



U.S.  
Tobacco  
Industry  
Interference  
Index

**NO  
NO  
NO  
NO**

***“...We will never  
be liked and what  
we want is to be  
ignored.”***

**- Philip Morris Tobacco Company.  
Goals For 2000. February 4, 1992.  
SEE DOCUMENT**

## **Limitations**

The Global Tobacco Industry Interference Index was designed to track implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC), which forbids all parties to the treaty from including the tobacco industry in policy deliberations. Though the U.S. was a full participant during the treaty negotiations and was part of a unanimous vote by the World Health Assembly to adopt the final text, the U.S. has not yet formally ratified the FCTC. The U.S. did sign the treaty in 2004, thereby committing to not undermine the treaty’s purpose and indicating an intent to ratify.

Beyond the lack of FCTC ratification, there are two significant limitations to undertaking the Index in the U.S. The first is the scope of domestic policy making. For most countries, public health is regulated at the national level. The points of entry for the tobacco industry in these countries are limited; one legislature, one executive branch, one regulatory ministry or department. In the U.S., tobacco control policy is addressed at the national, state and local levels. There are thousands of points of entry, and while the tobacco industry is more powerful at the federal and state levels, they or their proxies are consistently present at every level. It was beyond the scope of this project to undertake a thorough survey of every jurisdiction’s experience during the period covered by this report. The data collected should be read as a sample of tobacco industry interference rather than a comprehensive tally.

Second, many government-industry interactions that are forbidden under the FCTC are not only legal but constitutionally protected in the U.S. Industry lobbyists need not hide their efforts, other than to avoid negative publicity. This reality further increases the number of potential data points. It is unlikely that laws governing industry lobbying will change in the near future. Our efforts in the U.S. are therefore meant to shine a light on industry interference and raise awareness among lawmakers and the general public.

*"Involve **friendly** and **neutral** legislators in our policy-making work."*

- Philip Morris Legal Department.  
Project Down Under. June 25,  
1987. SEE DOCUMENT

# CONTENTS

|           |                               |
|-----------|-------------------------------|
| <b>03</b> | About ASH<br>Acknowledgements |
| <b>04</b> | Introduction<br>Background    |
| <b>07</b> | Index Indicators              |
| <b>09</b> | Examples of Interference      |
| <b>14</b> | Transparency                  |
| <b>17</b> | Conclusion<br>Recommendations |
| <b>20</b> | Resources                     |

ACTION ON SMOKING AND HEALTH • [ASH.ORG/2020INDEX](https://ash.org/2020index)

*“...it is imperative that  
the Tobacco Institute  
not be identified  
as a major player  
in this effort.”*

- Tobacco Institute. Pro-Active  
Legislative Targets 1990. October  
2, 1989. SEE DOCUMENT

## About ASH

ASH takes a human rights-based approach to tobacco. In a nutshell, we recognize that the tobacco industry violates basic human rights every day by marketing and selling products that they know will addict and kill when used as intended. People who smoke are victims of an immoral industry; cigarettes are intentionally highly addictive, and most people start when they are children. By the time they reach 18, it is too late for them to give consent. We must confront the industry, and one of the ways we do that is by monitoring (and hopefully reducing) their influence on policy making.

## Acknowledgements

ASH would like to thank the team at the Global Centre for Good Governance in Tobacco Control (GGTC) and STOP (Stopping Tobacco Organizations and Products) for giving us the opportunity to contribute to The Global Tobacco Industry Interference Index and for technical assistance and guidance for the preparation of this U.S. report.

We would also like to thank the state and local advocacy representatives of local, state and national organizations that helped us develop this report by providing detailed information of their experiences with tobacco industry interference.

Finally, we would like to thank our long-time collaborator, Doug Matheny, Programs and Initiatives Manager for State and Local Policy at the TSET Health Promotion Research Center.



Global Center for  
Good Governance  
in Tobacco Control



A GLOBAL  
TOBACCO  
INDUSTRY  
WATCHDOG

# Introduction

## PREFACE

2020 is not just another year, or even just another election year. Cell phone footage has starkly underlined our failure as a society to overcome centuries of entrenched racism and injustice in this country. We are also in the midst of an historic pandemic, which itself has exposed some of the ramifications of inequality. Many will be happy to put 2020 behind

them, but we can't lose sight of the opportunity before us. Sickness cannot be treated until it is diagnosed, and the diagnosis is clear. All of us, including and especially those of us in positions of privilege, must recognize and act against the diseases of racism, inequality and injustice.

## BACKGROUND

Three key facts help to set the stage for this report:

- 1 Tobacco use is the leading cause of disease and early death in the U.S.[1],**
- 2 The most effective strategies for reducing tobacco use involve public policy[2] and,**
- 3 The greatest barrier to enacting effective public policy is tobacco industry interference.[3] Exacerbated by aggressive tobacco industry marketing tactics, the ever-mounting cumulative costs in human suffering are incalculable.**

The tobacco industry has long meddled with the process of enacting effective tobacco control laws. Previously secret internal industry documents (made public by court order) show that tobacco companies have led successful efforts to defeat—separately and in all 50 states—proposed legislation to restrict public smoking, raise tobacco taxes, limit tobacco marketing, develop tobacco prevention or research, and reduce youth access to tobacco.[4] When they cannot stop such bills, tobacco companies fight to weaken them and insert self-serving clauses (e.g., preemption of local ordinances).[5] Many counter-productive laws written or influenced by the tobacco industry are still in effect today.[6] All states' tobacco control laws fall far short of best practices.[7]

