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Tobacco Industry Political Activity and Tobacco Control Policy Making in New Jersey: 1982-1995

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Tobacco Industry Political Activity and Tobacco Control Policy Making in New Jersey: 1982 - 1995

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This report is the latest in a series of Institute for Health Policy Studies reports that analyze tobacco industry campaign contributions, lobbying, and other political activity in California. The previous reports are:

M. Begay and S. Glantz. *Political Expenditures by the Tobacco Industry in California State Politics* UCSF IHPS Monograph Series, 1991.

M. Begay and S. Glantz. *Political Expenditures by the Tobacco Industry in California State Politics from 1976 to 1991*. UCSF IHPS Monograph Series, 1991.

B. Samuels and S. Glantz. *Tobacco Control Activities and the Tobacco Industry's Response in California Communities, 1990-1991*. UCSF IHPS Monograph Series, 1991.

M.E. Begay and S.A. Glantz. *Undoing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991*. UCSF IHPS, 1992.

S.A. Glantz and L.R.A. Smith. *The effect of ordinances requiring smokefree restaurants on restaurant sales in California*. UCSF IHPS Monograph Series, 1992.

M.E. Begay, M. Traynor, S. A. Glantz. *Extinguishing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991-1992*. UCSF IHPS, 1992.

M.E. Begay, M. Traynor, S.A. Glantz. *Tobacco Industry Political Expenditures in California State Politics, January-June, 1993*. UCSF IHPS, 1993.

M.E. Begay, M. Traynor, S.A. Glantz. *Tobacco Industry Political Expenditures in California in the 1991-1992 Election*. UCSF IHPS, 1993.

M.E. Begay, M. Traynor, S.A. Glantz. *The Twilight of Proposition 99: Reauthorization of Tobacco Education Programs and Tobacco Industry Political Expenditures in 1993*. UCSF IHPS, 1994.

H. Macdonald and S. Glantz. *Analysis of the Smoking and Tobacco Products, Statewide Regulation Initiative Statute*. UCSF IHPS, 1994.

H. Macdonald, M. Traynor, S. Glantz. *California's Proposition 188: An Analysis of the Tobacco Industry's Political Advertising Campaign*. UCSF IHPS, 1994.

S. Aguinaga, H. Macdonald, M. Traynor, M. Begay, S. Glantz. *Undermining Popular Government: Tobacco Industry Political Expenditures in California 1993-1994*. UCSF IHPS, 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/tobexp>)

M. Begay, and S. Glantz. *Question 1: Tobacco Education Outlays From the 1994 Fiscal Year to the 1996 Fiscal Year* UCSF IHPS 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/q1>)

F. Monardi, E. Balbach, S. Aguinaga, S. Glantz. *Shifting Allegiances: Tobacco Industry Political Expenditures in California, January 1995 - March 1996*. UCSF IHPS 1996 (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/sa>)

F. Monardi, A. O'Neill, and S. Glantz. *Tobacco Industry Political Activity in Colorado 1979 - 1995*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/co>)

F. Monardi, A. O'Neill, and S. Glantz. *Tobacco Industry Political Activity in Colorado 1983 - 1996*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/wa>)

EXECUTIVE SUMMARY

* The tobacco industry is a major political and legal force in New Jersey through campaign contributions, lobbying and litigation.

* The tobacco industry has become a major source of campaign contributions to legislative candidates, gubernatorial candidates, and political party committees. In the 1982-1983 election cycle, the tobacco industry contributed \$17,249 to candidates and parties. In 1994-1995, the tobacco industry contributed \$269,075 to candidates and parties.

* In 1994-1995, the combined contributions from Philip Morris, RJ Reynolds, the Tobacco Institute, Smokeless Tobacco Council, US Tobacco and New Jersey Amusement Co., to political parties and leadership PACs ranked second among top contributors to political parties and leadership PACs, slightly behind the New Jersey Laborers' PAC / Political Education League.

* Although direct campaign contributions to legislative candidates has decreased slightly since 1990-1991, the tobacco industry has compensated by contributing to leadership PACs, which have no campaign contributions limits. In 1994-1995 the tobacco industry contributed \$192,550 to leadership PACs, \$107,800 to Republican leadership PACs and \$84,750 to Democratic leadership PACs.

* In addition to providing campaign contributions, the tobacco industry is active in lobbying members of the legislature and the administration. During the 1994-1995 legislature, the tobacco industry spent \$725,107 in lobbying expenditures. The tobacco industry became an especially active lobby during the 1986-1987 legislative session after the legislature had passed several clean indoor air laws in the early and mid 1980s.

* A relationship exists between tobacco industry campaign contributions and state legislative behavior. The more money a legislator receives, the less likely he or she is to support tobacco control efforts. The tobacco industry also tends to contribute more money to legislators that have supported the industry in the past.

* Several health related groups, such as Blue Cross, the Medco Behavioral Care Corporation, and Cathedral Health Care Systems, are represented by many of the same lobbyists as the tobacco industry. This pattern of representation raises the possibility of conflict of interests among lobbyists who represent the tobacco industry and health groups.

* Before 1994, there were very few local smoke free or limiting tobacco to children ordinances in New Jersey. Since 1994, when the state Supreme Court upheld the 1990 East Brunswick ordinance that banned vending machines, 153 New Jersey localities have passed smoke free air ordinances or ordinances controlling the availability of tobacco to children.

* Despite a state Supreme Court decision to uphold the East Brunswick ordinance that eliminated cigarette vending machines, New Jersey cigarette distributors continue to legally challenge municipalities that enact ordinances that eliminate cigarette vending machines.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 3

INTRODUCTION 7

TOBACCO POLICY SCORES 9

TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS 11

 Campaign Contribution Data 11

 Contributions to State Legislators 12

 Legislative Leaders 14

 Legislative Committees 16

POLITICAL PARTIES 17

THE EXECUTIVE BRANCH 18

LOBBYING 18

THE RELATIONSHIP BETWEEN CAMPAIGN CONTRIBUTIONS AND LEGISLATIVE
POLICYMAKING 18

THE EAST BRUNSWICK ORDINANCE AND THE TOBACCO VENDORS’ CHALLENGE OF THE
ORDINANCE 20

THINKING ABOUT SECOND HAND SMOKE IN THE 1970S 22

 The Donna Shimp Case 22

 The New Jersey Sanitary Code 22

FROM VOLUNTARY ACTIVITY IN THE 1970s TO STATE LEGISLATION IN THE 1980s TO
LOCAL ORDINANCES IN THE 1990s 23

THE FAILED ATTEMPT TO RAISE THE CIGARETTE TAX 24

PROJECT ASSIST AND THE SMOKELESS STATES PROGRAM IN NEW JERSEY 25

NEW JERSEY’S LAWSUIT AGAINST THE TOBACCO INDUSTRY 27

CONCLUSION 27

REFERENCES 28

INTRODUCTION

The tobacco industry has become a potent political and legal force in the state of New Jersey. Since 1982, the tobacco industry has spent almost \$4.4 dollars in campaign contributions to legislative and gubernatorial candidates, political parties, party committees, and on lobbying activities. The tobacco industry has also successfully delayed, but not preempted, the implementation of local tobacco control ordinances by (unsuccessfully) challenging the ordinances through the state court system.

Before 1994, there were very few local clean indoor air or youth access ordinances in New Jersey. Between March 1994, when the state Supreme Court upheld the 1990 East Brunswick ordinance that banned vending machines, and April 1996, 153 New Jersey localities enacted clean air or youth access ordinances. These New Jersey localities have been assisted in a variety of ways by several tobacco control organizations that are active in New Jersey, including New Jersey GASP (Group Against Smoking Pollution), the New Jersey Medical Society, the American Heart Association, the American Lung Association, the American Cancer Society, Project ASSIST (American Stop Smoking Intervention Study), and the Robert Wood Johnson Foundation's SmokeLess States Program.

Figure 1 summarizes tobacco industry lobbying and political expenditures since 1982-1983, when the tobacco industry started making campaign contributions in New Jersey. (In the figures and tables, each year represents the two year election cycle.) Lobbying and political expenditures particularly increased in the 1986-1987 session, probably in response to state tobacco control legislation that was passed in the mid 1980s. During the early and mid 1980s, the New Jersey legislature passed laws requiring employers of more than 50 individuals to develop smoking policies (1985), requiring smoking and non-smoking areas in certain indoor public places (1985), requiring restaurants to post a sign indicating if they are non-smoking, have smoking and non-smoking sections, or have no policies regarding smoking, (1985) prohibiting smoking in retail food stores or public transportation (1985), and prohibiting smoking in public schools (1982). Assemblyman Martin Herman (D-Gloucester) was the author of most of this legislation. With the support of New Jersey GASP, the American Cancer Society, the American Lung Association, the New Jersey State PTA, physicians pharmacists and nurses, Herman was able to muster bipartisan support for these clean indoor air proposals [1]. Since 1987, tobacco industry political and lobbying expenditures have continued to rise, but at a slower rate, with substantial increases in campaign contributions in the 1994-1995 election cycle, mostly through political party committees. Although several legislators have introduced bills that would have raised the cigarette tax, provided clean indoor air, or limited access to tobacco products to children, the tobacco industry has been a powerful force that prevented the passage of any significant state tobacco control legislation in New Jersey since 1985. In 1994 and 1995, the tobacco industry spent over \$725,000 in lobbying expenditures (Table 1). The tobacco industry also spent almost \$270,000 in contributions to legislators, since 1982-1983.

