of the HF 117.

The Coalition historically had relied for many years on the technical and policy support of the Minnesota Department of Health. This relationship began during the early 1980s, around the time the Minnesota Plan for Nonsmoking and Health was published. However, with the election of pro-tobacco industry governor Arne Carlson in 1990 and his adamant efforts to eliminate the implementation of the Minnesota Plan for Nonsmoking and Health and its tobacco control programs in Minnesota, this relationship was strained substantially in the 1990s. As University of Michigan Professor Peter Jacobson noted:

For several years now, the Department of Health has maintained an uneasy relationship with tobacco control advocates throughout the state. While many people give the department credit for obtaining and subsequently administering the ASSIST contract, the department has come under fire for being all but mute on tobacco control issues. In the words of one respondent, ‘The department has not had a direct voice in tobacco control.’ As a result, the department has been essentially marginalized by the state’s tobacco control community, which instead has looked to the Minnesota Attorney General’s Office (which is headed by a Democrat who is often at odds with the state’s Republican governor) for leadership (65).

The Coalition’s efforts to pass a strong comprehensive youth access legislation are even more significant when its relationship with the Minnesota Department of Health is placed in historical context. The success of the Coalition in passing HF 117, came not only from the Coalition’s ability to build a state-wide grassroots movement around the issue of youth access to tobacco

control products, but also in its ability to cultivate alliances with new institutional players such as the Minnesota Attorney General's office.

However, the success experienced by the Smoke Free Coalition in passing the youth access legislation may have also provided the Coalition with a sense of complacency and a sense that the battle had been won. Upon the passage of the legislation, the Smoke Free Coalition fired the lobbyist who had been their champion in the bill's passage. According to President of Common Cause Minnesota, Marc Asch:

They had used a Republican lobbyist as their lobbyist to get the Youth Access bill through. When they completed passage of the Youth Access bill, they fired her and they replaced her with a DFL lobbyist. All of a sudden, the lobbyist who got the bill through, got fired, and this woman, who had never lobbied any of these issues, got the job...They just threw away all pretense that this was a bipartisan effort. So I think that's one reason that they became ineffective (9).

Unfortunately, the actions of the Coalition in response to their victory was a foreshadowing of the events to come. Within the next few years, tobacco control efforts in Minnesota were to receive significant challenges and the health advocates response was to wait and respond, rather than to be proactive and face these challenges head on.

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Chapter 7: The Minnesota Tobacco Trial: Finding the Needle in the Haystack

In the midst of tobacco control advances in the early 1990s, including ASSIST and the development of youth access legislation, Minnesota Attorney General Hubert Humphrey III was thinking of further ways in which to control the tobacco industry in Minnesota. Attorney General Humphrey and his staff carefully planned to sue the tobacco industry to recover costs associated with the treatment of tobacco-related disease and to restrict the tobacco industry's marketing behavior in Minnesota. However, Humphrey and his staff saw a higher purpose than just the lawsuit itself. Instead they envisioned a much larger context and rationale for such a suit that was premised on the notion that "law [was] an instrument for social policy, not just an end in itself" (1). According to Doug Blanke, who served as Minnesota Assistant Attorney General for Consumer Affairs under Humphrey, the notion:

motivated our thinking behind this entire suit, that this was not a suit simply to vindicate the laws that were broken. It was not a suit simply to get a check for the state treasury. It was a way to address the problem of the tobacco industry and the way and the impact it had on our society. From that perspective and because we were working with tobacco control people. . .our attitude was, 'this isn't something that ends when the lawsuit ends. The lawsuit is a way to try to advance this large effort to address tobacco use' (1).

Thus, before even the lawsuit was filed, the Attorney General's office had begun developing a strong foundation for the lawsuit and increased tobacco control efforts in Minnesota.

In addition to addressing the proper role of law in regulating the social impacts of a deadly product, the Minnesota Attorney General's office also considered a legal approach that was different from that of previous state suits against the tobacco industry. For example, Mississippi was the first state to sue the tobacco industry using a product liability approach (2). The approach taken by Minnesota was different:

I [Doug Blanke] would call the Mississippi case a product liability case and then the Minnesota case a law enforcement case. So while we had multiple companies, multiple causes of actions, we were essentially arguing that the tobacco companies had committed consumer fraud in violation of consumer laws. They had committed a conspiracy of restraint of trade that violated our anti-trust laws and there were other common law actions that went along with that. But it was essentially that they had broken the law. . .Whereas Mississippi was saying they were manufacturing and selling a dangerous product. . .our case focused on the conduct, the actions of the executives rather than the product and whether the product was dangerous (1).

Thus before the suit was filed, the Minnesota Attorney General's office had given careful consideration to the details of why Minnesota should develop its own unique strategy and rationale for such as lawsuit. Furthermore, Attorney General Humphrey stood firm in what he saw as goals of the lawsuit and what he would accept as the outcome.

Minnesota Suit is Filed

On August 17 1994, Attorney General Hubert Humphrey III announced that the state of Minnesota was suing all major tobacco companies including their trade associations (the Tobacco

Institute and the Council for Tobacco Research), charging them with misinforming the public about the adverse health effects of tobacco use and withholding the development of safer cigarettes (3). Unique to this lawsuit was the fact that the state of Minnesota was joined by Blue Cross and Blue Shield of Minnesota (BCBS), a major health insurer, in order to recover health care costs linked to tobacco use (4).

Another important feature of this lawsuit was the process that the Attorney General had to go through to secure council. According to President of Common Cause Minnesota, Marc Asch, “Humphrey decided he was going to sue them [the tobacco industry]. He went to the legislature and he asked for an increase in his budget to support the lawsuit. The legislature said no” (5). Therefore, the first obstacle that Humphrey had to face was from the legislature and a lack of funding to go after the tobacco industry. However, this would not stop Humphrey. In response to this obstacle, Attorney General Humphrey sought and successfully secured the assistance of one of the most experienced law firms in the country in mass tort litigation: the Minneapolis firm of Robins, Kaplan, Miller and Ciresi. Robbins, Kaplan, Miller and Ciresi was “a law firm that had done significant, complex, civil litigation” (4). Asch continues to say, “so what Humphrey did by entering into the agreement with Ciresi is he made it possible for the lawsuit to proceed because he did not have the funding to do it” (5).

Attorney General Humphrey took into account a number of additional considerations for choosing this law firm to represent the State of Minnesota. First, Robins, Kaplan, Miller, and Ciresi had extensive experience in the processing of large volumes of documents from previous mass tort litigation cases they had undertaken (for example, the legal representation of the Government of India against the chemical manufacturer Union Carbide, Inc., as well as litigation against the manufacturer of the Dalkon Shield contraceptive device). Humphrey recalls, “they [Robins, Kaplan, Miller, and Ciresi] that in order to tell the story, they were going to have to prove it through the verbalization, the story telling surrounding a host of documents that would basically lay out the picture to the jury” (4). Second, this law firm was willing to absorb the litigation costs of this case, should the State of Minnesota lose the case (4). This point was particularly important because the legislature had made it clear to Attorney General Humphrey that they would not give him the funding to pursue this suit (5). Third, this law firm was determined to take the case all the way to the jury and win: “and they [Robins, Kaplan, Miller, and Ciresi] went at this with the point of saying, we are going to win this case, not that they weren’t going to be willing to settle” (4). Finally, Robins, Kaplan, Miller, and Ciresi accepted a lower contingency fee (of one fourth of the monetary award), should the case be won or settled rather than the more traditional one third (4).

One of the main reasons that the law firm of Robins, Kaplan, Miller and Ciresi was chosen was because of the tobacco industry’s tactic of bombarding its opponents with massive amounts of paperwork. This maneuver included delaying trials through the filing of appeals (200 of them in the case of the Minnesota trial) in order to drive the plaintiff law firm bankrupt, and the dumping of an very large volume of documents to overwhelm the plaintiffs from finding essential evidence against the tobacco industry’s deceptive actions (4). As former Minnesota Attorney General, Hubert Humphrey III has observed on the politics of the discovery process, the tobacco industry essentially told the plaintiffs, “if you really want this information, here it is, and they dumped it. And they basically [said] ‘Now you try to find that needle in this haystack.’ But

interestingly enough, we did have a way of finding the needle (4). Finding the needle required the daunting task of processing and analyzing millions of pages of tobacco industry documents.

The tobacco companies were prepared to fight an extensive court battle. In August 1996, Philip Morris reported spending \$125 million to defend itself in Ramsey County Court and had deployed a force of over 1000 from its legal team. Brown and Williamson had a 300 member legal team (6).

Tobacco Politics in an Election Year

When Attorney General Humphrey initiated the suit against the tobacco industry in 1994, an election year, there was some speculation that he might run in the gubernatorial race against Republican Governor Carlson; instead Humphrey ran for re-election as Attorney General and won (1). According to Doug Blanke (then Assistant Attorney General for Consumer Affairs), publicly, Gov. Carlson was not supportive of the suit:

yet he never seemed quite willing to take it head on, at least for a long period of time. . .there was sort of an undeclared hostility on the part of the Governor that would show up from time to time and got worse as time [went on]. So I think most of the opposition that we met wasn't done in the full glare of publicity. . .At one point, the Governor, as we neared trial in late 1997, and our trial date was in January of '98, we sort of awoke one morning to find that the Governor had sent two of the members of his cabinet to testify in Congress that the Minnesota case should be settled and that Congress should oppose a national settlement. . .here we were representing the state in court, on our way to trial, and this was done without our knowing about it (1).

Governor Carlson not only did not support the lawsuit and trial, but tried to undermine it. Other observers of the politics of this trial, such as veteran *Minneapolis Star-Tribune* reporter Greg Gordon, made similar observations regarding Governor Carlson's stance toward the suit:

Arnie Carlson resisted, though he would deny it, this suit. He says he was left out and cut out, and he's the governor and had the right to be privileged. . . The preview to what was going on [was that] Humphrey's people did not trust Carlson because they thought he was aligned with the tobacco industry. . .He did not, to my knowledge, become very supportive of that suit (7).

As we noted in Chapter 4, from 1989 to 1994, Arne Carlson's Campaign Committee reported receiving about \$5,000 from tobacco industry lobbyist contributions. Additionally, during the 1993-1994 election cycle, major tobacco lobbyists in Minnesota including Ronald Jerich, Tom Kelm, and Allen M Shofe, served as fundraisers for Gov. Carlson's re-election bid (8). Tom Kelm alone expected to raise at least \$10,000 (8). In 1994, Tom and Doug Kelm's firm, North State Advisors who were the chief tobacco industry contract lobbyists in Minnesota, received at least \$100,000 from the tobacco industry (9). Gov. Carlson's indirect financial links to tobacco lobbyists in Minnesota, seem to explain, in part, his unsupportive stance on Attorney General Humphrey's suit.

However, the unsupportive stance of Governor Carlson towards Attorney General Humphrey's lawsuit against the tobacco industry was not unique to Minnesota. Similar forms of opposition had emerged in other states. For example, in 1994, Texas Attorney General Dan

Morales sued five fast-food restaurant chains in order to persuade them to initiate smoke free policies in their Texas restaurants. Attorney General Morales did not receive any support for the trial from elected officials or from then Governor George W. Bush (10). Similarly, in 1996 Mississippi Governor Fordice sued his own Attorney General, Mike Moore, alleging that Moore had not consulted with him prior to filing suit against the tobacco companies and therefore, the suit was illegal and unconstitutional (2). However, while the governors in previous situations were more direct in their active disapproval of fights against the tobacco industry, Governor Carlson was not as direct in his resistance. Nevertheless Humphrey persisted and the case proceeded.

On August 17, 1994, Minnesota Attorney General Hubert Humphrey III, brought six charges against the tobacco industry (Table 7-1) (6, 11, 12). The Attorney General accused the tobacco industry of not abiding by the commitment that they had created for themselves to research the health effects of tobacco use and not making restitution for the health care costs of their consumers. Furthermore, the tobacco companies had conspired amongst themselves to control trade and had created a cigarette monopoly which was then used to usurp information on the health adversities of smoking. Finally, the tobacco industry had received unjust enrichment from the sale of their products (11).

Attorney General Humphrey asked the Court to order the tobacco industry to essentially re-organize how it did business in Minnesota and the United States. He asked that the Court order the tobacco industry: a) to stop any fraudulent behavior; b) to disclose all their research related to smoking and health; c) to fund a corrective public education program regarding smoking and health; d) prevent the sale and distribution of cigarettes to minors; e) to fund smoking cessation programs; f) to dissolve the Tobacco Institute and the Council for Tobacco Research; g) to disgorge all profits from cigarette sales in Minnesota; h) to pay restitution; i) to pay damages to the state of Minnesota for past and future damages caused by the tobacco industry's illegal actions; j) to pay triple damages for violating Minnesota antitrust laws; and k) to pay reasonable attorney's fees and costs (6, 11).

Minnesota Declines the National Settlement

In April 1997, Humphrey was called to join a discussion on a national settlement with the tobacco industry that was negotiated by attorney generals from other states. Attorney General Humphrey expressed that the State of Minnesota refused to join for several reasons:

[The national settlement] would have seriously weakened the FDA's jurisdiction over nicotine. There were inadequate incentives to reduce youth smoking. There were limitations on the tobacco companies's liability tantamount to complete immunity from suit. These outlaw companies would have enjoyed legal privileges afforded to no other business in our country. The compensation was inadequate. States would have received far less per capita than we eventually achieved through our settlement. The document disclosure provisions were weak and uncertain. Finally, there was wide-ranging and unnecessary preemption of state laws. . . The reason all this is important , of course, is because we still do not have a national tobacco policy. If and when Congress does act, the result may not be pretty. . . I believe we are better off with no federal tobacco legislation than with bad federal legislation (13, p.402).

In 1997, the Koop- Kessler Advisory Committee on Tobacco Policy and Public Health recommended that the FDA should regulate all areas of nicotine, as well as other constituents, and that authority should be made explicit (14).

The Minnesota Tobacco Settlement

After 76 days of trial testimony and arguments by the plaintiffs and the defendants the case was settled on May 5, 1998. The major terms of the settlement included are presented in Table 7-1 (11).

Table 7-1: Grounds for the Minnesota Lawsuit and Settlement Terms

<u>Grounds for the Minnesota Tobacco Lawsuit (1994)</u>	<u>Terms of the Minnesota Tobacco Settlement (1998)</u>
1) Tobacco industry had created a special responsibility for itself that they would fully research the health effects of tobacco use	1) Tobacco industry to pay a total of \$6.1 billion to the state of Minnesota over the next 25 years; the first payment of \$240 million was to be made by September 5,1998
2) Tobacco companies named in the suit, had conspired among themselves to control trade using agreements and contracts	2) BCBS of Minnesota would receive nearly half a billion dollars over the next 10 years
3) Tobacco companies created a cigarette monopoly which they used to usurp information on the health adversities of smoking	3) Robins, Kaplan, Miller and Ciresi (law firm assisting in MN settlement) would receive 7.1% of the total settlement
4) Tobacco industry engaged in consumer fraud, unlawful trade practices, deceptive trade practices, and false advertisement	4) Creation of a documents depository open to the public for 10 years
5) Tobacco industry failed to make restitution for the health care costs of their customers	5) Creation of a \$102 cessation fund and a nonprofit foundation for the development of programs to reduce smoking among teens
6) Tobacco received unjust enrichment through the sale of their products	6) Closing of the Tobacco Institute and the Council for Tobacco Research
	7) Ban on marketing cigarettes to children
	8) Ban on billboard, bus, and transit are advertisements
	9) Tobacco company lobbying disclosures must be filed with the Minnesota State Attorney’s office and the Governor’s office

Source: Minnesota v. Philip Morris, 1994.

As a result of Minnesota’s decision to settle individually with the tobacco industry, the state received more money than the states who chose to be part of the Master Settlement Agreement. More important, millions of previously secret tobacco industry documents were now available to the public, changing the landscape of tobacco-related research and the business and politics of the tobacco industry. Never before had the internal thoughts and actions of the tobacco industry been

revealed in such a manner. And the outcome of the settlement pleased Attorney General Humphrey: “Because we are not part of the national settlement, we’re now a bounty state” (4).

Conclusions

The combined strategy of Blue Cross and Blue Shield of Minnesota and Minnesota Attorney General Hubert Humphrey’s strategy to avoid joining the rest of the states in a national settlement with the tobacco industry proved to be successful and highly beneficial to the State of Minnesota’s tobacco control efforts. Had Minnesota joined the other states in the national settlement agreement of 1997, it would have received only \$4.1 billion (15). However, as a result of its own settlement with the tobacco industry, Minnesota received \$6.1 billion. In addition, Minnesota received a number of very important concessions from the tobacco industry, including making public 30 million pages of formerly secret documents that outlined the tobacco industry’s efforts to conceal the health impacts of smoking and secondhand smoke exposure from the public; and the imposition of restrictions on tobacco industry marketing and advertisement in Minnesota. Realizing these benefits, however, would have to take place amidst opposition from Governor Carlson (R), and much of the Minnesota Legislature—especially legislators from the Minnesota Republican Party. Despite the active support of tobacco control advocates in Minnesota, these forces would complicate realizing Humphrey’s vision.

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Chapter 8: The Minnesota Tobacco Settlement

The lawsuit by the State of Minnesota against the tobacco industry resulted in the recovery of \$6.1 billion for the state and an additional \$469 million paid to Blue Cross Blue Shield of Minnesota (BCBS-MN) in a second, separate settlement with the tobacco industry. This money was available to provide the necessary funding for four advances in tobacco control in Minnesota: 1) funding for the creation of endowments, whose earned interest income would be dedicated to tobacco control programs; 2) a vigorous counter tobacco advertising campaign; 3) a non-profit public health foundation (Minnesota Partnership for Action Against Tobacco - MPAAT) to fund smoking cessation and local clean indoor air activities; and 4) the creation of tobacco control and cessation programs through Blue Cross Blue Shield of Minnesota. Table 8-1 summarizes the payments to be made by the tobacco industry (1).

Table 8-1: Summary of Tobacco Industry Settlements in Minnesota, 1998

Party Involved	Initial Payment	Annual Payments
State of Minnesota	\$1.3 billion over first 5 yrs \$202 million dedicated for research and smoking cessation (endowments)	\$114.8 million beginning in FY 2000 and increasing to \$204 million in FY 2004 (in perpetuity)
BC BS of Minnesota	\$ 469 million	

Source: *State of Minnesota v. Philip Morris Inc., et al.*

Attorney General Hubert Humphrey III, on behalf of the State of Minnesota, and Thomas F. Gilde at Blue Cross Blue Shield, sought to structure the settlements in a way to provide support for a tobacco control program in ways that would insulate them from political pressure mounted by the tobacco industry and its allies. These settlements were envisioned by Attorney General Humphrey and his colleagues as the biggest opportunity to create a programmatic solution to the problem of tobacco use in Minnesota that would secure and promulgate the building of a successful tobacco control infrastructure in Minnesota - an infrastructure that would lead to substantial reductions in tobacco use rates and withstand the tobacco industry's political and social influence. In this chapter, we delineate the processes, the players, and the dynamics of building such an infrastructure.

The Minnesota State Tobacco Settlement

On May 8, 1998, the State of Minnesota and twelve tobacco companies and trade groups settled the Minnesota law suit (1). A list of restrictions were imposed on the tobacco industry to address the activities that had previously been conducted by the tobacco industry in Minnesota to promote tobacco (Table 8-2). The tobacco industry was ordered to cease its opposition to the Minnesota legislature's tobacco control efforts and policymaking, to stop advertising on the transit system and in the movies, to disclose lobbying and campaign contributions, to discontinue operation of the Council for Tobacco Research and the Tobacco Institute and to pay monetary damages in the total of \$469 million (1).

Table 8-2: Restrictions on Tobacco Industry Activities and Other Settlement Terms

- refrain from opposition to Minnesota legislative activity intended to control tobacco use by children
- refrain from challenging the enforce ability of existing Minnesota laws or rules relating to tobacco control
- discontinue all billboard and transit advertisements of Tobacco Products in the State of Minnesota
- refrain from the payment for product placement within motion pictures made within the U.S.
- permanently cease the marketing of any service or item, other than Tobacco Products and advertisements for such products, which bears the brand name or other identifying mark of any domestic Tobacco Product
- disclose certain payments or provisions of other benefits to lobbyists, third parties and public officials
- cause The Council for Tobacco Research - USA to cease operation
- pay monetary damages to Blue Cross and Blue Shield of Minnesota and the State of Minnesota
- allow continued public access to industry documents and court files (Minnesota and Guildford Depositories) at their own expense for ten years

Source: *State of Minnesota v. Philip Morris Inc., et al.*

Furthermore, a major provision of the agreement was the disbursement of an initial settlement payment of \$1.3 billion to the State of Minnesota, with another approximately \$4.8 billion being paid in annual installments over 25 years, followed by additional payments according to a prescribed formula (1). After the settlement amount had been determined, the next step was to develop a plan on how to allocate these revenues and there was strong debate within the legislature, as well as between the legislature and health advocates on how to use this money. This debate occurred in the midst of the election season, in which not only many senators and representatives were up for election, but there would also be a new governor in the state capital.

