

A Half Century of  
Avoidable Death:

# A Global Perspective on Tobacco in America

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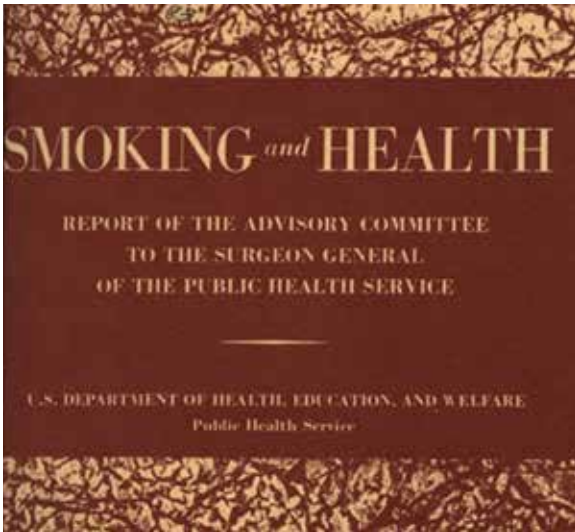
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# Introduction

On January 11, 1964 U.S. Surgeon General Luther Terry released the first report from his Advisory Committee on Smoking and Health. The conclusions were so bold and had been kept so confidential that security measures were taken for the release event<sup>1</sup>. Those conclusions forever changed the way Americans – and the world – think about tobacco.

The report causally linked smoking and lung cancer and other lung diseases. It was a secondary analysis; Dr. Terry’s team analyzed a mountain of scientific data from the early 1950s on. But in one stroke, the health risks of tobacco use had changed from a debate in the back of medical journals to a fact supported by the highest medical authority in the U.S. government. The report was one of the biggest news stories of 1964<sup>2</sup>, and it led to a series of public health interventions that continue today.

This year is the 50th anniversary of that landmark report, and our purpose here is to reflect on the progress made in half a century and the challenges that remain. But we will do this through a global lens, and in the process hopefully dispel two misconceptions: that the fight against the tobacco epidemic is largely won, and that it is pointless to look to the global community for new ways to address tobacco.



<sup>1</sup>US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General* [hereinafter SG report 2014]. Rockville, MD: 2014. Web.

<sup>2</sup> *Ibid*, p. 23.

<sup>3</sup>US Department of Health, Education and Welfare. Public Health Service. *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service* [hereinafter SG report 1964]. Web.

<sup>4</sup> RJ Reynolds Tobacco Company, *Camel Ad*. Digital image. *Stanford Research into the Impact of Tobacco Advertising*. Stanford School of Medicine. 1991. Web.

<sup>5</sup>SG report 2014, p. 720.

<sup>6</sup> *Ibid*, p. i.

<sup>7</sup> U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report, Current Cigarette Smoking Among Adults- United States, 2005-2012*. By Israel T. Agaku, Brian A. King, and Shanta R. Dube. Atlanta, GA: 2014. Web.



## The National Landscape on January 10th, 1964

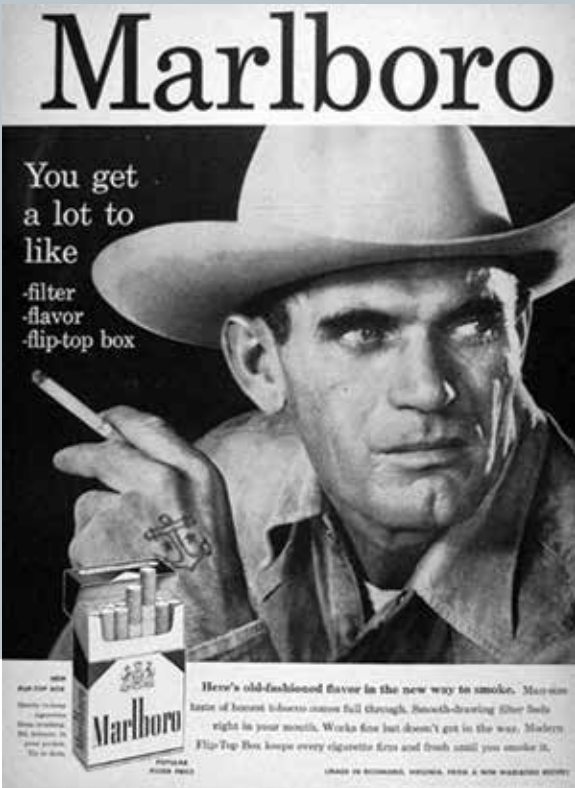
Prior to the 1964 report (and for a number of years after), smoking was the norm in America. In 1965, over 50% of adult men and over 1/3 of women smoked<sup>5</sup>. Most parents frowned on their children smoking but they weren’t sure why. Every office, factory, restaurant, bus and airplane was filled with secondhand smoke. Every household had to have ashtrays on hand, even if no one living there smoked, because asking a guest to step outside was the social equivalent of asking them to use the outhouse.

There were no restrictions on advertising. Tobacco companies ran ads on radio and television, in newspapers and magazines, on billboards and on top of taxicabs. Men dressed up as doctors extolled the virtues of one brand over another, and children’s cartoon characters not only smoked, their television shows were sponsored by tobacco companies. The “Marlboro Man,” launched in 1954, is still considered one of the most successful advertising campaigns in history for any industry, and largely because of it, Marlboro is still the world’s best-selling brand.

## The National Landscape Today

As a nation, we have made serious progress in combatting the death and disease caused by tobacco. Today, about 18% of adults smoke<sup>6</sup>, although this figure varies widely by geography and socio-economic status<sup>7</sup>. Many states and localities have enacted laws banning smoking in indoor (and some outdoor) public places, protecting people from secondhand smoke. Cigarette advertising is no longer seen on television, heard on the radio, or seen on billboards. Public education campaigns, both government and private, have ensured public awareness of the health risks. Higher taxes have made it more difficult for children to get hooked on nicotine. For children in some states, seeing someone smoking is an abnormality. From a relative standpoint, the past 50 years have been well-spent. But the absolute numbers still tell a devastating story.





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Tobacco use is still, by far, the number one preventable cause of death in the U.S., killing about 480,000 people each year; it is responsible for over 20% of all deaths. Tobacco kills about half of its long-term users. With about 44 million adult smokers, we can expect the death toll to continue for decades to come. And each day about 3,500 children try their first cigarette<sup>9</sup>.

To put this in perspective, consider Utah, the state with the lowest adult smoking prevalence at 10.6%<sup>10</sup>. This is something every state should aspire to achieve, but if a new health threat came along that promised to kill 5.3% of the population, it would be a dire public health crisis.

Tobacco is also a huge economic burden, costing the economy nearly \$300 billion<sup>11</sup> each year in direct and indirect costs. A large percentage of this figure is paid by taxpayers through Medicaid and Medicare<sup>12</sup>. Smokers are a much larger burden on private health insurance programs than non-smokers as well, a cost borne by employers<sup>13</sup>.

And Big Tobacco is stronger and richer than ever. In spite of marketing restrictions, the tobacco industry spends over \$1 million per hour in advertising<sup>14</sup>, just in the U.S. Industry lobbyists are active at every level of government, and

<sup>9</sup> Marlboro: You Get A Lot to Like. Digital image. Philip Morris, 1957. Web.

<sup>10</sup> SG report 2014. Message from Howard Koh.

<sup>11</sup> Centers for Disease Control and Prevention. Smoking and Tobacco Use. *Adult Cigarette Smoking in the United States: Current Estimates*. 14 Feb. 2014. Web.

<sup>12</sup> SG report 2014. Message from Kathleen Sebelius.

<sup>13</sup> Center for Disease Control and Prevention. Preventing Chronic Disease. *State-level Medicaid Expenditures Attributable to Smoking*. By Brian S. Armour, PhD, Eric A. Finkelstein, PhD, and Ian C. Fiebelkorn. 2009. Web.

industry lawyers file lawsuit after lawsuit in an effort to stave off greater measures to combat tobacco use.

## Global Landscape Today

Increasingly strict rules have made it harder for the tobacco industry to market to children, and smoke-free laws and public education make quitting more attractive. As the number of smokers declined in the U.S., Big Tobacco began to look for new ways to enhance its customer base. They looked at the relatively low cigarette smoking rate in the “global south” and saw tremendous opportunity. True, consumers in those countries are poor relative to the U.S., but even at home it was the poor who were their best customers, and nicotine addiction does not distinguish based on income. Best of all (from the industry point of view), these countries had almost no tobacco regulations and their populations were mostly ignorant of the health risks. Multinational tobacco companies arrived in earnest.

Today, there are about 1 billion smokers worldwide, a figure that is climbing daily. About 6 million people die each year from tobacco-related illnesses. The World Health Organization estimates that about 100 million people were killed by tobacco in the 20th century. Unless drastic action is taken, the toll for the 21st century will be 1 billion<sup>15</sup>.

“100 million people were killed by tobacco in the 20th century. Unless drastic action is taken, the toll for the 21st century will be 1 billion.”

## Global Response

Of those 1 billion slated to die this century, 650 million have not been born yet<sup>16</sup>. Their fate is not sealed. In the mid-1990s, the world began to respond to the growing tobacco epidemic, eventually launching negotiations for the world’s first public health treaty: the World Health Organization Framework Convention on Tobacco Control (FCTC).

The FCTC is unique – it is the only treaty focusing on health, and the only one focusing on a particular product. This is in recognition of the uniqueness of tobacco, the only consumer product that, when used exactly as intended, kills.

<sup>15</sup> Caldwell, Emily. “Research and Innovation Communications.” *Study: Companies Pay Almost \$6,000 Extra Per Year for Each Employee Who Smokes*. Ohio State University, 3 June 2013. Web.

<sup>16</sup> Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *Tobacco Industry Marketing*. 31 July 2013. Web.

<sup>17</sup> World Health Organization, *Tobacco Fact Sheet*, July 2013. Web.

<sup>18</sup> Mackay, Judith, Michael Eriksen, Omar Shafey. *The Tobacco Atlas* 2nd Ed. American Cancer Society, Brighton, UK, 2006. Web.

The FCTC was completed in 2003, and today 177 countries representing about 88% of global population have ratified it<sup>17</sup>. This makes it among the most rapidly-adopted treaties in history. However, the U.S. has never ratified.

## Brief History of the FCTC



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1999-2003 – Negotiations

2003 – Unanimous adoption by World Health Assembly (including the U.S.)

2004 – U.S. signed FCTC (has not yet ratified)\*

2005 – FCTC entered into force as a legal international instrument

2006 to present – Specific Guidelines for tobacco interventions adopted<sup>19</sup>

*\*Signing is a preliminary endorsement of a treaty. It does not create a binding legal obligation, but it shows a government’s intent to consider ratifying it. Ratification is an agreement that a country will be legally bound to the treaty.*

The treaty includes measures that would be familiar to anyone concerned about tobacco, including taxation, smoke-free air, package warning labels, public education, cessation, and legal liability for the tobacco industry. It also obligates countries to address issues that have been largely absent in the U.S. until recently, such as ingredient disclosure and regulation, industry interference in public policy, tobacco smuggling, and the environmental and economic impact of tobacco agriculture.