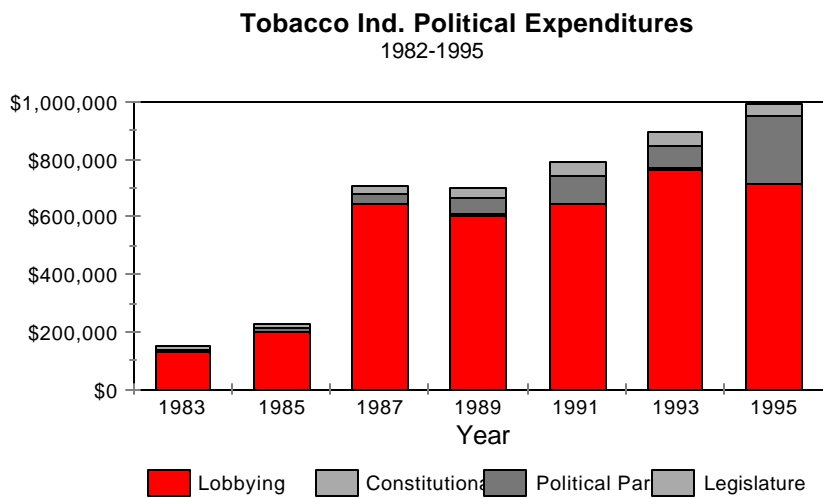


Figure 1. Tobacco industry contributions have steadily increased since 1982-1983.

legislative candidates, political parties and party committees

TABLE 1. SUMMARY OF TOBACCO INDUSTRY POLITICAL EXPENDITURES IN 1994-1995

	1982-91	1992-93	AB, BW, LOR*	PM	RJR	STC	TI	UST	Others	1994-95	Grand Total
Legislature	\$109,937	\$39,396		\$13,874	\$12,400	\$250	\$5,550	\$800	\$3,100	\$35,974	\$185,307
Political Party	\$200,900	\$83,000		\$188,500	\$11,600	\$2,500	\$12,900	\$11,050	\$6,550	\$233,100	\$517,000
Constitutional	\$4,100	\$4,600									\$8,700
Lobbying	\$2,258,858	\$767,389	\$89,080	\$217,192	\$144,098	\$104,000	\$139,737		\$31,000	\$725,107	\$3,751,354
Total	\$2,573,795	\$894,385	\$89,080	\$419,566	\$168,098	\$106,750	\$158,187	\$11,850	\$40,650	\$994,181	\$4,462,361

*Lobbying Expenditures for American Brands, Brown and Williamson, and Lorillard were \$24,000, \$36,460 and \$28,620, respectively.

** "Others" include various contributions from distributors and retailers (New Jersey Amusement Co., American Merchandising Council, Coast Cigarettes, New Jersey Tobacco and Candy PAC, and American Music Operators Association).

TABLE 2. TOP CONTRIBUTORS TO POLITICAL PARTIES AND LEADERSHIP PACs	
Contributor	Amount
NJ Laborers PAC / Political Education League	\$227,000
Tobacco Industry*	\$223,100
American Trial Lawyers Association / LEGAL	\$184,300
NJ Optometric PAC	\$150,000
Finn Casperson, Chm. Beneficial Management	\$142,000
NJ Dental Association PAC	\$140,000
Medical Society of NJ (MEDPAC)	\$139,550
Riker, Danzig, Scherer and Hyland	\$130,100
Remington and Vernick Engineers	\$127,800
NJ Policeman's Benevolent Association	\$116,850
*Philip Morris, RJ Reynolds, Tobacco Institute, Smokeless Tobacco Council, US Tobacco, Coast Cigarettes and New Jersey Amusement Co.	
Source of Other Contributions: New Jersey Reporter	

during the 1994-1995 electoral cycle. In comparison to other New Jersey groups that contribute to the political process, the tobacco industry ranks a close second in contributions to political parties or party committees in 1994-1995 behind the New Jersey Laborers' PAC / Political Education League (Table 2).

Contributions to political party committees, particularly "leadership PACS," grew dramatically during the 1994-1995 election cycle. Before 1993, political party contributions went directly to the state party committees. As a result of a change in campaign finance law in 1993, the maximum contribution to a legislator was limited to \$1,500 (\$1,800 in 1996). However, the campaign finance reform legislation permitted a loophole in which the Assembly Speaker, Senate President and the minority leaders in both chambers were allowed to set up "leadership PACs." Contributions to these leadership PACs can then be distributed to party members [2]. Whereas total tobacco industry contributions to party committees were \$83,000 in 1992-1993, tobacco industry contributions to party committees increased to \$233,100 in 1994-1995. While there has been a slight decrease in contributions directly to legislators in the last two electoral cycles (from \$39,396 in 1992-1993 to \$35,974 in 1994-1995), this decline has been more than compensated by the a substantial increase in contributions to "leadership PACS".

Tobacco industry contributions to political parties and party committees shifted from the Democratic Party to the Republican Party in 1994-1995. In 1990-91, the tobacco industry gave 54% of their political party contributions to the Democratic Party. In 1992-1993, 90% of party contributions went to the Democratic party, even though the Democrats lost control of the legislature. In 1994-95, tobacco industry contributions shifted to the Republican Party's favor -- 59% of tobacco industry contributions went to the Republican party. A large percentage of those party contributions went to the leadership PACS (Table 3).

TOBACCO POLICY SCORES

A “tobacco policy score” was estimated for each member of the 1994-1995 legislature to quantify his

TABLE 3. CONTRIBUTIONS MADE TO POLITICAL PARTIES AND LEADERSHIP PACS IN 1994-1995

Party/Committee	PM	RJR	STC	TCPA C	TI	UST	Coast	NJ Amuse	Total
Senate Pres.Comm. (DiFrancesco (R))	\$25,000	\$1,000	\$2,000		\$4,000	\$7,500	\$2,500		\$42,000
Assem. Republican Majority (Haytaian (R))	\$50,000	\$8,100		\$500	\$4,400	\$2,800			\$65,800
Republican State Committee	\$26,000			\$50	\$1,000			\$3,500	\$30,550
Republican Subtotal	\$101,000	\$9,100	\$2,000	\$550	\$9,400	\$10,300	\$2,500	\$3,500	\$138,350
Senate Democratic Majority (Bennet (D))	\$50,000	\$1,000	\$500		\$500	\$500			\$52,500
Doria Democrat Ldrshp Fund (Doria (D))	\$27,500	\$1,500			\$3,000	\$250			\$32,250
Democratic State Committee	\$10,000								\$10,000
Democratic Subtotal	\$87,500	\$2,500	\$500	\$0	\$3,500	\$750	\$0	\$0	\$94,750
Total	\$188,500	\$11,600	\$2,500	\$550	\$12,900	\$11,050	\$2,500	\$3,500	\$233,100

or her record on tobacco control issues. On a scale of 0 to 10, a score of zero represents an extremely pro-tobacco legislator and a score of 10 represents an extremely pro-tobacco control legislator. Five individuals, who have expertise in tobacco control, provided ratings of legislators in the 1994-1995 legislature. The average for each legislator is reported. Legislators first elected or appointed in 1995 did not receive a policy score because it was deemed too early to rate their performance accurately.

We chose to quantify legislative behavior with the tobacco policy score rather than examining individual votes because few tobacco-related issues are voted on by every member of the Legislature and simply examining recorded votes does not capture other ways in which a legislator can influence the outcome regarding a proposed piece of legislation, such as controlling what committee a bill goes to or the offering of friendly or hostile amendments.

Assemblywoman Maureen Ogden (R-Milburn) (now retired) had the highest tobacco policy score (most pro-tobacco control) 7.8. In the Senate, Senator Jack Sinagra (R-East Brunswick) had the highest tobacco policy score, 9.5. Assemblyman Guy Greg (R-Mount Olive) and Senator Gerald Cardinale (R-Cresskill) had the lowest policy scores (most pro-tobacco industry) in their chambers, 1.6 and 2.3, respectively.