In the Fall 1998 elections, Attorney General Hubert Humphrey III (DFL) came in third behind Independent Republican Norm Coleman (elected Minnesota Senator in 2002) and the winner in the gubernatorial race, Jesse Ventura. Mike Hatch (DFL) was elected Attorney General, the Democrats retained control of the state Senate and the Republicans retained control of the state House. Furthermore, the tobacco industry had spent \$4,650 on reported campaign contributions (\$750 to Republicans and \$3,900 to Democrats). The stage was set for a legislative fight over the use of tobacco settlement money (Table 8-3).

Table 8-3: Timeline of the Minnesota State Tobacco Settlement, 1998-2002

May 8, 1998	Minnesota settles lawsuit with tobacco industry
Fall 1998	During the November election, Hubert Humphrey III (DFL) loses gubernatorial race to Jesse Ventura (Independent). Mike Hatch (DFL) is elected Attorney General
Jan. 1999	Gov. Ventura announces his proposal to spend the settlement dollars: creation of Minnesota Families Foundation, medical research, support for local clinics, and support for community boards of health
March 2, 1999	Republican Speaker of the House Steve Sviggum opposes proposal by Gov. Ventura, along with Rep. Seagren who was in favor of using the funds for tax rebates
April 9, 1999	Minnesota State Senate votes 46-14 to spend the initial settlement payment of \$1.3 billion to create endowments for tobacco control
May 12, 1999	Gov. Ventura and Senate Majority Leader Roger Moe support endowments for tobacco control
May 17, 1999	Minnesota State Legislature approves allocation of settlement dollars for a tax relief, increased spending for education, the establishment of a light rail system for the Twin Cities, and creation of three tobacco control endowments
June, 1999	Tobacco Endowment Advisors are appointed
Sept. 1999	Minnesota Youth Tobacco Prevention Initiative-Strategic Plan is published

Allocating the State's Share of the Settlement

The Ramsey County District Court that approved the tobacco trial settlement made the following recommendation with regards to the manner in which the settlement dollars should be spent:

The Attorney General will propose, and the Settling Defendants have agreed not to oppose, that the Legislature appropriate to a foundation one-half the payments to in September 1998 and in January of the years 1999 through 2003, to be used for such activities as the directors of the foundation may determine will diminish the human and economic consequences of tobacco use (1).

Therefore, while the Court made the recommendation, the final decision was left to the legislature. The fight within the legislature that followed the court ruling was centered on the differing policy expectation of two major categories of stakeholders. State elected officials were divided between using the funds for the creation of endowments for health and social programs and tax rebates and the tobacco control advocates favored the use of these revenues to fund a statewide comprehensive tobacco control program. There were also fights between the Democratic-Farm-Labor (DFL) Party, the Independent-Republican (IR) Party and Independent Governor Jessie Ventura. In January 1999, Gov. Ventura proposed to use about \$600 million of

the one time tobacco settlement funds to create a non-profit Minnesota Families Foundation with the goal of helping Minnesotans become less dependent on the government and more self-sufficient (2). In addition to the Minnesota Families Foundation, Gov. Ventura proposed the allocation of \$350 million for general medical research at the University of Minnesota, \$100 million for support at the Mayo Clinic and other clinics, and \$250 million for support of community boards of health, which would oversee smoking prevention programs (2). Members of the DFL Party such as Rep. Matt Entenza (DFL- District 64A), wanted to create a Children's Endowment (2), and later supported Gov. Ventura's idea of putting the one time settlement funds into endowments for health and social programs, including \$250 million for community health boards endowment (3).

Members of the Republican Party such as Rep. Alice Seagren (R-District 41A), were proposing to spend the \$1.3 billion for tax rebates because they opposed government funding of endowments without legislative oversight (2). On March 2, 1999, Republican Speaker of the House Steve Sviggum (R- District 28B), echoed similar opposition to Gov. Ventura's proposal to use of the settlement payment for the creation of health and social program endowments programs (3). However, a Minnesota Public Radio poll conducted in the first week of February 1999 suggested strong support (63% support) for the use of the \$1.3 billion tobacco settlement for special projects and endowments rather than for tax rebates (17% support, with the remaining 19% being neutral) (4).

Minnesota tobacco control advocates wanted to spend \$650 million of the \$1.3 billion initial settlement payment to fund a state-wide comprehensive tobacco prevention program; Jeanne Weigum, president of the Association for Nonsmokers Rights Minnesota (ANSR), presented the health advocates view: "We need to see a coordinated prevention program, and that prevention program can't happen in little bits and pieces—a little here, a little bit there—it has to be really well-thought out and researched and evaluated. So we see that as an area we want to see some movement, but really [Gov. Ventura] has set up a pretty good starting framework" (2). The health advocacy community in Minnesota strongly defended the creation of tobacco use prevention and education endowments.

On April 9, 1999 the Minnesota Senate voted 46-14 to spend the \$1.3 billion initial settlement payment to support the creation of endowments for tobacco control and other programs (5). After the Senate vote, a Minnesota Public Radio opinion poll showed that 72% of Minnesotans supported the idea of putting the one time settlement money into endowments for tobacco control and other programs (6). By May 12, 1999 it had become clear that the Senate Majority leader, Sen. Roger Moe and Gov. Ventura were both in support of directing the one time tobacco settlement money into endowment funds, as part of a budget negotiation outcome. Gov. Ventura proclaimed "The people of Minnesota deserve endowments, today we set aside the tobacco money" (7). However, Gov. Ventura wanted to use the funds for medical research. Just like the House Republicans, Governor Ventura was not convinced that all of the one time settlement money of \$1.3 billion should be used for tobacco control programs (8).

The legislative fight over the use of the \$1.3 billion initial tobacco settlement payment came to an end on May 17, 1999 when the legislature approved tax relief for Minnesota taxpayers, increased spending for education, established a fund for light rail system in the Twin

Cities, and approved the use of the initial settlement payment for two endowments. One endowment was for tobacco prevention and the other for medical education and research (9). Thus, the Minnesota Legislative session that ended on May 17, 1999 involved several fights, one of which was over how to use the one time settlement payment.

Creation and Funding of New Tobacco Control Programs: The Tobacco Settlement Endowment Funds

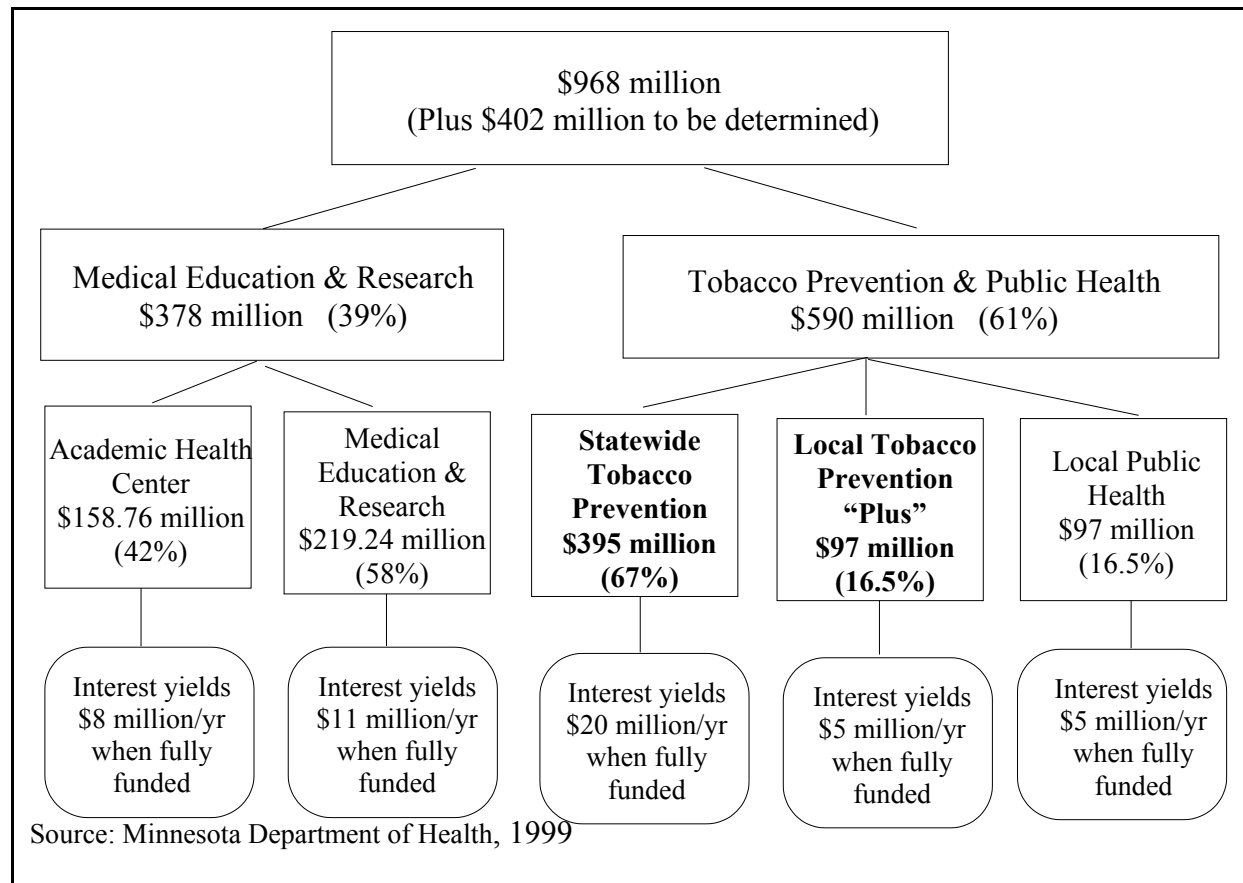
The 1999 Minnesota Omnibus Health and Human Services Act allocated \$968 million from the settlement to two separate health endowment funds to be funded by their annual respective interest earnings (10). Both endowment funds were created in the state treasury.

Earnings of the Medical Education Endowment Fund, or up to 5% of its annual fair market value, were to be appropriated for medical education activities in the state of Minnesota. Earnings from the Tobacco Use Prevention and Local Public Health Endowment Fund, or up to 5% of the annual fair market value of the fund were appropriated to “reduce the human and economic consequences of tobacco use among the youth of this state through state and local tobacco prevention measures and efforts” and for non-tobacco public health initiatives (10). Thus, two thirds of the 5% annual earnings from the tobacco use prevention and local public health endowment fund was appropriated to fund statewide tobacco use prevention initiatives aimed at youth, one-sixth was appropriated to local youth tobacco use prevention in coordination with other local public health initiatives to improve youth health, and one-sixth was appropriated to “community health boards for local health promotion and protection activities for local health initiatives other than tobacco prevention aimed at high risk health behaviors among youth” (10, Subdivision 7).

In total, tobacco use prevention and local public health programs are funded from the investment of \$590 million, whose annual interest is \$30 million (11). Earnings from the tobacco use prevention and local public health endowment fund financed three program areas (Table 8-4): statewide tobacco use prevention (\$20 million/year); local tobacco use prevention (\$5 million/year); and local non-tobacco public health (\$5 million/year).

Earnings from the medical education endowment fund financed non-tobacco medical education and research (\$378 million, earning an interest of \$19 million/year) (11). Funding for the programs of both the Medical Education and Research Endowment Fund and the Tobacco Prevention and Public Health Endowment Fund were estimated from the full funding of these endowments at market interest rates (Table 8-4) (11). The Minnesota Legislature controls the two endowment funds, while the Minnesota Department of Health manages and administers the uses of the earned interest from these endowments (10). All earned interest from the tobacco prevention and public health endowment fund are devoted to youth tobacco use prevention (10).

Table 8-4: Tobacco Settlement Endowment



The Medical Education Endowment Fund and the Tobacco Use Prevention and Local Public Health Fund expire on June 30, 2015. On that date, the statute specifies that “the commissioner of finance shall transfer the principal and only remaining interest to the general fund” (10).

Minnesota health advocates (such as the Minnesota Smoke Free Coalition, the Minnesota American Lung Association, the Minnesota American Cancer Society, and the Minnesota Medical Association) supported the creation of these endowments through advertisements that were directed to the Minnesota Legislature. The Minnesota Smoke-Free Coalition ran two print advertisements that focused on the theme of addiction: “How many Minnesota kids will Big Tobacco addict next year? This week you decide. . . The Minnesota Tobacco Settlement. Don’t Blow it” (Figure 8-1). The other print advertisement read: “Tobacco addiction will kill 51 of this year’s Eagan 12th graders. Think of that when their names are called on Graduation Day. . . The Minnesota Tobacco Settlement. Let’s Not Blow It” (Figure 8-2).

Minnesota kids will Big Tobacco addict next year?



"Whether intended or not, working to kill long-term tobacco prevention plays right into the hands of the tobacco industry. It's getting late in the legislative session. It's time to put party politics aside and do what's right for Minnesota."

— DR. C. EVERETT KOOP,
former Surgeon General of
the United States, in the
Rochester Post-Bulletin,

This week, you decide.

The Minnesota Senate has passed a tobacco prevention plan to protect our kids. But some powerful politicians in the Minnesota House want to let Big Tobacco off the hook. Who will win? You decide...

The bi-partisan Senate plan guarantees anti-tobacco education for generations to come. It's designed by our leading health experts...endorsed by every major health group in the state...and backed by an astounding 89% of Minnesota voters.

That's because the Senate plan invests 11% of the Minnesota Tobacco Settlement in a special Tobacco Prevention Endowment. Using zero tax dollars, interest from the endowment will fund effective anti-tobacco education proven to keep kids from becoming addicted. This actually saves taxpayers tens of millions of dollars by preventing tobacco-related illness.

It's common sense. Using money we won from Big Tobacco to solve the problems caused by Big Tobacco.

But now, some politicians in the House want to give Big Tobacco a second chance. They don't believe Minnesota's Tobacco Settlement should be used to protect future generations of Minnesota kids from tobacco addiction.

So, who's going to win? Big Tobacco? Or our kids? You decide.

This message brought to you by the

MINNESOTA SMOKE-FREE COALITION

*Grassroots voice of the American Cancer Society,
American Heart Association, American Lung Association*



**THE MINNESOTA TOBACCO SETTLEMENT.
LET'S NOT BLOW IT.**

Figure 8-1: Minnesota Tobacco Settlement Advertisement

Tobacco addiction will kill 51 of this year's Eagan 12th graders.

[Think of that when their names are called on Graduation Day.]

Four out of ten Minnesota high school seniors smoke. One-third of them will die from a tobacco-related disease. Still not convinced Minnesota needs intensive tobacco education? The number of Minnesota 12th graders who smoke has jumped by more than a third in the 1990s. Today, they're almost 20% more likely to smoke than high school seniors nationwide. That means Minnesota's problem is worse than most states'. Fortunately, we have the means to solve it. Setting aside just 11% of Minnesota's \$6.1 billion Tobacco Settlement will guarantee our kids get their tobacco education from someone other than the tobacco companies. This is a once-in-a-lifetime chance to stop tobacco addiction and death among Minnesota kids. It will save thousands of lives and billions of our tax dollars long after the rest of the tobacco money is gone. No wonder 87% of state voters support the idea. Where does your state representative stand? Call the Minnesota Smoke Free Coalition at (651) 641-1223 or visit www.SmokeFreeFuture.com.



www.publichealthcancer.org

THE MINNESOTA TOBACCO SETTLEMENT. LET'S NOT BLOW IT.

Figure 8-2: Minnesota Tobacco Settlement Advertisement

[State Taxpayers Overwhelmingly Support Tobacco Prevention Education for Kids]

State legislators can't help any of the 64,000 Minnesotans who died in the past ten years.



But what about the 18,000 kids who start smoking this year?

Smoking begins as a teenager. It kills as an adult. To break the cycle of tobacco death in Minnesota, we should invest a portion of the Tobacco Settlement in a long-term prevention campaign. If we don't, Minnesota will pay the price a generation from now, when the Settlement is long gone.

Over the last decade, Big Tobacco has lost 64,000 customers in Minnesota who died from tobacco-related causes: lung disease, heart damage, cancer. At the same time, the industry has spent \$900 million in Minnesota to attract customers and keep them hooked.

As long as they keep replacing customers, it's business as usual. And Minnesota youth tobacco use, which is already above national levels, is rising fast. That's why it will take more than a \$6.1 billion Tobacco Settlement to safeguard the health of Minnesota. If we don't devote an adequate portion to effective prevention programs, kids trying their first cigarette today will be tomorrow's casualties.

Fortunately, we know exactly what to do to save both lives and money. States like California and Massachusetts have cut smoking rates by 30-40% with coordinated anti-tobacco campaigns and community-based prevention efforts. Minnesota's Tobacco Settlement

recommends a similar effort here, fully accountable but invulnerable to tobacco industry lobbying. Eleven percent of the total Settlement would be set aside for tobacco prevention education, leaving plenty for other priorities.

This reasonable proposal is also wise. It recognizes that Big Tobacco is not about to quit the battle for the next generation's hearts, lungs and minds.

As citizens, it is our responsibility to create an environment that gives our kids a fighting chance against addiction and death.

The Legislature must take positive action to set aside sufficient funds to safeguard the next generation. Your representatives need to know how you feel. Tell them directly — 1 (800) 657-3550 — or mail us the coupon below and we'll do it for you.

For complete information about the Tobacco Prevention Trust Fund, please write, email or call the Minnesota Smoke Free Coalition. We're the grass roots voice of the American

Cancer Society, American Heart Association, American Lung Association and other leading Minnesota health organizations. 1619 Dayton Avenue, Suite 204B, St. Paul, MN 55104, <sfc2000@mtn.org>, (651) 641-1223. Or visit our website: <www.smokefreefuture.com>



How Minnesotans want the Tobacco Settlement spent:

Efforts to reduce tobacco use among kids?
Favor 87% Oppose 7% Not sure 6%

Roads, bridges or other infrastructures in the state?
Favor 37% Oppose 54% Not sure 9%

Tax relief for citizens of the state?
Favor 49% Oppose 44% Not sure 7%

[Mason-Dixon Political / Media Research Incorporated telephone poll of 825 registered, likely voters statewide, October 12-14, 1998. Margin of error - 3.5%.]

American Cancer Society of Minnesota
3316 W. 66th Street, Edina, MN 55435 Fax (612) 925-6333

Yes, I want 11% of the Tobacco Settlement reserved for tobacco prevention education. Please make sure my legislators know how I feel and that I hold them responsible for safeguarding the next generation from Big Tobacco.

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

This message brought to you by the American Cancer Society of Minnesota.

Cemetery photo: Worthier Khabizphoto@aol.com; teen photo: Maggie Hallahan, Network Images; Photo Media Corp.

THE TOBACCO SETTLEMENT HAS NO FUTURE WITHOUT PREVENTION & EDUCATION FOR KIDS.

Figure 8-3: Minnesota Tobacco Settlement Advertisement

The American Cancer Society of Minnesota ran a print advertisement campaign that focused on the theme of addiction as well, which called on Minnesota legislators to support tobacco use prevention and education for children: “State legislators can’t help any of the 64,000 Minnesotan who died in the past ten years. But what about the 18,000 kids who start smoking this year? The Tobacco Settlement has no Future Without Prevention and Education of Kids” (Figure 8-3). That advertisement chronicled the tobacco industry’s big campaigns to hook Minnesotan children to tobacco—the tobacco industry spent \$900 million in ten years to replace the 64,000 Minnesotan smokers that died from a variety of tobacco-related diseases and asked Minnesota Legislators to devote 11% of the settlement funds for tobacco prevention education. The same advertisement featured the results of an October 12-14, 1998 Mason-Dixon Political/Media Research Inc. poll that showed that Minnesotans wanted to spend the settlement money on a) efforts to reduce tobacco use among kids (87% in favor), b) roads, bridges or other infrastructure in the state (37% in favor), and c) tax relief for citizens of the state (49% in favor).

Administration of New Tobacco Control Programs

In 1998, the Minnesota Department of Health’s “Minnesota Student Survey” showed that the 30 day smoking prevalence among 12th graders was 45%, a rate that exceeded the national average by 7 percentage points (11). In establishing these endowments, the 1999 Minnesota Legislature set an ambitious goal for the Minnesota Department of Health’s Minnesota Youth Tobacco Initiative: to reduce the rate of tobacco use among Minnesota youth by 30% over the next 6 years and authorized the Minnesota Department of Health to implement programs to achieve that goal (11).