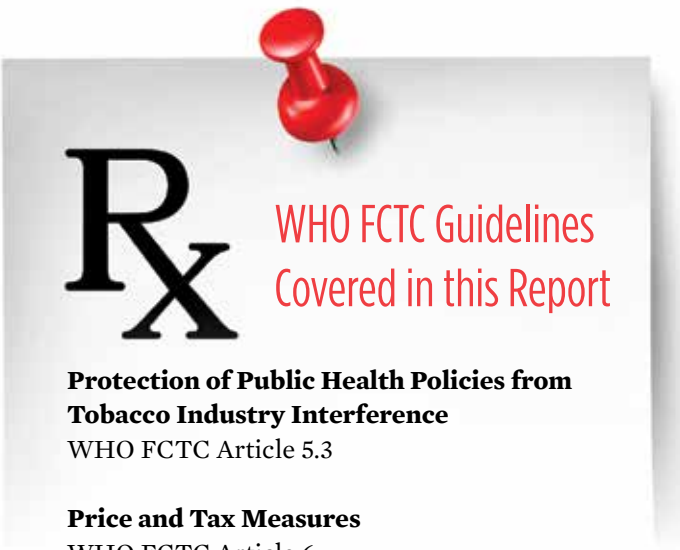
In 1999, when negotiations for the FCTC began, the world looked to the U.S. for best practices in addressing the tobacco epidemic. This is no longer true. While full implementation of the FCTC is still far off, a number of countries have pushed forward with innovative and dramatic measures to reduce tobacco consumption:

- 2001 – Canada introduced large, pictorial health warnings on all tobacco packaging ; nearly 60 countries have joined them
- 2004 – Ireland became the first country to ban smoking in all indoor and public work places; dozens of others have followed
- 2010 – Mauritius banned so-called “corporate social responsibility” marketing from the tobacco industry
- 2012 – Australia mandated “plain packaging” for tobacco products, removing the last marketing space available for the tobacco industry

## Global Epidemic, Global Solutions

The tobacco epidemic can no longer be seen entirely through a national lens. In addition to being able to teach and learn from other countries, the vector of the epidemic – the tobacco industry – largely ignores national boundaries. Attacking the vector in one country is like trying to prevent malaria by putting up mosquito netting over only one side of the bed.

In the following pages, we will examine current laws in the U.S. on some of the most important aspects of tobacco regulation, highlighting successes and failures, and comparing to best practices from around the globe. We have made great strides in the last 50 years, but a new dialogue is required if we want to see a tobacco-free world. And that dialogue must be global. ■



**Protection of Public Health Policies from Tobacco Industry Interference**  
WHO FCTC Article 5.3

**Price and Tax Measures**  
WHO FCTC Article 6

**Protection from Exposure to Tobacco Smoke**  
WHO FCTC Article 8

**Packaging and Labeling of Tobacco Products**  
WHO FCTC Article 11

**Education, Communication, Training and Public Awareness**  
WHO FCTC Article 12

**Tobacco Advertising, Promotion and Sponsorship**  
WHO FCTC Article 13

<sup>17</sup> World Health Organization. *Framework Convention on Tobacco Control. Parties to the WHO Framework Convention on Tobacco Control*. World Health Organization, 9 Apr. 2014. Web.

<sup>18</sup> World Health Organization. *Framework Convention on Tobacco Control. The History of the WHO Framework Convention on Tobacco Control*. World Health Organization. Web.

<sup>19</sup> World Health Organization. *WHO Framework Convention on Tobacco Control*. 2003. Web. [hereinafter FCTC].

# Milestones in U.S. Tobacco Regulation

1964	First Surgeon General’s Report: <i>Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service</i>
1965	Passage of the <b>Federal Cigarette Labeling and Advertising Act</b> ; law was strengthened in 1969
1966	Health warnings first required on cigarette packaging
1971	Cigarette ads banned on radio and television
1975	Minnesota passed first protection from secondhand smoke law, requiring non-smoking sections
1985	19th Surgeon General’s Report: <i>The Health Consequences of Involuntary Smoking</i>
1987	Aspen, Colorado was the first city to ban smoking in restaurants
1988	Smoking banned on domestic flights of less than 2 hours California launched first state-wide tobacco counter marketing campaign, paid for by tobacco taxes
1989	Smoking banned on all domestic flights
1990	San Luis Obispo, California was the first city to ban smoking in all indoor public and work places
1998	California banned smoking in bars, becoming the first state to ban smoking in all public and work places Master Settlement Agreement reached between the tobacco industry and 46 states, providing reimbursement for government medical costs associated with tobacco
1999	The U.S. joined the rest of the world to begin negotiations of the World Health Organization <b>Framework Convention on Tobacco Control</b> (FCTC) CDC published <i>Best Practices for Comprehensive Tobacco Control Programs</i>
2004	The U.S. signed the FCTC; it has not yet ratified
2006	In the largest civil litigation in history, U.S. District Court Judge Gladys Kessler ruled against the tobacco industry for deceiving the American public for 50 years on health issues and for marketing to children
2009	Congress passed the <b>Family Smoking Prevention and Tobacco Control Act</b> , giving FDA limited authority to regulate tobacco products and banning candy and other flavorings, except menthol
2012	In a lawsuit brought by the tobacco industry, a U.S. appeals court struck down graphic warning labels on tobacco packaging proposed by the FDA

# Protection of Public Health Policies from Tobacco Industry Interference

John Stewart  
Challenge Big Tobacco Campaign Director  
Corporate Accountability International

The tobacco industry is driving the world’s largest preventable cause of death, their products killing over six million people annually<sup>20</sup>. In recent years, the industry has increasingly targeted the Global South, where more than 70 percent of tobacco-related deaths already occur<sup>21</sup>. That’s why in 2003, the global community united around the world’s first corporate accountability and public health treaty: the World Health Organization’s Framework Convention on Tobacco Control (FCTC). The most powerful tool governments possess to rein in the tobacco epidemic, the treaty could save 200 million lives by 2050<sup>22</sup>. But tobacco industry interference poses the greatest threat to the treaty’s lifesaving potential. Keeping industry out of public health policymaking is essential to the treaty’s success.

Recognizing the need to protect the FCTC from industry interference, in 2003 the global community came together to unanimously adopt Article 5.3: the treaty’s backbone that establishes the irreconcilable conflict of interest between the tobacco industry and public health<sup>23</sup>. Article 5.3 effectively dispels the myth that the tobacco industry is a stakeholder in public health policymaking. And it creates a fundamental roadmap to counter the industry’s interference in strong tobacco controls.

The groundwork was laid for Article 5.3’s adoption as early as 2000 with the release of an expert report exposing tobacco industry interference strategies<sup>24</sup>. The report detailed how the tobacco industry seeks to undermine public health policy through lobbying, litigation, and by casting doubt on credible science<sup>25</sup>. The global community was outraged. Corporate Accountability International mobilized a global coalition to take action, leading to the adoption of a key resolution at the 2001 World Health Assembly warning Member States about the threat of industry interference at upcoming FCTC negotiations<sup>26</sup>.

In 2003, as the global community came together to negotiate the treaty and secure a measure excluding industry from public health policymaking, it was no surprise that industry representatives showed up to impede progress. The industry sent observers to the negotiations, taking advantage of WHO’s commitment to transparency, and even managed to place representatives on some government delegations<sup>27</sup>.

But, fueled by the 2001 resolution and its knowledge of the industry’s interference tactics, the global community stood strong. Article 5.3 was included in the final text of the FCTC, which was adopted in 2003<sup>28</sup>.

Five years later, Parties unanimously adopted strong guidelines on implementing Article 5.3: a milestone for public health and corporate accountability. The guidelines include safeguards against a range of industry tactics: from its attempts to lobby and draft legislation to its “corporate social responsibility” initiatives and partnerships with governments that belie a deep conflict of interest.



<sup>20</sup> World Health Organization, *Tobacco Fact Sheet*, July 2013. Web.

<sup>21</sup> World Health Organization. Trade, Foreign Policy, Diplomacy and Health. *Tobacco*. World Health Organization, 2014. Web.

<sup>22</sup> World Health Organization. *WHO Framework Convention on Tobacco Control: Why Is It Important?* May 2012. Web.

<sup>23</sup> World Health Organization. *WHO’s Framework Convention on Tobacco Control: Saving Lives* May 2011. Web.

<sup>24</sup> World Health Organization. Tobacco Free Initiative. *Tobacco industry Strategies to Undermine Tobacco Control Activities at the World Health Organization*. July 2000. Web.

<sup>25</sup> *Ibid.*

<sup>26</sup> “World Health Assembly Resolution 54.18: Transparency in Tobacco Control.” World Health Organization. 22 May 2001. Web.

<sup>27</sup> “Global Tobacco Treaty Meetings Marred by Industry Interference — Governments to Industry: You’re Not Welcome.” *Corporate Accountability International*. Web.

<sup>28</sup> World Health Organization. *WHO Framework Convention on Tobacco Control, Article 5.3* 2003. p. 7. Web.



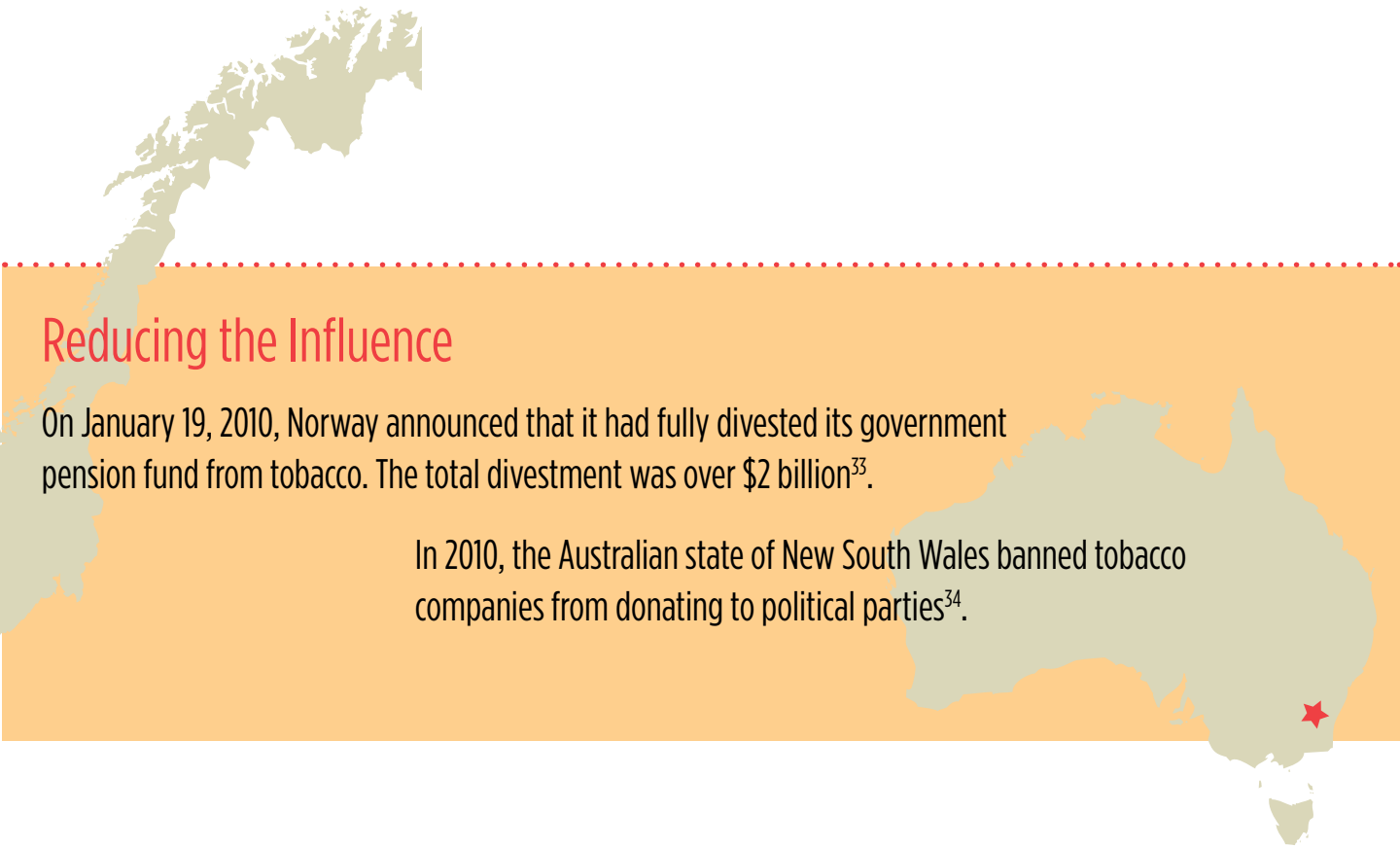
Article 5.3’s guidelines are already making a lasting impact, accelerating FCTC implementation and neutralizing industry influence. For example, in the Philippines—renowned for being home to the “strongest tobacco lobby in Asia” – the government overcame industry opposition to pass some of the boldest measures in the region<sup>29</sup>. After implementing Article 5.3 guidelines such as a code of conduct for government employees, the Philippines effectively removed some tobacco industry-friendly politicians from the legislative process<sup>30</sup>. As a result, the country passed a range of landmark public health measures, including an aggressive tobacco taxation policy and a ban on tobacco industry contributions to the Department of Education<sup>31</sup>.