The distribution of tobacco policy scores was near normal (bell shaped curve) with a mean tobacco policy score of 4.9 (median, 5.0) and a standard deviation of 1.5. Members of two houses had similar mean policy scores (House: mean 4.8, standard deviation 1.5, n=86; Senate: mean 5.1, standard deviation 1.5, n= 41; p=.47). Republicans had statistically significant lower tobacco policy scores (more pro-tobacco industry) than Democrats (Republicans: mean 4.7, standard deviation 1.5, n=81; Democrats: mean 5.4, standard deviation, 1.3, n=46; p<.001).

TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS

Campaign Contribution Data

Data on tobacco industry statewide political expenditures were obtained from disclosure statements filed with the New Jersey Election Law Enforcement Commission (ELEC) from 1982-1983 through 1994-1995 election cycles using archival records and disclosure statements available at ELEC's office*. The 1982-1983 election cycle is the first cycle that the tobacco industry made political contributions in New Jersey. Contributions to legislators, constitutional officers, statewide political parties and party committees, and expenditures towards lobbying are reported.** Records for contributions to candidates at the local level were not available. The following organizations were included as "tobacco industry" sources of funds: American Tobacco Company, New Jersey Tobacco and Candy Distributors Political Action Committee, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Inc., RJR Nabisco Inc., Smokeless Tobacco Council, The Tobacco Institute, U.S. Tobacco, Automatic Merchandising Council (distributor), New Jersey Amusement Co. (distributor) American Music Operators Association (distributor), and Coast Cigarettes (retail). Contributions from other subsidiaries of these companies, such as Philip Morris' Kraft General Foods and Miller Beer, were not included, nor were contributions from individuals connected with the tobacco industry. Expenditures for legal action to oppose local ordinances regarding smoke free workplaces or public places or controlling access of tobacco to minors, and public relations activity by the tobacco industry, while directed at influencing public policy, are not reportable as political expenditures under New Jersey law, and so are not included in our data. All data are reported

*New Jersey GASP assisted in the data collection of campaign contributions.

** Contributions made to joint accounts were evenly divided among candidates.

according to the two-year election cycle.

Contributions to State Legislators

Direct tobacco industry contributions to legislators and legislative candidates reached a peak of \$42,540 during the 1990-91 electoral cycle and fell slightly to \$35,974 by the 1994-1995 election cycle. Appendix tables A-1 through A-7 list contributions to legislators and legislative candidates since the 1982-1983 electoral cycle, when the tobacco industry began making contributions to New Jersey state legislators. Although slightly

decreasing in the last two electoral cycles, tobacco industry contributions to legislators have remained fairly constant in New Jersey. A preemption bill (Assembly Bill 4868) that had passed both houses of the legislature in 1991 may help explain the large increase that occurred 1990-1991 cycle, compared to the previous electoral cycle (Figure 2). Assembly Bill 4868, sponsored by Assemblyman Walter Kavanaugh, (R-Somerville) would have required locking devices on vending machines, but would have prohibited localities from enacting stronger ordinances regarding access of tobacco to minors. Kavanaugh has been one of the leading recipients of tobacco industry contributions in New Jersey. The bill was vetoed by former Governor James Florio (D).

Contributions to Legislators, Parties and Leadership PACs 1982-1995

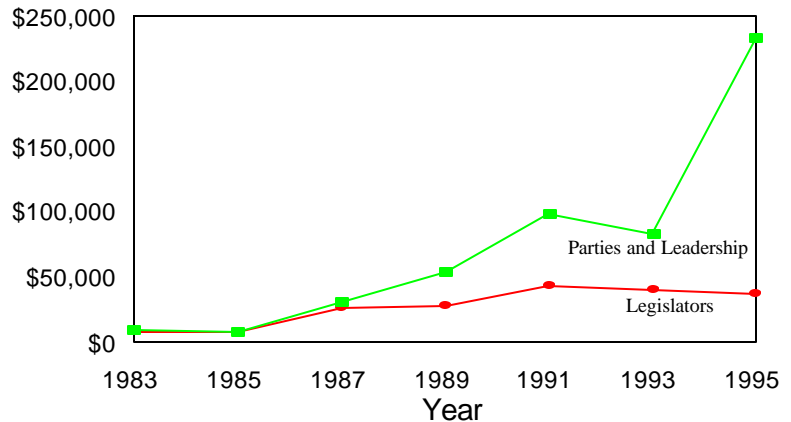


Figure 2. While direct contributions to legislators has remained steady, contributions to political parties and leadership PACs has substantially increased.

Year	Total Number of Recipients	Percentage of Contributions to Incumbents
1983	22	96%
1985	17	100%
1987	47	100%
1989	49	94%
1991	71	86%
1993	59	96%
1995	53	83%

Year	Democrat			Republican			Percent Republican
	Candidates	Party	Dem. Total	Candidates	Party	Rep.Total	
82-83	\$5,499		\$5,499	\$2,750		\$2,750	33%
84-85	\$4,200		\$4,200	\$3,824		\$3,824	48%
86-87	\$13,300	\$8,500	\$21,800	\$12,600	\$22,000	\$34,600	61%
88-89	\$11,575	\$35,500	\$47,075	\$16,597	\$18,400	\$34,997	43%
90-91	\$21,141	\$53,000	\$74,141	\$21,399	\$45,000	\$66,399	47%
92-93	\$8,733	\$75,000	\$83,733	\$31,562	\$8,000	\$39,562	32%
94-95	\$11,650	\$94,750	\$106,400	\$24,324	\$138,350	\$162,674	60%

Officeholder	Party	House	1982-91	1992-93	1994-95	Grand Total	Tobacco Policy Score
Kavanaugh, Walter J	R	A	\$3,850		\$3,000	\$6,650	4.0
Lynch, John	D	S		\$1,800	\$2,700	\$4,500	5.3
Bennett, John	R	S	\$350	\$1,500	\$2,000	\$3,850	4.3
Cardinale, Gerald	R	S	\$500		\$1,800	\$2,300	2.3
Littell, Robert	R	S	\$250		\$1,500	\$1,750	3.0
DiGaetano, Paul	R	A		\$250	\$1,500	\$1,750	4.2
Foley, Tom	D	A			\$1,500	\$1,500	1.7
Bryant, Wayne	D	S	\$3,750	\$300	\$1,400	\$5,450	5.0
Gregg, Guy	R	A			\$1,250	\$1,250	1.6
Dalton, Sean	D	A	\$2,000		\$1,250	\$3,250	6.5
Bubba, Joseph	R	S	\$1,800	\$1,000	\$1,100	\$3,900	3.3
Singer, Robert	R	S	\$333	\$250	\$1,000	\$1,583	6.3
DeCroce, Alex	R	A	\$1,300		\$750	\$2,050	1.8
Gill, Nia	D	A			\$750	\$750	5.8
Geist, George	R	A		\$800	\$750	\$1,550	5.5
Collins, Jack	R	A	\$1,075	\$700	\$750	\$2,525	3.4
Stuhltrager, Gary	R	A	\$1,075	\$700	\$750	\$2,525	5.4
Cohen, Neil	D	A		\$500	\$750	\$1,250	3.2
Martin, Robert	R	S	\$1,050	\$1,400	\$700	\$3,150	4.7
Arnone, Michael	R	A	\$250		\$650	\$900	3.0

From 1982 to 1991, the tobacco industry contributed fairly even amounts of money to Democrat and Republican state legislators, simply giving most contributions to incumbent legislators (Table 4). During this time period, partisan control of the Assembly chamber changed frequently. In the Assembly, the Democrats

were in power between 1982 to 1985, the Republicans were in power between 1986 to 1989, and the Democrats regained control in 1990-1991. In the Senate, the Democrats were in control between 1982 through 1991. However, after large Democratic defeats in 1991, the tobacco industry began to contribute significantly more to Republicans. Before the 1991 New Jersey legislative elections, Democrats had control of both the Senate and the Assembly. During the 1990-91 electoral cycle, the tobacco industry contributed \$21,141 to Democrats and \$21,399 to Republicans. However, because the Democratic legislature passed a series of unpopular tax increases proposed by Democratic Governor James Florio, the Republicans were able to gain control of the state legislature in 1991. The New Jersey Senate changed from 23 Democrats and 17 Republicans in 1991 to 27 Republicans and 13 Democrats in 1992. The Assembly went from 43 Democrats and 37 republicans in 1991 to 58 Republicans and 22 Democrats in 1992. In the 1992-1993 electoral cycle, the tobacco industry gave almost four times more money to Republicans than to Democrats: \$31,582 to \$8,733 respectively. The difference between contributions to Republicans and Democrats narrowed slightly in the 1994-1995 cycle: \$24,624 to Republicans and \$11,650 to Democrats (Table 5)

Table 6 provides a list of the top 20 recipients of tobacco industry money in 1994-1995. Of the twenty top recipients, fourteen were Republicans and six were Democrats. The average tobacco policy score for the top 20 recipients was 4.0 (standard deviation, 1.5). Assemblyman Walter Kavanaugh (R-Somerville) and Senator John Lynch (D-New Brunswick) were the largest recipients of tobacco industry contributions in 1994-1995.

