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California advocates' perspectives on the challenges and risks of advancing

the tobacco endgame

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ABSTRACT

In the United States, California's highly-regarded Tobacco Control

Program (CTCP) has defined its goal as "ending the tobacco epidemic for all

population groups" by 2035. To understand local advocates' perceptions of

endgame-oriented policies, we interviewed 28 advocates from California

communities that had recently adopted tobacco control policies. There was

no consensus among participants on which specific policies would constitute

the tobacco endgame in California. There was agreement, however, that

policymakers should promote policies that would impact communities with

the highest tobacco use prevalence and that policies should be "clean,"

avoiding exemptions. Participants were cognizant of California's history of

tobacco control policy innovations beginning locally and eventually being

adopted at the state level. Many commented that recent policy innovations in the state had begun a conversation that made more "radical" ideas seem possible. California tobacco control advocates are engaged in local endgame policy discussions and prepared to advance California's endgame goal.

INTRODUCTION

The state of California has the second-lowest smoking prevalence in the United States (U.S.). For more than 30 years, the state has devoted tobacco tax revenues to building community capacity, changing social norms about tobacco, and providing support for local tobacco control programs [1, 2]. Following a successful 2016 ballot initiative that raised the tobacco tax to provide additional funding for the California Tobacco Control Program (CTCP), CTCP defined its goal as "end[ing] the tobacco epidemic for all population groups" by 2035 [3]. This was the first time CTCP had specified an "endgame" goal [4]. There is no agreed-upon policy approach for the tobacco endgame, and internationally, countries have adopted different goals and metrics. CTCP, in setting a goal without a more concrete definition of how it will be achieved, is following this trend. Additionally, this has been CTCP's approach generally, to support local policy innovation without imposing specific requirements.

In previous research, conducted November 2016-April 2017, advocates and legislators active in California tobacco control, while supportive of the "endgame" idea and various policies proposed to achieve it, favored incremental policy measures over abrupt changes [5]. Participants also raised concerns about equity and the potential unintended consequences of rapid policy change. Since that study a wave of new policy activity has swept California, with more than 27 cities and counties instituting bans on sales of

some or all flavored tobacco products (including vaping products), or passing other new policies restricting the sale or use of tobacco, or both [6].

Support from local advocates is key to successful tobacco control policy implementation. Advocates help set the agenda for the public and policymakers, remove barriers to the adoption of policies, and counter interest group opposition [7, p. 25]. Local advocates have the most knowledge about their policy environments and may see opportunities for, or challenges to, endgame policy implementation and enforcement that others would miss. To better understand how local advocates understand endgame-oriented policies, we interviewed advocates from California communities that had recently adopted tobacco control policies and explored how they are thinking about their work in terms of tobacco endgame goals. This research can provide a model for investigating the ideas and concerns of the advocates best positioned to understand popular sentiment about local tobacco control policy. In the U.S., policy innovation often appears first at the local level, where advocates are most influential and the industry is weakest; these innovations are then gradually adopted by other localities, states, or nations.

METHODS

Drawing on personal knowledge and recommendations from members of tobacco control networks, we identified and interviewed a purposive sample of advocates (N=28) in 5 California counties and 1 city that had

recently adopted tobacco control policies (Table 1). Six participants had been involved in these campaigns but worked for statewide or national organizations. These policies included several approaches only recently added to California's tobacco control agenda, such as bans on the sale of some or all tobacco products, minimum pricing, raising the minimum age of tobacco purchase from 18 to 21 (now state policy, but initially passed by several localities), and laws that prohibit smoking in multi-unit housing (MUH), such as apartments, to prevent smoke from drifting into other units, with enforcement mechanisms that vary by jurisdiction. Table 2 provides details on the population, median income, and smoking prevalence in each of the 6 jurisdictions.

Between January 2018 and May 2019, we conducted by phone 30-60 minute recorded semi-structured interviews. We asked participants to discuss a tobacco policy recently adopted by their locality that they saw as consistent with California's endgame goal. Participants most often discussed the policy of banning the sale of flavored tobacco products, followed by a variety of other restrictions on retail sellers of tobacco products (Table 1). Questions focused on participants' understanding of the endgame and California's goals, and their views of their recently adopted policy, including its perceived advantages and disadvantages, how understandable it was, how enforceable it was, and whether it had any unintended consequences. This paper focuses on issues that participants raised across all policies, including: arguments about "Prohibition"; policy exemptions; policy equity;

and policy diffusion. Interviewers recorded interviews and then we arranged for recordings to be professionally transcribed. We used the software package NVivo10 for data management and analyzed data qualitatively by coding for recurrent themes and iteratively reviewing clusters of coded text.