But there’s more work to be done. As we’ve seen in Europe, where Philip Morris International mobilized lobbyists to

spread misinformation to almost one third of the European Parliament in advance of a crucial vote on the European Tobacco Products Directive<sup>32</sup>, the industry is still working to delay progress. As the tobacco industry continues to aggressively market its products and impede public health measures, now is the time to advocate for domestic implementation of measures in compliance with Article 5.3.

Only then will we break tobacco industry influence over public health policies and see full implementation of the FCTC: the realization of a vision where people, not tobacco executives, make health policy, where children are no longer bombarded with tobacco marketing and where rates of disease are a fraction of what they are today. ■

**For further information on Article 5.3, visit:**  
***www.StopCorporateAbuse.org/global-tobacco-treaty***



<sup>29</sup> World Health Organization. Joint National Capacity Assessment On the Implementation of Effective Tobacco Control Policies in the Philippines. 2011. p.5. Web.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> "Directive 2001/37/EC of the European Parliament and of the Council." The European Parliament and the Council of the European Union. 5 June 2001. Web.

<sup>33</sup> "Norway Divests \$2 Billion from Tobacco Companies." The Framework Convention Alliance for Tobacco Control, 2 Apr. 2009. Web.

<sup>34</sup> New South Wales Parliament. Banning Political Donations from Third Party interest groups: a summary of constitutional issues. NSW Parliamentary Library Research Service. 2012. Web.

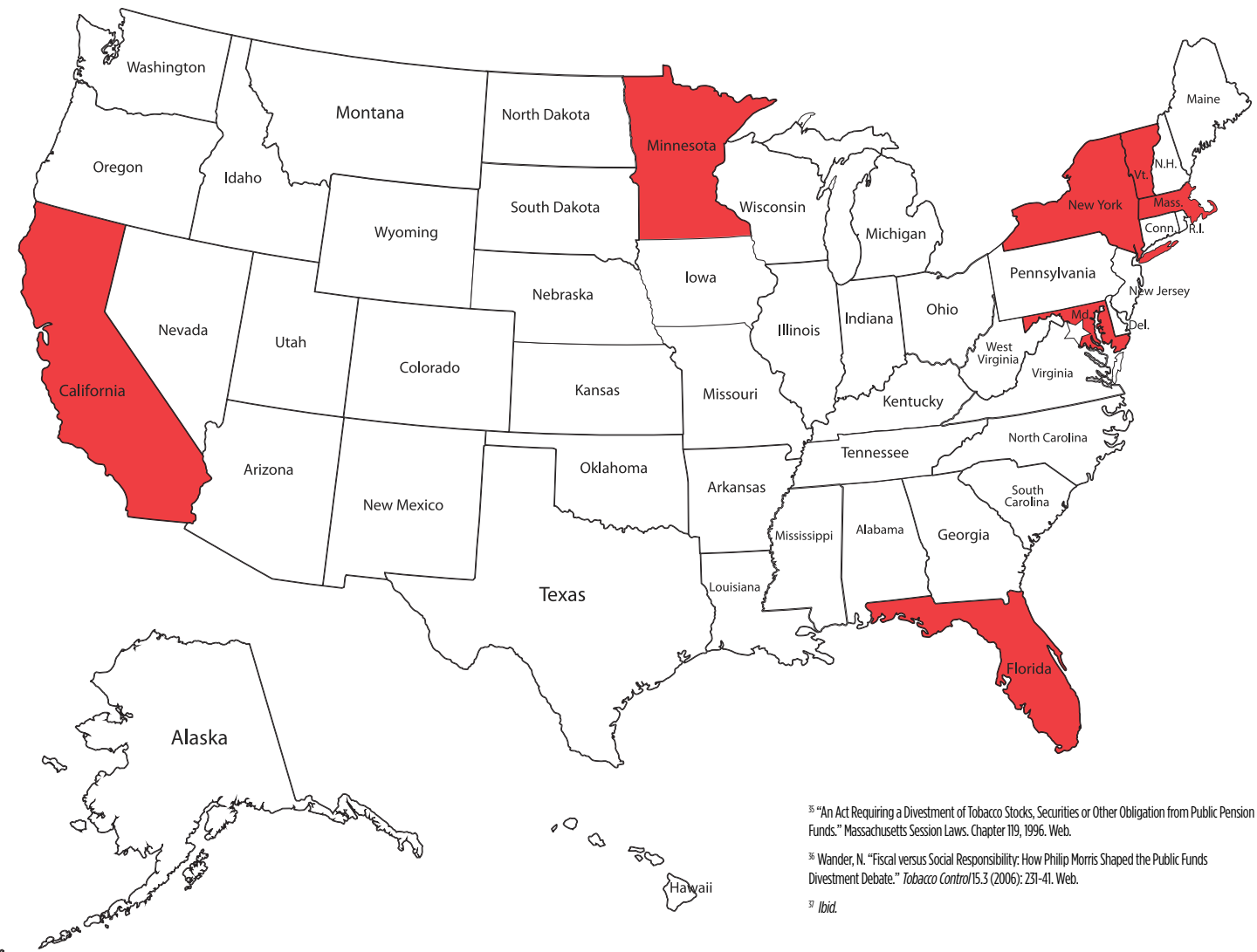
# Divestment

Divestment laws require that no state funds are used to invest in companies that make a certain percentage of revenue from tobacco. The laws require that if the states already invest in these companies, the state divest (or sell) those interests within a certain time frame. For example, the Massachusetts act, enacted in 1997, allowed three years for the state to complete the divestment<sup>35</sup>.

## Divestment in U.S. States

Between 1990 and 2000, divestment discussions took place in at least 25 states. However, only seven states (plus a number of counties and cities) partially or fully divested<sup>36</sup>.

Those states are Maryland; New York; Florida; Massachusetts; Vermont; Minnesota; and California<sup>37</sup>.



<sup>35</sup> "An Act Requiring a Divestment of Tobacco Stocks, Securities or Other Obligation from Public Pension Funds." Massachusetts Session Laws. Chapter 119, 1996. Web.

<sup>36</sup> Wander, N. "Fiscal versus Social Responsibility: How Philip Morris Shaped the Public Funds Divestment Debate." *Tobacco Control* 15.3 (2006): 231-41. Web.

<sup>37</sup> Ibid.

Corporate Social Responsibility  
— Spotlight on Mauritius

In the early 2000s, tobacco companies, specifically British American Tobacco, were running significant “corporate social responsibility” programs in Mauritius, including an undergraduate scholarship for 30 students a year, an entrepreneurship program and environmental programs<sup>38</sup>. In 2008, Mauritius passed its Public Health Act, effectively banning so-called Corporate Social Responsibility (CSR) by tobacco companies

The law states:

“No person shall offer any scholarship or any form of sponsorship in relation to –

- (i) a tobacco product;
- (ii) a trade mark, manufacturer’s name, logo or brand name associated with a tobacco product;
- (iii) any other such thing associated with a tobacco product”

“Sponsorship” means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use directly or indirectly; According to the International Tobacco Control Evaluation Project (ITC), “with this act, Mauritius has taken significant steps to fulfill its obligations under the FCTC and has implemented some of the most progressive tobacco policies in Africa<sup>39</sup>. ■



“Talent comes from hard work – Tobacco helps you become talented,” says the slogan, in foot-high letters, on the front of the Sichuan Tobacco Hope Primary School.<sup>42</sup>



Yonsei Law Student at 2012 KT&G (South Korea Tobacco Company) Charitable Distribution of Charcoal, to heat the homes of the poor.<sup>40</sup>



Aid workers after the eruption of Mount Merapi in Indonesia, sponsored by Sampoerna, a company owned by Philip Morris.<sup>41</sup>

<sup>38</sup> “Mauritius Social Report 2003/2004”, British American Tobacco, (2004). Web.

<sup>39</sup> “ITC Mauritius National Report”, International Tobacco Control Evaluation Project University of Waterloo, Ontario, Canada; Mauritius Institute of Health (MIH), Pamplemousses, Mauritius. January 2011. Web.

<sup>40</sup> Yonsei Law School Student at 2012 KT&G Charitable Distribution of Charcoal Photo. Digital image. FNNews, 2012. Web.

<sup>41</sup> Ijazah, Fauzan. Aid Workers near Mount Merapi Are Sponsored by Sampoerna. Digital image. Global Post., 4 Nov. 2010. Web.

<sup>42</sup> The Sichuan Tobacco Hope Elementary School. Digital image. Tobacco China. The Telegraph, 21 Sept. 2011. Web.

Price and Tax Measures

Dr. Cheryl Heulton  
Former President and CEO American Legacy Foundation  
Dean, Global Institute of Public Health, New York University

The taxation of tobacco products is a powerful tool in the struggle to reduce and prevent illness and death from tobacco use. The World Health Organization has cited substantive increases in tobacco taxes as the single most effective way to decrease tobacco use and increase cessation among smokers<sup>43</sup>. In 2013, the World Health Assembly called on governments to reduce the prevalence of smoking by one third by the year 2025. This goal could be achieved globally through doubling the inflation-adjusted price of cigarettes, which could be achieved in low and mid-income countries through tripling of excise taxes<sup>44</sup>. The International Agency for Research on Cancer has concluded that a 50 percent increase in price lowers consumption by 20 percent<sup>45</sup>. The Subcommittee on Cessation of the Inter-Agency Task Force concluded that a 2 dollar increase in the U.S. federal excise tax would decrease the number of U.S. smokers by 4.7 million<sup>46</sup>.

Recognizing the impact of price and tax on tobacco consumption, both the World Bank and the World Health Organization are strong supporters of national level policy changes that would substantially increase taxes on tobacco products<sup>47</sup>. The World Health Organization has recommended that member nations raise excise taxes on cigarettes to at least 70% of the retail price in order to decrease tobacco consumption<sup>48</sup>. These recommendations are in line with existing U.S. domestic policy recommendations including the Healthy People 2020 objective which calls for states and the federal government to increase taxes on cigarettes by at least \$1.50 per pack<sup>49</sup>. The recently released Surgeon General’s Report on the health consequences of smoking recommends that cigarette prices be increased to at least \$10 per pack<sup>50</sup>.

Tax can also be a useful tool to amass the funding needed for comprehensive tobacco control programs such as cessation services, public education efforts, enforcement of sales restrictions and clean air laws. As nicotine addiction in the United States and elsewhere becomes more and more concentrated among lower socioeconomic groups, higher taxes place the burden on those who are both the most price sensitive and the least able to afford the medication and counseling services that could help them quit. Thus, earmarking a portion of tax revenues directly to cessation services is not only sound economic and public health policy, but also a moral imperative.

The cost of smoking is not limited to the individual smoker, but is shared by the public in the form of higher health care costs and lost productivity. Tobacco taxes can provide

the resources needed to care for smokers who become ill from smoking-related causes and reduce the burden on society. A lesson learned from the 1998 Master Settlement Agreement is that if funds derived from tobacco-related taxes and settlements are directed away from the problem that generated them, there is a high opportunity cost<sup>51</sup>. In the U.S. the tobacco industry funded its obligations to repay states’ costs arising from tobacco-related illness by increasing the price of cigarettes, and yet a very small percentage of the funds which in fact came from smokers was made available to them in the form of cessation services.

Tax and the overall price of tobacco products can drain a significant portion of household disposable income and, particularly in communities living in the economic margins, the cost of tobacco can redirect land use, employment and expenditures to a non-productive good. ■

<sup>43</sup> World Health Organization. Tobacco Free Initiative. *WHO Report on the Global Tobacco Epidemic, 2009: Implementing Smoke-free Environments*. World Health Organization, 2009. Web.

<sup>44</sup> Jha, Prabhat, and Richard Peto. “Global Effects of Smoking, of Quitting, and of Taxing Tobacco.” *New England Journal of Medicine* 370.1 (2014): 60-68. Web.