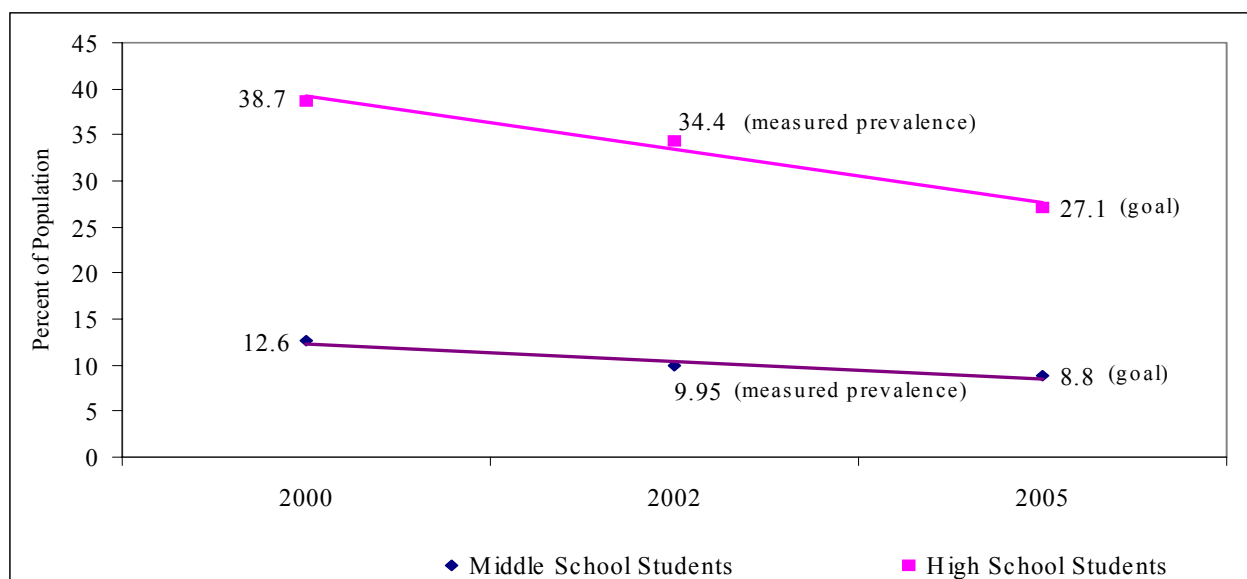
The Minnesota Legislature allowed interest earnings from these endowments to be used exclusively for youth related activities (11). The Minnesota Department of Health (MDH), appointed the Tobacco Endowment Advisors (Table 8-5) to advise Commissioner of Health Jan Malcolm “on the development of a long-term, multi-faceted program to achieve the goal of the endowment” (11). Similar to the Department of Health’s appointment of members to the Technical Advisory (TEA) Committee on Nonsmoking and Health in 1983 (Chapter 3), the Tobacco Endowment Advisors came “from numerous organizations representing a wide range of perspectives on adolescents, health issues, and tobacco use prevention, [including] representatives from state and local government, public health, education, health care, and community organizations” (11). TEA was charged with providing the Commissioner of Health with recommendations on the “initial steps in implementing a comprehensive tobacco use reduction and prevention plan, pursuant to the tobacco settlement fund endowments” (11). Thus, TEA advised the Commissioner of Health “on the development of a long-term, multifaceted program to achieve the goal of the endowment” (11). Thus, TEA only had an advisory role in the development of the program to reduce youth smoking rates by 30% by 2005. In contrast to MDH’s focus on youth tobacco issues, the Minnesota Partnership for Action Against Tobacco (MPAAT) focused on efforts to reduce adult tobacco use.

Table 8-5: Minnesota Tobacco Endowment Advisors, 1999

Gayle Hallin (Co-Chair) <i>Minnesota Department of Health</i>	Robert J. Jeddelloh <i>Physician/Provider</i>	Mary Robillard <i>Minnesota Council of Foundations</i>
Arla Johnson (Co-Chair) <i>American Cancer Society</i>	Daniel Johnson <i>BlueCross BlueShield Foundation</i>	Pat Stieg <i>American Heart Association</i>
Andy Berndt <i>Student Consumer Member</i>	Judy Knapp <i>Minnesota Smoke-Free Coalition</i>	Mary Thissen-Milder <i>Minnesota Dept. of Children, Families and Learning</i>
Neil Bracht <i>Consumer Member</i>	Sharon MacDonald <i>Local Public Schools</i>	Chris Tholkes <i>American Lung Association</i>
Carolyn Link Carlson/Marc Manley <i>BlueCross BlueShield of Minnesota</i>	Al McFarlane <i>Minnesota Minority Media Coalition</i>	Katie Tilley <i>Student Consumer Member</i>
Jane Croker <i>Community Coalition Representative</i>	Dean Massett <i>State Community Health Services Advisory Committee</i>	Jeanne Weigum <i>Association of Nonsmokers-Minnesota [sic]</i>
Jean Harris <i>League of Minnesota Cities</i>	Bob Meeks <i>Minnesota School Boards Association</i>	Mary Wellik <i>Local Public Health Association</i>
Patricia Harrison <i>Minnesota Department of Human Services</i>	Cheryl Perry <i>University of Minnesota School of Public Health</i>	Lara Waterman Wittstock <i>Minority Health Advisory Committee</i>
Richard D. Hurt <i>Minnesota Partnership for Action Against Tobacco</i>	Jenny Peterson <i>Minnesota Hospital and Healthcare Partnership</i>	Ellie Garrett (alternate member) <i>Minnesota Council of Health Plans</i>
George Isham <i>Minnesota Council of Health Plans</i>		

In September 1999, the Minnesota Department of Health, published the Minnesota Youth Tobacco Prevention Initiative—Strategic Plan, September 1999-July 2001 (Initiative) to advance the goals of the 30 % reduction in youth tobacco use (11). This goal would mean that youth smoking rates would drop from 38.7% to 27.1% for high school students and 12.6% to 8.8% for middle school students (Figure 8-4) (11).

Figure 8-4: Prevalence Goals and Actual Prevalence of Tobacco Use Among Youth



The Initiative was coordinated with anticipated tobacco control programs of the Minnesota Partnership for Action Against Tobacco (MPAAT) and Blue Cross Blue Shield of Minnesota (11). The Initiative focused exclusively on youth and had four parts all funded at different levels for 2000-2001 (Table 8-6). The Initiative gave rise to Target Market, an aggressive youth designed and youth-led tobacco control advertisement as well as a youth leadership campaign that featured messages of tobacco industry marketing manipulation of Minnesota youth (11).

Table 8-6: Summary of the Minnesota Youth Tobacco Prevention Initiative, 2000-2001

Initiative Program	Funding	Purpose
Statewide Public Information & Education Campaign (PIEC)	\$7.5 million	Development & implementation of PIEC
Statewide Programs	\$3.6 million	Mobilization of organizations to implement statewide efforts of PIEC
Community-based Prevention Programs	\$4.4 million	Identification, development, and strengthening of local tobacco prevention efforts
Youth Leadership Projects	\$1.0 million	Increase youth participation in local tobacco prevention and control programs
TOTAL	\$13.5 million	

Source: Minnesota Department of Health, 1999

The Target Market Campaign

The Target Market (TM) campaign is an innovative effort to discourage youth from smoking and is funded (\$7.5 million per year) by the Tobacco Use Prevention and Local Public Health Endowment and administered by the Minnesota Department of Health (12). Target Market is both a youth movement and a counter-marketing campaign that “focuses on the tobacco industry’s marketing practices of targeting underage smokers” (13). Its basic message is that the tobacco industry manipulates youth to get them to use tobacco products and as such TM is using similar tactics such as television advertisements, sports sponsorships, high visibility events (music concerts), and promotional gear to help teens refuse “the influence of tobacco in their lives”. Announcing the campaign, MDH Commissioner Jan Malcolm noted the Target Market advertisement campaign targets the tobacco industry at a time when adult smoking rates were constant at 24% and smoking rates among teenagers were on the rise: “42% of 12th graders in this state smoke” (12).

The Target Market advertisements are paid advertisements modeled after Florida’s “Truth” campaign and began airing on radio and television stations across the state on April 27, 2000 (12). Print ads used strong images such as a graveyard and a caption reading, “State legislators can’t help any of the 64,000 Minnesotans who died in the past ten years. But what about the 18,000 kids who start smoking this year?” and catchy phrases such as “The Minnesota Tobacco Settlement. Let’s not blow it”. The Target Market campaign planners did not only create advertisements that took on the tobacco industry’s tactics of targeting teens for its own

advertising campaigns (in order to replace its dying and quitting smokers), but also a youth-oriented movement, which started out with 400 signed members in early 1999 and by April 2001 it had 20,000 members (14) and as of November 2002, it had about 35,000 members.

Target Market is part of the Minnesota Youth Tobacco Prevention Initiative (MYTPI) which the Minnesota Department of Health's contracted to the Minnesota chapter of the American Lung Association to run from January 2000 to June 2001. MYTPI's funded activities included the following: Public information and education campaign (\$7.5 million); statewide programs focusing on youth outreach and involvement in nonsmoking activities (\$3.3 million); community-based prevention programs (\$3.5 million); population at risk prevention programs, such as American Indian youth (\$1.2 million); youth leadership project (\$1.1 million facilitated by the Minnesota Lung Association); youth access enforcement projects (\$1.05 million) (13, p.11). Finally, the local public health component of the tobacco prevention and public health endowment fund of MDH finances the execution of the Minnesota Youth Risk Behavior Survey (over \$5.5 million between 2000 and 2002) to identify and reduce non-tobacco risk behaviors while increasing the protective value of tobacco use reduction among high risk youth (13, p.11).

The tobacco industry spends, on average about \$7.5 million per month to market its products in Minnesota, whereas, the State of Minnesota spends only about \$1 million/month to bring the youth tobacco use rate down by 30% by 2005 (13).

Because of its visibility and aggressiveness, the Target Market campaign has been the target of legislative battles from the start. These battles echo earlier campaigns in other states (Florida, California, Texas) as well as in the work of the American Legacy Foundation to vilify anti-industry messages. The tobacco industry tries to avoid these messages; they included a limited "no vilification" clause in the Florida settlement (15) that was later removed (16) because of the most favored nation clause in the Florida settlement when the Texas settlement went through (16)(17).

Mirroring past tobacco industry rhetoric, at the heart of these battles were questions about whether the campaign was receiving too much funding, and whether in the end it would prove effective in reducing the Minnesota teenage tobacco use rates. On April 25, 2001 House Republicans such as Rep. Peggy Leppik (R-Golden) wanted to cut the Minnesota Youth Tobacco Endowment in half (14). In addition, other House Republicans (Rep. Fran Bradley of Rochester) used unsubstantiated claims of ineffectiveness to downplay Target Market's advertisement campaign and eliminate it (14). (Similar unsubstantiated claims were articulated earlier in California when then Republican Governor Pete Wilson shut down the California anti-smoking media campaign in 1992 (18).) Senate Democrats (Senate Majority Leader Roger Moe) were supportive of Target Market's mission and campaign.

The attacks on the Tobacco Use Prevention and Local Public Health Endowment and Target Market have little to do with whether that was money well spent or whether the advertising campaign would generate the expected results. The heart of the matter is that, just like in the beginning of the debate on what to do with the settlement money, Republicans pursued a course of wanting to divert that money to the general fund for tax rebates, thus eliminating any systematic effort to curb tobacco use in Minnesota among youth.

The question to be answered is whether or not the Target Media Campaign has been effective in reducing teenage tobacco use in Minnesota; concrete facts, not opinions or politics. In its December 2000 report “Teens and Tobacco in Minnesota—Results from the Minnesota Youth Tobacco Survey”, the Minnesota Department of Health, set out to reduce the use of tobacco among middle school students from 12.6% in 2000 to 8.8% in 2005; and the use of tobacco among high school students from 38.7% in 2000 to 27.1% in 2005 (19). Figure 8-4 indicates that the tobacco control program was on target to reach their target goals, as smoking prevalence among high school students was 34.4% and among middle school students it was 8.8% as of 2002. Furthermore, cigarette smoking among 8th graders decreased by about 25% between 2000 and 2002 and the percentage of middle school students that reported never smoking increased from 50.5% to 56% during the same time period (20). These results suggest that the Target Market campaign, as well as the overall comprehensive tobacco control approach taken by MDH (including a statewide programs focusing on youth outreach and involvement in nonsmoking activities, community-based prevention programs, population at risk prevention programs, youth leadership project, and local youth access enforcement projects) were effective and that MDH is on its way to achieving the goal of a 30% tobacco use reduction by 2005.

Minnesota Department of Health’s activities to reduce tobacco use among teens include not only the Target Market campaign, but also nonsmoking education in the classroom as well as grants for local tobacco control activities (21). Capturing the significance of the effectiveness of the Target Market campaign, a September 22, 2002 Minneapolis *Star-Tribune* editorial noted: “Although teenagers helped design the ads and craft the message, the strategy behind Target Market was rooted in careful epidemiological research, which shows that raising the level of social stigma attached to smoking is as important as helping smokers one by one ” (22).

The Minnesota Partnership for Action Against Tobacco (MPAAT)

In January 1998, as the lawsuit of Minnesota Attorney General Hubert Humphrey III and BlueCross and BlueShield of Minnesota was entering its trial phase, and as the possibility of a settlement was considered, there were substantial internal discussions in the Attorney General’s office on how to approach the Court and how to secure funds for tobacco control purposes that would be protected from tobacco industry lobbying influence on the legislature (Table 8-7).

The Attorney General’s office began to consider legal frameworks that would enable it to propose the setting aside of funds to help unidentified victims of tobacco addiction and do something to protect current and future sufferers of smoking. They decided to use the Koop-Kessler report (23, 24) to justify using the revenues more specifically for tobacco control. The Koop-Kessler report was the document produced by an Advisory Committee on Tobacco and Health charged with the task of developing “a comprehensive and rational public health policy toward tobacco, containing clear goals and principles, in order to provide a benchmark against which future public and private activities can be measured” (23, 24).

During the debate over a national “global settlement” of all litigation against the tobacco industry in 1997. The Koop-Kessler Advisory Committee recommended that “a portion of available funds flowing into a trust administered, as in the Australian model, by a state-chartered, state Health Foundation, governed by a board composed of the leaders of health and other non-government organizations who are not recipient of funding” (23). Minnesota Attorney General Hubert Humphrey III sought and received substantial support for the creation of MPAAT by the Minnesota Smoke-Free Coalition, ANSR-Minnesota, and other tobacco control advocates.

The settlement between the tobacco industry and the State of Minnesota stipulated:

...the Legislature appropriate to a foundation one-half the payments due in September 1998, and in January of the years 1999 through 2003, to be used for such activities as the directors of the foundation may determine will diminish the human and economic consequences of tobacco use. It is contemplated that the directors of the foundation will include public representatives, and representatives of such groups as the American Lung Association, Minnesota Chapter; the University of Minnesota School of Public Health; the Minnesota SmokeFree 2000 Coalition; the American Cancer Society, Minnesota Division; the American Heart Association, Minnesota Chapter; the Association for Non-Smokers' Rights--Minnesota; and the Mayo Clinic Nicotine Dependence Center (1).

Minnesota Attorney General Hubert Humphrey III sought this part of the agreement in order to insulate the tobacco lobby from influencing the work of the public health non-profit foundation (MPAAT). The MPAAT Board membership was clearly spelled out in MPAAT’s incorporating documents, (Table 8-8). The Board was also created to insulate itself from direct tobacco industry influence.

Table 8-8: Composition of MPAAT Board of Directors

- 2 Directors of different political parties, appointed by the Speaker of the Minnesota House of Representatives
- 2 Directors of different political parties, appointed by the Minnesota Senate Majority Leader
- 2 Directors appointed by the Governor
- 2 Directors appointed by the State Attorney General
- 2 Directors who are employees or officials of city, county or local governmental bodies
- 8 Directors from the public health community as follows:
 - 2 Directors who are employees or representatives of organizations which have as their primary organizational purpose reducing the human, social and economic consequences of tobacco use,
 - 2 Directors who are employees or representatives of nonprofit organizations a substantial purpose of which is to ameliorate the effects of and reduce the incidence of particular diseases or health conditions associated with tobacco use,
 - 2 Directors who are employees or representatives of accredited teaching and/or research institutions and foundations,
 - 2 Directors who are employees or representatives of health care providers or payors,
- 2 Directors who shall, by education, training or experience, have demonstrated special skills in community organizing
- 1 at-large Director

Source: Minnesota Partnership for Action Against Tobacco, 2003

The incorporation document of MPAAT (which was approved by the Minnesota Secretary of State) clearly stipulated the following:

No person shall be a Director

1. If that person (a) is, or has been within the ten years before becoming a director, the agent, attorney, employee, lobbyist, or representative of; or (b) receives, or has received within the ten years before becoming a director, any compensation from; or (c) is, or has been within the ten years before becoming a director, otherwise affiliated with any business or organizations which sells tobacco products, or any trade association the majority of the members of which sell tobacco or tobacco products; or If that person or a political committee, political fund or principal campaign committee acting on behalf of that person receives or has received within two years before the person becomes a director, any political 'contribution' under Minn. Stat. Section 10A.01, subd. 7 or 2 U.S.C. Section 431 (8) (A) from a tobacco manufacturer, whether made directly by the manufacturer or indirectly through an employee acting in the scope of his employment, affiliate, lobbyist or other agent acting under the substantial control of a tobacco manufacturer and
2. Unless that person has a demonstrated history of activities directed at or expertise related to reducing the human and economic consequences of tobacco use (1).

Mindful of any legislative concerns regarding the magnitude of funds that would be in the hands of a nonprofit public health foundation, planners within the Attorney General's office

envisioned that only a small percentage of the settlement money could be under the control of such foundation, according to Blanke:

So it will be a total of \$202 million that will go to MPAAT. But the rest of the money goes to a general fund of the legislature and we're not in the position to control that so [that is] what we did. We did what we could. Having worked with the health groups and advocates, we wrote in the settlement documents themselves that we were going to ask the court to create this foundation that became MPAAT, the court did that. . . We were going to ask the legislature to set some money in endowments, trust funds to be used on a continuing basis for tobacco prevention and control (25).

Although the Ramsey County District Court authorized the creation of MPAAT, the Minnesota Legislature had to approve its operations (25). MPAAT was incorporated as a 501(c)(3) nonprofit foundation on September 21, 1998 and its incorporation was certified by the Minnesota Secretary of State (26).

As Blanke has observed the creation of a public health foundation was to exemplify

a balance point between accountability and independence. We wanted it to be accountable enough so that it wasn't just throwing money. . . this was money that came from a public lawsuit which is why the MPAAT board is set up as it is, try to be accountable. And that is the court's oversight. But independent enough that it would be beyond the reach of the tobacco lobbyists. That was our proposal. Now what happened in practice was [that] there was a big fight about it. You know, the opponents were saying 'Oh, this foundation, that's a Skip Humphrey concoction, it's a Democratic [Party scheme].' Yes, Skip [Attorney General Hubert Humphrey III] had the authority for naming the majority of the initial board yes. Most of them are people he had never met. There are probably more Republicans than Democrats among them, including three Republicans. Many of the members are appointed. . . [The MPAAT Board's membership] is all under the Court's oversight (25).

MPAAT's board of appointed directors is comprised of leading public health, tobacco control experts, and community organizing (24). Table 8-8 lists the source and number of MPAAT Board appointees. This list was approved by the Minnesota Legislature and was entered in MPAAT's incorporation document (26). Table 8-9 lists the original MPAAT Board of Directors.

Table 8-9: Original MPAAT Board of Directors

Richard D. Hurt, M.D., Chair <i>Director of the Mayo Clinic Nicotine Dependence Center & Professor of Medicine, Mayo Medical School in Rochester</i>	Representative Peggy Leppik (R) <i>Member, Minnesota House of Representatives</i>
Gerald W. Christenson, M.A., Ph.D. <i>Distinguished Adjunct Professor, University of St. Thomas</i>	Gretchen Musicant, M.P.H. <i>Vice President, Minnesota Hospital and Healthcare Partnership</i>
John R. Garrison, M.P.A. <i>CEO, American Lung Association</i>	Matthew Ramadan <i>Chair, American Muslim Council, Minnesota Chapter</i>
Representative Lee Greenfield (D) <i>Member, Minnesota House of Representatives</i>	Lawrence M. Redmond <i>Legislative Affairs Specialist, Redmond & Associates</i>
A. Stuart Hanson, M.D. <i>Founding President, Minnesota Smoke-Free Coalition</i>	Christine D. Rice <i>Former Deputy Commissioner, Minnesota Department of Health</i>
Jean Harris, M.D., Ph.D. <i>Mayor of Eden Prairie, MN & Chair of the Health Subcommittee of the U.S. Conference of Mayors</i>	Terry L. Sluss, M.A. <i>Commissioner, Crow Wing County & Chair, Crow Wing County Tobacco Ordinance Committee</i>
Arla Johnson <i>Chair, Advocacy Group, American Cancer Society, Minnesota Division</i>	Jeanne Weigum, M.S.W. <i>President, Association for Nonsmokers-Minnesota</i>
Randy Johnson, J.D. <i>Chair, Hennepin County Board of Commissioners and Immediate Past President, National Association of Counties</i>	Whitney Wheelock
Anne M. Joseph, M.D., M.P.H. <i>Associate Professor, University of Minnesota School of Medicine</i>	Laura Watterman Wittstock <i>President MIGIZI Communications, a nonprofit communications organization serving the American Indian community</i>
David A. Kessler, M.D., J.D. <i>Dean, Yale University School of Medicine</i>	Julie Woodruff, M.S.N. <i>Scott County Coordinator, ASSIST Project & Co-Chair, Coordinating Committee, Minnesota ASSIST Project</i>
C. Everett Koop, M.D. <i>Former Surgeon General of the United States</i>	

Source: Minnesota Partnership for Action Against Tobacco, January 2002

MPAAT Funding

Funding for MPAAT was recommended in the Court settlement agreement, but the appropriation of those funds was left to the legislature (1). The result was the appropriation of funds for two separate activities: a \$102 million Cessation Account and a \$100 million Research Account. MPAAT became the funds' administrator. The \$202 million represented about 3.1% of Minnesota's \$6.1 billion tobacco settlement [Minneapolis Star-Tribune, 2001 #139]. The \$102 million was allocated to MPAAT's Cessation Account from the settlement funds paid by the tobacco industry in December 1998 (1), while the remaining \$100 million would be paid in \$10 million annual payments for the first 10 years of MPAAT's existence (27).