RESULTS

Arguments about "Prohibition"

Numerous participants mentioned the "Prohibition didn't work" argument frequently employed against U.S. proposals to ban tobacco sales [8]. Some dismissed this argument as irrelevant, however, since a sales ban was "a purchase location law…not a prohibition on [tobacco] use" (participant #1; also 17). Others seemed more apprehensive about the argument. One advocate, for example, expressed concern that although some localities might embrace "prohibition" language, doing so "makes us seem a little more extreme" (24) when viewed among developments across the U.S. Another participant, asked about a ban on sales of flavored products, responded, "We tried to remove ourselves from the word 'ban' in particular, because when you think 'ban', you think like Prohibition…and nobody likes – history doesn't even like Prohibition" (28).

Marijuana

Several participants mentioned marijuana-related policy issues. An advocate for banning sales of flavored tobacco products noted that her local policy included flavors for "blunt" wrappers (blunts are a smoked mixture of

tobacco and marijuana, typically encased in a wrapper made of flavored or unflavored tobacco leaves) (2; also 26). An advocate working on smoke-free MUH aimed to include both cannabis and tobacco smoke (19). Other participants expressed concern about the added complexity of addressing marijuana or mixed products in tobacco policies. One advocate reported "taking a deep dive into hemp [marijuana] policy" (27) in order to determine how new marijuana/THC products fit into tobacco retail licensing. A participant who worked with youth and people of color suggested that equitable tobacco control policies could not just focus on cigarette smokers but had also to take marijuana into account, noting that, "I don't know a lot of cigarette smokers, but I know a lot of flavored blunt wrap users…So that would be our endgame, ridding our communities of flavored blunt wraps." (28)

Some participants felt that the marijuana issue could be helpful to tobacco control efforts. A T21 (raising the minimum age of tobacco purchase to 21) policy advocate found pointing out links between tobacco and other drug use, "including smoking marijuana" was helpful in conveying the T21 message (3). A proponent of placing restrictions on retail sellers of marijuana noted that some cities tightly regulated the number and location of marijuana shops, causing advocates to think, "how can we align our… messaging…to say, 'Well, tobacco is really harmful…and you don't have any of these'" restrictions on tobacco retailers (5). Questions from the public about marijuana regulation also provided a point of engagement with people

concerned about the health implications of marijuana's increased use after legalization (2, 8).

Some participants expressed concern that liberalization of marijuana laws might mean that the public would not support stricter tobacco control measures. An advocate of setting minimum prices for tobacco warned that "we have to make sure that…progress in tobacco prevention isn't undone in the name of" cannabis legalization (6). Other respondents, however, indicated that the public seemed capable of making distinctions between tobacco and cannabis. For example, one advocate noted that, despite marijuana legalization, his city strongly supported an initiative banning flavored tobacco products (21).

Exemptions

Most participants agreed that "the fewer exemptions, the better" (26). The topic of exemptions came up primarily in discussion of bans on sales of some or all tobacco products. Beverly Hills (a small, very affluent city in southern California) in enacting its policy to prohibit all sales, made exceptions for hotels, which may continue to sell tobacco products to guests, and for three cigar lounges. Some advocates expressed disappointment, remarking that the policy "does not accomplish…our goal…[of] be[ing] a smoke-free city" (7). Referring to the hotels, another participant pointed out, "not one of them has smoking rooms anymore…So…why do they need to sell cigarettes?" (18). Nonetheless, he conceded that, regarding cigar lounges,

"we have to be pragmatic politically" (18). Another advocate concurred, remarking that "to get a bold policy through, sometimes you have to make concessions" (17).