<sup>45</sup> World Health Organization. International Agency for Research on Cancer. *Effectiveness of Tax and Price Policies for Tobacco Control: IARC Handbook of Cancer Prevention*, Vol. 14. Lyon, France: 2011. Web.

<sup>46</sup> Lipman, Terri H., and Linda Beth Tiedje. “Preventing 3 Million Premature Deaths and Helping 5 Million Smokers Quit: A National Action Plan for Tobacco Cessation.” *The American Journal of Public Health* 94.2 (2004): 205-10. Web.

<sup>47</sup> The World Bank. Tobacco. *Economics of Tobacco Control: Myths and Facts*. World Bank, 2011. Web.

<sup>48</sup> World Health Organization. Tobacco Free Initiative. *Taxation*. World Health Organization, 2014. Web.

<sup>49</sup> “Increase the Federal and State Tax on Cigarettes.” 2020 *Topics and Objectives: Tobacco Use*. HealthyPeople.gov, 28 Aug. 2013. Web.

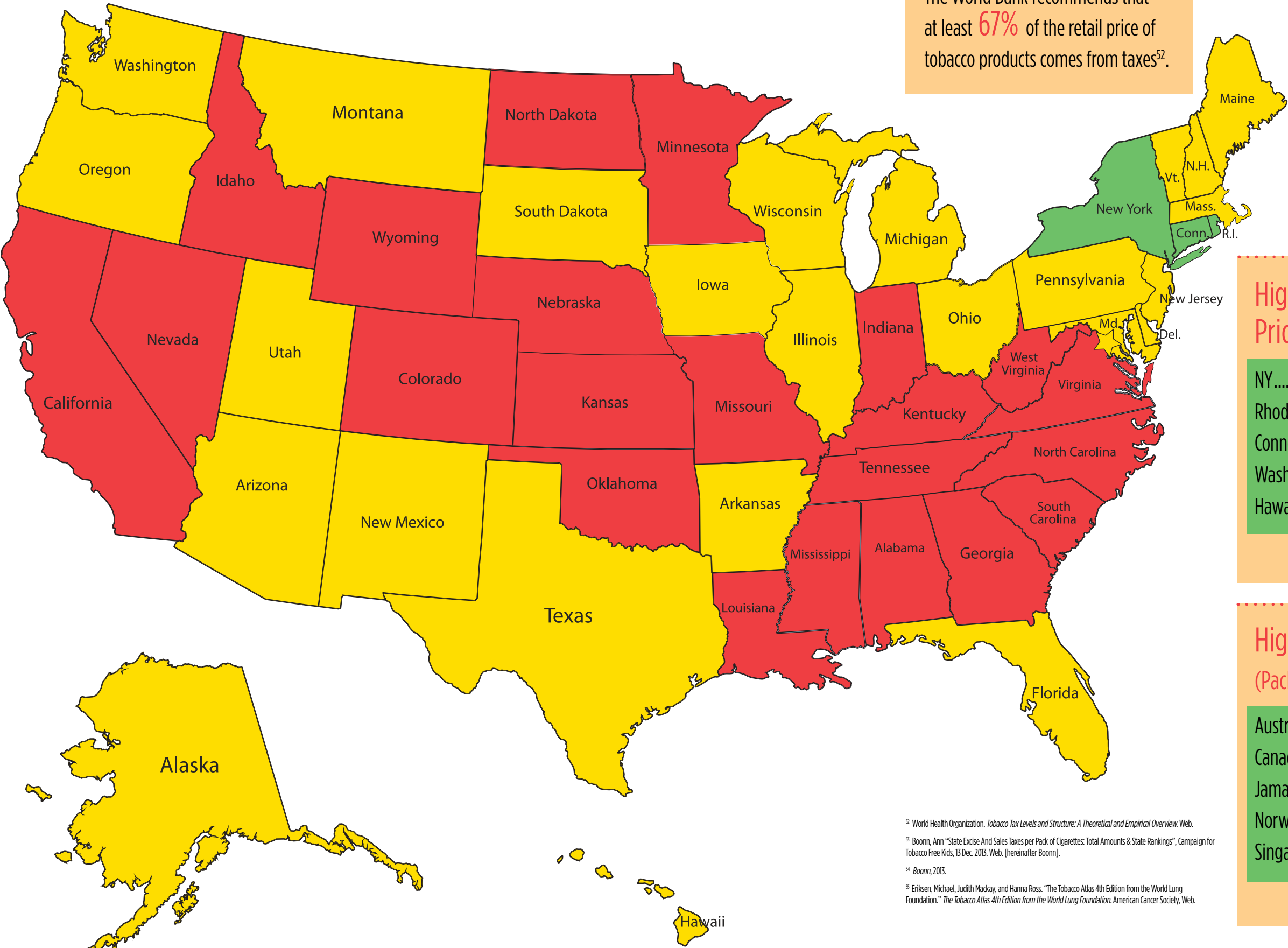
<sup>50</sup> *SG report 2014*, p.869.

<sup>51</sup> “1998 Tobacco Settlement: Decade of Broken Promises.” *U.S. State and Local Issues*. Campaign for Tobacco Free Kids, 9 Dec. 2013. Web.



- Under \$5.61 per pack
- Between \$5.61 and \$8.23 per pack
- Over \$8.23 per pack

The World Bank recommends that at least 67% of the retail price of tobacco products comes from taxes<sup>52</sup>.



Highs and Lows of U.S. State Retail Price Per Pack<sup>54</sup>

NY.....	\$10.08	Missouri.....	\$4.51
Rhode Island .....	\$8.16	Louisiana .....	\$4.48
Connecticut.....	\$8.23	North Carolina .....	\$4.47
Washington .....	\$7.82	North Dakota.....	\$4.23
Hawaii.....	\$8.91	Georgia .....	\$4.20

Highlights of Global Price Per Pack (Pack of Marlboros USD):<sup>55</sup>

Australia	\$12.14	The price of a pack of Marlboros in London is \$14.
Canada	\$10.51	
Jamaica	\$8.73	
Norway	\$15.11	
Singapore	\$9.29	

<sup>52</sup> World Health Organization. Tobacco Tax Levels and Structure: A Theoretical and Empirical Overview. Web.  
<sup>53</sup> Boonn, Ann "State Excise And Sales Taxes per Pack of Cigarettes: Total Amounts & State Rankings", Campaign for Tobacco Free Kids, 13 Dec. 2013. Web. [hereinafter Boonn].  
<sup>54</sup> Boonn, 2013.  
<sup>55</sup> Eriksen, Michael, Judith Mackay, and Hanna Ross. "The Tobacco Atlas 4th Edition from the World Lung Foundation." The Tobacco Atlas 4th Edition from the World Lung Foundation. American Cancer Society, Web.

# Protection from Exposure to Tobacco Smoke

Cynthia Hallett  
Executive Director, Americans for Nonsmokers' Rights

January 11, 2014 marked the 50th anniversary of the first Surgeon General's report on Smoking and Health. The report was the first comprehensive compilation of research linking cigarette smoking to severe adverse health effects. Today, and throughout the year, we celebrate the victories that have occurred since the release of this landmark report, as well as acknowledge ongoing challenges and gaps in protections and the course that we will chart to ensure that everyone lives and works in a smoke-free environment, that no one picks up the smoking habit and subsequent nicotine addiction, and that no one has to needlessly suffer from a smoking- or secondhand smoke-related disease.

It is hard to believe that 50 years ago so many Americans were smoking and that we allowed the tobacco industry to market and advertise its product as something healthy, glamorous, and cool.

Women were also establishing their independence by engaging in what had been a predominately male habit of smoking. And in 1964, there were no smoke-free laws as we know them today. In fact, there were very few laws that even regulated smoking in any fashion.

Much of the early nonsmokers' rights movement was based on common courtesy and common sense: If smoking was bad for the smoker per the findings of the 1964 report<sup>56</sup>, then secondhand smoke must be bad for the nonsmoker. While the 1964 Surgeon General's report illustrated the damaging health effects of cigarette smoking on the smoker, it wasn't until subsequent Surgeons General's reports, in particular the 1986 report authored by C. Everett Koop, that the adverse health effects of secondhand smoke on the nonsmoker were documented<sup>57</sup>. This 1986 report was cited as the reason that then CA State Senator Nicolas Petris (D-Oakland) authored a measure that made all in-state flights, trains, buses and other forms of public transportation 100% smoke-free<sup>58</sup>. The law took effect on September 27, 1987<sup>59</sup>.

Smoking was certainly commonplace and occurred in just about every venue possible in the 60's – offices, restaurants, bars, movie theaters, trains, airplanes, hospitals, and even elevators. Speaking of airplanes, 2014 marks the 24th anniversary of the federal law requiring smoke-free domestic airplane flights<sup>60</sup>. Americans for Nonsmokers' Rights was at the forefront of the fight for smoke-free skies, working with the flight attendants to ensure that those employees had a smoke-free workplace and also to make

sure that passengers enjoyed the benefits of not breathing toxic secondhand smoke during flights.

While much has been accomplished by the nonsmokers' rights movement, just over half of the U.S. population is not protected by strong workplace, restaurant, and bar laws, leaving just over 50% of the U.S. population unprotected from exposure to a known carcinogen in the workplace – in offices, restaurants, bars, and casinos<sup>61</sup>.



Article 8 confirms that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.

**Parties are legally bound to adopt measures to protect people from secondhand smoke.**

*Parties must adopt and implement effective legislative, executive, administrative and/or other measures, providing protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.*

<sup>56</sup> US Department of Health, Education and Welfare. Public Health Service. *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service [hereinafter SG report 1964]*. Web.

<sup>57</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. Center for Health Promotion and Education, Office on Smoking and Health. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General [hereinafter SG report 1986]*. Rockville, MD. Web.

<sup>58</sup> "Smoke-free Transportation Chronology." Americans for Nonsmokers' Rights, January 2005. Web.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Center for Disease Control and Prevention. CDC Newsroom. *Half of All States Have Smoke-Free Workplaces, Restaurants and Bars*. 2011. Web.

# Protection from Exposure to Tobacco Smoke

Smoke-free accomplishments to date are impressive; however, we are concerned about the gaps in protections and that challenges to future progress persist, in large part because the source of the problem and interference with sound public health laws like smoke-free workplace laws still exists — the tobacco industry.

Tobacco companies and their allies have a vested financial interest in maintaining a level of addiction to nicotine. As a result, we have been hampered in some of our efforts to accomplish our public health, nonsmokers' rights goals because the industry continues to resist the most robust regulations that would protect nonsmokers. ■



## Smoking and Drinking<sup>63</sup>

In 2004, Ireland became the first country to ban smoking in all indoor public and work places, including their famous pubs. Many skeptics said that pub culture would never accept it, but it has been extremely successful. Today, even most smokers say they would not go back to the way it was.

## Countries with Comprehensive Article 8 Smoke-free Laws<sup>64</sup>

Protection from exposure to tobacco smoke in indoor workplaces, public transportation, indoor public places and as a appropriate other public places.

Albania	Greece	Peru
Argentina	Honduras	Poland
Australia	Ireland	Spain
Barbados	Kosovo	Thailand
Bhutan	Marshall	Trinidad &
Brazil	Islands	Tobago
Burkina Faso	Namibia	Turkey
Canada	Nauru	United
Chile	New Zealand	Kingdom
Colombia	Panama	Uruguay



<sup>62</sup> Thai No Smoking Sign. Digital image. *International No Smoking Signs*. Smoke-free Action UK. Web.