Table 7 presents a list of the 35 legislators who have never received campaign contributions from the tobacco industry. Nineteen of these legislators were Democrats and sixteen were Republicans. The average tobacco policy score among non-recipients was 5.8 (standard deviation, 1.4). The tobacco policy scores of individuals who did not receive tobacco industry contributions was significantly higher (more pro-tobacco control) than the top 20 recipients of tobacco industry campaign contributions ($p < .01$).

Legislative Leaders

The tobacco industry wants to maintain close contact with legislative leaders. As Senator Gordon Macinnes (D-Morris Township) has noted “Tobacco lobbyists are not very visible in the corridors. Instead they talk to the leadership” [3].

Several legislative leaders received large tobacco industry contributions in 1994-1995 or during previous electoral cycles (Table 8). In the Assembly, the tobacco industry contributed \$750 to Speaker Jack Collins (R-Woodstown,) and \$1,500 to Majority Leader Paul DiGaetano (R-Rutherford) in the 1994-1995 electoral cycle. Although Assembly Minority Leader Joseph Doria (D-Bayonne) did not receive tobacco industry contributions in 1994 or 1995, he has received \$7,675 since 1986-87, more tobacco industry contributions than any other current New Jersey state legislator other than Assemblyman John Rooney (R-Emerson). Assembly Majority Whip Christopher Bateman (R-Somerville) is the only Assembly leader to have never accepted tobacco industry campaign contributions.

In the Senate, Majority Leader John Bennet (R-Eatontown), Deputy Majority Leader Gerald Cardinale (R-Creskill), and Minority Leader John Lynch (D-New Brunswick) received \$2,000, \$1,800, and \$2,700, respectively, in tobacco industry campaign contributions in 1994 and 1995. Senate President Donald Di Francesco (R-Scotch Plains) is the only Senate leader to have never accepted tobacco industry campaign contributions. However, Di Francesco is an important fundraiser for Senate Republicans [3]. Di Francesco

has one of the lowest tobacco policy scores (pro-tobacco industry) in the New Jersey Senate.

Because of a change in campaign finance laws in New Jersey; the Assembly Speaker, the Senate President and the two minority leaders in each House may form committees to raise money for members of their party. The tobacco industry has contributed substantially to all four committees. In 1994-1995, the tobacco industry contributed \$42,000 to Senator DiFrancesco's "Senate President's Committee", \$65,800 to Assembly

TABLE 7. NEW JERSEY LEGISLATORS WHO HAVE NEVER ACCEPTED TOBACCO INDUSTRY CONTRIBUTIONS			
Officeholder	Party	House	Tobacco Policy Score
Albohn, Arthur	R	A	5.3
Asselta, Nick	R	A	5.3
Augustine, Alan	R	A	5.6
Baer, Byron	D	S	6.7
Bateman, Christopher	R	A	6.2
Buono, Barbara	D	A	7.0
Casey, John	D	S	5.7
Cruz-Perez, Nilsa	D	A	6.0
DiFrancesco, Donald	R	S	2.7
Garrett, E. Scott	R	A	3.0
Green, Jerry	D	A	5.0
Hayden, Donald	R	A	6.3
Jones, Leroy	D	A	7.0
Kramer, Paul	R	A	5.5
LaRossa, Richard	R	S	3.7
Lipman, Wynona	D	S	6.3
MacInnes, Gordon	D	S	7.3
McGreevey, James	D	S	5.3
Mikulak, Stephen	R	A	6.0
O'Connor, Edward	D	S	4.3
O'Toole, Kevin	R	A	
Ogden, Maureen	R	A	7.8
Oros, Ernest	R	A	6.3
Petrilo, Steven	D	A	6.7
Quigley, Joan	D	A	6.3
Russo, David	R	A	7.4
Sacco, Nicholas	D	S	5.7
Schluter, William	R	S	6.0
Sinagra, Jack	R	S	9.5
Suliga, Joseph	D	A	3.6
Turner, Shirley	D	A	6.2

TABLE 7. NEW JERSEY LEGISLATORS WHO HAVE NEVER ACCEPTED TOBACCO INDUSTRY CONTRIBUTIONS			
Weinberg, Loretta	D	A	7.4
Williams, George	D	A	3.7
Yuhas, Joseph	D	A	4.5
Zisa, Charles	D	A	7.2

TABLE 8. CAMPAIGN CONTRIBUTIONS TO LEGISLATIVE LEADERS						
Officeholder	Party	1976-91	1992-93	1994-95	Grand Total	Tobacco Policy Score
Assembly						
Collins, Jack	R	\$1,075	\$700	\$750	\$2,525	3.4
DiGaetano, Paul	R		\$250	\$1,500	\$1,750	4.2
Felice, Nicholas	R	\$900		\$0	\$900	5.5
Bagger, Richard	R	\$250	\$300	\$250	\$800	4.6
Bateman, Christopher	R			\$0	\$0	6.2
Doria, Joseph	D	\$6,175	\$1,500	\$0	\$7,675	5.5
Senate						
DiFrancesco, Donald	R			\$0	\$0	2.7
Bennett, John	R	\$350	\$1,500	\$2,000	\$3,850	4.3
Cardinale, Gerald	R	\$500		\$1,800	\$2,300	2.3
Palaja, Joseph	R	\$333		\$0	\$333	5.3
Lynch, John	D		\$1,800	\$2,700	\$4,500	5.3

Speaker's Haytaian's "Assembly Republican Majority Committee", \$52,500 to Senator John Lynch's "Senate Democratic Majority Committee", and \$32,250 to Assemblyman Joseph Doria's "Doria Democratic Leadership Fund" (Table 3).

Legislative Committees

The Senate and Assembly Health Committees, the Assembly Appropriations Committee and the Senate Budget and Appropriations Committee are important legislative committees that consider tobacco related legislation (Tables A-9 through A-12). In 1996, most tobacco related bills were sent to the Assembly or Senate Health Committees. The Assembly Appropriations and the Senate Budget and Appropriations Committees have considered revenue bills and tobacco taxes as a potential source of revenue.

Senate Health Committee -- The Chair of the Senate Health Committee is Jack Sinagra (R-East Brunswick). He has never accepted tobacco industry contributions and has the highest tobacco policy score

(pro-tobacco control) in the 1994-1995 New Jersey legislature. He is the author of the most tobacco control and youth access legislation in the New Jersey legislature since 1992. Some of the bills that he has introduced as of April 1997, to be considered by the Senate Health Committee, include bills to prohibit cigarette vending machines in the state (S1227), prohibit tobacco advertising within 1,000 feet of schools (S601), prohibit the sale of single cigarettes (S1228) and prohibit the sale or distribution of items with tobacco product logos (S1230). In the 1996-1997 session, Senator John Adler (D-Haddonfield) introduced a bill to phase out smoking in restaurants, which was referred to the Senate Health Committee (S880). The Senate Health Committee is also considering a Clean Indoor Air bill (S376) introduced by Senator Gordon MacInnes (R-Denville). This bill would provide a smoke free environment in all public indoor areas, including restaurants. The bill allows for some exceptions such as taverns and it is not preemptive.* The other members of the Senate Health Committee have accepted tobacco industry contributions either in 1994-1995, or in previous electoral cycles. With the exception of one member, most committee members tend to favor tobacco control legislation.

Assembly Health Committee -- During the 1996-1997 session, the Assembly Health Committee is considering or has considered identical bills to those being deliberated in the Senate Health Committee. Identical bills include A2570 (eliminate cigarette vending machines), A1255 (prohibit sale of single cigarettes), and A1259 (restrictions on advertising near schools) and A1266 (clean indoor air). However, the author of A1255 and A1259, David Russo (R-Midland Park) has withdrawn these bills from consideration. Most members of the Assembly Health committee tend to have neutral or above average tobacco policy scores (pro tobacco control). The two Democrats on the committee, Joan Quigley (D-Jersey City) and Loretta Weinberg (D-Teaneck), have never received tobacco industry campaign contributions. Freshman Republican Francis Blee (R-Linwood) has not received tobacco industry contributions either.