Those who discussed bans on sales of flavored tobacco products criticized policies that, for example, eliminated sales only from areas around schools and parks. As one participant pointed out, "youth do move about the community," so a buffer zone policy had "less of an impact" than comprehensive bans on sales (8; also 20). Bans targeted to schools and parks were more complex to monitor (20) and involved purchasing expensive Geographic Information System software to determine the location of retailers whose sales were to be banned (24). Flavored tobacco product sales bans that exempted adults-only stores had some of the same issues – for instance, "youth living in those neighborhoods still indirectly have access to tobacco products" (19). That is, adults could pass the products on to youth. In addition, some retailers tried to claim adults-only store status by "mov[ing] all their menthol and flavored tobacco products into [a] closet," sectioned off from the rest of the store, which was "just nonsense." (28; also 26). These products remained in the store.

In contrast to those who acknowledged the need for concessions, others saw greater potential for "wholeheartedly comprehensive" policies without "any loopholes" (19). This was a change for some. One participant said that "two years ago I would've said, 'Oh, I wouldn't dare pass [a ban on sales of flavored products] without adults only [exemptions]. That's suicide.'

Where now it's completely changed 180 [degrees], and now we're realizing

how much difficulty is involved with…adult-only exemptions or having buffer

zones.….Now we realize that it can happen, and the public supports it.

Elected officials support it" (24). Furthermore, participants reported that it

was easier to establish comprehensive policies than to revise a policy later,

"go[ing] back to improve the language, or remove the exemption to make

that policy stronger" (26). Attempts to do that could be "very, very ugly,

because at the end of the day, this definitely passed…You had your shot. You

kind of missed" (28).

Equity

Numerous participants stressed the significance of equity and social

justice. They emphasized that they were focusing their efforts on "vulnerable

populations that are using tobacco on a regular basis" (22). Banning sales of

menthol products was most frequently mentioned in this context, as a way of

"correcting a wrong…linked to targeting of highest need communities,

particularly African American, LGBT [lesbian, gay, bisexual and transgender],

Latino, lower-income working class folks, for many, many generations" (21;

also 20, 24, 28, 12, 16). Participants expressed concern that if policies

banning sales of flavored tobacco excluded menthol (as some local policies

have), "it might actually be more difficult to get rid of menthol cigarettes,

because, unless we can lump them all together as candy-flavored tobacco…it

makes the job campaign-wise, a little more challenging" (24). Policymakers

at the federal level already made this mistake: "menthol is just a painful

reminder of how things went just terribly wrong; [when] Congress could really step up and pass protections for most kids, but not African-American kids" (21). Neglecting menthol on the state or local level would mean "you only get the lowest hanging fruit, when…equity-wise, the greatest health impact is going to be menthol cigarettes" (24). That is, it was relatively easy to get policy-makers to act to prohibit new candy-flavored e-cigarette products, which were overtly appealing to kids, but eliminating the menthol products associated with African-Americans (though used by a variety of racial and ethnic groups) would affect far more people. Comprehensive policies including all products made use of the outrage candy-flavored products engendered to protect all users of flavored products.

Equity could be affected by numerous policies, and it worked in a variety of ways. For example, one advocate pointed out that those vulnerable populations were "the populations that have the least resources to come up to hours-long city council meetings." In achieving a smoke-free MUH policy, she continued, "my strongest supporters were owners of condominiums. And the people most helped, I would argue, were people in low income housing" (4). Similarly, a participant discussing tobacco-free pharmacies noted that his work had started with the LGBT community, but "every part of [the city] benefitted from the reduction in retail outlets" for tobacco products(9).

The value of equity raised other complexities. One participant noted that adult-only stores were frequently located "in low-income communities of

color," (10) leading to more tobacco availability in those areas. But another noted that "Big Tobacco has somehow rallied some of the current owners of tobacco retail stores…And they're framing it up like it's…a cultural/ethnic discrimination angle" (23). Because small stores were frequently owned or operated by members of a particular ethnic group (differing from community to community), neighborhood residents could see them as both representatives of a community and a source of harm to it. The advocate continued that the discrimination framing was "manipulative" but also acknowledged that the store owners "are just trying to live" (23).