---

[1] U.S. Centers for Disease Control and Prevention. [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm).  
[2] Reducing Tobacco Use. A Report of the Surgeon General. 2000. [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2000/complete\\_report/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/2000/complete_report/index.htm).  
[3] 2018 Global Progress Report on Implementation of the WHO Framework Convention on Tobacco Control. <https://www.who.int/fctc/reporting/WHO-FCTC-2018-global-progress-report.pdf?ua=1>.  
[4] Matheny JD, Stevens EM, Chen S, et al. The RICO Verdict and Corrective Statements: Catalysts for Policy Change? *Tob Regul Sci*. 2019; 5(3):206-228.  
[5] Givel MS, Glantz SA. Tobacco lobby political influence on US state legislatures in the 1990s. *Tob Control*. 2001;10:124-134.  
[6] Centers for Disease Control and Prevention (CDC). State Tobacco Activities Tracking and Evaluation (STATE) System. Preemption on smokefree indoor air, youth access, and licensure. <https://chronicdata.cdc.gov/Legislation/Map-of-Preemption-on-Smokefree-Indoor-Air-Youth-Ac/xf8-h9us>.  
[7] American Lung Association. State of Tobacco Control 2020. <https://www.lung.org/research/sotc>.

***“Please get these  
checks back to us  
as soon as possible...”***

**- R.J. Reynolds Tobacco Company.**  
Request for PAC checks. March 27,  
2000. SEE DOCUMENT

## OVERVIEW

As the leading preventable cause of death, tobacco kills an estimated 480,000 family members, friends and neighbors in the U.S. each year. We will never know how many lives could have been saved if not for decades of tobacco industry interference in lawmaking. Moving forward, it is clear that regular monitoring and public reporting of such interference has become a moral imperative.

In the United States, as in most countries, the tobacco industry thrives in opacity where its strategies to influence policy can be shielded and hidden from public scrutiny. Conversely, shedding light on tobacco industry interference in lawmaking can have a massive impact. By taking concerted and sustained action to heighten awareness and increase transparency, public health advocates can “denormalize” lawmakers’ acquiescence and vastly improve the legislative climate for enacting best practices in tobacco control across the nation.

The WHO Framework Convention on Tobacco Control (FCTC) calls on all countries to protect their tobacco control policies from tobacco industry interests. To this end, the Global Tobacco Industry Interference Index was created to objectively assess and systematically raise awareness of tobacco industry interference in public policy in countries around the world. The Index is based on publicly available data, with each country scored using 20

standard indicators of tobacco industry interference in lawmaking.

This is the second year that the United States has participated in the Global Tobacco Industry Interference Index. In the first report, for calendar year 2018, the country scored 72/100, reflecting a high level of interference, placing the country among the worst performing countries in terms of shielding itself from tobacco industry interference in lawmaking. In this second report, for calendar year 2019, the United States garnered an overall score of 66, indicating some progress but still an unacceptably high level of interference ranking in the upper tier among all participating nations. The US score is more than double that of the United Kingdom or France which scored 32 and 27 respectively.[8] It is also substantially higher than either Canada or Mexico, each of which scored 47.[9]

In addition to the scores and rationale for the 20 standard indicators, this year’s report includes a separate section featuring nine “state snapshots” submitted by public health advocates providing examples of recent experiences with tobacco industry interference at the local and state level. We hope that in the future this section will continue to expand and more fully reflect the nature and scope of tobacco industry interference in the U.S.

---

[8] <https://globaltobaccoindex.org/>.

[9] <https://globaltobaccoindex.org/>.

Consistent with the landmark 2006 federal racketeering ruling that major U.S. tobacco companies would likely continue their fraudulent behavior, the indicators and snapshots in this report show that the companies are continuing to work behind the scenes to defeat or weaken proposed

tobacco control legislation. Despite claims that they have changed, tobacco companies are still using their vast resources to deceptively market deadly products, communicate false narratives, and reward front groups and legislative allies with contributions and gifts.

## Top U.S. Tobacco Companies are Racketeers

An ongoing federal racketeering case filed in 1999 resulted in a 2006 ruling that major U.S. tobacco companies – including Altria, Philip Morris, and R.J. Reynolds – had engaged in a five-decade organized conspiracy to commit fraud. The companies had not only defrauded the public, but also lawmakers. Documenting 145 distinct violations of federal civil racketeering laws, the court concluded that the companies’ illegal behavior would likely continue indefinitely. In late 2017, the defendants finally began to publish court-ordered “corrective statements” only after the wording and potential impact of the statements had been weakened by extensive appeals and delays. The federal racketeering case remains active, with tobacco companies still fighting to avoid public posting of the corrective statements at retail points-of-sale.



Photo source: <https://www.tobaccofreekids.org/what-we-do/industry-watch/doj>

# Index Indicators

The indicators highlighted in this section represent common opportunities for tobacco industry interference. Each country participating in the Global Tobacco Industry Interference Index is given a score for each indicator based on their level of implementation of Article 5.3 of the FCTC. The Global Index as well as scores for all participating countries can be found at [exposetobacco.org](https://exposetobacco.org). The following tables demonstrate U.S. scores for each individual Global Tobacco Industry Interference Index indicator, reflecting research and data obtained from documented industry interference in calendar year 2019. The lower the score the better the ranking.

## A. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

In terms of tobacco control and regulation, domestic policymaking in the United States is not concentrated in one central authority. Rather, it occurs at various levels, from the federal and state to local governments.