Assembly Appropriations Committee and Senate Budget and Appropriations -- Although several members of the Assembly Appropriations Committee have never accepted tobacco industry contributions, the Chair of the Committee, Walter Kavanaugh (R-Somerville), was the leading recipient of tobacco industry contributions in 1994-95 (\$3,750 in 1994-1995 and \$6,650 lifetime total). In the 1996-1997 session, one bill before this committee is A1332, which would increase tobacco sales licensing fees, require licensing for certain representatives and dedicate 25 percent of license fee revenue for enforcement. An identical bill has not been introduced in the Senate. In the Senate Budget and Appropriations Committee, only two members received contributions in 1994-95 -- Robert Littel (R-Franklin) and Bernard Kenny (D-Hoboken). Only two committee members have never received money from the tobacco industry -- Richard La Rossa (R-Trenton) and Wynona Lippman (D-Newark).

POLITICAL PARTIES

Before 1993, political party contributions went directly to the state party committees. As a result of a change in campaign finance law in 1993, the maximum contribution to a legislator was \$1,500 (now \$1,800). However, the campaign finance reform legislation had a loophole in which the Assembly Speaker, Senate President and the minority leaders in both chambers can set up "leadership PACs." Contributions from these leadership PACs can then be distributed to party members [2]. Whereas total tobacco industry contributions

* State preemption of local tobacco control legislation is the primary strategy that the tobacco industry uses to avoid meaningful tobacco control legislation. The fact that S376 is not preemptive is important from a public health perspective.

to party committees was \$83,000 in 1992-1993, tobacco industry contributions to party committees increased to \$233,100 in 1994-1995. Where there has been a slight decrease in contributions to legislators in the last two electoral cycles, there has been a substantial increase in contributions to leadership PACs (Table 3). Tobacco industry contributions to Republican party committees in 1994-1995, totaled \$138,350 -- 78% of that amount was donated to the Senate President's Committee (DiFrancesco) and the Assembly Republican Majority Committee (Haytaian). Tobacco industry contributions to the Democratic party in 1994-1995 totaled \$94,750 -- 88 percent went to the Doria Democratic Leadership Fund (Doria) or the Senate Democratic Majority Committee (Lynch).

Tobacco industry contributions to political parties and party committees have shifted from the Democratic Party to the Republican Party in 1994-1995. In 1990-91, the tobacco industry gave 54% of party contributions to the Democratic Party. In 1992-1993, 90% of soft money contributions went to the Democratic party, even though they lost control of the legislature. In 1994-95, tobacco industry contributions to the Democratic party decreased to 41%.

THE EXECUTIVE BRANCH

The governor is the only state constitutional officer who is elected in New Jersey and the tobacco industry has also contributed to gubernatorial campaigns. Where other states may elect an Attorney General, Secretary of State or Treasurer, these positions are appointed by the Governor in New Jersey. In 1993, Philip Morris and US Tobacco contributed \$4,100 to Republican Christine Whitman's primary and general election campaign. Philip Morris also contributed \$250 to incumbent Democratic governor James Florio and \$250 to Republican primary challenger Cary Edwards. In 1989, Philip Morris contributed \$1,800 to Democratic gubernatorial candidate James Florio and RJ Reynolds contributed \$1,500 to Republican gubernatorial candidate William Gormley. In 1985, Philip Morris contributed \$800 to incumbent Republican governor Thomas Kean.

LOBBYING

Data on lobbying expenditures came from lobbying disclosure statements filed with the New Jersey ELEC. Lobbying data from tobacco industry sources were first available in 1982. As shown in Figure 1 the tobacco industry's lobbying expenditures increased substantially in 1986-87. Compared to the previous legislative session, lobbying expenditures almost tripled. In general, lobbying expenditures increased slightly since 1987.

Table A-13 summarizes lobbying expenditures in New Jersey at the state level. Since 1982, the tobacco industry has spent over \$3.75 million in lobbying expenditures in New Jersey. In 1994-95, Philip Morris, RJ Reynolds, the Tobacco Institute, Smokeless Tobacco Council, American Music Operators Association, American Brands, Lorillard, and Brown and Williamson paid \$725,107 to lobbyists in the state of New Jersey. Among the lobbying firms most used by the tobacco industry, Philip Morris has employed Princeton Public Affairs, RJ Reynolds has employed the Stewart Agency, Smokeless Tobacco Council has employed Public Strategies Inc. and the Tobacco Institute have employed Impact Inc and Joseph Katz Co.

Several health related groups are represented by many of the same lobbyists as the tobacco industry. In addition to Philip Morris, Princeton Public Affairs also represents the competitive Health Care Coalition,

Hamilton Hospital, the Mooss Foundation, Morristown Memorial Hospital, and the New Jersey HMO Association. Besides RJ Reynolds, the Stewart Agency represents Cathedral Health Care Systems, the Center for Molecular Medicine and Immunology, Blue Cross, Cooper Hospital, Medco Behavioral Care Corporation, the Multistate Association, the Radiological Society, and Saint Peter's Medical Center. Smokeless Tobacco Council's lobbying firm, Public Strategies, also represents the same health groups as RJ Reynolds' lobbying firm, the Stewart Agency. Impact Inc., which represents the Tobacco Institute, also represents Blue Cross, Cooper Hospital, East Orange General Hospital, New Jersey Occupational Therapy Association and Medco Behavioral Care Corporation. This pattern of representation raises the possibility of conflict of interests among lobbyists who represent the tobacco industry and health groups [4].

THE RELATIONSHIP BETWEEN CAMPAIGN CONTRIBUTIONS AND LEGISLATIVE POLICYMAKING

There is a statistical relationship between tobacco industry campaign contributions and the tobacco policy scores, with both the campaign contributions and the tobacco policy scores affecting each other. We

TABLE 9. SIMULTANEOUS EQUATIONS RESULTS FOR TOBACCO POLICY SCORES AND 1994-1995 CAMPAIGN CONTRIBUTIONS

Dependent Variable = Tobacco Policy Score				
Variable	Coefficient	St. Error	t	p
Contributions (in thousands of dollars)	-1.18	.32	-3.71	<.001
Republican Legislators	-.58	.26	-2.20	.03
Intercept	5.63			
Dependent Variable = Campaign Contributions (in thousands of dollars)				
Tobacco Policy Score	-.679	.181	-3.75	<.001
Majority Party (Republicans)	-.377	.222	-1.69	.09
Leadership	.121	.440	.27	.78
Intercept	3.86			
n=123				

$R^2 = .14$ for tobacco policy score; $R^2 = .12$ for campaign contributions.

sought to test the hypothesis that campaign contributions sway legislators to be sympathetic toward the tobacco industry's point of view, while at the same time, the tobacco industry rewards those legislators that have helped it in the past. Simultaneous equations regression using two stage least squares was used to test the hypothesis that campaign contributions were affecting legislative behavior simultaneously with behavior affecting contributions [5-8].

The simultaneous equation regression model contains two equations. One equation predicts the 1994-1995 tobacco policy score (dependent variable) from the amount of campaign contributions in that election cycle (independent variable). The second equation predicts campaign contributions (dependent variable) from the tobacco policy scores and a variable representing legislative leaders to allow for the possibility that legislative leaders received greater campaign contributions than members in general. (This analysis is only based on direct contributions to legislators. It does not include money contributed to political parties or leadership PACs.)

Table 9 presents the results of this analysis. For every \$1000 a legislator received, his or her tobacco policy score dropped (i.e., became more pro-tobacco industry) by an average of -1.18. Republican legislators, on average, had tobacco policy scores that were -.58 points lower than Democratic legislators for the same amount of tobacco industry funds. In other words, assuming a Republican and a Democrat received the same amount of money from the tobacco industry, the Republican would likely have a lower score than the Democrat. At the same time, for every one point reduction in the tobacco policy score, campaign contributions from the tobacco industry increased by an average of \$679.

These results are comparable to previous findings of the effects of tobacco industry campaign contributions on the California, Colorado, Massachusetts, Ohio, Pennsylvania, and Washington, legislatures [5-10]. These studies also found a simultaneous relationship between tobacco policy scores and tobacco industry campaign contributions.

THE EAST BRUNSWICK ORDINANCE AND THE TOBACCO VENDORS' CHALLENGE OF THE ORDINANCE

The township of East Brunswick (population 43,548) passed an ordinance in 1990 that eliminated cigarette vending machines in the township. The ordinance was significant because it was the first ordinance in the state of New Jersey to completely eliminate vending machines in the state. After it was successfully defended in the state Supreme Court, many other New Jersey municipalities ordinances controlling the availability of tobacco to youth.