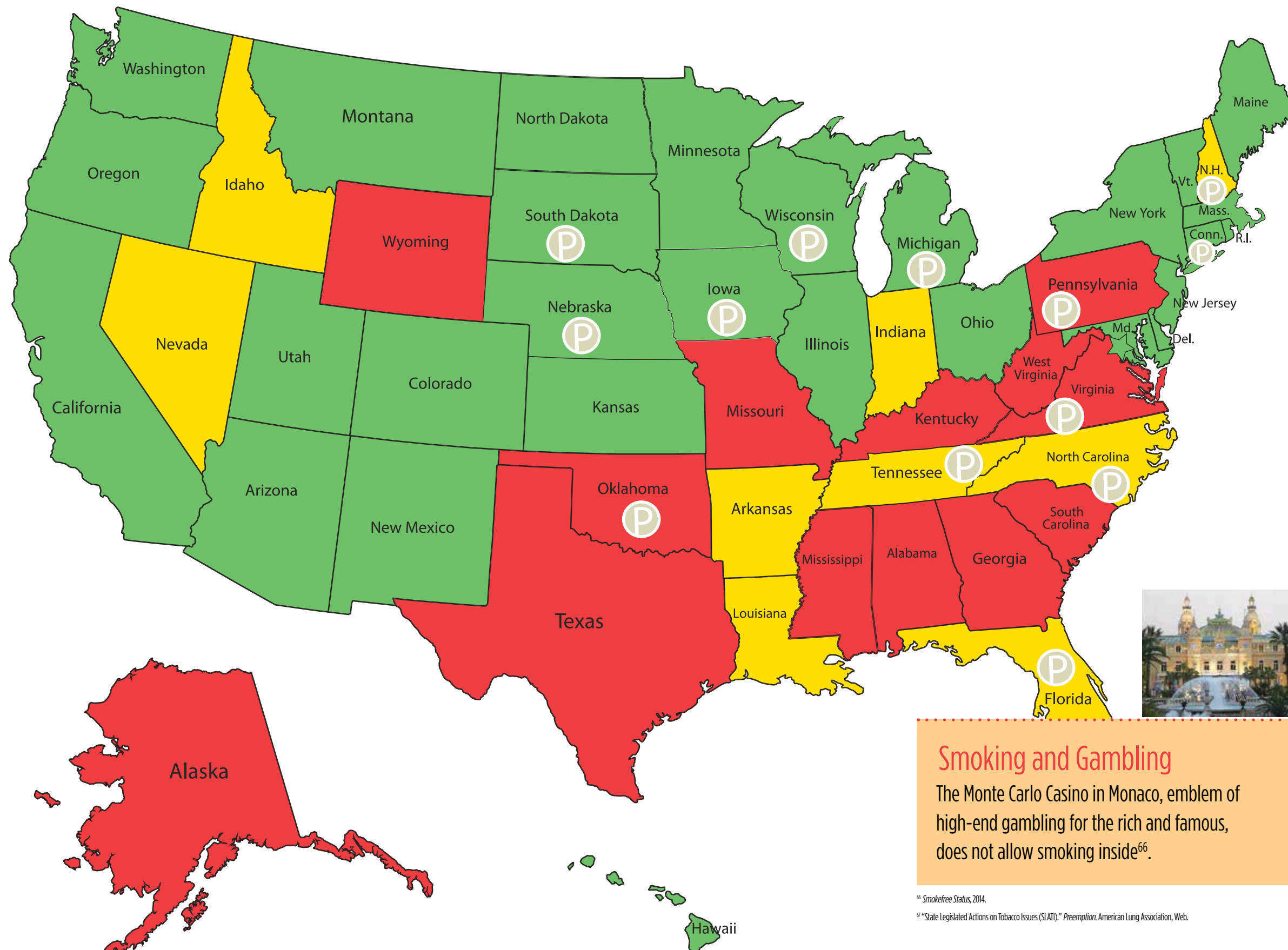
<sup>63</sup> "Ireland." *American's for Nonsmokers Rights*. Web.

<sup>64</sup> "Smoke free Status of Workplaces and Hospitality Venues around the World." American for Nonsmoker's Rights. 2 Jan. 2014. Web. [hereinafter Smokefree Status].

<sup>65</sup> Garrido, Edgard. No Smoking Sign: Honduras. Digital image. Reuters. Web.



## Protection from Exposure to Tobacco Smoke Map



## MAP KEY

-  Comprehensive protection from secondhand smoke
-  Strong law with exemptions that expose workers in certain sectors
-  Failure to adequately protect people from exposure
-  State preempts stronger local smoke-free laws<sup>67</sup>

## A Note on Preemption

Preemption refers to the precedence of state law over local law; an ongoing problem for tobacco control. In 2010, 12 states preempted (i.e. did not allow) stronger local tobacco control laws on smoke-free indoor air<sup>68</sup>. In an attempt to counteract this problem, The U.S. Department of Health and Human Services made the elimination of preemption in tobacco control a national goal in Healthy People 2020. The objective of the goal is to eliminate state laws that preempt stronger local tobacco control laws, therefore allowing local governments to step in and protect health where the state and federal governments are not<sup>69</sup>.

## Smoking and Gambling

The Monte Carlo Casino in Monaco, emblem of high-end gambling for the rich and famous, does not allow smoking inside<sup>66</sup>.

<sup>66</sup> *Smokefree Status*, 2014.

<sup>67</sup> "State Legislated Actions on Tobacco Issues (SLATI)." *Preemption*. American Lung Association, Web.

<sup>68</sup> "Opposition to the Preemption of Local Tobacco Control Regulations." *Statement of Policy*. National Association of County and City Health Officials (NACCHO). 2013. Web.

<sup>68</sup> "Eliminate State laws that preempt stronger local tobacco control laws." 2020 *Topics and Objectives: Tobacco Use*. [Healthypeople.gov](https://www.healthypeople.gov/2020/topics-objectives/topic/tobacco-use), 28 Aug. 2013. Web.

# Packaging and Labeling of Tobacco Products

## Cigarette Package Health Warning Labels: A Vital Contributor to Global Public Health

Thomas J. Glynn, PhD  
Director, Cancer Science and Trends and  
Director, International Cancer Control  
American Cancer Society

Health warning labels on tobacco packages describe the harmful effects of tobacco use and provide important information to consumers, in the form of text and/or scientifically-based pictures or graphics. Years of research on health warning labels provide clear evidence that they save lives and that the larger they are, the more information they provide, and the more scientifically accurate their graphic depictions of the harms of tobacco use, the more lives they save<sup>70</sup>.

Health warning labels were first introduced on cigarette packages in several countries nearly 50 years ago, as small text-only descriptions of what harms tobacco use might cause<sup>71</sup>. Since then, however, they have become more sophisticated and science-based and are a key element in the global effort to reduce and eventually eliminate tobacco use as a cause of death and disease.

Article 11 of the Framework Convention on Tobacco Control (FCTC) recognizes the importance of health warning labels by requiring that tobacco product packages carry health warnings that not only describe the many harmful effects of tobacco, but also provide other relevant information to inform consumers about the harmful effects of these products and what steps they can take to avoid them (e.g. ingredients and emissions information, telephone quitline numbers)<sup>72</sup>.

The importance of large, graphic health warning labels has now been recognized by at least 64 countries, more than one-third of all Parties to the FCTC<sup>73</sup>. They require science-based graphic warnings on a substantial portion of each cigarette package sold in those countries, which not only provides consumers with information which can save their lives, but also deprives tobacco companies of the opportunity to provide additional inaccurate information to these same consumers.

Research on the effects of the warning labels in these countries and, especially among some of those countries which pioneered the placement of graphic warnings on their packages, e.g. Canada, Australia, Thailand, Brazil, and New Zealand, has shown that they have been effective in reducing tobacco use and increasing awareness of the harms of tobacco use. *continued on page 20*



Article 11 sets forth national obligations mandating that Parties require health warnings and messages in the packaging and labeling of tobacco products.

- Labels should appear on both front and back of the package
- Labels should be at the TOP of the package
- Labels should be as large as possible (at least 50% of the package)
- Labels should include full color pictures
- Labels should rotate multiple messages
- Labels should include a range of warnings and messages
- Labels should include information on harms of tobacco smoke
- Labels should provide advice about cessation
- Labels should list constituents without amounts

<sup>70</sup> Glynn, Thomas J., PhD. "Ewww, That's Gross! A New Era in U.S. Cigarette Labeling." *Cancer.org*. American Cancer Society, 22 June 2011. Web. [hereinafter Glynn].

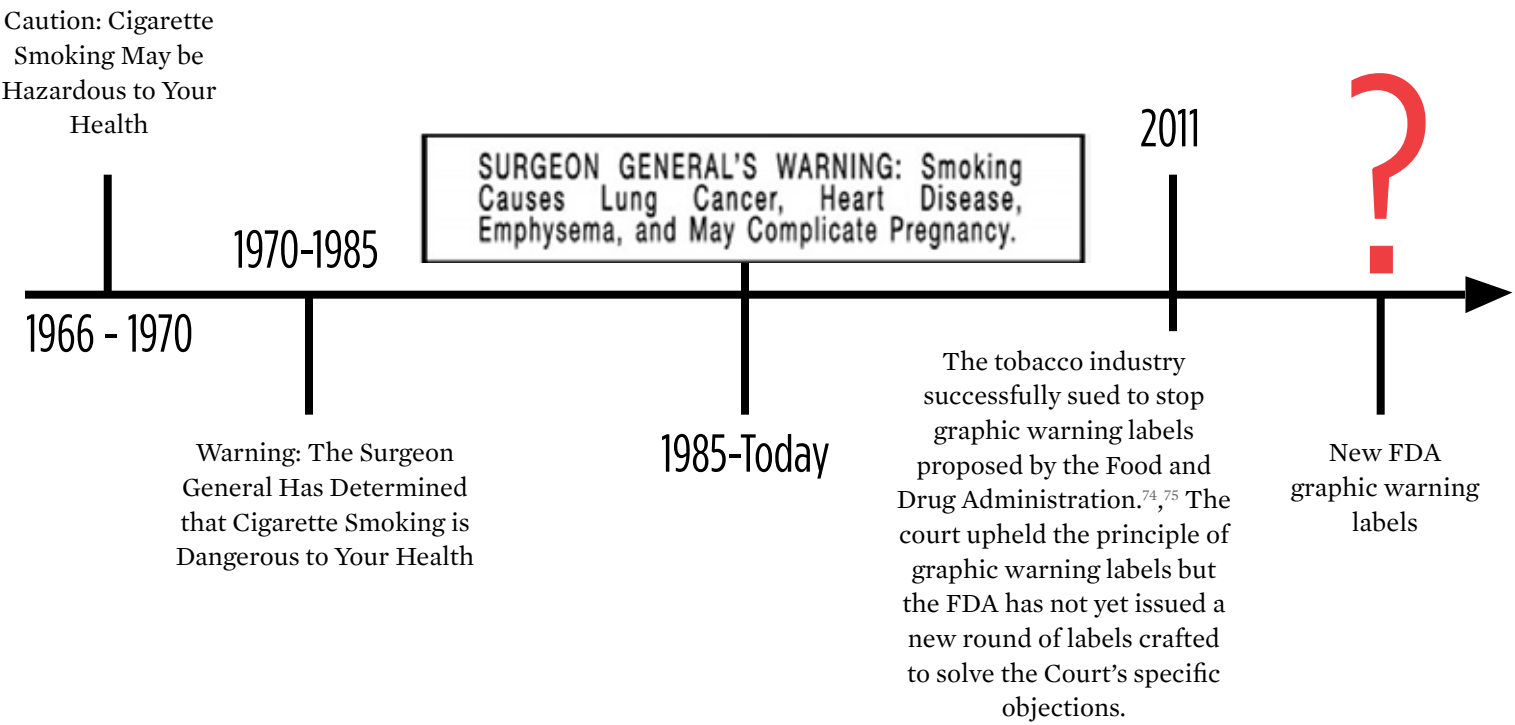
<sup>71</sup> Meg Riordan, "Tobacco Warning Labels: Evidence of Effectiveness", *Campaign for Tobacco Free Kids*, p. 3-4, Mar. 19, 2013. Web. [hereinafter Riordan].

<sup>72</sup> FCTC, p. 9.

<sup>73</sup> Riordan, 2013.

# Packaging and Labeling of Tobacco Products

## A History of U.S. Tobacco Warning Labels



In 2000, no country required graphic warnings on tobacco products. Made a priority obligation in the FCTC, today more than 57 countries and counting have them.



"The European Union's Cigarette Warnings."



"Venezuelan Cigarette Warnings."



"New Zealand Cigarette Warnings."



"Canada's Graphic Health Warnings."

<sup>74</sup> FSPTCA, Section 102.

<sup>75</sup> R.J. Reynolds Tobacco Co., et al., v. Food & Drug Administration, et al., 696 F.3d 1205 (D.C. Cir. 2012).