For many participants, equity required considering the process of passage of a policy and the consequences of implementing it. One participant warned that "it behooves people to have a very local approach and…real buy-in" (6). Getting true community involvement was crucial for African-American communities, another participant noted, because without it, "It's going to be the white man coming in and trying to regulate us again. That's what the push-back is going to be" (28). Numerous participants voiced concern that public health advocates not forget communities once policies were passed and tobacco products were removed: "The other reasons [aside from addiction] they might be smoking [such as stress brought on by economic hardship or racial discrimination] are not going to be mitigated by the policies that we are pushing…And I think the more that we ignore that, the more people are going to push back and fight the policies" (11). It was

important to "beef up cessation services in a comprehensive way so that it is relevant to the communities that are most affected" (16; also 19).

The flip side of including menthol in policies banning sales of flavored tobacco products to address the health of African Americans and other targeted populations such as the LGBT community, was fear within those communities about criminalizing smoking and smokers. Numerous participants emphasized that flavor policies were "not about the behavior but about sales of the product. We're not about policing people's behavior. We don't want to see any more negative police/community interaction" (5; also 10, 16, 17, 20, 21, 22). Most participants believed flavor bans were unlikely to result in over-policing: "I…don't think we're going to see…this law be misused to justify inappropriately criminalizing residents" (10; 20). Another participant remarked that the argument was raised because "the tobacco industry has…paid some African American leaders to come out and say [bans on sales of menthol products] were criminalizing the Black community" (16). However, she also pointed out that she wasn't sure what would happen "if an officer sees somebody selling some [contraband menthol cigarettes] Newports out of their trunk…I would like us to get a handle on [that] before we have an Eric Garner case in California" (16). (Eric Garner, an African American man, died because police officers held him in a choke hold while arresting him for illegally selling individual cigarettes.)[9]

Policy dissemination

Many participants showed awareness that their policies were precedents for other jurisdictions to follow (18, 13, 17). An advocate reported that a jurisdiction implementing a novel ordinance helps "a lot of people [in other cities] to understand that this is the next big step that can be taken" in their own community (22). Even if a policy change did not seem to have a short term impact, one participant said, "we really have to take the long view, that we're creating a flavor-free tobacco region and state…so that youth [eventually] wouldn't be able to go across the street into the next town and buy these products" (8; also 10).

Participants also exhibited awareness that policy innovation in California generally had cities and counties taking the lead, not state government. Asked whether the state's new endgame focus had influenced his work, one participant replied, "I think our local work has shifted the conversation of the state, to be honest" (21). Another noted that his organization "always had that vision…even before the state wanted that endgame" (19). This local, then state adoption of policy change was normal, as another participant noted: "the idea [is] they grow from the local jurisdictions to make statewide implementation more likely" (12). That influence could spread not only through the state, but also to other states (12) and from there, "ripple out into the rest of the world" (16).

A couple of participants sounded a warning about this process. One commented that, once policymaking started to move forward at the state level, "We need to be very vigilant of preemption," (26) (when the state

passes a weak law that prevents localities from passing stronger ones).

Another was concerned that state-level action would skip over the

community work necessary to make policies acceptable and successful,

particularly among communities of color: "You ban flavored tobacco and

menthol, and…where's the community engagement?…There can't be one

without the other or there's going to be imbalance" between policymakers

and those most affected by regulations (28).

Several participants also noted a greater readiness that they had seen

in even the recent past for new, innovative policies. One noted this

conceptual transition, saying, "To think about the endgame at first was kind

of jarring . . .[but after Beverly Hills] you start to think, wow, maybe this is

possible!" (17). Another said of his local elected officials, "They wanted a

bolder move…They wanted things like, 'what is the way to end this?…How do

we stop this?'" This was a big change, he noted. "There wasn't a

conversation even happening…And that was just the last couple of years"

(14). An advocate from another area reported that, "I've heard elected

officials say…'We're saying we won't allow pharmacies to sell tobacco

anymore. Well, can't we just say that nobody sells tobacco anymore?'" (9).

One participant saw her role as getting people to believe an "endgame" was

possible, saying: "Let's believe [in zero smoking prevalence], and then we

can work towards how we're going to get there" (16). Creating an endgame

vision and overcoming skepticism seemed increasingly possible in California,

as one advocate noted: "the entire United States is learning a lot from

California, and I think putting those big goals in front of public health advocates is really making a huge difference, and believing it will happen is making a big difference. The policies we now consider, and we would have considered impossible, even just two years ago, now people are taking as commonplace" (24).