At the federal level, regulation is lodged mainly with the Food and Drug Administration (FDA). For tobacco regulation in particular, the FDA Tobacco Products Scientific Advisory Committee reports and recommends to the FDA Commission on the safety and health issues relating to tobacco products. The Committee comprises 12 members, nine of which are voting members and come from the medical or scientific fields. The three non-voting members, however, are identified with industry interests. Of these three non-voting members, one representative must come from the tobacco manufacturing industry, one from tobacco growers, and one from small business tobacco manufacturing.[10]

In 2019, the tobacco industry spent USD 28,085,063 on lobbying,[11] up from USD 23,426,000 in 2018. [12] Lobbying efforts included initiatives to raise the minimum age of purchase to 21. Health advocates,

however, warned that this is an old strategy employed by tobacco companies to appear good while pushing for weaker legislation that provides for exemptions, pre-empts stricter local measures, and guarantees ineffectual enforcement.[13] It also relieves pressure from tobacco and e-cigarette companies from other regulatory concerns, such as flavored pods and targeted advertising.

In September 2019, new e-cigarette giant, JUUL Labs donated to the New Democrat Coalition Action Fund (\$5,000) and Clay Jr. for Congress (USD1,000).[14]

In December 2019, President Trump signed into law federal legislation raising the minimum age of purchase to 21.[15] The law came from a bill endorsed by Majority Leader Republican Senator Mitch McConnell and Virginia Democratic Senator Tim Kaine, who are both recipients of campaign donations from the tobacco industry.[16]

[10] <https://www.fda.gov/advisory-committees/committees-and-meeting-materials/tobacco-products-scientific-advisory-committee>.

[11] <https://www.opensecrets.org/federal-lobbying/industries/summary?cycle=2019&id=A02>.

[12] <https://www.opensecrets.org/federal-lobbying/industries/summary?cycle=2018&id=A02>.

[13] <https://publicintegrity.org/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/>.

[14] <https://blogs.bmj.com/tc/2020/03/22/world-tobacco-industry-hydras-many-political-investment-heads/>.

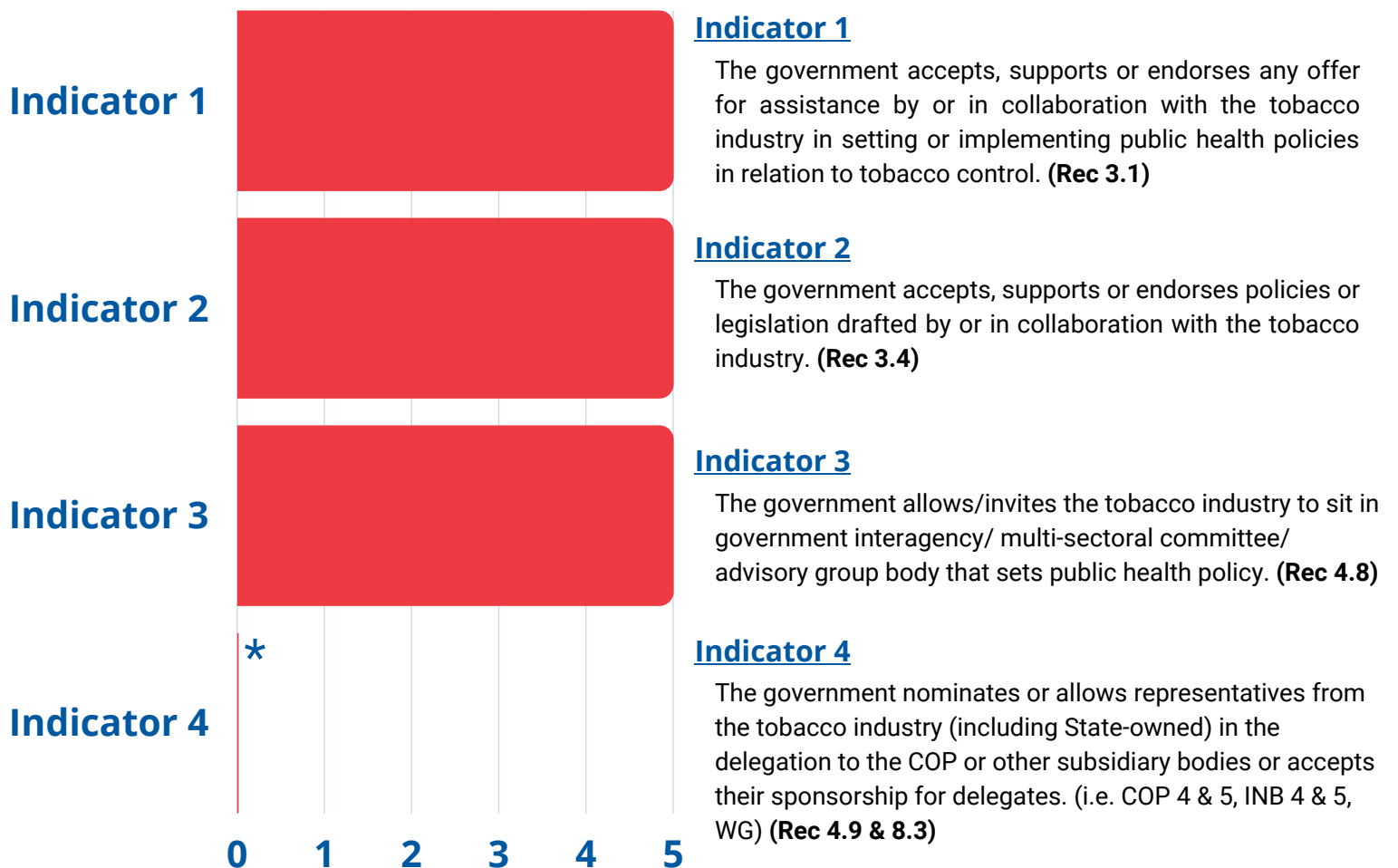
[15] <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>.

[16] <https://publicintegrity.org/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/>.