<sup>76</sup> "The European Union's Cigarette Warnings." *Physicians for A Smoke-Free Canada*. Web.

<sup>77</sup> "Venezuelan Cigarette Warnings." *Physicians for A Smoke-Free Canada*. Web.

<sup>78</sup> "New Zealand Cigarette Warnings." *Physicians for A Smoke-Free Canada*. Web.

<sup>79</sup> "Canada's Graphic Health Warnings." *Physicians for A Smoke-Free Canada*. Web.



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Zealand, have demonstrated that warnings which include pictures, compared to words alone:

- are more likely to be noticed;
- are rated more effective by tobacco users;
- are more likely to remain memorable over time;
- better communicate the health risks of tobacco use;
- reduce the appeal of the cigarette or tobacco package;
- increase motivation and intentions to quit;
- deter smokers from having a cigarette when they are about to have one;
- promote the use of resources for quitting;
- are associated with more attempts to quit;
- prevent relapse in former smokers; and,
- increase knowledge about the health effects of tobacco<sup>80</sup>.

These very positive, research-based outcomes from the placement of text and graphic warnings on tobacco packages led Dr. Thomas Frieden, Director of the U.S. Centers for Disease Control and Prevention, to recently observe that “Graphic warning labels motivate smokers to quit and discourage nonsmokers from starting, are well accepted by the public, and can be effectively implemented at virtually no cost to governments<sup>81</sup>”.

In summary, health warning labels have now taken their place as a science-based, essential element in the global effort to reduce and eventually eliminate the death, disease, and economic disruption caused by tobacco use. The FCTC, governments, consumer organizations, and, most importantly, smokers and nonsmokers alike, have recognized and embraced their importance. Implementing the most effective health warnings in every country should remain a priority of the WHO and governments around the world – one billion lives are at stake. ■



In 2012, Australia was the first in the world to require cigarettes to be sold in plain packaging, with large graphic warning labels.



In 2011, Uruguay required that cigarette packaging have graphic warning labels taking up 80% of the front and back of every package. In addition, each brand (such as Marlboro) can have only one presentation (i.e., no Marlboro Red, Green, or Blue, designed by Philip Morris to get around the ban on misleading terms like “light” and “low”).

Both Australia and Uruguay have been sued by Philip Morris International under bilateral investment treaties, claiming violations of international trade rules.

# Education, Communication, Training and Public Awareness

## Public Education: A Key Component in Saving Lives Lost to Tobacco Use

Harold Wimmer  
President and CEO  
American Lung Association

Public education is essential to preventing youth from starting to smoke and reducing tobacco use. These vital public health programs amplify the effects of other proven tobacco control policies, such as increasing prices on tobacco products and making public places and workplaces smoke-free; and giving tobacco users access to programs and services that can help them successfully quit. In the United States, public education has generally occurred through tobacco prevention and education programs at the state and local level, and more recently, through hard hitting national media campaigns.

The bottom line is tobacco prevention and education programs save lives. The Centers for Disease Control and Prevention (CDC) in its 2007 *Best Practices for Comprehensive Tobacco Control Programs* declares: “Research shows that the more states spend on comprehensive tobacco control programs, the greater the reductions in smoking – and the longer states invest in such programs, the greater and faster the impact.”<sup>84</sup>

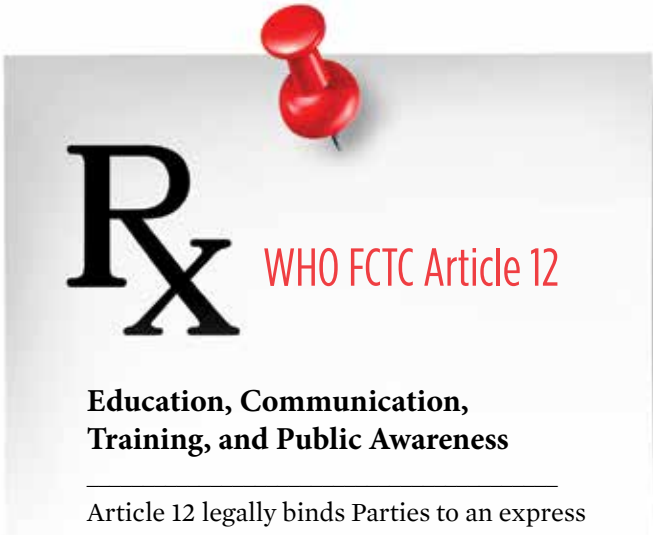
CDC launched its nationwide “Tips from Former Smokers” media campaign in the spring of 2012<sup>85</sup>. It harnesses the power of personal stories from former smokers now living with diseases caused by smoking and exposure to secondhand smoke. The response to this media campaign has been overwhelming, with calls to state telephone quit lines increasing substantially during the duration of both the 2012 and spring 2013 Tips campaigns<sup>86</sup>. A recent study evaluating the 2012 Tips campaign in the journal *The Lancet* showed that 100,000 people successfully quit smoking as a result of the campaign<sup>87</sup>.

In February 2014, the U.S. Food and Drug Administration launched its first youth tobacco prevention campaign, “The Real Costs,” targeting teenagers most at risk of becoming smokers<sup>88</sup>. The campaign includes hard-hitting graphics and

messages designed to educate youth on the long-term impact of their decision to experiment with cigarettes, and will include television, radio and print media.

Not all public education campaigns originate from the government. The American Lung Association began its “Kick the Habit” campaign in 1970, and has continued efforts to encourage smokers to quit ever since<sup>89</sup>. Soon after

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### Education, Communication, Training, and Public Awareness

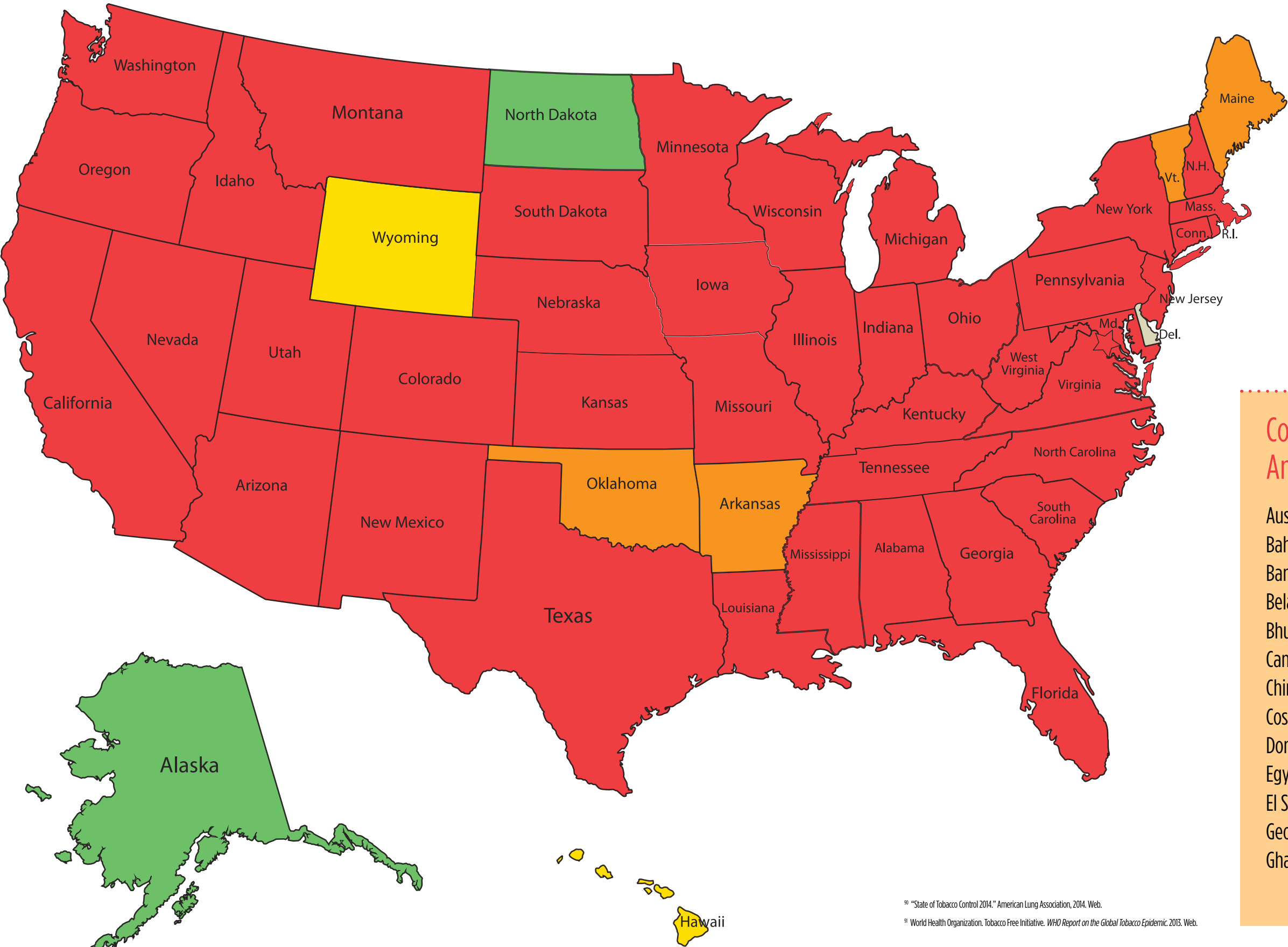
Article 12 legally binds Parties to an express obligation to promote and strengthen public awareness on tobacco using all available communication tools.

**Article 12 requires Parties to promote:**  
*Broad access to effective and comprehensive educational and public awareness programs on the health risks of tobacco consumption, exposure and smoke. Provide public awareness about the benefits of cessation of tobacco use and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.*

<sup>80</sup> Glynn, 2011.  
<sup>81</sup> Center for Disease Control and Prevention. CDC Newsroom. *Report Finds Global Smokers Consider Quitting Due to Graphic Health Warnings on Packages*. 26 May 2011. Web.  
<sup>82</sup> “Australian Health Warnings.” Physicians for A Smoke-Free Canada. Web.  
<sup>83</sup> “Cigarette Warnings in Uruguay.” Physicians for A Smoke-Free Canada. Web.

<sup>84</sup> Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *Best Practices for Comprehensive Tobacco Control Programs – 2007*[hereinafter *Best Practices*]. Atlanta, GA: October 2007. Web.  
<sup>85</sup> For more information about the Tips media campaigns, www.cdc.gov/tips.  
<sup>86</sup> Center for Disease Control and Prevention. *Tips from Former Smokers: Campaign Overview*. Atlanta, GA: January 2014. Web.  
<sup>87</sup> McAfee, Tim, MD, Kevin C. Davis, MA, Robert L. Alexander, PhD, Terry F. Pechacek, PhD, and Rebecca Bunnell, ScD. “Effect of the First Federally Funded US Antismoking National Media Campaign.” *The Lancet* 382.9909 (2013): 2003-011. Web.  
<sup>88</sup> The Food and Drug Administration. *The Real Cost: Campaign Overview*. 11 Feb. 2014. Web.  
<sup>89</sup> American Lung Association, *Historical Timeline*. Web.

State Funding for Anti-Tobacco Education as a Proportion of CDC Recommendation<sup>90</sup>



Comprehensive Mass Media Anti-tobacco Campaigns in 2012<sup>91</sup>

Australia	India	Sao Tome & Principe
Bahrain	Kuwait	Seychelles
Bangladesh	Liberia	Singapore
Belarus	Luxembourg	Switzerland
Bhutan	Madagascar	Tunisia
Cambodia	Malaysia	Turkey
China	Mauritius	United Kingdom
Costa Rica	New Zealand	USA
Dominica	Norway	Uruguay
Egypt	Republic of Korea	Vietnam
El Salvador	Russia	
Georgia	Samoa	
Ghana		

<sup>90</sup> "State of Tobacco Control 2014." American Lung Association, 2014. Web.  
<sup>91</sup> World Health Organization. Tobacco Free Initiative. WHO Report on the Global Tobacco Epidemic. 2013. Web.



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opening its doors in 1999, the American Legacy Foundation launched “Truth,” a national youth tobacco prevention counter-marketing campaign utilizing direct advertising as well as social media<sup>92</sup>.