Former East Brunswick Mayor Jack Sinagra (currently a state senator) proposed an ordinance eliminating vending machine to the East Brunswick town council on June 27, 1990. In East Brunswick, as in the rest of New Jersey, a proposed ordinance requires two readings. The first reading is for introduction to the council and the second reading, which must occur at least ten days later, is to allow for public comment. During the second reading there was vocal support and opposition to the ordinance. Supporters of the ordinance included Parent Teacher Associations, high school students, New Jersey GASP (Group Against Smoking Pollution) and Dr. John Slade of the Department of Medicine at St. Peter's Medical Center and the Robert Wood Johnson Medical School. The high school students, in particular, testified that cigarettes were very easy to acquire from vending machines [11]. Local vending machine companies protested the proposed ordinance. They expressed concerns about being put out of business, confiscating property without paying for it, and the fact that their vending machines would be worthless [11]. On July 9, 1990 the five member council voted unanimously for the ordinance.

Under normal circumstances, an ordinance would be implemented twenty days after the council's vote. However, before the ordinance was to be implemented, several vending machine operators filed a lawsuit against the township of East Brunswick. The plaintiffs were C.I.C. Corporation, Coast Cigarette Sales, Eskin Vending Corporation, and the American Music Operators Association. It has been reported that the vendors had received financial support from the tobacco industry [12].

When the lawsuit was filed, the town officials discussed whether they should defend or rescind the ordinance. While town officials definitely wanted to defend the ordinance, they were bolstered in this decision by several factors. First, although they were concerned that cost of litigation would be considerable, the town officials did not think the cost would be outrageous. The position of town attorney is part-time and the time required to do the job appeared to be more than one attorney could handle. However, the town attorney at the time, Bertram Busch, agreed to defend East Brunswick with assistance from attorneys in his private law firm. He also agreed to work on the case at a lower rate than some of his other private clients. Second, although they were unable to raise money from outside sources, several groups were willing to provide resources to help with the litigation. New Jersey GASP (Group Against Smoking Pollution) agreed to be an informational resource and offered financial support. The town of East Brunswick was encouraged by New Jersey's GASP's offer of financial support, but did not accept; instead, they relied on New Jersey GASP as a source of information. Dr. John Slade provided information from studies he had done on how children can easily buy cigarettes from vending machines. The Tobacco Products Liability Project in Boston,

Massachusetts provided assistance in supplying some legal research for East Brunswick. The American Cancer Society, American Lung Association and the American Heart Association provided letters of support.

Mayor Sinagra, Township Attorney Bertram Busch, and the Township Council decided that they would wait until all litigation was complete before they enforced the ordinance. They did not want to remove the machines and then return them if the courts ruled against the ordinance.

The rationale of the plaintiffs' lawsuit was denial of equal protection under the state and federal constitution and the claim that state law preempted municipalities from enacting ordinances relating to cigarette vending machines. First, the plaintiffs argued that they were being denied equal protection because cigarettes could still be sold in stores, whereas vending machines were now eliminated. They argued that if cigarettes were not an illegal product and if one outlet is allowed to sell the product, but another is not, then the outlet that cannot sell the product is being denied equal protection. The plaintiffs cited the Cigarette Tax Act of 1954 (NJSA 54:40A-1 to 45) and the Unfair Cigarette Tax of 1956 (NJSA 56:7-18 to 38) to support their preemption claim. These statutes enabled the state to tax cigarette machines. The plaintiffs argued that taxing the vending machines provided a form of revenue for the state of New Jersey and so the state of New Jersey had the sole responsibility and authority for franchising and regulating vending machines.

In 1992, a Superior Court judge ruled in favor of the vendors. The judge disagreed with the plaintiffs (the vendors) about the equal protection argument, but agreed with them on the preemption argument. The town of East Brunswick had to decide whether to appeal or not. Jack Sinagra had resigned as Mayor because he had won a state Senate seat and Council President Ira Oskowski became Mayor. The Mayor and the Council discussed the costs of appealing the case, then voted unanimously to appeal the case. The Council felt that their case was strong and they believed that East Brunswick had a sufficient economic base to financially support the appeal [11]. Although there was no significant outpouring of public support, there was no significant criticism of the of the Mayor or the Council about appealing the decision [11].

The appellate case was argued on June 1, 1993. Before the case was argued, New Jersey GASP, the Tri-Agency Council (American Heart Association, American Lung Association, and American Cancer Society), and Action on Smoking and Health (a Washington D.C. based anti-smoking group) submitted *amicus curiae* briefs to the Appellate Court. The case was decided on July 2, 1993. The appellate court ruled in favor of East Brunswick and reversed the trial court decision. The Appellate Court concluded that the Cigarette Tax Act and the Unfair Cigarette Tax Act were not preemptive. The Appellate Court also cited Governor Florio's January 21, 1992, pocket veto message of A-4868, a pro-tobacco bill that would have preempted local ordinances, January 21, 1992. Florio vetoed the bill because it would have preempted localities from passing tougher vending machine ordinances.

The vendors filed a Petition for Certification with the State Supreme Court. In March, 1994, the Supreme Court upheld the appellate decision that the East Brunswick ordinance was not preempted by any state statute. The Supreme Court also stated that "the Appellate Division's ruling is in accord with many precedents upholding the power of municipalities to enact ordinances to protect the health, safety, and welfare of their citizens, and will not cause any 'great potential harm' to State interests" [13].

The situation in East Brunswick provides an interesting comparison to another city that was sued by restaurant owners over the passage of a Clean Indoor Air Ordinance. In 1994, the town of Puyallup, Washington passed a Clean Indoor Air ordinance that pertained to all restaurants in the town [7]. Restaurant owners, with the financial assistance of RJ Reynolds, sued the town of Puyallup. The town of Puyallup

reluctantly rescinded the ordinance, because they felt that they could not afford to fight the lawsuit. In addition, various health groups did nothing to provide assistance or resources for Puyallup to help them with a potential lawsuit, if they decided to defend it [7]. In contrast, several groups and individuals, while not providing financial assistance, did provide other resources, such as legal casework or engage in other activities, such as filing *amicus curiae* briefs. The assistance of local activists and organizations may be one significant factor why East Brunswick was successful and why Puyallup failed.

THINKING ABOUT SECOND HAND SMOKE IN THE 1970S

The Donna Shimp Case

The pioneering case of *Shimp vs. New Jersey Bell Telephone Company* (1976) case brought additional attention to the problem of second hand smoke both nationally and in the state of New Jersey. In the early 1970s, Donna Shimp, an employee of New Jersey Bell, was bothered by the smoke of a nearby co-worker who smoked constantly during working hours. Her normally excellent work ratings were downgraded because she did not work well in the smoke filled environment. She sought relief from management, her union, the National Labor Relations Board, and federal, state and local health agencies, but all ignored her pleas. At the time, she did not have the right to sue under the Occupational Safety and Health Act of 1970. While she was seeking relief from these agencies, she gathered evidence that was accumulating about the dangers of second hand smoke, and precisely documented her health problems and working conditions. She also received information about the dangers of second hand smoke from the American Lung Association, Action on Smoking and Health and New Jersey GASP [14]. Eleanor Demarest, the President of New Jersey GASP in the 1970s, personally provided Donna Shimp with some financial support.

In fall, 1975, Donna Shimp was introduced to Alfred Blumrosen, a regulatory law professor at Rutgers Law School, who had an interest in occupational hazards. With the help of Blumrosen and trial attorney Stuart Finifter, Donna Shimp took her case to Superior Court in New Jersey. On December 21, 1976, the court ruled that Donna Shimp had a common law right to a safe workplace, and that the smoke from cigarette smoking was harmful to her health. The court also ordered New Jersey Bell to restrict smoking in all offices and customer service areas. New Jersey Bell complied with the order [14]. The *Shimp vs. New Jersey Telephone Company* made both employees and employers more aware of the problems of second hand smoke. It also gave health organizations and tobacco control activists more evidence to present to employers about the need to provide smokefree indoor air in the workplace and helped start the educational efforts on workplace smoking in New Jersey in the 1970s.

The New Jersey Sanitary Code

In 1977, following the Donna Shimp case and the growing evidence that secondhand smoke was dangerous, the Public Health Council of New Jersey proposed a new chapter of the New Jersey sanitary code to include restrictions on smoking in most public places, including workplaces and restaurants. Brown and Williamson Tobacco company and the Tobacco Institute not only opposed the proposal, but organized local groups such as the Restaurant and Tavern Association and law enforcement groups [15] to oppose the measure at public hearings. Despite the opposition, the Public Health Council voted in favor of the new chapter of the New Jersey sanitary code.

The opposition appealed to the state attorney general, arguing that the Public Health Council committed several procedural flaws. The Attorney General agreed that procedural flaws were made, and that the Health Council would have to propose and reschedule hearings again.

However, members of the legislature, particularly Marty Herman (D-Gloucester), felt that it was the role of the legislature to make such clean indoor air policies, not an administrative board. The legislature rescinded the Public Health Council's rulemaking authority on smoking [16]. As described above, in the early 1980s, the legislature then passed several laws restricting or limiting smoking to certain sections in public

schools, retail food stores, public transportation, and other indoor public places.