***"Company strategy: Defeat or limit legislative attempts to increase cigarette taxes, restrict cigarette advertising and promotion, limit smoking opportunities and regulate industry matters."***

- R.J. Reynolds Tobacco Company. Action Plan and Budget. September 28, 1989. SEE DOCUMENT

## INDICATORS 1-4: Level of Industry Participation in Policy-Development



★ Zero would normally be a positive thing, but in this case, the U.S. only has a zero because they have not ratified the WHO Framework Convention on Tobacco Control (FCTC). This means the U.S. doesn't have an official COP delegation for the industry to infiltrate.

Every Indicator description ends with a **Rec** reference to the related Recommendation it follows in the **Guidelines for Implementation of Article 5.3 of the WHO FCTC**, [available here](#).

# Examples of Interference

## Arkansas



In 2019, **JUUL successfully lobbied** for T-21 legislation in Arkansas that included language preempting local governments from enacting any laws on the manufacture, sale, storage or distribution of tobacco products, including restrictions on flavored tobacco products.[17]

## Arizona



**Altria and Juul backed a bad Tobacco 21 bill** in Arizona that would have blocked cities, towns and counties from regulating the sale of tobacco products. The bill would have overridden virtually every local regulation now in existence, ranging from how far tobacco shops have to be from schools to enhanced penalties for retailers who sell to anyone who is underage. About the only thing that local governments would have been allowed to do is control tobacco and vaping use on government properties, including any publicly funded stadiums.[18]

## California



**JUUL was a sponsor of the 2019 California Democratic Party state convention.**[19] The vape product manufacturer – of which a 35% stake is owned by Altria – also spent more than \$211,000 in lobbying at the Capitol in Sacramento and bought advertising in capital media. Also in 2019, Juul collected 9,500 signatures needed to place a ballot measure on the November 5 election in San Francisco that would have preempted and overruled the city's ban on flavored tobacco products (including e-cigarettes) as well as the city's Tobacco 21 law and legislation previously passed that prohibited the sale of e-cigarettes in San Francisco until the FDA issues an order authorizing their sale.[20]

On August 31, 2020, the California Coalition for Fairness, funded by R.J. Reynolds and Philip Morris, filed a notice with the state to seek a referendum on the statewide law signed that same month by Governor Gavin Newsome to ban the sale of flavored tobacco products. If opponents qualify for a referendum by collecting signatures of 623,212 registered voters by December 10, implementation of the flavor ban will be delayed for two years (required to be placed on hold until the next statewide general election in November 2022).[21]

[17] <https://www.nytimes.com/2019/04/28/health/juul-lobbying-states-ecigarettes.html>.

[18] [https://tucson.com/news/local/industry-backed-bill-would-block-local-arizona-regulations-on-tobacco/article\\_cf417f82-d40d-50a5-abea-cce680e397bb.html](https://tucson.com/news/local/industry-backed-bill-would-block-local-arizona-regulations-on-tobacco/article_cf417f82-d40d-50a5-abea-cce680e397bb.html).

[19] <https://www.sacbee.com/news/politics-government/capitol-alert/article231228168.html>.

[20] <https://www.forbes.com/sites/kenrickcai/2019/06/26/juul-readies-backdoor-plan-to-dodge-san-francisco-e-cigarette-ban-with-november-vote/?source=bloomberg#6b3058782671>.

[21] <https://www.retailtobacconists.com/big-tobacco-goes-big-in-effort-to-quash-law-banning-sales-of-flavored-tobacco-products>.

*“So our defensive strategy is just to keep on keeping on. We use events, charitable contributions, and entertainment of standing committees.”*

- Philip Morris Tobacco Company. Southwest Region  
State Legislative Summary. 1989. SEE DOCUMENT

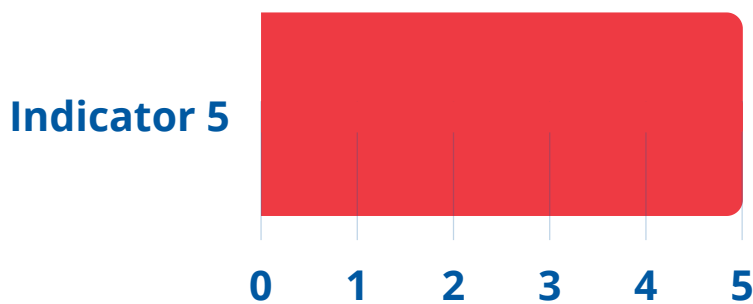
## B. TOBACCO INDUSTRY CORPORATE SOCIAL RESPONSIBILITY (CSR) ACTIVITIES

Companies often employ corporate social responsibility (CSR) activities to build goodwill and boost their reputation with the community. The same is true with the tobacco industry, which funds cessation programs and provides research grants to schools, among others, as CSR tactics.[22] These activities, however, are veiled attempts to present a

socially responsible image to deflect criticisms from unethical practices.

In 2019, Juul donated \$7.5 million to Meharry Medical College, a historically black college, to fund a public health center.[23]

### INDICATOR 5: Tobacco Industry CSR Activities



#### Indicator 5

A. The government agencies or its officials endorse, support, form partnerships with or participate in so-called CSR activities organized by the tobacco industry. **(Rec 6.2)**

B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). **(Rec 6.4)**

## Colorado

Big Tobacco launched a **forceful effort to stop a bill** that would ask Colorado voters to approve a cigarette tax increase and a new nicotine tax, spending thousands of dollars on a social media campaign against it and hiring some of the most powerful lobbyists at the state Capitol to ensure the measure was killed. Their opposition came quickly – even before the measure was introduced, state records suggest.[24]

[22] [https://tobaccotactics.org/index.php/CSR\\_Strategy](https://tobaccotactics.org/index.php/CSR_Strategy).