Comprehensive tobacco prevention and education programs are also extremely cost effective. The state of California has the longest running tobacco prevention and education program, started in 1989 with a portion of revenue dedicated from an increase in state tobacco taxes. Funding for the program has fluctuated over the years, and is currently well below the CDC recommendation, but it has never gone below \$60 million a year. And a recent study in the journal PLoS ONE showed that this sustained investment has produced an astounding \$55 reduction in state health care costs for every \$1 invested in the program<sup>93</sup>. Also, the state of Washington’s tobacco control program realized a \$5 reduction in just tobacco-related hospitalization costs for every \$1 spent from 2000 to 2009, according to a study in the *American Journal of Public Health*<sup>94</sup>.

States are receiving billions of dollars in tobacco settlement payments and tobacco tax revenue every year — \$24.9 billion in fiscal year 2014. Unfortunately, most states fail to invest in tobacco prevention and education programs at adequate levels. The CDC Best Practices recommends a funding level for each state and the District of Columbia (DC), and in fiscal year 2013/2014, 40 states and DC are failing to spend even 50 percent of the recommended level. It would take just 15 percent of state tobacco revenue to fund comprehensive tobacco prevention and education programs at the level the CDC recommends<sup>95</sup>.

Public education, through tobacco prevention and education programs, saves lives and saves money. Together with other public health organizations, the American Lung Association will continue to advocate and support these efforts to prevent and reduce tobacco use. ■



Thailand television ad, in which children ask adult smokers for a light. None of the adults agreed, and all of them tried to explain that smoking was bad.<sup>96</sup>

<sup>92</sup> American Legacy Foundation, *Truth Fact Sheet*. January 2012. Web.  
<sup>93</sup> Lightwood, James, Stanton A. Glantz “The Effect of the California Tobacco Control Program on Smoking Prevalence, Cigarette Consumption, and Healthcare Costs: 1989–2008.” *PLoS ONE* 8(2): e47145 (2013). Web.  
<sup>94</sup> Dilley, JA, JR Harris, MJ Boysun, TR Reid. “Program, Policy and Price Interventions for Tobacco Control: Quantifying the Return on Investment of a State Tobacco Control Program.” *Am J Public Health* e1–e7. 15 Dec. 2011. Published online ahead of print.  
<sup>95</sup> *Best Practices*, 2007.  
<sup>96</sup> “Thai Anti-smoking Ad.” YouTube, 25 June 2012. Web.

# Tobacco Advertising, Promotion and Sponsorship

Stanton Glantz, Ph.D.  
Director, Center for Tobacco Control Research and Education  
University of California, San Francisco

Aggressive marketing and promotion by the tobacco industry is the central reason that the tobacco epidemic continues<sup>97</sup>. The tobacco industry has been a leader in using media to manipulate social norms to stimulate and support tobacco use since early in the Twentieth Century when the tobacco companies invented baseball cards to associate cigarettes with good health and sports as well as paying to put smoking into the emerging motion picture industry from its beginnings<sup>98</sup>. The scientific proof is so overwhelming, that in 2012, the U.S. Surgeon General concluded that these media exposures — both conventional advertising and smoking in movies — cause youth smoking<sup>99</sup>.

The United States was the first country to require health warning labels on cigarettes (in 1965) and banned cigarette advertising on television and radio as of 1972<sup>100</sup>. Since then, however, progress has been slow. Warning labels on cigarette packs remain hard-to-read text on the side of cigarette packages.

In the early 1990s, several states, beginning with Mississippi and Minnesota, sued the major cigarette companies for the reimbursement of smoking-induced costs to state Medicaid programs as well as for injunctive relief to end marketing directed at children<sup>101</sup>. These cases resulted in a series of individual state settlements and culminated in the 1998 Master Settlement Agreement in which the companies agreed to reimburse the states for smoking-induced costs in perpetuity (based on a formula that accounted for changes in levels of smoking) and to accept some restrictions on marketing<sup>102</sup>. The federal Department of Justice also sued the companies and their trade organizations under the

<sup>97</sup> U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. *The Role of the Media in Promoting and Reducing Tobacco Use*. Tobacco Control Monograph No. 19. Bethesda, MD: NIH Pub. No. 07-6242, June 2008. Web.  
<sup>98</sup> Mekemson, C. and S. A. Glantz. “How the Tobacco Industry Built Its Relationship with Hollywood.” *Tobacco Control* 11 Supplement 1 (2002): 181–91. Web.  
<sup>99</sup> US Department of Health and Human Services, Public Health Service. Office of the Surgeon General. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Rockville, MD: 2012. Web.  
<sup>100</sup> Centers for Disease Control and Prevention. *Smoking and Tobacco Use: Legislation*. 15 Nov. 2012. Web.  
<sup>101</sup> “About the Master Settlement Agreement.” *American Legacy Foundation*. Web.  
<sup>102</sup> *Ibid*.

Article 13 legally binds Parties to comprehensively ban advertising, promotion and sponsorship in accordance with its constitution or constitutional principles. This includes a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory.

Alternatively, any party not in a position to adopt a comprehensive ban due to its constitution or constitutional principles would have to apply restrictions on all tobacco advertising, promotion and sponsorship. This includes restrictions or a comprehensive ban on advertising, promotion and sponsorship originating from its territory with cross-border effects (subject to the legal environment and technical means available to that party).

- As a minimum the guidelines suggest that each Party:**
- a. Prohibit all forms of tobacco advertising, promotion and sponsorship that promote tobacco products that are false, misleading or deceptive.
  - b. Require that health or other appropriate warnings or messages accompany all tobacco advertising (as appropriate), promotion and sponsorship.
  - c. Restrict use of direct or indirect incentives that encourage the purchase of tobacco products by the public.
  - d. If no comprehensive ban, require disclosure to the government of tobacco industry expenditures on advertising, promotion and sponsorship.
  - e. Comprehensive ban or restriction of tobacco advertising, promotion and sponsorship on radio, television, and print media and as appropriate other media (i.e. Internet).
  - f. Prohibit or restrict tobacco sponsorship of international events, activities and/or participants therein.



Racketeer Influenced Corrupt Organizations Act (RICO), which led to a 2006 verdict that the companies had formed an illegal enterprise to defraud the public<sup>103</sup>.

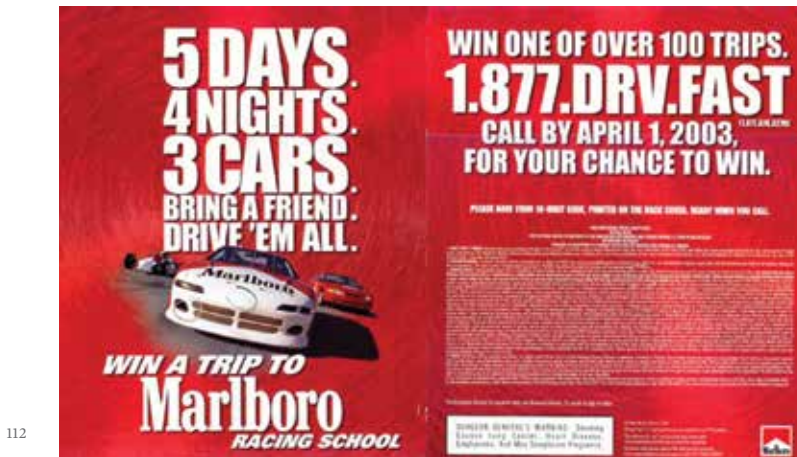
The FCTC Article 13 Guidelines note that “packaging is an important element of advertising and promotion. Tobacco pack or product features are used in various ways to attract consumers...for example by using logos, colors, fonts, pictures, shapes and materials on or in packs...,” and that therefore the “effect of advertising or promotion on packaging can be eliminated by requiring plain packaging<sup>104</sup>.” The Guidelines urge parties to prohibit the use of “any term, descriptor, trademark, emblem, marketing, image, logo, color and figurative or any other sign that promotes a tobacco product or tobacco use, whether directly or indirectly, by any means that are false, misleading, or deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of any tobacco product or tobacco products, or about the health effects or hazards of tobacco use<sup>105</sup>.”

FCTC Article 11 provides that parties must adopt effective measures to ensure that tobacco product packaging and labeling are not false, misleading, or deceptive. It notes that explicit terms and descriptors, as well as signs that indirectly create the false impression that a particular tobacco product is less harmful (such as substituting package colors for terms), should be prohibited<sup>106</sup>. In order to meet the requirements of Article 11, the Guidelines for Implementation of Article 11 discusses plain packaging and urges parties to adopt measures that restrict or prohibit the use of color, in addition to logos, brand images, or other promotional information on packaging, and in particular “address industry package design techniques that may suggest that some products are less harmful than others<sup>107</sup>.”

While the 2009 Family Smoking Prevention and Tobacco Control Act (FSPTCA) mandated stronger graphic warnings on the front of packages, the tobacco industry successfully sued to stop the specific warning labels that the Food and Drug Administration proposed (although the courts did uphold the *principle* of graphic warning labels<sup>108</sup>) and the FDA has not issued a new round of labels crafted to meet the Court’s specific objections. The FDA also counts the “lost pleasure” smokers will experience as a cost of effective warning labels, which makes it harder to pass judicial muster<sup>109</sup>.

While the 2006 federal court ruling that convicted the major cigarette companies of creating an illegal racketeering enterprise to defraud the public and the 2009 FSPTCA both banned the use of the terms “light” and “mild” as

intrinsically misleading, the cigarette companies simply replaced these words with color-coded packages<sup>110</sup>. Although the color coding of packages to communicate the same information as the words “light” and “mild” in my opinion perpetuates the fraud of light and mild cigarettes and the FSPTCA requires such products to be deemed “adulterated<sup>111</sup>”, neither the Department of Justice nor the FDA have taken any action against the industry’s use of color coding to thwart the law. ■



<sup>103</sup> “United States v. Philip Morris (D.O.J. Lawsuit).” *Public Health Law Center*. 2010. Web.

<sup>104</sup> World Health Organization. WHO Framework Convention on Tobacco Control, *Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship)*. 2008. Web.

<sup>105</sup> *Ibid*.

<sup>106</sup> *Article 11*.

<sup>107</sup> World Health Organization. WHO Framework Convention on Tobacco Control, *Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control (Packaging and labelling of tobacco products)* 2008. Web.

<sup>108</sup> Glantz, Stanton. “The FDA Made the Right Decision Not to Appeal the Current Warning Labels.” *Center for Tobacco Control Research and Education*. 21 Mar. 2013. Web.

<sup>109</sup> *Ibid*.

<sup>110</sup> Connolly, Gregory, Hillel R. Alpert. “Has the tobacco industry evaded the FDA’s ban on “Light” cigarette descriptors?” *Tobacco Control*, 13 Mar. 2013. Web.

<sup>111</sup> *Ibid*.

<sup>112</sup> *Marlboro Racing Contest Magazine Ad*. Digital image. Campaign for Tobacco Free Kids. 30 Nov. 2010. Web.

<sup>113</sup> Slade, John. “Marlboro Hot Sauce.” *Campaign for Tobacco Free Kids*. 29 Nov. 2010. Web.

## Does U.S. Federal Law Conform with the Framework Convention on Tobacco Control (FCTC)?

### False/ Misleading Ads

**FCTC Recommendation:** Each party shall... prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading, or deceptive or likely to create an erroneous impression...<sup>114</sup>

**U.S. Law:** Conforming: The Family Smoking Prevention and Tobacco Control Act (FSPTCA) “prohibits false or misleading labeling and advertising for tobacco products<sup>115</sup>.

R.J. Reynolds Joe Camel Ad.



### Health Warnings

**FCTC Recommendation:** The FCTC requires large, visible health warnings on tobacco packaging, and recommends graphic warnings that cover at least 50% of the principle display area<sup>116</sup>.

**U.S. Law:** Nonconforming. Some form of health warning has been required on cigarette packages in the U.S. since the 1966 Federal Cigarette Labeling and Advertising Act (FCLLA). However, in 2012, the tobacco industry successfully sued to stop the specific warning labels that the Food and Drug Administration proposed<sup>118</sup>.