The Court's decision to create MPAAT, was premised on the Koop-Kessler Report (discussed earlier). In a July 1998 Memorandum in Support of Plan for Administration of Consent Judgement Funds (28), the Court suggested that a non-profit corporation fund administrator will allow for a comprehensive, sustained cessation and research endeavor:

Unquestionably, these authorities [i.e. public health authorities in the tobacco control, smoking cessation and tobacco research fields] support that cessation and research are key components to any effective program aimed at reducing the harm caused by tobacco products. The creation of a new nonprofit organization to support tobacco prevention and control programs and to administer the cessation and national research accounts is fully consistent with the recommendations of these public health authorities. . . The creation of an independent non-profit organization is one of the recommendations of the Koop-Kessler Advisory Committee, a bipartisan group of twenty-five leading public health and tobacco control organizations, convened at the request of Congress in 1997 (28).

MPAAT Program Areas

Guided by the Koop-Kessler report, the court empowered MPAAT to use a social-environmental approach (premised on a population- rather than individual-basis) to reduce tobacco use in Minnesota, including cessation, an approach that was part of a larger comprehensive plan. The Court's support for such approach was guided by the Office on Smoking and Health of the Centers for Disease Control and Prevention (CDC). In a letter to Attorney General Humphrey, CDC's Office on Smoking and Health noted: "The most successful tobacco control programs utilize partnerships consisting of diverse organizations and institutions the Office on Smoking and Health looks forward to contributing to this partnership" (28).

Specifically the Court contemplated that MPAAT's board of directors would take into account the tobacco control planning efforts of other health promotion programs, such as the Minnesota Health Improvement Partnership, the 'Vision for Minnesota's Future' process of the Minnesota Smoke Free Coalition, the Blue Cross-Blue Shield 'Minnesota Decides' process, Tobacco Control Models of other health plans, and other "similar efforts, local and national" (28), "work to reinforce and strengthen the public infrastructure for tobacco control at the community and state level;" "draw upon the experiences of California, Massachusetts, Florida, Oregon and other states in developing and evaluating similar programs and will make extensive use of the expertise and technical assistance of the US Centers for Disease Control and Prevention in designing effective programs, evaluating them, and ensuring accountability;" "rely extensively on advisory committees of stakeholders and experts with specialized expertise, to develop plans and programs for cessation, research and other initiatives;" and "incorporate strong evaluation components from the inception of programs and modify as necessary to modify accordingly to maximize health outcomes" (28).

Based on the court's mandate, MPAAT created five priority areas of tobacco control activities in Minnesota: 1) reduction of exposure to second hand smoke, 2) reduction of tobacco use among young adults (18-24 years), 3) reduction of tobacco use among racial minorities, 4) reduction of tobacco use among gay, lesbian, bisexual and transgender communities, and 5) support of health care improvements for tobacco reduction.

In 2002 MPAAT provided grants, on a peer-reviewed, competitive basis, for the following activities: a) statewide grants to reduce secondhand smoke exposure, support cessation efforts, and address tobacco use in the workplace (\$1.2 million); b) community building projects to address tobacco use, reduction among racial and ethnic minorities (\$50.7 million); c) community projects to eliminate second hand smoke (\$1.3 million); d) planning grants (\$0.5 million); and e) demonstration projects (\$0.5 million) to encourage smoke free entertainment for young adults (29). Finally, MPAAT runs the Minnesota Tobacco Quitline and a multiyear \$5.5 million advertisement campaign to educate adult Minnesotans of the dangers of secondhand smoke and to promote the quitline (29).

The Blue Cross Blue Shield Tobacco Settlement

On August 17, 1994, Blue Cross joined Minnesota Attorney General Hubert Humphrey III, in a lawsuit against the major tobacco companies charging them with consumer deception regarding the health impacts of smoking and seeking to recover health care costs associated with smoking in the state of Minnesota (Table 8-2). While Blue Cross successfully settled the lawsuit with the tobacco industry, subsequent litigation has blocked efforts to implement a tobacco control program in Minnesota, and effectively halted the program.

Blue Cross' lawsuit went through various phases (Table 8-10). In 1996, the Minnesota Supreme Court ruled that Blue Cross had the standing and the right to sue the tobacco industry on its own and it was not doing so as part of a class action suit. Then in January 1998, Blue Cross's lawsuit went to trial. In the same month, Andy Czaikowski, Blue Cross President and CEO, responding to rumors that his company was secretly negotiating a settlement with the tobacco companies, set forth three conditions the defendants had to meet in order to settle: a) disclosure of all secret tobacco industry documents and information; b) specific targets for reducing youth smoking rates, and an end to tobacco industry's targeting of Minnesota youth; and c) monetary compensation for economic costs associated with the tobacco industry's illegal behavior (30). On May 8, 1998, the tobacco industry settled with Blue Cross and with the State of Minnesota (1). The terms of the settlement are summarized in Table 8-2. Consistent with the Blue Cross's wishes, the tobacco industry agreed to, among other activities, stop from challenging laws to control tobacco use by children, stop from interfering with the enforcement of existing Minnesota tobacco control laws, stop the billboard and public transit advertisement of tobacco products, disclose lobbying payments to Minnesota government officials, pay monetary damages of \$469 million and allow free public access to formerly tobacco industry secret documents (1).

As soon as the case was settled a public debate arose as to how to spend the settlement funds. At issue was the question of whether the settlement funds belonged to Blue Cross or whether they belonged to its policy holders and ought to be returned to them in the form of refunds (31). This issue led to a class action suit on behalf of Blue Cross policy holders which was dismissed in September 1998 (the policy holders asked that BCBS's tobacco settlement funds be returned to the policy holders as refunds). As Table 8-10 suggests, from June 1998 to October 2002, Blue Cross filed several plans on how to use the proceeds of the settlement as well as the excess funds (in order to maintain its non-profit status), and each time these plans were approved by the Minnesota Commerce Department, a lawsuit was filed to have the proceeds returned to policy holders. In short, the \$469 million BCBS received (over five years) from the settlement with the tobacco industry exceeded the allowable revenue permitted by Minn Stat. §62C.09 subd.3 (to keep its nonprofit status) by \$118 million (surplus) (32). Therefore, BCBS had to submit a plan to the Minnesota Department of Commerce on how it planned to spend the surplus, at which point BCBS policy holders would attempt to block approval of the plan in order to have the surplus funds be returned to the policy holders as refunds. And even when the Minnesota Department of Commerce would approve of BCBS's plan to spend the surplus, BCBS policy holders would sue to have the court decide what the proper use of that surplus would be.

Blue Cross's plans on how to use the settlement funds had a substantial component devoted to tobacco control and anti-smoking programs in Minnesota. As early as November 9, 1998, Blue Cross intended to spend the settlement funds (of \$434 million) to a) pay federal and state taxes (\$124 million), b) smoking cessation drugs to members at no cost (about \$110 million), c) health initiatives to curb tobacco use (\$179 million) and d) grants through the Blue Cross Foundation to promote "tobacco-reduction Programs" (\$21 million) (33). This plan was approved by the Minnesota Commerce Department. Blue Cross and Blue Shield of Minnesota is a unique health plan which was created by a special legislative action and it is considered a non-profit but taxable health plan. Therefore, because under this designation lawsuit winnings are considered taxable income, Blue Cross and Blue Shield of Minnesota had to pay state and federal taxes on revenue it earned from its settlement with the tobacco industry.

Another example of the challenges faced by Blue Cross to use its funds to promote tobacco control programs in Minnesota is illustrated by its campaign called "Investment in Prevention" which targeted spending the tobacco settlement proceeds to three basic health problems in Minnesota: reduction of tobacco use, improvement of cardiovascular health, and early prevention and detection of cancer (34). Though the Minnesota Commerce Department approved this plan on June 5, 2002, another lawsuit, similar to earlier suits seeking refunds for policy holders, was filed by five subscribers seeking to have the settlement's proceeds returned to them as refunds. On October 31, 2002, the Dakota County District Court considered a hearing on whether to dismiss the lawsuit; however, in the end of November 2002, the judge denied the dismissal (Table 8-10). Lastly, these legal challenges against the use of Blue Cross's tobacco settlement money have held back a \$80 million health improvement campaign which was to be awarded to Miami advertisement firm Crispin Porter & Bugoski, a campaign Blue Cross put on hold pending the outcome of the Dakota County Court decision (35).

Table 8-10: Blue Cross Tobacco Lawsuit and Settlement Timeline, 1994-2002

Aug. 17, 1994	Blue Cross and Blue Shield of Minnesota and the state of Minnesota file an unprecedented lawsuit against cigarette manufacturers and their trade associations on grounds the industry deceived consumers, resulting in higher health care costs for Blue Cross and the state.
July 1996	Minnesota Supreme Court upholds lower court decisions that Blue Cross has standing in its own right to sue the tobacco industry and that the lawsuit is not a class action on behalf of Blue Cross members.
Jan. 1998	The historic tobacco trial begins.
May 8, 1998	Blue Cross announces its landmark settlement with the tobacco industry. Four days later, attorneys file class-action lawsuits claiming Blue Cross settlement should be paid directly to members.
June 1998	As required by state law, Blue Cross begins creating a plan for using the settlement funds to submit to the state regulator, the Minnesota Commerce Department.
Sept. 1998	Blue Cross files a tobacco proceeds plan with the Commerce Department. Commerce Commissioner Dave Gruenes requests a public hearing before an administrative law judge. District court dismisses class-action lawsuits seeking to have the tobacco settlement paid directly to Blue Cross members.
Nov. 1998	HealthPartners files opposition to the Blue Cross proceeds plan, but later withdraws its opposition after Blue Cross addresses those concerns.
Dec. 1998	Commerce Commissioner Gruenes issues a consent order allowing Blue Cross to pay taxes on the settlement income and transfer \$21 million to the Blue Cross Foundation.
Jan. 1999	A three-day public hearing (St. Paul). Nearly all testimony supports the Blue Cross proceeds plan.
March 1999	The administrative law judge, after reviewing the evidence and testimony regarding the Blue Cross proceeds plan, recommends the plan in its entirety to the Commerce Department for approval. The Minnesota Court of Appeals affirms the district court decision to dismiss class action lawsuits seeking to have the tobacco settlement paid directly to Blue Cross members.
July 1999	Deputy Commerce Commissioner Gary LaVasseur issues an order rejecting the Blue Cross tobacco proceeds plan. Blue Cross requests reconsideration of the order, but LaVasseur denies that request. The Minnesota Supreme Court refuses to hear appeal of class-action lawsuits against Blue Cross for attorneys seeking to have the tobacco settlement paid directly to Blue Cross members.
Aug. 1999	Blue Cross files an appeal to the Minnesota Court of Appeals to overturn the Commerce Departments' rejection of its tobacco proceeds plan.
Feb. 2000	Minnesota Court of Appeals issues its ruling reversing Commerce Department and orders the department to approve implementation of Blue Cross' proceeds plan.
March 2000	The Commerce Department petitions the Minnesota Supreme Court to review the Court of Appeals decision ordering the department to approve implementation of the Blue Cross plan.
Oct. 31, 2000	Minnesota Supreme Court hears oral arguments from the Commerce Department and Blue Cross.
April 12, 2000	The Minnesota Supreme Court reverses the Court of Appeals's decision. Blue Cross continues to work with the Commerce Department on a revised plan.
Nov. 8, 2001	Blue Cross announces "A Healthier Minnesota," a \$412 million investment in reducing tobacco use, improving health, and making our state a better place to live and work, funded by Blue Cross' tobacco settlement proceeds. The new plan is filed with the Commerce Department.
Jan. 8, 2002	The Department of Commerce holds a public meeting on the Blue Cross plan. The vast majority of written and oral comments support the Healthier Minnesota plan.
June 5, 2002	The Department of Commerce approves Blue Cross' Healthier Minnesota plan.
July 22, 2002	Five subscribers, who are plaintiffs serving as potential class representatives, commence a class action lawsuit against Blue Cross claiming Blue Cross' settlement to be paid directly to subscribers. Blue decided not to spend settlement proceeds until this legal action is resolved.
Oct. 31, 2002	A hearing is scheduled in Dakota County District Court to determine whether the lawsuit against Blue Cross should proceed or should be dismissed.
Nov. 27, 2002	Dakota County District Court judge rules not to dismiss the case.

Source: Manley, 2002

Conclusion

Tobacco control efforts at the state level were hindered due to squabbling over how the tobacco settlement funds should have been spent. The payments to the State of Minnesota were the subject of debate between elected officials, some of whom would have preferred to use the funds for tax rebates. Despite the delay in setting up the endowments, a total of \$25 million annually (the interest from the two tobacco endowments) was allocated to prevent tobacco use. However, the establishment of the endowments to be used for tobacco use prevention was difficult and tobacco control advocates would see in 2003 that a vigilant watch over the endowments was necessary because the same elected officials who were eager to use the endowments for other purposes in the late 1990s would also look to use the endowments to patch budget woes.

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Chapter 9: Local Tobacco Control and Clean Indoor Air Legislation in Minnesota

Throughout the 1990s, Minnesota state and local tobacco control legislative efforts emphasized youth access to tobacco products as their top priority. However, after the state of Minnesota and Minnesota Blue Cross Blue Shield settled their lawsuits against the major tobacco manufacturers in 1998, local Minnesota tobacco control activities started to focus again on clean indoor air legislation. With the financial support of the Minnesota Partnership for Action Against Tobacco (MPAAT) and technical assistance provided by the Minnesota Department of Health and the Minnesota Smoke-Free Coalition, several cities and counties considered restrictions on smoking in public and private spaces (Tables 9-1 and 9-2).

Table 9-1. MN Local Tobacco Control & Clean Indoor Air (CIA) Ordinances, 1988-2002

Community	CIA	Workplaces	Restaurants	Bars	Gov't Bldgs	Public Places	Status	Date enacted	Attacked
Austin	Yes						Pending		
Beltrami County	Yes		Yes				Pending		
Cloquet	Yes		Yes			Yes	Enacted	8/7/2001	
Crow Wing County	Yes		Yes				Early		
Dakota County	Yes		Yes				Withdrawn		
Duluth	Yes		Yes			Yes	Enacted	5/29/2001	Challenged
Duluth	Yes		Yes			Yes	Enacted	6/12/2000	
Duluth	Yes		Yes			Yes	Enacted	6/12/2000	
Duluth	Yes				Yes	Yes	No Action		
Eden Prairie	Yes				Yes		Enacted	10/15/02	
Fergus Falls	Yes		Yes				No Action		
Goodhue County	Yes		Yes				Pending		
Grand Rapids	Yes		Yes				Defeated		
Hennepin County	Yes				Yes		Enacted	7/19/2000	
Hibbing	Yes		Yes	Yes			Early		
Hutchinson	Yes		Yes				Early		
Hutchinson	Yes		Yes	Yes			Defeated		
Little Falls	Yes		Yes				Defeated	1/23/2001	Repealed
Mankato	Yes		Yes				Pending		
Moose Lake	Yes		Yes	Yes			Enacted	1/28/2001	
Moose Lake	Yes		Yes				Enacted	4/5/2000	
New Prague	Yes		Yes			Yes	Defeated		
Olmsted County	Yes		Yes			Yes	Enacted	11/13/2001	
Rochester	Yes		Yes				Defeated		
Superior	Yes		Yes				Early		
Thiensville	Yes		Yes				Withdrawn		
Winona County	Yes				Yes		Defeated		

Source: American Nonsmokers Rights Foundation, 2002 (copyrighted material). Used by permission.

NOTES: Early Status refers to the organizing phase of an ordinance campaign; No Action Taken refers to an ordinance being tabled. Ordinance Attacked refers to an ordinance being placed on a public referendum vote; Ordinance Repealed refers to an ordinance being repealed by public vote.

Table 9-2. Local Smoking Control and Clean Indoor Air Ordinances in Minnesota (as of December 3, 2002)

Community	Smoking Control	First Date of Enact.	Most Recent Amend.	Type of Workplaces Covered	WP: 100% Smokefree	Restaurant restrictions	Restaurant Minimum % Smokefree	Restaurant Attached Bar Restrictions	Free-standing Bar restrictions	Other Public Places restriction
Bloomington	Yes	6/18/2001		None		No			No	No
Cloquet	Yes	8/7/2001		None		Yes	100%	Sep Ventilated Sep Ventilated	No	No
Duluth	Yes	6/12/2000	5/29/2001	All	Yes (No size exemption, no separately ventilated smoking areas)	Yes	100%		No	Yes
Hennepin County	Yes	7/19/2000		Public	Yes (No size exemption, no separately ventilated smoking areas)	No			No	Yes
Moose Lake	Yes	4/5/2000	7/12/2000	None		Yes	100%	No restrictions Sep Ventilated	No	No
Olmsted County	Yes	11/13/2001		None		Yes	100%		No	No
Saint Cloud	Yes	5/8/2002		None		No			No	Yes

Source: American Nonsmokers' Rights Foundation Local Tobacco Control Ordinance Database[®], Copyright 1998 - 2002 American Nonsmokers' Rights Foundation. Used by permission.

NOTES:

Smoking Control and Clean indoor air (CIA) are equivalents, and refer to smoking restrictions in regarding workplaces, restaurants, bars, public places, and their enforcement and penalties. Smoking Control and CIA do not refer to Youth Access (Self Service Display Bans, Vending Machines, Licensing requirements, and Use/Possession/Purchase), Advertising, Excise Taxes (local), and CUPs (Conditional Use Permits).

Bloomington's smoking control covers only outdoor air provisions such as no smoking at city pools.

Other public places may include restrictions on any of the following: Theater Lobbies, Bowling Centers, Retail Stores, Food Markets, Public Transportation, Bingo Parlors, Multi-Unit Dwellings, and Day Care.

Types of workplaces covered: Private refers to privately owned workplaces. Public workplace refers to municipal/government workplaces and does not cover smoking restrictions in government owned vehicles.

Moose Lake was the first Minnesota city to enact a smokefree restaurant ordinance. However, Duluth was the first major city in Minnesota to successfully enact a clean indoor air ordinance affecting restaurants, which we discuss in detail, as well as representative developments from other local clean indoor air legislative campaigns. Duluth and other localities smoke free campaigns focused on restaurants and bars rather than workplaces.

Moose Lake

On February 9, 2000, Jan Salo-Korby of the Stop Teen Tobacco Smoking Organizing Project (STTOP) of the American Lung Association of Minnesota introduced a proposed ordinance to the Moose Lake City Council (1). As proposed, the ordinance ended smoking in all work places and public places, including restaurants, excluding bars. Moose Lake was the first city in Minnesota to end smoking in its hospital and on its public beach (2). The City Council held a meeting on March 21 to hear from proponents and opponents of the ordinance. STTOP proponents got a boost from a local restaurateur (Romelle Jones, a former smoker and owner of Art's Cafe) as well as area physicians, all of whom promoted a smokefree ordinance for Moose Lake's 9 restaurants (3). During the March 21 hearing, opposition to the proposed ordinance came from the owner of the largest restaurant (David Lund) who, citing the adequacy of his restaurant's ventilation system, stated through a spokesperson that "the decision (smoking) should be made by individual owners, not the City" (4).

On April 5, 2000, the Moose Lake City Council passed an ordinance that ended smoking in all restaurants by a vote of 3-1 (with one councilor abstaining) (5). The City of Moose Lake Smoke Free Restaurant Ordinance featured clear definitions of affected spaces, such as "bar," "restaurant," "smoking," and "tobacco product," required sign age, and levied penalties for individual smoking violators (maximum allowable by state law) and went into effect August 1, 2000 (6). Moose Lake became the first city in Minnesota to enact such an ordinance.

Duluth

The Duluth Chapter of the American Lung Association and the Twin Ports Youth and Tobacco Coalition (Coalition) started work on the ordinance in November 1999. The ordinance was developed in three stages: the first weak ordinance went into effect January 1, 2001; the City Council strengthened it in June 2001; and supporters defended it against an attempt to repeal it with a referendum in November 2001. After making a series of mistakes in 1999 and 2000, the health advocates bounced back and, in the end, contributed substantially to the enactment and defense of a strong ordinance.

The First Ordinance

The Coalition hoped to avoid controversy by working with local restaurants in the development of the ordinance, beginning in November 1999. At the same time, the Coalition also began to educate Duluth City Council members about the health dangers of secondhand smoke exposure. Initially, restaurant owners were receptive to the idea (7).

In Spring 2000, a number of key events occurred which shaped the public debate on the ordinance. Opposition to the ordinance from local restaurants became evident in early Spring 2000, as local owners were refusing to meet with the Coalition to discuss the ordinance. In addition, as we discuss later in this chapter, the Beverage Association's link to Philip Morris was exposed as was its opposition to the ordinance. Coalition members began to gather signatures in support of the ordinance while framing the ordinance as a children's health issue. The ordinance was introduced in a City Council meeting on April 10, 2000 and included a proposed prohibition of smoking in restaurants, pool halls, and bowling alleys; bars were excluded. During an April 25, 2000, televised "Town Meeting" to debate the ordinance, proponents framed the ordinance as a children's health issue while opponents framed it as an economic issue (8). Pro-tobacco interests prevailed on June 13, 2000, the City Council passed a weak ordinance (Table 9-3).