[23] Hartmann-Boyce J, Begh R, Aveyard PJB. Electronic cigarettes for smoking cessation. 2018;360:j5543.

[24] <https://coloradosun.com/2019/04/30/colorado-nicotine-tobacco-tax-proposal-opposition/>.

***“The only reason many legislators will vote against a tobacco tax increase is because of his friendship with the tobacco lobbyist.”***

- Letter to Tobacco Institute President Sam Chilcoate from Tobacco Institute lobbyist Gaylord Armstrong. January 25, 1983. SEE DOCUMENT

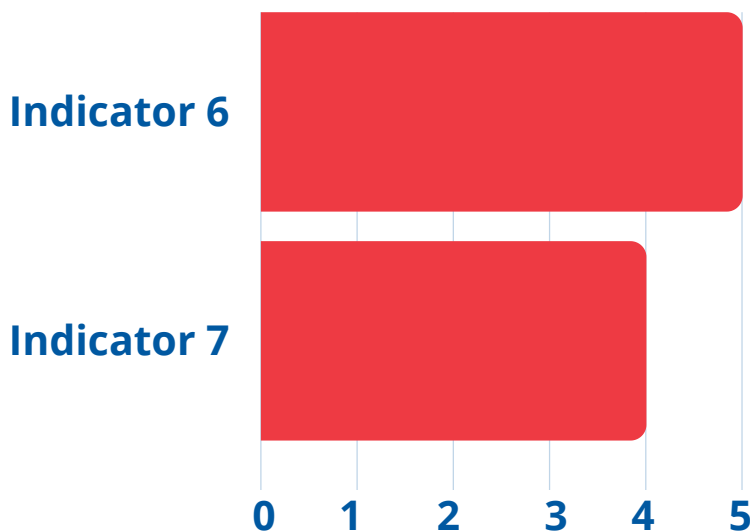
## C. BENEFITS TO THE TOBACCO INDUSTRY

In May 2019, a federal judge ordered the FDA to start a review of e-cigarettes and finish the same by May 2020. The judge ruled that the FDA failed to enforce its mandate when it allowed the sale of e-cigarettes, including flavored ones that appeal to youth, without reviewing their health effects. Recently, however, the FDA asked for a 120-day extension due to the COVID-19 pandemic. The request for extension was

granted.[25]

In September 2019, the Trump administration also announced its plan to stop the sale of flavored e-cigarettes unless the manufacturers can present a public health benefit.[26] By November 2019, the administration indicated that it may reverse itself and has not moved forward with its original plan.[27]

### INDICATORS 6-7: Benefits to the Tobacco Industry



#### Indicator 6

The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for pictorial health warnings, Tax increase can be implemented within 1 month) (Rec 7.1)

#### Indicator 7

The government gives privileges, incentives, exemptions or benefits to the tobacco industry. (Rec 7.3)

[25] <https://www.cspdailynews.com/tobacco/pmta-deadline-delay-granted>.

[26] <https://truthinitiative.org/research-resources/emerging-tobacco-products/action-needed-e-cigarettes>.

[27] <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>.

***“Our field staff and lobbyists use a variety of tactics to fight this kind of legislation. We regularly communicate with and influence appointments to the legislative committees that would traditionally review such bills.”***

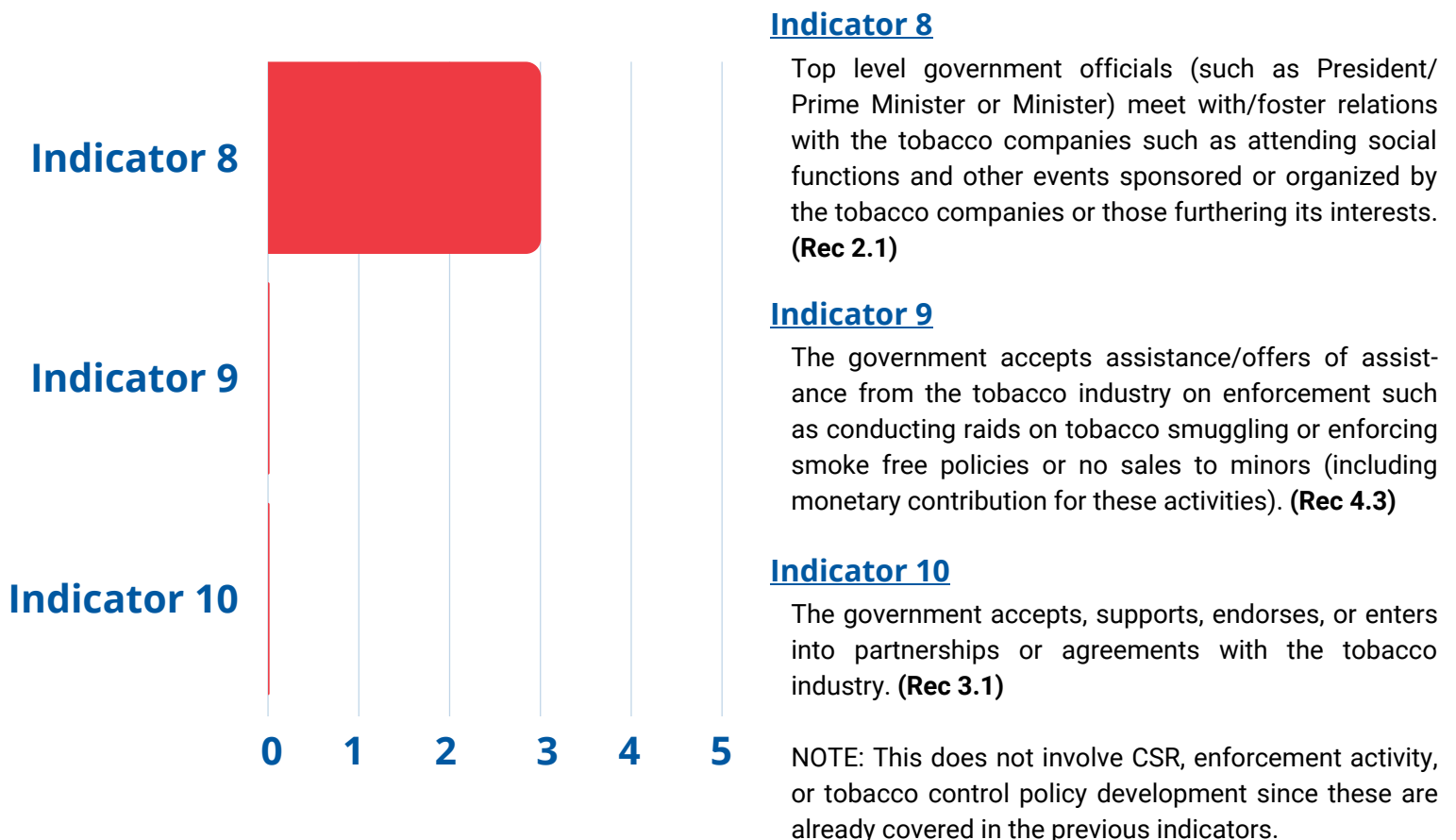
- Tobacco Institute. Outline for Winter Meeting Presentations on Public Smoking. January 8, 1985. SEE DOCUMENT