DISCUSSION

Previous research [5] in 2018 found that California legislators and advocates to be somewhat cautious about endgame-oriented policies, preferring more gradual approaches. This study found an overall sense from interviewees of momentum for policy innovation, with greater belief in the possibility of an endgame. Some of this may be a response to advocates' having begun to receive funding from the state's new tobacco tax, enacted in 2016, that enabled local tobacco control agencies and coalitions to hire staff and engage in more ambitious policy-oriented planning. Advocates likely understood the success of the tax (and a tobacco industry-sponsored measure to repeal a flavor ban in San Francisco that went down to decisive defeat in 2018) [10] as signaling public support for tobacco control efforts in the state. The influx of funding and resources from the tax increase may have also bolstered advocates' enthusiasm.

The greater caution about endgame policies found in previous research [5] may also relate to the specific participants. The previous study included interviews with state legislators and leaders of statewide organizations; the

current study prioritized local advocates (though we also included some statewide leaders). Statewide leaders – and particularly members of the state legislature -- think in terms of what can be accomplished at the state level, taking into account that law must get support from legislators who represent communities on a wide spectrum of readiness for policy change. The local advocates knew that their localities could take bolder steps, and judged that they would be willing to do so again.

Participants understood that there were challenges ahead, for example, framing the endgame in such a way as to avoid or undercut arguments made in the past by the tobacco industry and its allies. For example, participants did not feel that the history of alcohol prohibition in the US was an appropriate reference for the tobacco endgame, but understood that it would be important to make that distinction, notably by distinguishing sales bans from prohibitions on possession or use of tobacco products. Making that distinction was also important to establish that new tobacco control policies would not invite further overpolicing of marginalized communities, such as occurred in the Eric Garner case.

Another challenge that participants foresaw was California's recent legalization of marijuana for recreational use. Although there was some concern that the liberalization of marijuana regulation suggested that public opinion would not favor stricter tobacco policy, most participants had a more nuanced perspective—that one could simultaneously favor restricting tobacco sales, especially to youth, while permitting sales of marijuana,

especially to adults. The combined use of tobacco products and marijuana (in blunts, for example, or THC vaping liquids) meant that policies had to encompass both. Further, some participants proposed that the (still) stricter rules relating to marijuana retail sales could provide a model for tobacco.

Participants demonstrated awareness that policy innovations carried risks. Although they identified policies containing exemptions as less than ideal, requiring more complex and expensive enforcement or a difficult amendment process, participants sometimes considered exemptions to be a pragmatic way of advancing a policy; this was true even in the case of a policy traditionally considered so far from being considered "pragmatic" as to be almost unthinkable, a tobacco sales ban. In some cases, participants considered exemptions to be harmful. For example, a flavor ban that exempted (still allowed sales of) menthol "solved" the problem by removing the products most obviously marketed to children and youth. However, it left African Americans (who tend to prefer menthol products) still vulnerable, and without the allies concerned about youth-oriented "candy" flavors. There appeared to be broad understanding that the goal of ending the epidemic "for all population groups," meant increased engagement with communities with the highest levels of tobacco use.

The trend of California tobacco control policy efforts, led by localities, then followed at state level, was well known to participants. Some suggested that the state's new focus on a tobacco endgame was the result of local innovation. Participants also recognized that communities took their cues

from others, so that policy innovations even in small communities would "ripple outward" and engender wider effects over time.

Our study has limitations. We interviewed a small number of key informants selected because they worked in communities that had recently passed innovative tobacco control policies; thus, our sample cannot be considered representative of all California tobacco control advocates. Those working in more conservative communities may view the idea of an endgame more skeptically. However, other tobacco control policies (such as clean indoor air laws), were once regarded as radical and became more normative with their adoption. Indeed, during the course of the study, Beverly Hills began discussing the first-ever prohibition on sales. Some participants interviewed before these deliberations found such an idea out of reach, while others, interviewed afterward, remarked that the conversation alone made such policies seem possible.