The Tobacco Industry's Response

By February 2000, the tobacco industry had recruited third party groups to organize the opposition against the ordinance. As in earlier debates over local ordinances (9, 10), the tobacco industry used the National Smokers Alliance (NSA), which was created by the public relations firm of Burson-Marsteller for Philip Morris (10), to lobby against the ordinance. The tobacco industry recruited the Minnesota Licensed Beverage Association (11) to lobby against the ordinance. On February 2, 2000, Philip Morris's regional director Paul J. Lucas gave the Beverage Association a check for \$10,000 (12). The Beverage Association's lobbyist (Jim Farrell, a former legislator) claimed that the contribution Philip Morris made to the Beverage Association was "for annual dues for Miller Brewing Co., which Philip Morris owns" (13), not for lobbying. In contrast, the quarterly report of lobbying expenditures filed with the Minnesota Attorney General reports that \$2500 of the \$10,000 Philip Morris paid to the Beverage Association was earmarked for lobbying expenses (11). This was not the first time the Beverage Association received tobacco industry funding in Minnesota. Between 1993 and 1997, the tobacco industry provided \$9,000 to the Beverage Association (14-16).

The Duluth Hospitality Association used four tactics to oppose the ordinance: it promoted claims of substantial economic loss, proposed ventilation solutions to the problem of secondhand smoke exposure, endorsed the creation of a task force which could be used to water down or delay the ordinance, and sponsored a signature petition drive to argue that business owners be allowed to decide how to accommodate their smoking and nonsmoking patrons. Claims of economic loss and ventilation alternatives to the proposed ordinance were articulated during a May 1, 2000 City Council meeting by Duluth restaurateurs (Kay Biga and Brian Dougherty), a bowling alley manager (Paul Goeb) and the Beverage Association (Colin Minehart) (17).

Table 9-3: Duluth’s Original Ordinance in 2000 and the Revised Ordinance in 2001

	Original Ordinance (June 12, 2000)	Revised Ordinance (May 29, 2001)
Finding: Adverse Health Effects	Yes	Yes
Finding: Possible Economic Hardship	Yes	Removed
Bar definition	Any establishment or portion of an establishment where one can consume alcoholic beverages.	An establishment that has an on-sale liquor license pursuant to state law
Bar/restaurant definition	Not present	Any establishment that has an on-sale liquor license and a food license pursuant to state law
Other person in charge definition	Not present	Present, follows state clean indoor air law
Proprietor definition	Not present	Present, follows state clean indoor air law
Public places required to be smoke free	Retail stores, offices and other commercial establishments, public conveyances, hospitals, auditoriums, arenas, meeting rooms, common areas of hotels and motels	Same
Bowling alleys and pool halls	Excluded	Excluded until April 1, 2003
Private offices	Excluded	Excluded
Room definition	Doors not required on entries and exits "of historical significance" May be substituted for walls "at such time as the council deems, by amendment of this ordinance, that sufficient scientific evidence supports the effectiveness of air barriers or other technologies"	Doors required on all rooms
Ventilation	Allowed to have smoking area in separately ventilated room up to 30% of seating if no one under 18 allowed in	Provision removed Current separately ventilated smoking rooms (up to 30% of seating with no one under 18 allowed in) allowed to remain until April 1, 2003.
Restaurants	Exempted (through definition of bar); not explicitly addressed	Smoking permitted if separate room with door and separate ventilation, so long as no one under 18 be allowed in
Bar area of restaurant		
Bars	Excluded if people under 18 are not permitted to enter Smoking allowed at restaurants that hold liquor licenses after 8 pm so long as people under 18 "are not allowed to remain on the premises."	Excluded without conditions
Hours of operation		Provision deleted Exempt, unless formed to get around provision of ordinance
Private clubs	Not mentioned	Exempt
Religious use	Exempt	Exempt
Signage	Required to "inform the public of the smoking restrictions contained in this ordinance"	No smoking signs required
Ashtrays, lighters, matchbooks	Not mentioned	May not be placed in smoke free areas
Proprietor responsibility	"Nothing in this ordinance shall be construed to impose any requirements upon owners of public places." Restaurant may apply for exemption if loss of sales of 15% compared to same months of previous year or 10% for two consecutive months "as a result of complying with this ordinance." Exemptions granted if council does not deny it within 30 days	Required to post "no smoking" signs, remove ashtrays, lighters, and matchbooks, ask people not to smoke, and ask them to leave if they persist in smoking
Hardship exemptions	Nonsmoking employees not required to enter bar areas	Deleted
Employees entering bar area	"without employee's consent"	Same
Nondiscrimination clause	Not present	Present "This ordinance is intended to compliment the Minnesota Clean Indoor Air Act. ... Nothing in this ordinance authorizes smoking in any location where smoking is restricted by other applicable laws."
Relationship to Minnesota Clean Indoor Air Act	Not mentioned	
Penalties	Proprietors exempt; size of fine not specified	Proprietors included; fines up to \$700 for first offense
Severability	Not included	Included

Claims that ventilation was the proper solution to second hand smoke exposure (as opposed to smoke free restaurants) were premised on tobacco industry-sponsored studies conducted by Roger Jenkins and chemists working at Oak Ridge National Laboratories who had previous experience working with the tobacco industry (7, 18). Tobacco control advocates countered by asking Honeywell, the manufacturer of the “air curtain” ventilation system being promoted by industry allies, “Will filtering eliminate all health hazards known to occur with exposure to environmental tobacco smoke?”(19). Honeywell replied “Honeywell has no data to support health hazard claims” (19).

Philip Morris set up a phone bank urging Duluth residents to oppose the ordinance. Shortly after May 1, 2000, Duluth residents received phone calls from people with southern US accents identifying themselves with a campaign against the ordinance. The callers urged residents to encourage their City Councilors to oppose the ordinance. A Duluth area television reporter contacted Philip Morris and confirmed that Philip Morris had set up the phone bank (20).

To avoid or delay legislative approaches to create smoke free restaurants in Duluth, the Duluth Hospitality Association, a newly created group to fight the Duluth ordinance, also endorsed a task force proposal announced by Mayor Gary Doty on May 1, 2000. While the Mayor presented the task force as a way to solve differences between opponents and proponents, Hospitality Association members saw it as a way to avoid legislative regulation of their restaurants and bars (21). The Beverage Association, acting on behalf of Philip Morris and with its financial support, worked behind the scenes to create a task force: “We have been told that the beverage industry pushed very hard here and made threats, [such as] ‘if you guys let this [ordinance] pass, wait until the next legislative session.. you are not going to get what you want down at the capitol” (20). Mayor Doty unsuccessfully attempted to recruit departmental heads to serve on the task force, a move that de-legitimized his task force proposal. The Coalition opposed the task force proposal. On May 22, 2000, citing an overload of the City Council with too many task forces, and the adequacy of discussion on the subject, the City Council tabled the task force proposal.

The Hospitality Association mounted a petition campaign near the end of spring 2000 urging City Councilors to allow businesses to make their own decisions about accommodating smoking (22). Following standard tobacco industry “accommodation” rhetoric (23), the petition read: “We, the undersigned, patrons and supporters of our local Duluth businesses strongly urge you, the Duluth City Council, to reject the smoking prohibition ordinance and to continue to allow businesses, with our input, to make accommodation decisions without government interference for all patrons of the Duluth hospitality industry.” About the same time, in June 2000, the tobacco industry’s National Smokers Alliance used two signature campaigns to organize local smokers against the ordinance (24-26). The first was an economic “Freedom Fax,” asking City Councilors to protect small hospitality business owners: “Protect the mom-and-pop business community that would be most affected by a smoking ban.” The second was a business rights signature campaign that urged Duluthians to “support the ability of the marketplace to dictate these policies, and the rights of business owners to serve all of their customers the way they see fit!” The signed petitions were delivered to the Duluth City Council.

Health Advocates' Response

Health advocates, led by the Coalition, pursued an ambiguous strategy to promote the ordinance. Although they exposed the link between the Minnesota Licensed Beverage Association and Philip Morris, recruited medical specialists for expert testimony on the dangers of secondhand smoke and ineffectiveness of ventilation, and mobilized witnesses to testify against the task force proposals, the Coalition failed to challenge the tobacco industry's claims of hospitality industry revenue loss from the ordinance. It also failed to frame exposure to secondhand smoke as a workplace safety and health issue. In February 2000, the Coalition reported the link between the Beverage Association and Philip Morris to the *Duluth News Tribune* and to the Duluth City Council. Later in Spring 2000, the Coalition reported that Philip Morris had sent representatives to the April 25, 2000 "Town Meeting—The Smoking Ban Controversy" (8). On May 1, 2000, the testimony of Dr. Richard Hurt, a well-respected authority on the dangers of secondhand smoke and Chair of MPAAT, added credibility to the health claims of the Coalition. Additional expert testimony from local physicians supplemented Dr. Hurt's testimony and forced Honeywell Inc., the manufacturer of ventilation equipment, to state that it had "no data to support health hazard claims" (19).

The Coalition had an ambivalent response to the task force proposal—a proposal that was first announced by Duluth Mayor Gary Doty on May 1, 2000. First, on May 1, 2000, Pat McKone (Duluth ALA) suggested that a task force would make the ordinance lose momentum and also encourage the city council to procrastinate on the issue (21). But four days later, in response to Councilor Donny Ness's call for the creation of a 12-month task force, the Coalition suggested that its members would support a three month task force study but not a 12-month task force study. About three weeks later however, during a May 22, 2000 City Council meeting to consider the task force proposal, the Coalition and the local ALA chapter recruited enough witnesses to table the task force idea. The tobacco industry promotes the creation of task forces in order to delay and eventually, quietly eliminate smoke free ordinances (27).

The Coalition's failure to engage tobacco industry claims of adverse economic impacts weakened its position. Coalition members feared that any adverse economic events, especially during the winter months, would be attributed to them. As one advocate put it: "We do not want any business to go out of business and become a poster child for why ordinances shouldn't be passed" (20). Their silence cost them the opportunity to establish themselves as credible critics of tobacco industry's economic arguments.

Final Language of the First Ordinance

On June 13, 2000, the Duluth City Council voted to enact an ordinance that, for the most part, handed a victory to the tobacco industry. The tobacco industry prevailed because health advocates framed the ordinance as a children's health issue, thus compromising their ability to credibly critique the tobacco industry's economic claims. The ordinance allowed for smoking rooms in restaurants with the type of ventilation systems that the tobacco industry was supporting, contained very weak enforcement provisions (proprietors were not responsible for keeping their establishments smokefree, created a broad process for restaurants to gain an exemption by claiming economic hardship, exempted bars and the bar portions of restaurants,

and permitted restaurants that served alcohol to also allow smoking after 8 pm (the “8 pm rule”) so long as people under 18 were not present. The “8 pm rule” made enforcement impossible, because it allowed smoking even when “no smoking” signs were prominently displayed. The ordinance went into effect January 1, 2001.

Reactions to the First Ordinance

Despite the tobacco industry’s victory, the tobacco industry’s allies continued to press to take advantage of the fundamental weaknesses in the ordinance. The events that led to the enactment of a much stronger second ordinance were precipitated by three major debates: a debate over the economic hardship exemption process, a debate over defiance of the first ordinance, and a debate over enforcement.

Exemptions

As elsewhere, some restaurants immediately claimed that the ordinance was causing severe economic hardship; seeking economic exemptions is another standard tobacco industry tactic (28). From February 1, 2001 to April 30, 2001 five of Duluth’s 190 restaurants (2.5%) filed for economic hardship exemptions and all were approved. The applicants generally claimed that smokers made up the majority of their patrons; and as required by the ordinance, they claimed a loss of 15 percent of their revenue in January 2001 compared with January 2000. The City of Duluth, which had been without a city auditor for over four years, did not independently assess the revenue loss claims. Neither did the City Council. While the sales information on these five establishments is not available, retail sales data for establishments in Duluth serving food and/or alcohol actually increased. The data show that there was between a \$650,000 and \$439,000 drop in sales between March and April of 2001 for establishments with and without alcohol respectively, but there was approximately a \$900,000 increase in sales for both types of establishments between February and March (29). The tobacco industry’s prediction of economic chaos did not materialize.

The Coalition challenged each exemption and proposed the ordinance be amended to remove or limit the exemption provisions. (For example, the Coalition suggested that restaurants exempted for hardship should not be allowed to serve children and that youth should not be allowed to work in these establishments.) Yet, the Coalition was unable to stop the City Council’s economic exemptions because it missed an earlier opportunity to establish itself as a credible critic of the tobacco industry’s economic claims. However, because some restaurant owners perceived the exemption provisions as a potential source of unfair competition, the Coalition’s efforts to critique tobacco industry’s economic claims gained momentum (30), and editorial opposition to the exemption and the economic hardship exemptions clause was eventually removed (31, 32).

The exemption claims lost legitimacy when Kay Biga, a local restaurateur and the mayor’s election campaign co-chair, asked the City Council to exempt her bankrupt restaurant because she lost revenue in January 2001. Biga’s decision to file for an exemption, and a subsequent fight between the City Council and Mayor Gary Doty over the applicability of the exemption provisions, led to the de-legitimation of the exemption claims and the eventual

removal of exemptions from a revised ordinance passed a few months later in May. The central issue in that fight was whether bankrupt restaurants could seek an exemption retroactively to recover lost revenue. The City Council did not make such provision and was irritated with Biga's request and Mayor Gary Doty's insistence that such an exemption be granted anyway. Duluth is one of a handful of cities in Minnesota that gives the mayor substantial political power over the city council (33). To overcome the mayor's power, the Duluth City Council had to produce veto proof votes.

Enforcement Problems and Defiance

Encouraging defiance of or noncompliance with the ordinance is another tobacco industry tactic (28). In Duluth, the local paper reported, "The owners of Sammy's Pizza and the Pickwick restaurant have said publicly they were ignoring the former ban [that is, the original ordinance], which didn't allow police to cite restaurant owners who allowed smoking. Other restaurants have quietly ignored the ban and allowed customers to smoke" (34). Specifically, the Pickwick did not seal off its smoking section (35) and Sammy's reopened its smoking sections (35).

By early March 2001, and in response to City Council inaction on the defiance problem, Coalition members picketed the Pickwick, an openly defiant restaurant (7, 36). Picketing galvanized the defiance issue (7), and enabled the Coalition to link defiance to the ordinance's lack of enforcement thus promoted the development of stronger enforcement provisions. After Coalition members picketed the Pickwick, in the words of a Coalition organizer, the opposition "infuriated a couple of City Councilors. . . [and felt that] the City Council's authority was challenged" (7).

In Spring 2001, individual restaurateurs and the Hospitality Association complained that lack of enforcement and problems with the way the enforcement provisions were written created unfair competition and promoted defiance (37, 38). In April 2001, the Hospitality Association called on the Coalition to adopt a three point plan to deal with the problems the Association had helped to create: a new ten-month task force to study the ordinance and its problems, continuation of no enforcement, and continuation of the exemptions provision. Members of the Hospitality Association used the economic hardship exemption clause and the division over the merits of the ordinance within the City Council to argue that it generated unfair competition and propose the creation of a task force: "Local government has created an unlevel playing field within the city limits of Duluth and within the Twin Ports region by targeting a selection of the hospitality industry. To further the inequalities, local government has protected businesses with a hardship exemption clause. However, many businesses cannot even apply for an exemption because they hold a liquor license" (39). Instead, the Coalition encouraged the mayor and the City Council to create a strong enforcement provision for the ordinance.

Council Strengthens the Ordinance

Rather than creating a task force, on May 29, 2001, the City Council passed several amendments to strengthen the ordinance. The City Council was irritated with the opposition's defiance of the ordinance, demands to allow exemptions for bankrupt restaurants, challenges to the Council's authority and legitimacy, and the creation of unfair competition. The hearing and debate of the Council ended with a veto-proof vote in favor of a stronger ordinance. The Council defeated a motion to repeal the existing ordinance by a vote of 6-3; defeated a motion to allow ventilation by 7-2; and defeated the exemptions provision by 6-3, thus strengthening the enforcement provisions of the ordinance. On June 6, 2001, Duluth Mayor Gary Doty signed the new ordinance into law, to go into effect on July 15, 2001. However, the new ordinance did not go into effect as planned after Mayor Doty signed it because opponents successfully forced a referendum vote to repeal it.

The Repeal Fight

Once the repeal petition was approved by the City of Duluth, the tobacco industry worked through third parties (Duluth Hospitality Association, NSA) direct mail campaigns (Philip Morris), and its own lobbyists (Tom Briant) (40) to discredit the strengthened ordinance and its supporters. The *Duluth News Tribune* reported that Briant "has led many tobacco industry efforts in Minnesota and is funded by tobacco interests" (40). Tom Briant, who assisted in the drafting of the petition and referendum language (with a \$2,500 in-kind contribution) and downplayed the role of the tobacco industry in Duluth, claiming that its role against the ordinance was minimal. He claimed "After paying all the settlements, billions of dollars to all the states, that well has just about dried up" (40). Tom Briant heads the Minnesota Accommodation Coalition which between 2000 and 2001 received nearly \$200,000 from the tobacco industry to lobby against tobacco control measures in Minnesota (41). On August 31, 2001, the Duluth Hospitality Association created the People's Voice Committee (PVC), a political action committee to campaign for the referendum.

The PVC claimed that the amended ordinance would create revenue and employment loss in the hospitality industry, violate business rights prerogatives, impede police efforts to fight violent crime, and violate smokers rights. PVC also claimed that the health effects of secondhand smoke were exaggerated. It also accused the Duluth City Council of alienating the local hospitality industry from the amendments discussion and accused the health advocates of being part of "big anti-tobacco" funded by the health industry (40).

The PVC also denied any financial links to the tobacco industry (40). Campaign finance reports filed before and after the election with the Duluth City Clerk, however, show that PVC spent \$18,823 (Table 9-4) to defeat the ordinance (42, 43). PVC receipts totaled over \$22,203 (Table 9-5), of which 13,528 (or over 60%) came from RJ Reynolds, Brown and Williamson, Lorillard, a major Minnesota-based tobacco lobbyist, Thomas Briant, and a \$100 from a local tobacco store (43). The tobacco industry's direct involvement (through the activities of Thomas A Briant) in Duluth was first reported at the end of October 2001 (44).

Table 9-4: Peoples' Voice Committee and Philip Morris Expenditures to Repeal the Duluth Ordinance: August 27, 2001 to December 6, 2001

Activity	People's Voice Committee	Philip Morris	Total
Advertisements	\$11,987		\$11,987
Signs	\$3,535		\$3,535
Stamps	\$1,900		\$1,900
Printing	\$1,401		\$1,401
Consumer Mailing		\$11,376	\$11,376
Total	\$18,823	\$11,376	\$30,199

Sources: City of Duluth, City Clerk Office, Champaign Financial Report, Filings for 8/27/01 to 10/25/01 and 10/26/01 to 12/6/01, Peoples' Voice Committee In Opposition to Duluth Smoking Ban. Philip Morris, Campaign Financial Report, City of Duluth, City Clerk's Office.

Table 9-5: Tobacco Industry and Other Cash In-Kind Contributions to Peoples Voice Committee (PVC) in Duluth, MN, August 27, 2001 to December 6, 2001*

Tobacco Company Contributions	Contribution	Percent of Grand Total
RJ Reynolds	\$5,000	
Brown & Williamson	\$2,500	
Lorillard	\$1,800	
Denfeld Tobacco	\$100	
TA Briant	\$4,128	
Sub-total	\$13,528	60.90%
Other Contributions		Percent of Grand Total
Bedrock Bar	\$100	
Duluth Hospitality Assn	\$1,175	
Paulucci International	\$2,500	
Champps Americana	\$100	
Silver Hammer	\$100	
Lakeview Castle	\$100	
Superior Beverages	\$1,000	
Hometown Distributors	\$250	
Rohlfing Distributing	\$1,000	
Country Kitchen	\$100	
Stadium Lanes	\$250	
Country Lanes North	\$250	
Better Brands	\$500	
Michaud Distributing	\$500	
Incline Station	\$250	
New London Corp.	\$500	
Sub-total	\$8,675	39.10%
Grand Total	\$22,203	100.00%

* Only contributions of \$100 or more are itemized.

Additional opposition came from FORCES (Fight Ordinances and Restrictions to Control and Eliminate Smoking) and its Minnesota branch (Minnesota Smokers' Rights Coalition), whose spokesperson (Felt Lair) claimed the ordinance violated personal and businesses' rights, and that the health impacts of secondhand smoke were exaggerated (45). FORCES is an ally of the tobacco industry as indicated in a 1997 fax transmission addressed from Canadian FORCES to the Canadian Tobacco Manufacturer's Council and cc'ed to Mark Berlind of Philip Morris: "I am sure this will mark the beginning of a good and mutually beneficial cooperation between FORCES, other smokers' rights groups and the industry. However, I will keep our communications confidential for obvious reasons" (46).