## D. UNNECESSARY INTERACTION WITH THE TOBACCO INDUSTRY

Corporate lobbyists that represent the tobacco industry mingled with Senate Majority Leader Mitch McConnell at a fundraiser for the National Republican Senate Committee hosted by two former McConnell staffers.[28]

The same month McConnell announced the bill to increase the purchase age of tobacco, members of the vaping industry trade group Vapor Technology Association met with McConnell’s staff.[29]

### INDICATORS 8-10: Forms of Unnecessary Interaction



[28] <https://www.politico.com/newsletters/politico-influence/2019/05/14/republican-lobbyists-to-mingle-with-mcconnell-at-nrsc-fundraiser-436358>.

[29] <https://www.npr.org/2019/06/17/730496066/tobaccos-special-friend-what-internal-documents-say-about-mitch-mcconnell>.

# Examples of Interference

## New York



The Tobacco Hooks Kids Committee was pursuing a ban of all flavors (including menthol) in all tobacco products in New York State. The tobacco industry sent lobbyists to the state capitol and worked with the Reverend Al Sharpton and his group the National Action Network and Keith L.T. Wright, the boss of the Manhattan Democratic Party, to raise the specter of unfair police enforcement (invoking Eric Garner) of black people smoking menthol cigarettes. The bill has since been set aside.

**Altria is in line to spend nearly \$800,000 this year on lobbying in New York;** much of it state lobbying, and some on local ordinance lobbying, according to a review of lobbying records and retainer agreements for the Virginia-based firm. Other big lobbying spenders: Juul (\$516,000); RJR (\$369,000); a cigar trade group (\$57,000); a state and national vapor association (\$150,000); Top Tobacco (\$78,000); SI Group Client Services (\$55,000), and others. In all, they will spend more than \$2 million this year in New York State. Kenmore-based Magellan Technologies employs 200 people locally; it makes and distributes flavored vaping products nationwide. It is spending \$120,000 on a single lobbyist: Joel Giambra, the former Erie County executive. Former Buffalo Assemblyman Sam Hoyt, who ran Cuomo's economic development agency in the region, also was signed up as a Magellan lobbyist.[30]

## Oklahoma



During 2019 and 2020, up to 14 contract lobbyists were registered to represent the tobacco industry at the Oklahoma State Capitol. Both years, **tobacco industry lobbyists succeeded in stalling legislation that would have closed major loopholes** in state smoking laws and restored the rights of Oklahoma communities to require smokefree workplaces. In 2020, the tobacco industry worked through their lobbyists to promote legislation of their own design to rewrite Oklahoma's statutory definitions for tobacco products. The proposed amendments would have exempted a broad range of emerging tobacco products – including the R.J. Reynolds Revel brand and the Swedish Match ZYN brand – from any state tobacco excise tax. Also in 2020, tobacco industry lobbyists in Oklahoma worked behind the scenes to ensure that proposed legislation to raise the legal age to purchase tobacco products to 21 (matching the recent change in federal law) did not address any other long-standing deficiencies in the 1994 Oklahoma Prevention of Youth Access to Tobacco Act. As a result, penalties and enforcement remain inadequate to deter Oklahoma's high rates of tobacco sales to youth, state tobacco retail licenses continue to cost only \$10 per year, and no license is required to sell addictive vaping products.

[30] <https://buffalonews.com/2020/02/17/lobbyists-line-up-as-albany-clash-over-flavored-tobacco-vape-products-intensifies/>.