Discussions of the tobacco endgame have frequently focused on complex and drawn-out plans, sometimes involving sizable state investment, such as the proposal that the state should buy out the tobacco industry [11-13]. Recent events in California suggest a different, in many ways a simpler future, more in line with the history of tobacco control, in which localities have taken the lead. The first laws in California calling for non-smoking sections in restaurants were local and largely symbolic, but they demonstrated the possibility for clean indoor air, and more, and stronger laws followed. A tobacco sales ban in a small municipality such as Beverly

Hills will not substantially reduce tobacco use in California, but it serves as proof of concept. Municipalities and counties in the U.S. may increasingly recognize and exercise their ability to pass such laws, as the 2014 U.S. Surgeon General's report suggested [14]. This study, and the recent, rapid spread of policies to ban sales of flavored tobacco products in the state, suggest that tobacco control advocates in California are attentive to such possibilities and willing to act.

This study, and the history of California's approach to tobacco control more generally, point to the importance of local policy advocacy. Local advocates understand the specific issues in their communities, and have a nuanced perspective on policy development, such as when exemptions or exceptions are and are not acceptable. Local advocates also may be able to implement policies that would not be possible at a state or national level; such policies may seem radical, but passage (even on a small scale) normalizes them. Not every community is ready, but this study suggests that we should encourage more attention to the local actors and new, small-scale policy changes happening around the world that have the potential to ultimately end the tobacco epidemic.

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Product terms

Candy flavors: Additives to tobacco or, more frequently, vaping products, to

make them sweet; often labeled with either generic (e.g., "chocolate") or

brand-suggestive (e.g., "smartees") candy names.

Cannabis: See marijuana.

Hemp: See marijuana.

Marijuana: The plant cannabis, especially as smoked or consumed as a

psychoactive (mind-altering) drug.

Menthol: A crystalline compound with a cooling minty taste and odor, found

in peppermint and other natural oils. Menthol cigarettes have long been the

most popular flavored cigarette in the U.S., particularly among African

Americans, and menthol is the only legal added flavor for tobacco products.

Newports: a popular brand of menthol cigarettes.

Tobacco: Tobacco is the common name of several plants in the Nicotiana genus and the Solanaceae family, and the general term for any product prepared from the cured leaves of the tobacco plant. In the U.S., tobacco is most commonly smoked in commercially-made cigarettes, but may also be used in the form of chewing tobacco, or purchased loose to be rolled into cigarettes or mixed with marijuana as "blunts."

THC: Tetrahydrocannabinol, a psychoactive chemical found in marijuana.

Vaping liquids: The fluids used in electronic cigarettes, usually containing nicotine, sometimes flavored or containing THC.

Policy terms

Adult only stores: Retailers selling age-limited products (tobacco, alcohol) that do not admit minors to their premises.

Buffer zone or buffer zone policy: Regulations that prohibit the sale of tobacco products in specific areas, usually those surrounding schools, parks, or playgrounds frequented by youth.

Clean indoor air laws: Laws that prohibit smoking indoors.

Condominium: a building or complex of buildings containing a number of individually owned apartments or houses.

Legalization of marijuana: Possession and sales of marijuana for medicinal or recreational use, while illegal under federal law, have recently been decriminalized by a number of states, including California.

Low income housing: Housing developments, usually built by or in partnership with government programs, in which cost of rent or purchase is a set percentage of income.

Ordinance: a piece of legislation enacted by a city or county authority.

Policy diffusion: The tendency of jurisdictions to adopt policies or laws already adopted by others.

Policy equity: The principle that policies should be formulated in such a way that they affect all communities fairly, taking into account that they have different levels of tobacco use, or use different types of tobacco products.

Policy exemptions: Distinctions permitting certain activities that would otherwise be prohibited by a policy, e.g., a clean indoor air law that specifically allows smoking in tobacco shops.

Policy loopholes: Exceptions or omissions in policies that undermine the general intent of the law, e.g., a ban on the sale of flavored tobacco that allows the sale of menthol-flavored products.

Preemption: reserving legal authority on an issue to a higher level of government, preventing lower levels from taking action.

Prohibition: reference to a period (1920-1933) in the United States when alcohol production, distribution, and sales were criminalized nationally. The law was repealed in part because continued widespread alcohol use created both opportunities for corruption and disrespect for the law; hence, Prohibition is widely regarded as a failure.

Tobacco retail licensing (TRL): In California, selling tobacco requires a special license from the state. In addition, cities and counties can require their own license. Fees paid by retailers to purchase the license are used to fund enforcement activities (e.g., ensuring that retailers do not sell to minors).