FROM VOLUNTARY ACTIVITY IN THE 1970s TO STATE LEGISLATION IN THE 1980s TO LOCAL ORDINANCES IN THE 1990s

New Jersey tobacco control organizations in the 1970s, such as New Jersey GASP and the tri-agency coalition, focused their efforts on educating and reaching out to employers, restaurant owners, hospitals and schools to promote voluntary controls on smoking. In the early 1980s, tobacco control activists in New Jersey became more active politically at the state level, largely because there was a legislator, Senator Martin Herman (D-Gloucester), that was very interested in introducing and guiding tobacco control bills through the legislature. During the early and mid 1980s, the New Jersey legislature passed a series of laws requiring employers of more than 50 individuals to develop smoking policies (1985), requiring the posting of signs regarding whether smoking was allowed in a restaurant (1985), prohibiting smoking in retail food stores or public transportation (1985), and prohibiting smoking in public schools (1982). However, after the tobacco industry became a more active political force in the late 1980s, passage of tobacco control legislation stopped. With little success in the late 1980s at the state level, tobacco control activists refocused their efforts to the local level.

The State Supreme Court decision to uphold the East Brunswick ordinance led to a flurry of tobacco control activity at the local level. Since the Supreme Court decision in 1994, 153 cities or towns enacted local ordinances, compared to 19 before the Supreme Court decision (Figure 3). Most of these ordinances pertain to preventing the availability of tobacco to children. Of the 153 ordinances passed since 1994, 114 have been ordinances restricting or ending vending machine sales or other ordinances to prevent sales of cigarettes to youth. Only a few cities have passed smokefree indoor air ordinances and most smokefree indoor air ordinances only eliminate or restrict smoking in government buildings or facilities or other public places. The only city to have ended smoking in private workplaces, except for restaurants and bars, is Highland Park (1996). Lawrence township has a partial ban on smoking in private workplaces and Seacaucus has a partial ban on smoking in public indoor places. Most of the cities that have passed ordinances have been small to medium sized towns or cities. The city of Trenton has not passed tobacco control ordinances, because they have not considered tobacco control a top priority [16]. New Jersey GASP, the American Cancer Society, the American Heart Association, the American Lung Association, the New Jersey Medical Society, Project ASSIST and the Robert Wood Johnson SmokeLess States Program have provided varying levels of resources for many of these local communities that have passed vending machine ordinances or clean indoor air ordinances [17].

Despite the cigarette vendors' defeat in the East Brunswick ordinance, the vendors have not given up challenging the legality of local ordinances. The vendors have argued that machines with "locking devices" should be allowed, because these type of machines are no different from over the counter sales [18].

In 1995, General Foods Vending Inc. and C.I.C. Corporation sued the town of Westfield for adopting a vending machine ordinance. The vendors were defeated in Superior Court and they did not file an appeal. In February, 1997, Vend-O-Matik of New Brunswick lost their challenge to a New Brunswick ordinance that eliminated cigarette vending machines.

In Bergen County, four vendors (Manny's Cigarette Services, Mercury Vending, C.I.C. Corporation, and Wayne Vending) have challenged the local ordinances in five towns. The five towns are Carlstadt, Hackensack, Mahwah, Palisades Park and Washington township. Superior Court Judge Patrick Fitzpatrick started listening to testimony in February, 1997. However, on March 18, 1997, Judge Fitzpatrick declared a mistrial. A week earlier, he had received an unmarked package with a tape recorder. He listened to the tape for about a minute and realized that it was an angry vendor making his arguments as why the local vending machine bans were unconstitutional. The tape was sent by Lou Mancinelli of General Foods Vending Inc in Westfield. Mancinelli had lost his case in Westfield in 1995. As of April 17, 1997, a decision has not been made on how the case will proceed [18].

THE FAILED ATTEMPT TO RAISE THE CIGARETTE TAX

The current cigarette tax in New Jersey is 40 cents, which ranks sixteenth in the nation. A proposal to raise the cigarette tax by 25 cents was defeated in the summer of 1996 because of an intense lobbying effort by the tobacco industry and the anti-tax mood of most New Jersey citizens.

Cumulative No. of NJ Localities with Indoor Air or Youth Access Laws

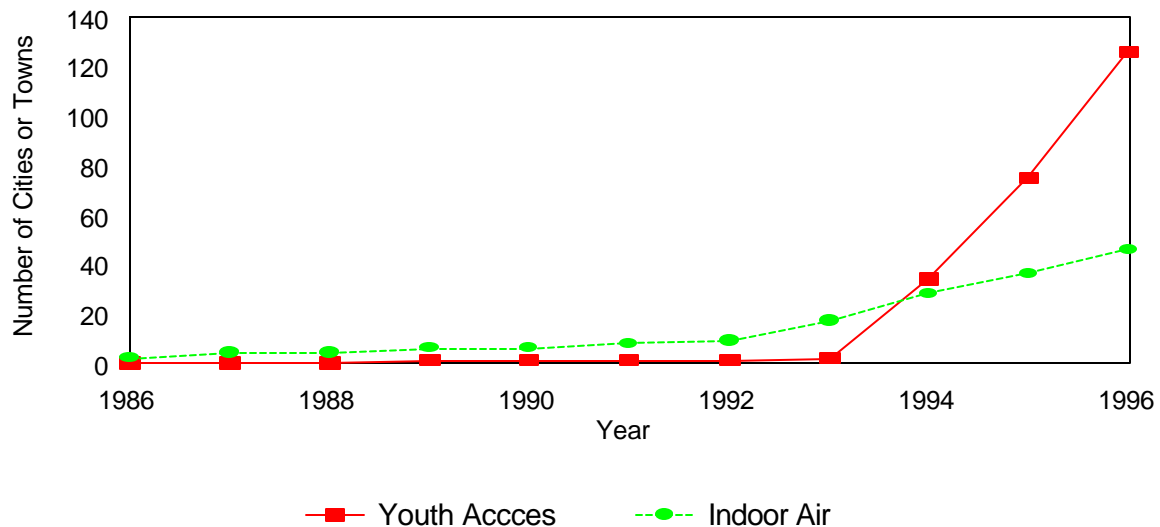


Figure 3 Since the state Supreme Court upheld the New Brunswick ordinance in 1994, the number of towns enacting tobacco control ordinances has skyrocketed. Most ordinances limit access of tobacco products to children.

The first proposal to increase the cigarette tax was made in 1992 by the Coalition for a Healthy New Jersey. The coalition comprised of over one hundred health, law enforcement, educational and governmental organizations including the American Heart Association, the American Cancer Society, the American Lung Association, New Jersey GASP, D.A.R.E., the New Jersey Academy of Family Physicians, the New Jersey Public Health Association, and the New Jersey Association of County Officers. The coalition was chaired by Dr. John Slade of the St. Peter's Medical Center and Robert Wood Johnson Medical School. The proposal would have increased the cigarette tax by one dollar and increased excise taxes on beer, wine and liquor. Of the money raised from the increase in cigarette and alcohol taxes, eighty seven percent would be earmarked for the Uncompensated Care Trust Fund, and thirteen percent would have been earmarked for tobacco and alcohol treatment and prevention programs. However, legislation was never considered, because the Coalition could not find a sponsor to introduce a bill [16].

In the Spring of 1996, Assembly member Gary Stuhlhager (R-Woodbury) proposed a constitutional amendment (ACR 1) to increase the cigarette tax by 25 cents. The increased revenue would be dedicated for new school construction. Speaker Jack Collins, who is in the same multi-member district as Stuhlhager, expressed support for the constitutional amendment [19]. In order to dedicate tax funds for a specific purpose, the New Jersey State Constitution must be amended. An amendment requires the proposal to pass three-fifths of both the Assembly and Senate (48 of 80 in the Assembly and 24 of 40 in the Senate) and to win a majority of voters in a statewide referendum. On the grounds that the constitutional amendment process does not need the signature of the governor, Governor Christy Whitman (R) did not take an official position on the issue.

Before the bill was introduced into the legislature, a broad based coalition had formed called the "Coalition to Build Schools." The coalition included the New Jersey Educational Association, the New Jersey School Board Association, the New Jersey Medical Society, the AFL-CIO, the American Heart Association, American Lung Association, American Cancer Society, New Jersey GASP, and various local construction organizations, mayors, and parent-teacher organizations. The revenue raised would be solely for school construction. Unlike recent cigarette tax increases in California, Massachusetts, Arizona, and Oregon, no money would go toward tobacco education or research. The health groups were satisfied with just an increase in the tax [19].