# "215 *BILLS DEFEATED* *IN 43 STATES.*"

- Tobacco Institute. 1986  
Legislative Report.  
Summary of Activity in  
State Legislatures.  
February 12, 1987.  
[SEE DOCUMENT](#)

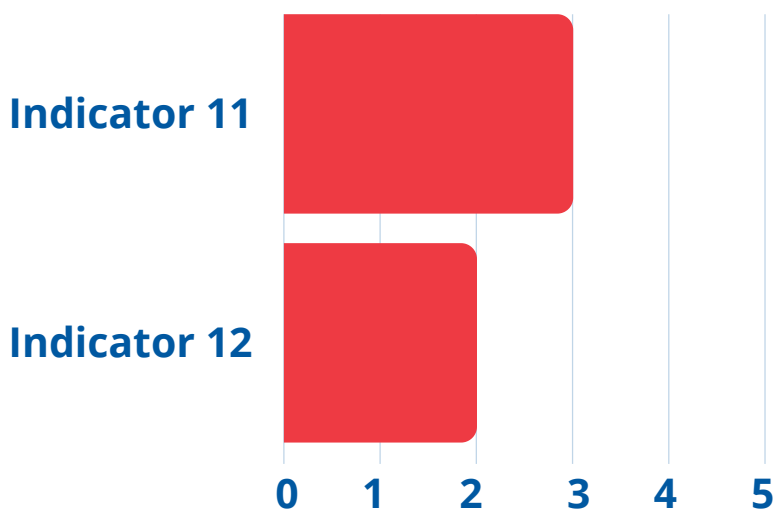
## E. TRANSPARENCY

At the federal level, the FDA has no policies regarding disclosure of public comments on cases in its dockets. It also does not have disclosure policies on communications between FDA officials and representatives from the tobacco industry.

At the state level, most states do not require lawmakers to disclose the full extent of their engagements with lobbyists. However, all states do have laws on registration of lobbyists and entities who engage their services. This information is available to the public.[31]

For the tobacco industry in particular, several laws mandate disclosure of certain information. The Family Smoking Prevention and Tobacco Control Act requires annual registration of tobacco companies. The Federal Lobbying Disclosure Act requires registration of in-house lobbying for firms that meet a certain income/expense minimum. Tobacco firms are also required to secure permits from the Alcohol and Tobacco Tax and Trade Bureau and the Internal Revenue Service.

### INDICATORS 11-12: Transparency



#### Indicator 11

The government does not publicly disclose meetings/interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. **(Rec 2.2)**

#### Indicator 12

The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists **(Rec 5.3)**

[31] Matheny JD, Stevens EM, Chen S, Christiansen BA, Kowitt SD, Osman A, Vidrine DJ. The RICO Verdict and Corrective Statements: Catalysts for Policy Change? Tob Regul Sci. 2019;5(3):206-228.

## F. CONFLICT OF INTEREST

The United States has a long history of tobacco interference through active political lobbying. For the 2019-2020 election cycle, a total of \$5,472,394 of political campaign contributions has come from the tobacco industry.[32] This donation total was released by the Federal Election Commission on Friday, October 23, 2020.

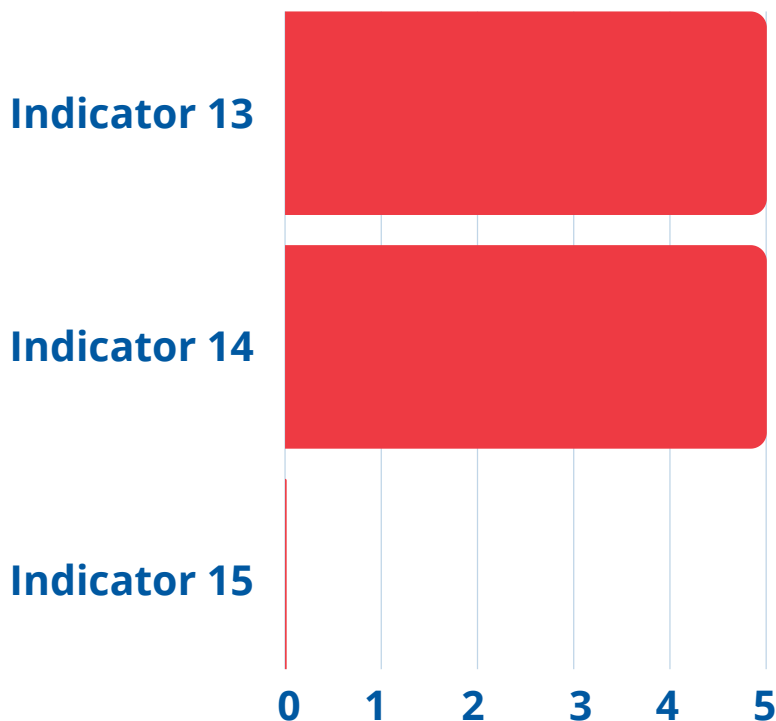
In 2019, of the 280 tobacco lobbyists reported by the Center for Responsive Politics, 217 are “revolvers” or former government regulators, congressional staff, or members of Congress who are now employed by lobbying firms or the private sector.[33]

Tobacco industry influence can be found at the highest levels of government. For example, Altria Client Services is run by U.S. Senate Majority Leader Mitch McConnell’s former chief of staff, Steven Law, and two former McConnell staffers, Hunter Bates and Brendan Dunn are partners at lobbying firm Akin

Gump Strauss Hauer & Feld and the firm lobbied Congress for Altria on tobacco 21 legislation.[34] Hazen Marshall, Mitch McConnell’s former policy director, registered to lobby for Altria on “issues related to the regulation of tobacco products, tobacco excise taxes, corporate taxes, and Tobacco 21 legislation” in April, and Texas Senator John Cornyn’s recent chief of staff left Congress in January to open a lobbying firm called Marshall & Popp.[35]

The United States rule promulgation system is extremely complex involving multiple agencies and oversight and guidance by both the executive and legislative branches. Navigating the system is difficult, and individual officials who understand it need not be in powerful positions to strongly influence results. The tobacco industry has long been successful in placing its former employees in key positions throughout the bureaucracy.