One week before the November 6, 2001 election, a Philip Morris direct mail campaign (Information Alert) claimed that the old ordinance respected businesses' rights; the amended ordinance would create a large number of unnecessary lawsuits; and that the amended ordinance was extreme and unfair to businesses. Philip Morris spent \$11,376 for its "Information Alert" (47). Philip Morris's involvement became public two days before the repeal vote (40), while its expenses (Table 9-5) were not reported to the Duluth City Clerk's Office until after the election (47). Overall, opponents of the amended ordinance spent \$30,199 to defeat the ordinance (Table 9-5); of that sum, a total of \$24,904 (or about 82%), came directly from the tobacco industry. The rest of PVC's funding came mostly from alcoholic beverage distributors (Table 9-5).

In the months preceding the repeal vote the Coalition challenged the tobacco industry's claims that the health effects of second-hand smoke were exaggerated. The Coalition sponsored an advertisement campaign in three local newspapers framing secondhand smoking as a health issue (48-50). A direct mail campaign focused on children's disproportionate health impacts from secondhand smoke exposure, and encouraged citizens to vote in to ratify the smokefree ordinance.

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On November 6, 2001, 61% of Duluth voters approved the continuation of the original ordinance and 53% approved its amendments to place enforcement responsibilities on restaurant

owners and eliminate exemptions from the smoking ordinance in 2003. The amended ordinance became law and took effect on November 13, 2001.

As of this writing (January 2003) two major restaurants in Duluth, Blackwoods Restaurant and Grandma's Restaurant are courting the City Council to seek an amendment that would allow for an exemption from the ordinance to continue to allow smoking in the bar area of their restaurants after April 1, 2003 (the date bars are by law to become smoke free spaces) (51). The City Council is not very enthusiastic about touching the ordinance. Mayor Gary Doty is supporting the ordinance and does not want to see any changes either. If the City Council amends the ordinance to allow for exemptions, the health advocates and the local Twin Ports Youth and Tobacco Coalition will initiate a referendum in the November 2003 election to remove any exemptions; Coalition members are confident that they have the voters support to do so (51). If Duluth voters favor an ordinance without any economic hardship exemptions, then by City Charter, the City Council will not be able to change anything about the ordinance. Given that next November 2003 there will be a mayoral election in Duluth and several City Council seats will be up for re-election, the Coalition expects that it would be unwise for the City Council candidates and the mayoral candidates to be unsupportive of such a referendum (51).

Duluth Ordinance Summary and Conclusions

As soon as the health advocates started a community-wide campaign to develop a smoke free ordinance in November 1999, the tobacco industry adapted very quickly, deploying established as well as new tactics to oppose the smokefree ordinance. Because Duluth was the first major city in Minnesota to develop such an ordinance, and therefore became a precedent setting case for the rest of Minnesota, the tobacco industry devised a plan to try to destroy it. The tobacco industry nearly succeeded because health advocates made tactical errors in the framing of the original ordinance and in their critique of tobacco industry's economic claims.

The tobacco industry used four established strategies: 1) recruitment of allies, 2) creation of a front group, 3) accommodation, and 4) a repeal campaign. We also found two new tobacco industry tactics: direct recruitment of a state beverage association to fight against a local ordinance, and a more public presence of tobacco industry involvement. In Duluth, the tobacco industry recruited the Beverage Association to oppose the ordinance in February 2000. As the fight over the ordinance became more difficult for the tobacco industry, major tobacco companies directly funded the newly created Hospitality Association (a front group) to influence the outcome of a referendum campaign. DHA created PVC which received the bulk of its funds from the tobacco industry. The tobacco industry's recruitment of allies, the creation of front groups, accommodation, and the deployment of the repeal campaign in Duluth have been acted out on a much larger scale in California (9, 28, 52). The tobacco industry's cozy relationship with the hospitality industry in the US (53) and worldwide (23) has only recently been analyzed. As recent studies have shown, the tobacco industry has used economic fear as its main recruiting method to secure the cooperation of the hospitality industry (23) in implementing its accommodation strategy. The creation of the Duluth Hospitality Association and the tactics it used against the ordinance are clones of Philip Morris's accommodation strategy (23): claims of hospitality industry revenue loss from the ordinance, and claims of ventilation as a solution to the adverse health effects of secondhand smoke. As local smoke free ordinances across the US

gain momentum in the fight to secure clean indoor air legislation, the tobacco industry will continue to deploy these strategies to defeat them.

The Duluth case also exhibits two new tobacco industry tactical developments. The first is the direct financing and recruitment of the Minnesota Licensed Beverage Association to fight the ordinance. Although licensed beverage associations have been recruited primarily for state-level legislative battles (23) their use to fight local ordinances signifies a new tactical development. This development might be predicated on tobacco industry's realization that local tobacco control legislation will increase substantially in the US thus making smoking increasingly and socially unacceptable. Therefore, Duluth represents the beginning of a new tactic in which alcoholic beverage distributors and retailers are recruited to fight local ordinances.

In addition, the tobacco industry became more openly involved in fighting the Duluth ordinance. The financial support of the Beverage Association in the very beginning of the Duluth fight (February 2000) suggests that the tobacco industry was anxious to destroy the ordinance early on in its development. As the fight raged on, the tobacco industry continued to be out in the open through the activities of Thomas A. Briant, a major tobacco industry contract lobbyist specializing in accommodation issues (41) and the financing of the Duluth Hospitality Association's political action committee (PVC) in the summer and autumn 2001. In part, because of pressures from the health groups and the media, the tobacco industry surfaced from the shadows to fight the ordinance. As the ordinance fight went on, the local Hospitality Association began to accuse health advocates as being allies of "big health," an accusation that did not resonate with the public in Duluth. In addition, Philip Morris used a phone bank and a direct mailing campaign, and in doing so it revealed even more its unpopular involvement in the fight over the ordinance. From the outset, denials by the Hospitality Association and the Beverage Association of links to tobacco industry were not credible in Duluth. Thus, the tobacco industry seems to have overplayed its confidence in staying in the shadows and therefore did not succeed in defeating the ordinance.

Duluth would have seen a faster passage of a strong ordinance if the coalition had not made a number of tactical errors. These errors were, seeking to enlist the restaurant/hospitality industry as an ally in the development of the ordinance, framing the issue of secondhand smoke exposure as a children's health issue, letting industry's economic loss claims go unchallenged for some time, allowing the passage of a first ordinance with economic hardship exemptions, ventilation provisions, and unenforceable provisions, and nearly losing the fight on industry's task force demands. Unlike the California health advocates (28, 52), health advocates in Duluth did not frame the ordinance as a workplace health and safety issue, thus allowing themselves to be drawn into defending claims of the health impacts of secondhand smoke against industry claims during the first ordinance campaign (Spring 2000); fought back with more credible tactics during the ordinance amendments campaign (Spring 2001); and led the way to the passage of a much stronger ordinance and to a favorable referendum outcome (Autumn 2001).

Framing the issue of secondhand smoke exposure as a children's health issue was a significant tactical error. That framing led to a classification of food serving establishments by age of patron, as opposed to percentage of sales derived from alcohol and the "8 pm rule."

Therefore the Coalition lost credibility of its expertise; subsequently, its criticism of industry's economic claims did not gain momentum, thus leading to the passage of a weak first ordinance. In other words, had the Coalition framed the issue as a workers health and safety issue from the start, it would have engaged in an effective critique of the tobacco industry's economic arguments. The original Duluth ordinance suffered from three weaknesses: exemptions due to claims of economic loss, unenforceability, and defiance (noncompliance). All of these weaknesses could have been prevented if the Coalition had established itself as a credible and effective critic of the tobacco industry's tactics and claims from the start of the smokefree ordinance campaign. The stronger ordinance passed by the City Council on May 29, 2001, was successful for three reasons: a more vigilant approach by the health advocates as they took to task both the tobacco industry's claims and City Council and Mayoral claims and proposals, a tobacco industry that had to reveal itself, and a hospitality industry which overreached.

Cloquet

On September 13, 2000, Jan Salo-Korby of the American Lung Association's Duluth office, organized a meeting to discuss the possibility for a smoke free restaurant ordinance in Cloquet. Cloquet Mayor, Bruce Ahlgren supported the idea for a smoke free ordinance (54). During that meeting, Salo-Korby cited several studies in support of eliminating secondhand smoke exposure in restaurants, opponents from the local hospitality sector countered with claims of freedom of choice for business owners and unfair costs of ventilation equipment (55). The opponents' claims of unfair costs from the possible ventilation provisions of such an ordinance were premised on an ordinance that was passed by the Ashland City Council (Wisconsin) on May 1, 2000 which required restaurants that permitted smoking to construct separate walls and add ventilation systems (13, 55). On September 13, 2000 a meeting of local health advocates resulted in the formation of the Citizens for Smokefree Environments, led by Salo-Korby, which brought the ordinance proposal to the city council on April 3, 2001. Citizens for Smokefree Environments boasted the support of 1,000 area residents.

On August 7, 2001 the Cloquet City Council voted 5-2 to pass an ordinance that ended smoking in the city's 9 restaurants (56). Former opponents of the ordinance who claimed that such matters should be decided by business owners (Mike Van) stated that they will abide by the ordinance and "provide customers with a good service" (55). Voting for the ordinance, Mayor Ahlgren, stated "Most of the comments from the community have been for smokefree restaurants. I just followed the wishes of the people" (55). Similar views were also expressed by four supporting councilors. (Cloquet has a six member city council). The ordinance defined violation as petty misdemeanors carrying a fine of no more than \$200.

Olmsted/Rochester County

On May 23, 2001, Citizens for a Smoke Free Rochester proposed a restaurant smoke free ordinance to the Rochester City Council (57). The proposal exempted bars and private clubs. Citizens for a Smoke Free Rochester was organized by the Zumbro Valley Medical Society and included members from Mayo Clinic, ACS, ALA, AHA, CardioVision2020 (a Mayo Clinic program promoting healthy lifestyles) and the Olmsted County Public Health Department (58). The Rochester Lodging and Hospitality Association, opposed the proposed ordinance from the

start claiming that it violated business owners rights (59). We have found no direct evidence of tobacco industry involvement.

On June 25, 2001 the Rochester City Council considered a smoking ordinance for the city's 200 restaurants (57). The City Council debated the proposed ordinance and decide not to act on it, citing concerns over the city's proper authority to regulate smoking, as well as fears of making a decision that would create a divisive effect on the city (59). On July 30, 2001 the City Council decided that the issue should be taken up by the state of Minnesota instead (60). Opponents from the Rochester Lodging and Hospitality Association complained that they did not have an influence over the writing of the proposal (59).

On August 13, 2001, Olmsted County Board chairwoman Jean Michaels recommended the creation of a task force to consider the ordinance (59). However, since the City of Rochester dropped consideration of the proposed ordinance and its membership in a task force, the county board of commissioners reasserted its authority to "regulate public health threats" (60). In Olmsted, the county board of commissioners also serves as the county board of health, a position that boosted the county board of commissioners' authority to regulate secondhand smoke exposure in restaurants (61).

On September 25, 2001 the Olmsted Board of Commissioners decided to consider the ordinance and directed its public health staff to draft a smokefree restaurant ordinance (61). When a proposed ordinance was considered a few months earlier by the Rochester City Council it attempted to regulate bars as well as restaurants, thus confusing the members of the Council and leading them to drop consideration of the ordinance (61). But on September 25, 2001, the County Board of Commissioners removed the bar provision and considered only restaurants. On November 13, 2000 the County Board of Commissioners voted 5-2 to pass a smoke free restaurant ordinance (62).

The ordinance became effective on January 1, 2002 and clearly defined affected spaces, the role of proprietors, and the nature of violations and penalties. The ordinance clearly defined all affected spaces, such as "restaurant," "bar," "private club," "smoking," and "establishment." It also provided a strict definition of affected spaces in restaurants: "smoking is prohibited in all indoor areas of any restaurant and its indoor entrance areas, commonly referred to as vestibules, alcoves, and foyers" (63). Moreover, the ordinance authorized restaurant proprietors to enforce the no smoking provisions of the ordinance and declared violations a petty misdemeanor. Finally it authorized the Olmsted County Environmental Services Department to oversee guidance and penalties for violations of the ordinance (63).

Little Falls

Efforts to pass a smoke free ordinance in Little Falls began in mid June 1999, when the Tobacco Free Future Project (Project) of the University of Minnesota (funded by the National Cancer Institute) started a community wide discussion to halt teenage smoking by targeting the social sources of youth access to cigarettes (64). However, the Project did not hire an organizer (Greg Spofford) until mid May 2000 (65). The lack of an organizer compromised the legitimacy of community education on the dangers of second hand smoke exposure and the significance of enacting a smoke free ordinance. The goal of the Project's organizer was to "convince members of the Little Falls City Council to pass an ordinance banning smoking in restaurants" (65).

On January 21, 2000, the Morrison County Record reported that using the Little Falls' high rate of smoking among high school seniors (33% versus an average of 25% for the state in 1998) the Project received support for the idea of a smoke free restaurant ordinance from the local school board but not the city council (66). The City Council hesitated to consider the Project's idea for an ordinance because it sought the advice of the Minnesota Attorney General's office on the constitutionality of such an ordinance (67). On May 14, 2000, the city council reported that such an ordinance was constitutional (67). Project organizer Greg Spofford presented the idea of the ordinance to the city council on May 14, 2000; the City Council instead instructed Spofford to seek the opinion of local restauranteurs, and bring their opinion back to the City Council (67). On July 10, 2000 the Little Falls City Council voted 4-3 to stop any further action on the ordinance proposal (68).

In early August 2000, Project advocates began gathering signatures to petition the city council to reconsider its earlier stance and vote for the ordinance (68). On October 2, 2000 Ann McNamara president of the Project presented the Little Falls city council with a petition bearing nearly 1000 signatures to encourage city council members to adapt a smoke free ordinance (69). Following that presentation, councilor Urban Otremba introduced the ordinance. The proposed ordinance ended smoking in restaurants, city buildings and vehicles (70). Since the city council had heard arguments and presentations for and against the ordinance before, it set a vote on the issue for October 16, 2000 (69).

On October 16, 2000, the Little Falls City Council voted 5-3 to pass a smoke free ordinance ending smoking in restaurants, city buildings and city vehicles. Opponents from a local veterans group (Tom Schumacher) opposed the ordinance claiming the restaurant owner's rights were taken away and that the restaurant owners would sue the city and burdening the city financially (71). A local Perkins restaurant franchisee/owner who used to be an opponent of the ordinance suggested that he would obey the city council's decision (71). Other restauranteurs (Ron Lyschik) however, supported the ordinance claiming that their restaurants went smoke free in 1996 (Black and White Hamburger Shop) and that doing so benefitted them financially (71). The ordinance went into effect on November 22, 2000.

On November 26, 2000, Cindy Poppen, an opponent of the ordinance, presented the city council with a petition to rescind it (72). Cindy Poppen told the city council to re-examine their vote because the ordinance will divide the city, claiming "It'll be like a war. We would like to see you seriously reconsider your vote on this matter"(72). Opponents gathered the required

signatures (20% of registered voters) and on December 3, 2000, the Little Falls City council decided to put the ordinance on a repeal vote scheduled for January 23, 2001. On December 5, 2000, the *St. Cloud Times* reporter, Sarah Colburn, wrote that Cindy Poppen denied any links to “tobacco companies or bar and restaurant associations,” adding “But Poppen has received some tips from a restaurant and bar association in the state. Poppen has spoken with the association a few times and said the contact has made her feel she’s not alone in her fight” (73).

On January 22, 2001, the day before the election, the *St. Cloud Times* reported that Hospitality Minnesota had hired Tom Briant, a major tobacco contract lobbyist in Minnesota, to monitor the Little Falls smokefree ordinance (74). Briant admitted to have made contacts with the opposition (Cindy Poppen) and was quoted in the *St. Cloud Times* saying “I’ve talked to the petition committee members several times but they’ve told me they do not need any assistance and they’ve pretty much done everything on their own. This has been done by local people who are just concerned about protecting their rights”(74). Moreover Cindy Poppen received information from Tom Briant on a “Red light Green light” program (a program promoted through Philip Morris’s accommodation campaign (23)), which she presented to the Little Falls City Council (74). Both Briant and Poppen denied any links to the tobacco industry; Poppen was quoted in the *St. Cloud Times* saying “Any kind of funding that has been spent on anything has come out of our pockets, our paychecks” (74). Despite the major effort of the Project to educate the Little Falls community and its civic leaders on the health dangers of second hand smoke and the importance of the ordinance, the Tobacco Free-Future Project and its local group—Citizens for a Health Little Falls (75), were unable to expose any links between the opponents and the tobacco industry (76). The result of the referendum was 1,204-1,186 against the ordinance (77).

Conclusion

The local smoke free ordinance movement in Minnesota has been advancing slowly under substantial opposition from tobacco industry allied groups—hospitality and restaurant groups, and in some cases (e.g., Duluth) direct tobacco industry involvement. However, amidst the progress of the movement at the local level, there was increased activity and disruption at the state level to impede this progress. The attacks on the Minnesota Partnership for Action Against Tobacco (MPAAT) program, both passive and active, by the Hospitality industry and Attorney General Hatch (which will be discussed in the next chapter), have led to the complete standstill of local activities to promote clean indoor air campaigns. The tobacco industry clearly understands the significance of local tobacco control work and it will seek out any opportunities to undermine such efforts. Minnesota’s ability to continue this pivotal work of building the tobacco control infrastructure hinges on two crucial factors: the systematic support it receives from the health advocates, and how clearly MPAAT articulates its purpose, importance and relevance of its work to the residents, and local and state policy makers in Minnesota.

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Chapter 10: A New Series of Attacks

While tobacco control success was seen at the local level in many towns and communities, efforts at the state level were severely hampered starting in 2001 and continuing through the beginning of 2003. With the Minnesota Tobacco Settlement finalized and the Minnesota Partnership for Action Against Tobacco (MPAAT) established, the tobacco industry began to develop new plans to destroy the growing tobacco control infrastructure in Minnesota (1). First, starting in the Fall 2001, MPAAT, was attacked first by the Minneapolis *Star-Tribune* and a major labor union, and then by the Minnesota Attorney General's office. The attacks centered around claims of violations of the court mandate that created MPAAT, and internal conflicts of interest which allegedly hampered MPAAT's mission. At about the same time, the second attack came from the Minnesota State Legislature which was using the state budget deficit to again attack the endowments that had been set aside for tobacco control.

The Minneapolis *Star-Tribune* Attack on MPAAT

Beginning on November 18, 2001, the Minneapolis *Star-Tribune* published a series of articles attacking MPAAT whose message was summarized in the following:

In 1998, Minnesota created a one-of-a-kind organization to help smokers kick the habit. But the group has shown little interest in doing that. Instead, it is spending a sizable chunk of its money pushing controversial smoking bans, while awarding most if its grant money to insiders (2).

The Minneapolis *Star-Tribune* attack on MPAAT was written by business reporters David Phelps and Deborah Caulfield Rybak (3). Phelps and Caulfield Rybak alleged that MPAAT was a) not being held accountable; b) inadequately funding youth smoking prevention programs; c) inadequately engaging in smoking cessation programs; d) withholding expenditures in its first 3 years of operation; e) abandoning the guiding principles that governed its spending; f) not releasing the findings of a key survey study on whether Minnesotans wanted smoke free ordinances, g) misdirecting its funding to local smoke free ordinances (a direction they claimed was inconsistent with cessation); h) dividing communities through the use of local smoke free ordinance campaigns; i) inconsistently evaluating grant proposals; j) disproportionately awarding grants to large tobacco control organizations in the state; and k) unfairly evaluating and ultimately denying a grant proposal on smoking cessation by the International Brotherhood of Electrical Workers (IBEW) and a labor umbrella group (Clarity Minnesota, Inc.) (3).

Chuck Westin, a contract lobbyist of Philip Morris, contacted the Minnesota Department of Health to negotiate a review of IBEW's proposal to MPAAT (to do a union-wide cessation campaign) and requested written comments from Randy Kirkendall, Manager of the Tobacco Prevention and Control Section, a request that was denied (1, 4). While IBEW had received verbal suggestions on how to improve the chances of its proposal for funding by MPAAT, none of the suggestions were incorporated (4). Furthermore, the proposal submitted by IBEW could not have been funded due to the restriction put in place by court order, which stated that a proposal which already had funding from another source (the cessation program was covered by the IBEW for its workers) could not also receive funding from MPAAT.

Phelps and Caulfield Rybak used tobacco-allied sources, including former Republican Governor Arne Carlson who stated upon MPAAT's creation that it "was a scandal waiting to happen" (5), to question the legitimacy of MPAAT's stewardship of the \$202 million and its accountability. Governor Carlson's links with the tobacco industry were also well-documented when it was revealed that he, Governor Tommy Thompson, and their wives took an extended vacation, courtesy of Philip Morris (6).

Phelps and Caulfield Rybak also relied heavily on tobacco allied organizations such as the Cato Institute who claimed that cigarette price increases, not smoke free workplaces and restaurants drive the decrease of cigarette consumption; however, there was no mention of ties between the tobacco industry and the Cato Institute to tobacco. (Phelps and Caulfield-Rybak's stories on MPAAT won a journalism award.)