ACR 1 was introduced in the Assembly on June 10, 1996. ACR 1 moved quickly through the Assembly. By June 20, 1996, both the Assembly Education Committee and the Assembly Appropriations Committee reported the bills out of committee. On July 18, 1996, the resolution passed with more than a three-fifths majority. The vote was 68 in favor, 5 opposed and 3 did not vote. The bill was received in the Senate, but not assigned to a committee. Instead, Senate President Di Francesco brought the proposed constitutional amendment to an immediate floor vote. The Senate did not vote in favor of the constitutional amendment. But once it was clear that the proposed constitutional amendment would not pass, Senate President Di Francesco invoked a parliamentary rule to avoid the votes from being recorded publicly in order to prevent Senators, particularly of the Republican party, from being embarrassed [20]. The proposed constitutional amendment failed during the 1996-1997 legislative session.

Two factors may account for why the proposed constitutional amendment did not get through the Senate and on to the ballot. First, there was an intense lobbying effort by the tobacco industry to stop the bill before it went to a ballot [19]. Because Assembly Speaker Jack Collins supported the measure, the tobacco industry did not make a major effort to stop the proposed constitutional amendment, while it was progressing through the Assembly. Since there was not a referendum, it is uncertain how much money the tobacco

industry would have spent to oppose the initiative. However, the tobacco industry is a major contributor to the New Jersey Republican party and to Senate Republicans.

Second, the anti-tax climate, while strong in many parts of the nation, is particularly strong in New Jersey. The roots of the anti-tax climate can be traced to James Florio's (D) term as governor (1990-1994). Before the 1989 gubernatorial election, candidate Florio stated that he did not see a need for future tax increases. However, when he entered office, he changed his mind after examining the budget situation. Florio proposed and the Democratic legislature passed several tax increases in 1991. The New Jersey citizenry expressed its anger by voting for Republican state legislators in the 1991 legislative elections. Governor Florio was defeated for re-election in 1993 by Republican Christy Whitman.

The New Jersey electorate is still in an intensely anti-tax mood, regardless of the source of the tax [19]. When the constitutional amendment was going through the legislative process, "talk radio" criticized the tax. The "Coalition to Build Schools" countered with advertising that expressed the need for new schools. Nevertheless, the anti-tax sentiment was still extremely strong in New Jersey. However, the anti-tax sentiment that was expressed during the attempt to put a referendum on the ballot may not reflect a majority of New Jersey citizens. Although a majority are opposed to most forms of tax increases, an Eagleton Institute (Rutgers University) poll found that 69 percent of New Jerseyans favor an increase in the tax on cigarettes [21].

PROJECT ASSIST AND THE SMOKELESS STATES PROGRAM IN NEW JERSEY

Project ASSIST (American Stop Smoking Intervention Study) is a eight year project funded by the National Cancer Institute (NCI) that began in 1991 and will end in 1999. ASSIST is being implemented in seventeen states, including New Jersey. The goals of ASSIST are to reduce the adult smoking prevalence to 17% or less by 1998 and to reduce the youth smoking initiation rate. ASSIST seeks to change the public acceptance of tobacco use. ASSIST also works on the development and involvement of community tobacco control coalitions, through schools, work sites, community groups, health care organizations and the community.

Project ASSIST in New Jersey consists of a partnership between the federal government, the New Jersey Department of Health and the New Jersey division of the American Cancer Society. These agencies have provided the infrastructure for developing coalitions of groups that are interested in reducing nicotine addiction. The Commission on Smoking OR Health functions as the state coalition responsible for the whole state. The Essex/Union coalition is responsible for Essex and Union counties and the Cumberland County coalition is responsible for Cumberland county [22].

Because the ASSIST project is federally funded through the state Department of Health, the tobacco industry has attempted to blur the distinction between the private activities of the coalition members and the publicly funded activities of the ASSIST and the state health department in several states [7, 23]. The first Freedom of Information request was made by a new Jersey citizen in November, 1993. The Project ASSIST staff provided the individual a quarterly report and the individual was not heard from again. The second Freedom of Information Request was made by Stuart Rabinowitz on September 22, 1995 [24]. Rabinowitz had made several FOIA requests in several states. No legal action or complaints against New Jersey ASSIST after these requests.

Although Project ASSIST in New Jersey intends to reach all citizens, the New Jersey Project ASSIST coalition has targeted youth, women of childbearing age, blue collar workers and minorities [25].

The objectives of New Jersey ASSIST are [22]

- 1) Involve community groups and organizations that represent children, blue collar workers, women of childbearing age and minorities in ASSIST activities.
- 2) Make all public and private schools, vocational and technical schools, colleges and universities, and pre-schools smoke-free by 1998.
- 3) Have all schools serving Kindergarten through grade 12 teach about the dangers of smoking.
- 4) Have at least three out of four workplaces prohibit or severely restrict smoking by 1998.
- 5) Have at least three out of four doctors, dentists and health care providers routinely advise patients to stop smoking.
- 6) Increase public support for policies that provide clean indoor air, limit tobacco use and sales to minors, increase the tax on tobacco, promote lower insurance rates for non-smokers, and limit advertising of cigarettes.

The Robert Wood Johnson Foundation's SmokeLess States Programs helps fund the activities of another coalition called "New Jersey Breathes." "New Jersey Breathes" includes the New Jersey Medical Society and other tobacco control advocacy organizations in the State of New Jersey. The goals of SmokeLess states in New Jersey are to [26]

- 1) staff and expand the efforts of the statewide coalition.
- 2) launch a public education effort focusing on youth access to tobacco.
- 3) help support a tobacco control policy and resource center and
- 4) enhance prevention and treatment capacity through school based education, reimbursement of smoking cessation, and community action grants.

While Project ASSIST and the SmokeLess States program have provided information and assistance to support tobacco control activities in New Jersey, neither organization has taken a high profile leadership role in reducing tobacco use in New Jersey.

NEW JERSEY'S LAWSUIT AGAINST THE TOBACCO INDUSTRY

On September 10, 1996, Attorney General Peter Verniero* filed a lawsuit against the tobacco industry in order to recoup Medic-Aid costs spent on treating tobacco related illnesses. At the time, New Jersey became the sixteenth state to file a lawsuit against the tobacco industry. As of April 24, 1997 there are 23 states and 4 cities and counties that have filed lawsuits against the tobacco industry.** New Jersey is one of four states with a Republican Attorney General suing the tobacco industry (Kansas, Arizona, New Jersey and New York). The New Jersey lawsuit claims that the tobacco industry 1) was unjustly enriched at the expense of New Jersey citizens, 2) made fraudulent, misleading and deceptive claims about smoking and health, and 3) that the tobacco companies acted as a single enterprise to cover up their own research about the addictiveness of nicotine and the harmful effects of smoking.

The lawsuit argues that the taxpayers of New Jersey have had to pay millions of dollars for the treatment of tobacco related illnesses while the tobacco companies have yielded billions of dollars in profits from the sale of tobacco related items [27]. The lawsuit also asserts a violation of New Jersey's Consumer Fraud Act, that the state of New Jersey has suffered as result of fraudulent, misleading and deceptive statements about the health effects of smoking [27]. The lawsuit notes that the tobacco industry intentionally and/or knowingly misrepresented the adverse health effects of smoking, made false promises about conducting and disclosing objective research on smoking and health, and intentionally concealed or failed to disclose material facts relating to smoking and health. The lawsuit also cites a violation of the state's RICO (Racketeer Influenced and Corrupt Organization) statute (N.J.S.A 2C:41-1, a RICO statute pertains to criminal ventures that involve conspiracy for economic gain) that the tobacco companies worked together as an "enterprise" in maximizing sales of tobacco products, misleading the public and public officials about the health risks related to tobacco products, and concealing information and research in regards to the addictiveness of nicotine [27, 28].

CONCLUSION

The state of New Jersey was one of the first states to have state legislation regarding clean indoor air laws. Most of this legislation was passed in the early and mid 1980s. The tobacco industry became more active as a result of this activity. Because of tobacco industry campaign contribution activity and lobbying activity, the New Jersey legislature has not seriously considered any major tobacco control legislation. The focus for tobacco control and public health advocates in the 1990s has been at the local level. With the state Supreme Court validation of the East Brunswick vending machine ban, almost twenty percent of New Jersey municipalities have eliminated vending machines from their cities or towns. However, although there is no state legislation that preempts city or town councils from passing strong clean indoor air ordinances, there has been little activity in this area.

* The New Jersey Attorney General is appointed by the governor.

** The other states that have filed lawsuits are Alaska, Arizona, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, New York, Oklahoma, Texas, Utah, Washington, West Virginia, and Wisconsin. San Francisco, Los Angeles and seven other counties in California, New York City, Erie County (New York), the Lt. Governor of Alabama, and private attorneys in Ohio have also filed lawsuits against the tobacco industry.

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