**Best Practices:** 46 countries now require health messages to comprise at least 50 percent of the overall package, and three countries (Australia, Sri Lanka, Uruguay) require warnings to cover as much as 80 percent of the front and back of the package<sup>119</sup>.



### Incentives to Buy

**FCTC Recommendation:** “Each party shall...restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public<sup>120</sup>.”

**U.S. Law:** Somewhat conforming. The FSPTCA bans most free samples of cigarettes and brand-name non-tobacco promotional items<sup>121</sup>. However, U.S. law still allows for many incentives such as coupons and mail promotions.



<sup>114</sup> *FCTC*, p. 11.

<sup>115</sup> “S. 982—111th Congress: Family Smoking Prevention and Tobacco Control Act.” *www.GovTrack.us*. 2009. Web. [hereinafter FSPTCA].

<sup>116</sup> *FCTC*, p. 12.

<sup>118</sup> “Federal Cigarette Labeling and Advertising Act.” Title 15, U.S.C. §§ 1331-1340. Federal Trade Commission. Web.

<sup>119</sup> *Riordan*, p. 4.

<sup>120</sup> *FCTC*, p. 12.

<sup>121</sup> FSPTCA, Section 102.

<sup>122</sup> “Camel Crush Coupon” *CigaretteCoupons.blogspot.com*. RJ Reynolds, 2009. Web.

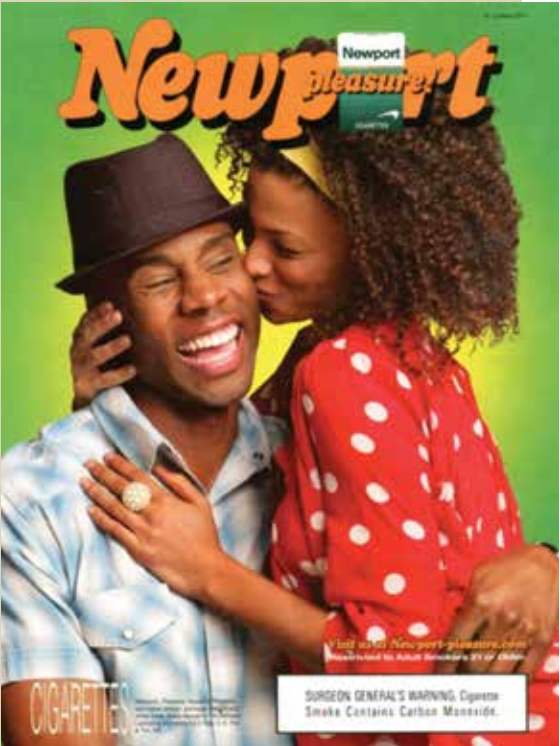


Ban or Restrict Ads

**FCTC Recommendation:** “Each party shall... undertake a comprehensive ban or, in the case of a Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet...”<sup>123</sup>”

**U.S. Law:** Somewhat conforming. There are some restrictions, but no outright ban. Federal Communication Commission (FCC) regulations prohibits “the airing of advertising for cigarettes... on radio, TV, or any other... electronic communication under the FCC’s jurisdiction<sup>124</sup>.” Outdoor advertising within 1,000 feet of schools is banned and there are limits on point of sale advertising<sup>125</sup>. However, the FCTC gives an allowance for constitutional free speech principles under Article 13<sup>126</sup>, so it is unclear whether U.S. federal law could be deemed conforming.

**Best Practices:** Australia is the first country to require plain packaging, prohibiting tobacco logos, brands, and colors leaving a “plain” package with the product name and the health warnings<sup>127</sup>.



P. Lorillard Newport Advertisement 2005.

What States Can Do

The 2009 Family Smoking Prevention and Tobacco Control Act gave states greater rights to regulate tobacco marketing. For more information, see the Tobacco Control Legal Consortium website.<sup>128</sup>

<sup>123</sup> FCTC, p. 12.  
<sup>124</sup> “The Public and Broadcasting” *The Media Bureau*. Federal Communications Commission, Washington, D.C., July 2008. Web.  
<sup>125</sup> FSPICA, Section 102.

<sup>126</sup> FCTC, p. 12.  
<sup>127</sup> “Global Tobacco Control: What the U.S. Can Learn from Other Countries Executive Summary.” *Tobacco Control Legal Consortium*. 2013. Web.  
<sup>128</sup> <http://publichealthlawcenter.org/programs/tobacco-control-legal-consortium>.

State Conformity  
California

Tobacco advertisements are banned in video games intended for minors

“No person or business shall sell, lease, rent or provide, or offer to sell, lease, rent or otherwise offer to the public or to public establishments in this state, any video game intended for either private use or for use in a public establishment and intended primarily for use by any person under the age of 18 years, which contains in its design and in the on-screen presentation of the video game, any paid commercial advertisement of alcoholic beverages or tobacco product containers or other forms of consumer packaging, particular brand names, trademarks or copyrighted slogans of alcoholic beverages or tobacco products<sup>129</sup>.”



Local Conformity  
Jefferson County, Alabama

Voluntary Graphic Health Warning Signs

The Jefferson County Department of Health has pioneered a program based on the voluntary commitment of storeowners to post graphic health warning signs in their stores that sell tobacco products. Fifty one convenience store owners agreed to do so, and the number of callers to the quit line has more than doubled<sup>130</sup>.



Display Bans Don’t Violate  
International Trade Rules

Norway banned all tobacco advertising, promotion and sponsorship, including the display of tobacco packages in stores in 2010. Philip Morris sued the government over the point-of-sale display ban under the European Free Trade Agreement. In 2012, the court upheld Norway’s ban<sup>132</sup>.

Point-of-Sale Display Bans

The tobacco industry has used retail space for decades as an important part of its marketing, often ensuring that tobacco products are placed near candy so that they are seen by children. To date, 13 countries have mandated that tobacco products be kept out of sight behind the counter<sup>131</sup>.

Australia	Ireland	Thailand	Wales
Canada	New	England	Scotland
Finland	Zealand	Northern	
Iceland	Norway	Ireland	

<sup>129</sup> California. Penal Code§ 308. Findlaw.com. 2013. Web.  
<sup>130</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. *Communities Putting Prevention to Work*. 2010. Web.  
<sup>131</sup> Berman, Micah, Marlo Miura and John Bergstresser. “Tobacco Product Display Restrictions.” Center for Public Health and Tobacco Policy. 2012. Web.  
<sup>132</sup> World Health Organization. Framework Convention on Tobacco Control. “Norway: Prohibition on the Visible Display of Tobacco Products at the Points of Sale.” Oct. 2012. Web.

# Conclusion

## We Know What Works

There has been significant progress in the war on tobacco in the last half century. In 1964, nearly all of the maps and graphs in the preceding pages would have been blank, since there were virtually no regulations concerning tobacco. Since 1964, tobacco regulations in the U.S. have prevented an estimated 8 million tobacco-caused deaths and have added an average of 20 years to each life saved<sup>133</sup>. That is a huge accomplishment. However, in that same time period, over 17 million Americans were killed by tobacco, and today about 20% of all U.S. deaths are caused by tobacco<sup>134</sup>. We have done a lot, but we have a long way to go.

Efforts thus far have reduced the prevalence of smoking among adults by more than 55%, from 42% in 1964 to about 18% today<sup>135</sup>. But that still means that 9% of the U.S. population is likely to die from diseases caused by their use of tobacco. Over 28 million people will suffer a completely avoidable cause of death, while costing the American economy hundreds of billions of dollars in health costs and productivity losses each year<sup>136</sup>. If any new epidemic surfaced that threatened to kill so many, it would be the biggest health crisis in centuries. We need to treat the use of tobacco as the crisis it is.

In recognition of the 50th anniversary of the original Surgeon General report on smoking and health, the public health community has set a “10 in 10” target, i.e., reduce the prevalence of smoking in the U.S. to 10% by 2024<sup>137</sup>. This is a bold goal, and would save millions of lives. But most experts agree that this target cannot be achieved if we merely continue down our current path. While we can expect further incremental success, “10 in 10” is simply not achievable with our current pallet of policies. We need to find new solutions.

Is there a magic wand, a magic bullet or a vaccine to defeat the epidemic of disease and death caused by tobacco? Probably not, or the prevalence of smoking would be zero today. But there is a set of scientifically validated measures contained in the Framework Convention on Tobacco Control (FCTC) that may be nearly as effective as a vaccine was in defeating smallpox or polio.

The FCTC represents the compiled wisdom of decades of global efforts to reduce tobacco use, and we know it works. Countries that have fully implemented the treaty have seen dramatic success in reducing the toll of tobacco use. Uruguay, for example, saw a five percentile point decrease in smoking prevalence within five years of implementing the treaty<sup>138</sup>. Finland and New Zealand, using the measures

contained in the FCTC, are looking forward to ending tobacco use in their countries by 2025<sup>139</sup>. Surely American lives are as worthy of saving as lives elsewhere.

## Here Is How We Can Do It:

- Remove the tobacco industry as a stakeholder in making public health policy. There is an irreconcilable conflict between its interests and the public interest.
- Raise tobacco taxes. Increased prices for tobacco always reduces consumption and prevents children from starting to smoke.
- Protect all people from secondhand smoke. Smoking must be banned in all public and work places, without exception.
- Ban flavorings that make tobacco more attractive, especially to children. This includes menthol.
- Require large, graphic warning labels and plain packaging on tobacco products. The pack is the tobacco industry’s most important advertising space.
- Educate the public. Counter marketing campaigns are effective and save government money in the long run.
- Regulate all tobacco advertising, promotion and sponsorship. History has shown us that if we leave loopholes, the tobacco industry will exploit them.
- Offer free smoking cessation services to anyone who wants to quit. Smokers are not the problem, they are the victims.
- Ensure that all of our efforts push in the same direction. Don’t let policies on trade, agriculture, development, etc. undermine health.

Enactment of these measures requires a commitment from all agencies at all levels of government, and it requires a broad partnership with civil society including business, schools and places of worship. The only true barrier we face is political will. Fifty years from now, in 2064, tobacco should be a topic of history, not health policy. ■

<sup>133</sup> Holford, Theodore R., Rafael Meza, Kenneth E. Warner, Clare Meernik, Jihyoun Jeon, Suresh H. Moolgavkar, and David T. Levy. “Tobacco Control and the Reduction in Smoking-Related Premature Deaths in the United States, 1964-2012.” *The Journal of the American Medical Association* 311.2 (2014): 164. 8 Jan. 2014. Web.

<sup>134</sup> *Ibid.*

<sup>135</sup> US Department of Health and Human Services, Centers for Disease Control and Prevention. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General [hereinafter SG report 2014]*. Rockville, MD: p. i. 2014. Web.

<sup>136</sup> *Ibid.*

<sup>137</sup> “American Heart Association Joins Health Groups to Commemorate the 50th Anniversary of the 1964 Surgeon General’s Report on Tobacco.” *AHA/ASA Newsroom*. American Heart Association, 8 Jan. 2014. Web.

<sup>138</sup> The NCD Alliance. *The FCTC- An Evidence Based Tool to Reduce the Burden of Disease*. Web.

<sup>139</sup> “World Heart Federation Calls on All Countries to Follow Example of Finland, New Zealand.” *World Heart Federation*. N.p., 9 Sept. 2013. Web.

# Special Thanks to Our Guest Authors

*Stanton Glantz, Ph.D.  
Professor of Medicine  
University of California  
San Francisco*

*Thomas J. Glynn, PhD  
Director  
Cancer Science and Trends and Director  
International Cancer Control  
American Cancer Society*

*Cynthia Hallett  
Executive Director  
Americans for Nonsmokers’ Rights*

*Dr. Cheryl Healton  
Former President and CEO  
American Legacy Foundation*

*Dean  
Global Institute of Public Health  
New York University*

*John Stewart  
Challenge Big Tobacco Campaign Director  
Corporate Accountability International*

*Harold Wimmer  
President and CEO  
American Lung Association*







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701 4th Street, NW  
Washington, DC 20001  
[www.ash.org](http://www.ash.org)  
P: 202-659-4310  
E: [HQ@ash.org](mailto:HQ@ash.org)



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