At the same time, the Cato Institute's links to the tobacco industry run very deep. As early as February 20, 1991, Cato Institute chairman William A. Niskanen was asking Philip Morris for contributions to support a conference on safety (7). In 1995, R.J. Reynolds made a \$50,000 contribution to the Cato Institute to support its "Regulatory Rollback and Reform" project (8). The Cato Institute 1996 annual report lists Philip Morris and RJ Reynolds as two of their corporate contributors (9). Finally, in addition to tobacco industry donations to the Cato Institute, tobacco companies such as RJ Reynolds used the pages of the Cato Journal to articulate strategies to "build a conservative sentiment against anti-smokers" (10). In short, the Cato Institute has been an active ally of the tobacco industry with financial and social links between the two parties. None of these links were reported.

Phelps and Caulfield Rybak ignored health authorities in their reporting on whether MPAAT's programs were effective in reducing tobacco use in Minnesota. (4).

Minnesota Attorney General, Michael Hatch was quoted in Phelps and Caulfield Rybak's article as saying: "They [MPAAT] have become so pure in ideology that they are arrogant, and they have forgotten their mission. Try to get people to stop smoking; don't force people. Zealotry is bad no matter what the issue is" (3).

MPAAT's public response to the attacks was limited to a simple opinion editorial published by Richard Hurt, MD, chair of MPAAT's board of directors on November 25, 2001, one week after Phelps and Caulfield Rybak published their article. Hurt wrote that he wanted "to clarify and correct some of the inaccuracies and misrepresentations in the articles about MPAAT's mission, focus and processes" (11). He argued that MPAAT was following the Court's mandate to carry out activities that it was accused of violating; MPAAT was using the Court's mandate to use the U.S. Centers for Disease Control and Prevention (to promote cessation programs) and that it used the National Institutes for Health to guide its grant application and evaluation procedures. Moreover, Hurt reiterated that MPAAT was an accountable organization and pointed out that following the Court's order, 8 of its 21 volunteer board members were appointed by the Minnesota Legislature, the Governor's office and the Attorney General's office (11).

The Minnesota Attorney General's Attack on MPAAT

On January 5, 2002, while at the funeral of known tobacco industry friend State Senator Sam Solon (D-Duluth) (12), several tobacco lobbyists met to brainstorm on how to stop MPAAT from funding local clean indoor air ordinances in Minnesota. According to Jeanne Weigum (President of ANSR in Minnesota and an MPAAT Board member):

At Sam Solon's funeral, Charlie Westin and other tobacco lobbyists hovered together and discussed what they were going to do about this serious problem [i.e., proliferation of local smoke-free ordinances in Minnesota] and the version of the story I've been told is that they fairly openly discussed during the funeral to divert MPAAT from this 'crazy ordinance stuff' and the scheme was hatched at Sam Solon's funeral and in fact, some people have even told me which room, at what time of the day this scheme was hatched (1).

Three days after Solon's funeral, on January 8, 2002, Minnesota Attorney General Mike Hatch asked MPAAT to end the funding of local tobacco control ordinances: "We have asked MPAAT to voluntarily cease financing enactment of ordinances or legislation and to stick to the bread and butter of helping people to cease using tobacco products" (13). This attack ignores the fact that the creation of smokefree environments leads to substantial declines in smoking (14). It is a much more cost-effective and efficient cessation strategy than individual efforts. This response allowed opponents of the foundation to dominate public perception of the foundation.

Caulfield-Rybak and Phelps reported that the Attorney General's office had received complaints about MPAAT from the Minnesota AFL-CIO, the Minnesota Hospitality Association, local chambers of commerce, government officials from Minnesota cities and counties, the Minnesota Taxpayers League, restaurant owners and 100 private individuals. Neither MPAAT nor the health advocates were able to obtain copies of these complaints. As we discuss in Chapter 9 on local tobacco control developments in Minnesota, some opponents, such as the Duluth Hospitality Association have financial involvement with the tobacco industry (15, 16) Caulfield-Rybak and Phelps speculated that if MPAAT was not to voluntarily stop these campaigns, then the Attorney General might ask the Ramsey County District Court Judge Michael Fetsch "to review the court order that created MPAAT" (13).

On January 7, 2002 the Minnesota Chamber of Commerce drafted a policy position statement seeking the "close monitoring of MPAAT's grant making as well as that of the Minnesota Department of Health in order to determine their success rate," according to Caulfield-Rybak and Phelps (13). From 1995 to 1999, the Minnesota Chamber of Commerce received about \$7,800 from the Tobacco Institute (17-19). During the third week of January 2002, Attorney General Mike Hatch asked Ramsey County District Court Judge Michael Fetsch to review the court order regarding MPAAT's activities (20).

Repeating History

The tobacco industry's proposed plan to attack MPAAT parallels in many ways, the tobacco industry's attack on the Minnesota ASSIST program in the early 1990s (see Chapter 5). Tobacco control advocates understood the similarity between the two attacks. The attack on the Minnesota ASSIST program was largely centered on the unfounded allegations of bias in

reviewing a grant proposal from the Minnesota Grocers' Association (known to have ties with the tobacco industry) to educate grocery retailers on how to identify underage buyers of tobacco products (see Chapter 5). Five years later, the tobacco industry was using the IBEW's grant proposal as the spark to ignite the attack on MPAAT. According to Jeanne Weigum:

The parallels are just astounding. It's like, we can't learn from their playbook and they use the same playbook. It's like, how dumb are we, except that I don't know [what] we would have done when the proposal came in, I don't know [what] we would have done even if we had recognized it as a Trojan horse, I don't know how we could have dealt with it, because unless we would have at that point gone to the people and said, hey this really isn't an appropriate proposal, but let's talk to you about what kind of proposal might be appropriate, what kind of things you might do, I mean, that might have been an option and I understand that that actually did, to some degree, happen (1).

Weigum goes on to say:

the plan was to stop the local ordinance activity, which you will now see they were successful at. Now there is an ASSIST document that starts with the 'entire ASSIST [program] has been shut down,' no grants have been [approved], no grants will be funded, and grants where contracts had been signed were put on hold, and I read that paragraph again after some time and it read exactly about what happened with MPAAT, the parallels are so striking that I don't know how one could miss them (1).

Furthermore, the methods of attacking the two programs were similar. The tobacco industry's attacks on the ASSIST program in Minnesota relied on FOIAs to harass ASSIST contractors under the guise of extracting information (Chapter 5). Minnesota Attorney General Mike Hatch's attacks on MPAAT relied on civil legislative demands - a form of request which, although it carries no legal authority, has severely disrupted local clean indoor air ordinance campaigns in Minnesota. Moreover, during its attacks on the ASSIST program, the tobacco industry alleged that the ASSIST contractors were engaged in illegal lobbying. During Attorney General Hatch's attacks on MPAAT, he alleged that local clean indoor air ordinances were dividing communities; this is a claim that is not in agreement with available evidence (21).

The Attorney General's Motion

On April 19, 2002, Minnesota Attorney General Mike Hatch, filed a motion with the Ramsey County District Court seeking to dissolve MPAAT and move its funds under the jurisdiction of the Minnesota Department of Health (cessation account of \$102 million) and the University of Minnesota (research account of \$100 million) (20). However, while the Attorney General's actions seemed driven by the tobacco industry's desire to dismantle MPAAT, there may have been some validity to his accusations. According to President of Common Cause, Mike Asch:

The treasurer of MPAAT resigned from the Board because of his concerns over conflicts of interest. That happened before Hatch - it was one of the things that precipitated Hatch. The attack did not come out of nowhere. I mean, the attack came because MPAAT was perceived by many people as having conflicts (22).

My honest opinion is everybody won the lawsuit, okay? And they thought the money was theirs. And that Smoke Free Coalition thought it was theirs, and Cancer thought it was theirs, and Lung thought it was theirs, and Humphrey's people thought it was theirs to spend. And that's what I think the problems of conflict of interest started because of the way in which they viewed it. I mean, they viewed it as being theirs. And I think that the claims of conflict of interest ...are very real (22).

There's no question those guys have a conflict. They do. They give the money to the people who are represented on the board....But that is a different question from 'Is the policy of funding tobacco cessation through legislation the way you want to spend your money.' And what Hatch has been able to do is Hatch has been able to muddy these two issues...to be able to kind of roll it all together to undermine their credibility (22).

Therefore, while there were concerns over conflicts of interest that appeared to be valid, this was an issue that could be addressed and appropriate changes made without the destruction of MPAAT. However, Attorney General Hatch attempted to make the issue more complicated such that the only reasonable solution would be the end of MPAAT.

The Ramsey County District Court considered the matter on May 17, 2002 when Alan Gilbert (Minnesota Solicitor General and Chief Deputy of Attorney General Mike Hatch) argued that the \$202 million endowed to MPAAT should be removed from its jurisdiction (23). Thomas Pursell, who had worked with Attorney General Humphrey during the lawsuit and trial periods, and who now was MPAAT's legal counsel, argued that MPAAT's activities were driven by evidence-based research guided by the CDC and other credible authorities and were "grounded in the science of tobacco control and used effectively for that purpose" (23). Alan Gilbert and the Attorney General's claims centered on the notion that MPAAT's funding of local ordinance campaigns was political rather than scientific (24).

On May 17, 2002 health advocates from across the United States wrote amicus briefs to Ramsey County District Court Judge Fetsch in defense of MPAAT's work and effectiveness, and expose tobacco industry tactics against smoke free campaigns in Minnesota (ANR Foundation) (25). The Washington, DC-based group Campaign for Tobacco Free Kids conducted a radio and newspaper advertisement campaign in support of MPAAT, proclaiming "Big Tobacco and its allies want to shut MPAAT down"(26).

In addition to these types of support for MPAAT, two other events of support are worth noting. The first is the results of a poll (funded by MPAAT) that indicated that 83% of the respondents supported local clean indoor air, considering it as important as safe food for restaurants (21). The survey's author, Bill Morris of Decision Resources, Inc., observed that "In general, there is little evidence that lasting problems have occurred due to the ordinance or referendum debate" (21). This is an important finding because, some segments of the hospitality industry in Minnesota (such as the tobacco industry-linked Duluth Hospitality Association) (15, 16) were arguing that such ordinances were dividing communities. Moreover, Attorney General Hatch, on May 1, 2002 proposed that MPAAT be governed by a five person committee, two of whom should be former governors Arne Carlson (a friend of the tobacco industry) and Wendell Anderson (27, 28), whose chief of staff, Tom Kelm, left the Anderson administration in the late

1970s to start the lobbying firm North State Advisors that became the key tobacco industry contract lobbying firm in Minnesota (Chapter 4).

A news story on Minnesota Public Radio that aired on May 16, 2002, exposed Attorney General Mike Hatch's links to tobacco lobbyists: "Campaign Finance Board records show Hatch's campaign reimbursed one of the state's most influential lobbyists, Ron Jerich, on three occasions for fundraising. . . Both Jerich and his wife are registered lobbyists for RJ Reynolds" (29). Indeed records from the Minnesota Campaign Finance and Public Disclosure Board show during his gubernatorial race in 1994 Mike Hatch (candidate registration number 12345) received \$800 from lobbyists representing Philip Morris and RJ Reynolds, and during his bid for Attorney General in 1998 (candidate registration number 14815) he received \$850 from lobbyists representing the Minnesota Wholesale Marketers—a tobacco wholesaler group, and the Tobacco Institute (30, 31).

Health Advocates' Response

Health advocates in Minnesota did not publicly defend MPAAT or confronted Attorney General Hatch's accusations against MPAAT. Both the health advocates and MPAAT recognized the importance and significance of the local clean indoor air ordinances, but they did nothing to publicize this evidence. This silence is puzzling since MPAAT board members knew in 2001 that the Minneapolis *Star Tribune* was researching MPAAT for a big negative story. They did nothing to prepare for it or to respond to it. According to MPAAT Board member Jeanne Weigum:

We dropped the ball coming out of the gate with the *Star Tribune* article. The *Star Tribune* article was out there brewing for a very long time, months. The *Star Tribune* article was out there brewing, we knew it was going to be negative and we knew what it was going to say. We didn't know how negative it was gonna be, but we knew the general direction and we didn't get out there in front and create anything. We were a blank slate. MPAAT was an invisible organization with large amounts of money and we had largely taken the position within the organization that we would be represented by our grantees, that we were a funder and that our efforts and our mission would be represented [by those] who received the money (32).

Neither MPAAT grantees (some of whom came from the health advocacy community) nor the health advocates rose in defense of MPAAT. In addition to the lack of response to the *Star Tribune* article, health advocates in Minnesota, including MPAAT and the Smokefree Coalition, missed another important opportunity to not only defend themselves in the public eye, but also to begin to take a more aggressive, pro-active stance on issues of tobacco control.

In March of 2002, a press conference had been arranged with University of California Professor Stanton A. Glantz (a well-known tobacco control researcher, industry critic and a co-author of this report) to help MPAAT and the health advocates to fight back against the attacks of Attorney General and to highlight the evidence base for local clean indoor air activities and the effectiveness of the tobacco control program overall which was evidence-based research guided by the CDC and not simply a political issue as Hatch had suggested. However, the press conference was cancelled when the American Lung Association of Minnesota pulled out.

Lacking unanimous approval from all organizations, the Smoke Free Coalition cancelled the press conference.

A week later, a press conference that was held by MPAAT received substantial support by all major tobacco control groups in Minnesota (Minnesota Smoke Free Coalition, Minnesota Medical Association, ANSR-Minnesota, ALAMN, AHAMN, ACSMN). That event was a major show of support for MPAAT and its work and relevance to the well being of Minnesotans (1). Although health advocates in Minnesota showed their support for MPAAT, they delayed until MPAAT was already in deep trouble with the public.

The Ramsey County Court Ruling

On June 26, 2002, Ramsey County District Court Judge Michael Fetsch, ruled on the Attorney General's motion, denying the motion to appoint a new administrator to oversee MPAAT's \$202 million endowment, and recognized the significance of MPAAT's independent status and its environmental approach to smoking cessation. Judge Fetsch called MPAAT's rationale for the continuation of its funding of local smokefree ordinances "a convincing ideological argument" (2). However, Judge Fetsch, ignoring the scientific evidence that smoke free workplaces reduce smoking (33), ordered MPAAT to provide the court with a plan to deal with internal conflicts of interest among its board of directors, its staff, and its grantees (34). Finally, Judge Fetsch ordered MPAAT to freeze its grant making activities until it provides an equal amount of funding for individual cessation programs and environmentally-based programs (i.e., local smoke free ordinance campaigns) (35).

Responding to the court's decision, Richard Hurt, MPAAT's Chair, focused on the positive, stated that he was pleased with the order "... not because it validates us, but because it is an endorsement of public health over politics" (35). In a subsequent editorial, the *Minneapolis Star-Tribune* called Judge Fetsch's ruling "an important win for public health," and commended the judge's ruling for recognizing "the legitimacy of the environmental approaches MPAAT has funded," and for not excluding such approaches from MPAAT's funding activities (36). Another editorial in the St. Paul *Pioneer Press* echoed similar conclusions about Judge Fetsch's ruling suggesting that the restructuring of MPAAT's board "will help isolate MPAAT from its grant recipients, further strengthening its independence" (37). Other editorials (38), however, complained that Judge Fetsch's decision offered no guidance on how exactly MPAAT is to restructure itself, or on the individual smoking cessation approach: "Fetsch left more questions than answers in his June 26 decision. Rather than trying to fathom what he meant, the nonprofit should ask for more direction" (38).

On September 11, 2002, MPAAT submitted a two-part proposal to Judge Fetsch: first to streamline its board of directors and second to expand its individual cessation program. MPAAT proposed the creation of a Transitional Nominating Committee which would recruit new board members that did not have conflicts of interest and then present a slate of potential new members to the current board to vote; this is expected to take place within three months of approval by the Court (39). MPAAT proposed to re-organize its board to have 19 instead of 21 members, 11 of which would be at-large members, and the rest appointed by governmental officials (40). Furthermore, clear language was also developed to address the conflict of interests with grantees:

Contracts and Grants to Officers and Directors and Their Affiliated Organizations in Prohibited. This corporation shall not give grants or contracts to any officer, director or family member of any such person, or to any organizations with which they are affiliated, or have been affiliated during the year before becoming an officer or director, during the term of their association with MPAAT. In addition, no grant or contract will be given to a former officer, director, or family member of such persons for one year after such person ceases to be an officer or director of MPAAT. Also, for those officers or directors who take office after September 24, 2002, no grant or contract may be given to an organization affiliated with an officer or director for one year after such person ceases to be an officer or director of MPAAT (39).

Second, to address the issue of providing more direct individual cessation services, MPAAT created a work group headed by Dr. Anne Joseph and Rep. Peggy Leppik to “formulate a comprehensive plan to comply with the Court’s order” (39). The group defined the following goals for MPAAT cessation services: a) ensure assistance to all tobacco users; b) provide multiple evidence-based options; c) provide counseling and nicotine replacement therapy, irrespective of ability to pay; and d) conduct outreach to priority populations which include blue collar workers, racial and ethnic groups, lesbian, bisexual and transgender communities, 18-24 year olds and women of child-bearing age (39). Figure 10-1 provides an overview of the comprehensive plan to provide Minnesota smokers with cessation services.

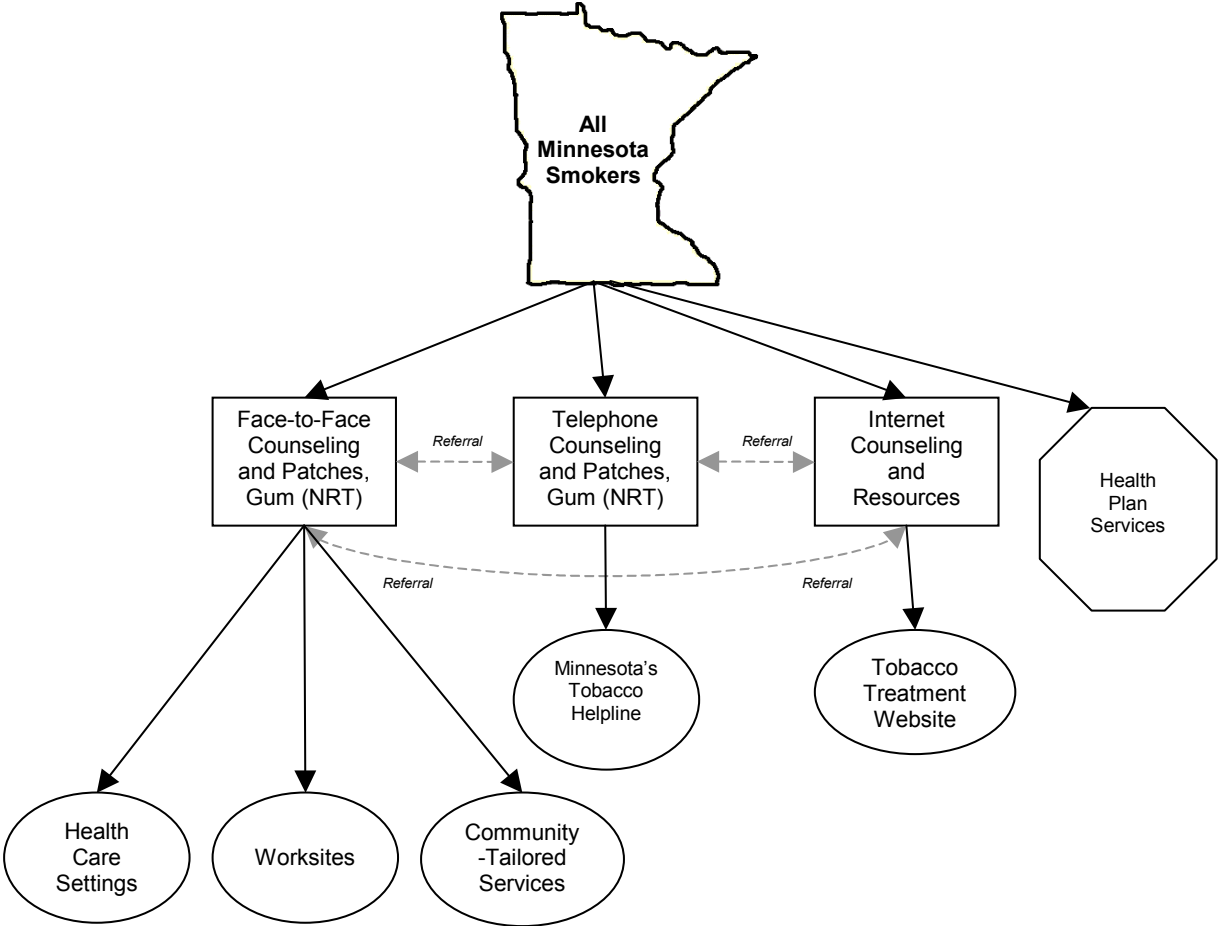
MPAAT proposed to award \$4.7 million (Table 10-1) to grantees in 2003 for smoking cessation programs, an Internet counseling web site, expansion of the telephone help-line, distribution of nicotine patches and nicotine gum to smokers who are undergoing counseling but do not have health insurance coverage for such services (40).

Judge Fetsch set a hearing date for February 20, 2003. The Attorney General must directed to have a brief filed by January 23 in response to MPAAT’s proposed restructuring. MPAAT was given until February 10 to respond and Attorney General Hatch was given one additional week thereafter to issue a rebuttal. On February 20, tobacco control advocates in Minnesota got a break. Judge Fetsch said that he would not reconsider the Attorney General’s motion to remove MPAAT’s funding (41, 42). Despite statements from Lori Swanson, Solicitor General in the Minnesota Attorney General’s Office, that MPAAT had “grossly mismanaged its money and should no longer be allowed to administer the funds,” Judge Fetsch “told her that he already had denied the motion last June when Attorney General Mike Hatch first took MPAAT to court” (41).

Within a week of the hearing, Judge Fetsch issued his ruling which approved MPAAT’s individual cessation and new governance plans (43). Jan Malcolm, MPAAT Board member and former Commissioner of Health said, “We are thrilled to be able to move forward with our work to help people quit smoking... It has been a challenging year, but we feel we can not move ahead as a stronger organization with a better understanding of how we can serve Minnesotans” (43).

Figure 10-1: Menu of Individual-Level Tobacco Cessation Programs in Minnesota

Menu of Individual-Level Tobacco Cessation Programs in Minnesota



The MPAAT-funded program components illustrated above will be interlinked so tobacco users are able to choose the program that best meets their needs and to access multiple services if desired.

Table 10-1: Summary of MPAAT’s Proposed Tobacco Cessation Programs

Program Component	Services Provided	Populations Served	Target Timelines for Awarding Grants	Budget Estimates for FY 2004
Tobacco Treatment Centers in Health Care Settings	Individual and group counseling; nicotine replacement therapy	Minnesotans within geographical proximity to Treatment Centers	Within 6 months of plan approval	Approx. \$ 1.2 M
Tobacco Treatment Programs in Worksites	Individual and group counseling; nicotine replacement therapy	Employees in Minnesota	On-site group counseling within 6 months of plan approval; labor unions/management treatment programs within 12 months of plan approval	Approx. \$500,000
Community-Tailored Tobacco Treatment Programs	Programs to identify smokers in a specific target population and help them quit through community-tailored strategies	Racial and ethnic groups and American Indian nations; gay, lesbian, bisexual and transgender communities; 18 to 24-year-olds; women of child-bearing age	Within 12 months of plan approval	Approx. \$1.0 M
Minnesota’s Tobacco Helpline	Phone counseling; nicotine replacement therapy; self-help materials; referral to other MPAAT-funded programs	Minnesotans with access to phones	The Helpline has been operating since April 2001; nicotine replacement therapy is available effective September 2002; Helpline referral to all MPAAT services will be in place within 6 months of plan approval	Approx. \$2.5-3M
Tobacco Treatment Website	Internet-based counseling; self help materials; information about accessing nicotine replacement and other MPAAT funded programs	Minnesotans with access to the Internet (in homes, work sites and public facilities)	Within 2 months of plan approval	Approx. \$150,000
Healthcare Provider Outreach	Provider training to promote implementation of <i>U.S. Public Health Service</i> smoking cessation guidelines	Minnesota health care providers	Within 6 months of plan approval	Approx. \$150,000

A statement from the Judge said:

It is not the Court's purpose or mission to strictly bind the activities of the MPAAT in its day to day operations or to architect in detail how MPAAT is to conduct its research or its anti-smoking campaigns. MPAAT must have operational freedom. With that freedom, however, comes the responsibility to scrutinize all of the uses to which the allocated monies are put and to insure that the dual ends of research and cessation are properly served" (43).

With the receipt of this news, MPAAT could now move forward to restructure its board, beginning with the recommendations of the transitional nominating committee. The committee includes Reatha Clark King (Chairman of General Mills Foundation), Ruth Orrick (Senior Vice President of Corporate Communications for Thomson Legal and Regulatory and Senior Vice President of Corporate Communications for Thomson West), and Duane Benson (Executive Director of the Minnesota Business Partnership and former state Senator) (43). The new board will consist of 19 members with 11 at-large positions, which also eliminates the requirement that board members be affiliated with tobacco control organizations.

The 2002 Endowments Legislative Fight

In late January 2002, Minnesota legislators began to discuss ways to fix a \$439 million deficit of the 2002 budget cycle (44). The Democrat controlled Senate proposal allowed the State to borrow an unspecified amount from the Tobacco Use Prevention and Medical Education Endowments for its cash needs (44). The Republican-controlled House proposed to use up the tobacco endowment funds to erase the deficit (45). By early March 2002, the Republican proposal for correcting the deficit problem suggested the removal of \$310 million from the Tobacco Use Prevention endowment, a proposal opposed by Democrats (46). This move would have cut statewide tobacco control activities by 90% but left the local tobacco control activities untouched (47). On March 15, 2002 the Republican controlled House voted along party lines to cut the tobacco endowment funds to fill the \$439 million deficit (48). As late as the second week of May 2002 and while the budget deficit issue was taken up by a legislative budget conference committee, Republicans were insisting on using up the tobacco endowment money for balancing the deficit, while Democratic senators emphatically refused to accept such proposal (49). Senate Majority Leader Roger Moe (DFL-Erskine) and lead Senate budget negotiator Senator Doug Johnson (DFL-Tower) vigorously defended the integrity of the endowments (49). In total, tobacco use prevention and local public health programs are funded from the investment of \$590 million, whose annual interest is \$30 million (50). In the end of the 2002 legislative session, the House and the Senate reached a veto-proof compromise in which the state would not raid, but borrow an unspecified amount from the tobacco settlement endowments and then repay the endowments with interest, as opposed to depleting them (51-53).

The Commissioner of Health, Jan Malcolm, was concerned with the legislature relying too much on the endowment accounts. She stated that the legislative outcome over the budget deficit was "a far better outcome than just spending the principal itself and having it gone" (51). The Minnesota Health Department strongly defended the tobacco use prevention endowment (54). The Minnesota Smoke-Free Coalition promoted a tobacco tax increase by one dollar

instead to balance to budget deficit (47). The Minnesota legislature did not pass any tobacco tax increases before it ended its legislative session in May 2002. In fact, the excise tax in Minnesota has remained 48 cents per pack since 1993, which means that Minnesota is ranked 20 in the nation in terms of the size of its cigarette excise tax (55).

What the legislative fights over the tobacco settlement endowments suggest is that it is uncertain whether the settlement endowments will remain intact for very long. If the Republican Party gains control of both the Minnesota House and the Senate, it is safe to assume that the endowments funds will be expropriated, diverted to the general fund and possibly allocated either for tax rebates, or become destined for the state's savings reserves. Additionally, the endowments may be in danger if either the House or the Senate and the Governor's Office are controlled by the Republican Party of Minnesota.

Tobacco Control Funding in 2003

In November 2002, the state election in Minnesota made this speculation a reality. In addition to the House being a Republican majority (the Senate remains a Democratic majority), a Republican governor was elected. Former House Majority Leader Tim Pawlenty, who has had the desire since 1999 to move the funds from the endowments to "health-related tax relief until there's proof that the prevention programs work" was elected as the Governor of Minnesota. Therefore, it should be no surprise that in light of a state budget deficit of \$4.6 billion, Republican Governor Pawlenty is following his campaign statement that he would be willing to use funds from the endowments to balance the state budget claiming that there is no evidence of effectiveness of tobacco control programs: "Attorney General [Mike] Hatch and others have repeatedly cited that many of those programs and related programs are not very effective and they are not using the money very well, and so you may well see some of that tobacco money be put on the table in terms of deficit reduction" (56).

As of February 2003, Governor Pawlenty's budget proposal includes the depletion of more than \$1 billion from the youth tobacco prevention and medical school education and training accounts (57). While the tobacco-funded medical school programs at the University of Minnesota would also lose their endowments, the Governor allocated 9 cents per pack of the cigarette tax to compensate (57), with 2.5 cents per pack going towards medical education funding and the remaining 6.5 cents per pack to fund the Academic Health Center. Governor Pawlenty, with support from House Speaker Steve Sviggum, has also said that he would not raise cigarette taxes, stating that "It's one of the most regressive taxes you can impose. It's a tax that falls disproportionately on poor people" (56). While the 48 cents a pack cigarette excise tax was the third highest in the nation ten years ago, it now ranks 26th in the nation and falls below the national average of 60 cents per pack (56).

Health advocates began to come together and make their voice heard in February 2003. Minnesota's Smoke-Free Coalition organized a rally at the state capitol just one day after Pawlenty's February 19th release of the budget proposal (58). Carol Falkowski, President of the Minnesota Smoke-Free Coalition stated, "The governor's proposal is like telling the tobacco industry it's open season on Minnesota kids. We understand that cuts need to be made, but eliminating youth tobacco prevention could be fatal"(59). Falkowski stated, in a separate

interview, “In one fell swoop...we’re going from first to worst in protecting our kids from tobacco. This addiction begins with children and is completely preventable” (58). While there is no doubt that serious cuts need to be made to the budget to deal with the deficit, the economic burden of tobacco in Minnesota is \$2.6 billion annually in health care costs and lost productivity (59). Long-term, the costs, both in terms of dollars and lives, associated with tobacco use will far exceed the cost of prevention. When youth prevention efforts were all but eliminated in the early 1990s, the rate of youth tobacco use in Minnesota increased more rapidly than the national average (59).

Former Commissioner of Health, Jan Malcom, stated that the state’s tobacco control efforts lead to an 11% decline in smoking among high school students and a 21% decline among middle school students, over a two year period(57). However, the current Commissioner of Health, Dianne Mandernach, felt that the budget was made for the common good and stated, “The governor’s priority was on putting forward a budget that addressed the core needs of people on an immediate basis. This [tobacco prevention] was a little lower on the priority list” (57). In a separate interview, Mandernach said that there is a risk that teen smoking rates will increase... “I won’t say they will...they may” (60). It is this type of a weak response that lead the way to past setbacks in Minnesota’s tobacco control progress.

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Chapter 11: Lessons Learned

The state of Minnesota has a long history of tobacco control. From the early success seen in 1975 when the nation's first comprehensive clean indoor air legislation was passed (1), to fighting off Attorney General Mike Hatch's attempt to dissolve the Minnesota Partnership for Action Against Tobacco (2, 3), Minnesota's tobacco control efforts have survived the assaults the tobacco industry and its allies have mounted. However, in this history, a cycle of victory and defeat is often seen which may have been the result of complacency or a lack of leadership within the nongovernmental sector. Minnesota has made substantial progress in tobacco control when there has been substantial leadership coming from political figures (such as Representative Phyllis Kahn or Attorney General Hubert Humphrey III) or state officials (such as former Minnesota Commissioner of Health, Sister Mary Madonna Ashton), with the private organizations, including the voluntary health agencies and the Smokefree Coalition, playing a valuable supporting role. These organizations have, however, failed to develop the will and capacity to serve an important agenda setting role and engage hostile politicians.

Because of the lack of this important agenda-setting role and pressure for accountability among unsympathetic (or even pro-tobacco industry) politicians, Minnesota experiences periods of retreat on tobacco control when there are not supportive individuals in public office, so the gains are often lost. The fact that the first Minnesota tobacco control campaign was ended without serious opposition from the health groups in the face of unsubstantiated claims of a budget crisis is an example of this problem. The failure of the health groups to rally effectively in the face of attacks on MPAAT and the endowments a decade later is another reflection of this problem. These groups are risk and conflict averse and the tobacco industry and its allies are well-practiced at exploiting this organizational characteristic of the health forces. The strong desire for a total consensus among *all* the health groups before *any* will act exacerbates the difficulty of developing leadership within the private sector.

The Tobacco Industry's Power and Tactics

While the tobacco industry is wealthy and highly motivated, it suffers from low public credibility and a need to stay out of the public eye. Given Minnesota's long tradition of engagement in the tobacco issue, and particularly the damaging information made available as a result of the Minnesota law suit against the tobacco industry (4), it is virtually impossible for any politician to openly advocate for the tobacco industry's interests. As a result, the tobacco industry must act through third parties, front groups and allies. Rather than making the direct argument that tobacco control should be eliminated because they threaten tobacco company sales and profits, the industry works through these intermediaries to make arguments about budget crises, "illegal lobbying," "rights," or claims that smokefree environments harm the hospitality business.

During the attacks on Minnesota's ASSIST program, the tobacco industry used the Minnesota Grocers' Association (MGA), the Minnesota Candy and Tobacco Association, and the Minnesota Wholesale Marketers Association, Inc. to FOIA the ASSIST program for documentation in support of their allegations of illegal lobbying and misuse of federal funds (5, 6). Not only did this tactic cause confusion, but it also cost a significant amount of time and

energy. To respond to the MGA's request for investigation, state officials estimated that they spent over 300 hours to discover a \$40 reporting mistake that was corrected without penalties (7).

Less than ten years later, the tobacco industry used the International Brotherhood of Electrical Workers (IBEW) to accuse MPAAT of conflicts of interest and an inappropriate grant review process (8). The *Minneapolis Star-Tribune* was able to mount attacks on MPAAT relying on sources such as the tobacco-industry financed Cato Institute while ignoring reputable health authorities, including the US Centers for Disease Control. No nongovernmental organizations were willing to take on Attorney General Mike Hatch's attacks on MPAAT. The costs of these allegations was that MPAAT's funding was frozen for almost two years (9). Despite the fact that MPAAT's restructuring proposal was approved and their funding remains under its own control, the tobacco industry still succeeded in halting a significant portion of tobacco control efforts in Minnesota for over a year while the public relations and court battle proceeded and has probably reduced MPAAT's effectiveness by forcing it to divert resources from cost-effective policy-based interventions to expensive and inefficient efforts directed at individual cessation.

The Tobacco Control Advocates Potential for Power

While the tobacco control advocates do not have the money that the tobacco industry has, they do have two potentially powerful assets: the truth and strong public support. Making effective use of these assets, however, requires a level of leadership, risk taking, and willingness to project power that has simply not been exhibited by the nongovernmental organizations in Minnesota.

In the early years, during the development of the Minnesota Plan for Nonsmoking and Health, Minnesota Commissioner of Health, Sister Mary Madonna Ashton constructed the Technical Advisory Board of a variety of people hailing from many different areas of expertise (10) that could have built a strong and broad constituency to support the tobacco control program. The tobacco industry recognized the danger that this development represented. Health advocates, in contrast, allowed this potential support network to be eroded. The health groups have tended to look inward, which results in limited or no action in cases where there was a lack of complete consensus. This preoccupation with consensus has both inhibited strong action and made it difficult to react to challenges in a timely manner.

In addition to uncovering the links between the tobacco industry and individuals and organizations within the state, it is also important to be public with these findings. The tobacco industry works best in the back rooms, suggesting that the public would not approve of its dealings. Therefore, the tobacco control community should work to take their information to the public. Creating a controversy or exposing a lie in the court of public opinion is one of the most effective tools for public health (11). Decisions made among elected officials, bureaucrats and Court system ultimately affect the public, but the public is dependent upon the public health community to inform them of such issues as the erosion of tobacco control efforts.

The lies of the tobacco industry are widely and rapidly distributed due to the deep pockets of the tobacco industry. The manner in which an issue is framed is vital to the subsequent discussions and the resulting options (11). Therefore, the tobacco control community must both maintain control of the framing of each and every debate that arises, and more importantly, be proactive in setting the agenda for future debates. Science-based evidence is a powerful tool for the health advocates. There are volumes of research that document the disease (and ultimately death) that is caused by tobacco and secondhand smoke, as well as the effectiveness of well-executed strong media campaigns and smokefree environments to reduce smoking. Despite this wealth of information, too often the health advocates do not explain this information to the public or they allow the tobacco industry to shift the argument based on unsupported and diversionary claims, such as that tobacco control activities harm the hospitality industry, that shift the debate away from health to “areas in which we have the most credible arguments, e.g., economics, government intervention, etc.” (12). These are the maneuvers that are employed by the tobacco industry and it is vital that the health advocates respond quickly to tell the involved parties, and the public in general, the truth.

Maintain Support and Accountability Among Elected Officials

At the same time, public health advocates must recognize that the issues of tobacco control are deeply political and that simply publicizing the truth or having effective tobacco control programs that meet their stated goal of reducing smoking and other tobacco use is not enough. They need to raise the cost to politicians who do the tobacco industry’s bidding, whether it is to win campaign contributions or because of ideological agreement with the industry.

Sometimes, securing support from political leaders is easy. Political support, as seen from Representative Phyllis Kahn and former state Senator Edward Brandt, who became the first president of the Association for Nonsmokers Rights (13), were crucial to the success of tobacco control advances (14). The problem arises when key politicians are willing to support the tobacco industry. In particular, Governor Carlson was a well-known recipient of tobacco industry favor. In addition to his Australian vacation with then Governor Tommy Thompson, Governor Carlson accepted almost \$5,000 from the tobacco industry between 1989 and 1994 and accepted assistance from Ronald Jerich, Tom Kelm, and Allen M Shofe (tobacco industry lobbyists) as fundraisers for his re-election campaign committee (15). Three years after his election, Gov. Carlson eliminated the anti-smoking media campaign and later vetoed new anti-tobacco legislation, including two 1994 bills that would have created a \$250,000 campaign to protect children from exposure to second-hand smoke (16).

Campaign contributions from the tobacco industry to members of the Minnesota Legislature steadily increased throughout the 1980s and early 1990s; \$5,600 in 1985-86, \$11,135 in 1987-88, \$15,403 in 1989-90, and \$17,700 in 1991-92. During the mid to late 1990s, there was a significant decrease in campaign contributions from the tobacco industry: \$1,700 in 1993-1994, \$3,630 in 1995-96, \$4,650 in 1997-98, and \$2,050 in 1999-2000. Surprisingly, the reported campaign contributions have consistently favored the Democratic Farm Labor Party over the Republicans, with the exception of 1999-2000. Again, it is important to remember that

these are just the reported campaign contributions and there are many other ways to influence policy makers, including purchasing expensive vacations for top-level officials.

The tobacco industry and its allies have successfully used claims of illegal or inappropriate behavior repeatedly to tie down tobacco control activities, such as in the attacks on ASSIST and MPAAT. These attacks are often framed in terms of conflicts of interest among health groups. The real conflict of interest, however, may be created because the health groups are too dependent on the government as a funding agency. In the mid-1990s, in the midst of budget crises, health groups lost confidence in justifying the first anti-smoking media campaign; they felt that the claim of a fiscal crisis was so strong that they did not have any sympathetic support in the legislature, and therefore they could not have done anything to save the anti-smoking campaign (17, 18). (As noted above, there was no budget crisis.) The Department of Health, which was helping to finance the Smokefree Coalition, also was not willing to fight for the program in either the Legislature or administration and the health groups did nothing to press the Department to give the program higher priority. In more recent debates over the state programs, the health advocates such as the American Lung Association were partially funded through the government, which may have decreased their willingness to make aggressive attacks on tobacco control policies (19). The need for some separation between the tobacco control advocates and the government is necessary because the tobacco industry can still influence elected officials through political expenditures. The ability to commend and objectively critique political actions is very important.

In California, for instance, the fact that some of the health groups, particularly the American Nonsmokers Rights Foundation and American Lung Association, accepted funding from the state did not prevent them from undertaking strong action (including suing the Governor) to protect the tobacco control program (11). At the same time, the most aggressive defender of the California campaign emerged as the American Heart Association, which by policy does not accept government funding. It may be that the solution to the problem of conflicts of interest in Minnesota would be for the health groups to eschew state (and perhaps MPAAT) funding so that they would be uninhibited to hold politicians accountable for pro-tobacco actions.

The Need for a Lasting Tobacco Control Infrastructure Independent of Government

Perhaps most importantly, it is essential for the tobacco control advocates in Minnesota to develop a tobacco control infrastructure. Several times throughout the book, history has provided examples where an organized system of health advocates, business people, and legislators who are in favor of tobacco control measures could have come together to defeat the actions of the tobacco industry and third parties or legislators influences by the tobacco industry. But that did not happen. Now that MPAAT's proposal for restructuring has been accepted, MPAAT may be in a position to build that infrastructure. Attorney General Humphrey sought to create MPAAT as a part of the Minnesota Settlement in an attempt to insulate it from political pressures (20). Given MPAAT's design, it could become a leader that could work to bring together community people, businesses, and legislators in support of tobacco control efforts in such a way that attacks such as budget cuts and unfounded allegations would not cause substantial disruption to the progress of the tobacco control infrastructure. (The Blue Cross Blue

Shield program could also play a productive role, if it can ever escape from the seemingly endless litigation that has prevented its implementation.) While programs for youth prevention, community norm change through creation of smoke free environments, and cessation of tobacco use are important in their own right, that is not enough. The infrastructure must encompass the entire realm of tobacco control issues, which are largely political.

This fact may, in the end, make it difficult for MPAAT to play this role. The board is somewhat under the control of politicians who, in turn, are subject to the tobacco industry's influence. In the end, at least one of the truly private nonprofit health charities – the American Heart Association, American Lung Association, American Cancer Society or Minnesota Medical Association – will have to take the lead in defending the programs.

The simple fact remains that tobacco is the leading preventable cause of death and that the experience from Minnesota, California, Massachusetts, and elsewhere has demonstrated that it is possible to reduce the burden of tobacco use quickly. The technology is there and the public supports these efforts. Unfortunately, the tobacco industry is as aware – or more aware – of these facts than the public, or even the health groups, and works relentlessly against effective interventions. Only when the health interests are willing to take off their gloves and devote the resources - financial, organizational, and political - to a rough and tumble battle will they win in the long run.

To date, none have been willing.

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