### INDICATORS 13-15: Conflict of Interest



#### Indicator 13

The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. **(Rec 4.11)**

#### Indicator 14

Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General). **(Rec 4.4)**

#### Indicator 15

Current government officials and relatives hold positions in the tobacco business including consultancy positions. **(Rec 4.5, 4.8, 4.10)**

[32] <https://www.opensecrets.org/industries/totals.php?cycle=2020&ind=a02>.

[33] <https://www.opensecrets.org/federal-lobbying/industries/lobbyists?cycle=2019&id=A02>.

[34] <https://readsludge.com/2019/05/28/mcconnells-tobacco-21-bill-exposes-states-to-big-tobaccos-wishlist/>.

[35] <https://readsludge.com/2019/05/28/mcconnells-tobacco-21-bill-exposes-states-to-big-tobaccos-wishlist/>.

***“Attached is a list of contributions we intend to make with the downloaded PHIL PAC funds.”***

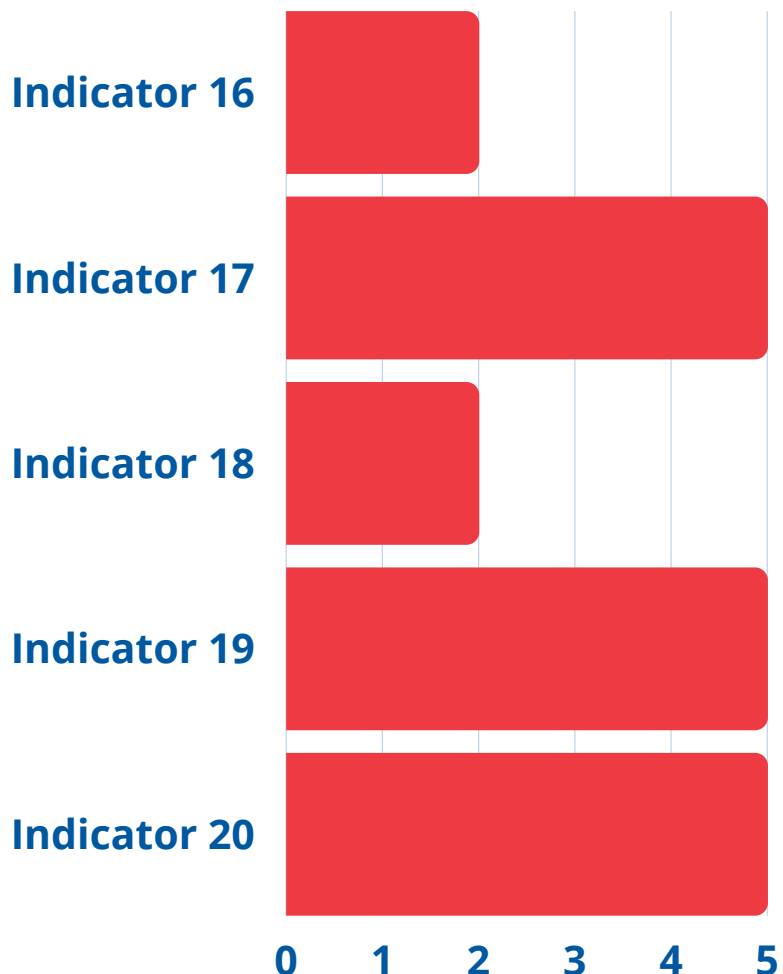
- Philip Morris USA. Interoffice Correspondence.  
Phil PAC Download to Oklahoma PAC. June 16, 1992. SEE DOCUMENT

## G. PREVENTATIVE MEASURES

The FDA Tobacco Scientific Advisory Committee provides links to agendas, rosters, webcasts, presentations, public submissions, minutes and

questions for their meetings. Federal oversight is also conducted by several government agencies (for example FDA, IRS, CDC, ATB).

### INDICATORS 16-20: Preventative Measures



#### Indicator 16

The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. **(Rec 5.1)**

#### Indicator 17

The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. **(Rec 4.2)**

#### Indicator 18

The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. **(Rec 5.2)**

#### Indicator 19

The government has a program/system/plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. **(Rec 1.1, 1.2)**

#### Indicator 20

The government has put in place a policy to disallow the acceptance of all forms of contributions/gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. **(Rec 3.4)**

# Conclusion and Recommendations

By exposing tobacco industry interference, public health advocates can help reinvigorate stalled tobacco control initiatives and accelerate adoption of effective laws. Much like the norms in a community will change after enacting comprehensive smoke-free laws, norms related to tobacco industry interference will change within legislative bodies when tobacco companies and their allies are held publicly accountable. As an ethical matter of principle and reflecting strong public opinion, lawmakers should refuse all tobacco industry interference and immediately work to correct past harms.

Though not a prerequisite for greater action at other levels of government, the U.S. should formally ratify the FCTC and enact a federal law to implement it. In the meantime, the real battleground for progress against the tobacco epidemic will continue to be at the state and local level, and that progress will be much more rapid if we can eliminate industry interference. Included below are several recommended interventions, fully scalable and adaptable for affecting change in every state and community. The time is now.

## 1 RAISE AWARENESS

Recognizing the problem is the first step to solving it. Raising awareness of tobacco industry interference in lawmaking should be considered a key component of the comprehensive tobacco control “vaccine.” Advocates can employ earned media strategies such as press events, op-eds and letters to the editor to highlight the impact of past and present tobacco industry interference and the urgent need for corrective action.

## 2 EMPLOY AVAILABLE RESOURCES

Existing fact sheets, resolutions, infographics, and social media resources can be adapted as needed to disseminate key findings from the ongoing federal racketeering case, related quotes from internal tobacco industry documents, and other helpful information (see Resources on page 20 of this report).

## 3 LEVERAGE PUBLIC SUPPORT

There is strong public support against tobacco industry interference in lawmaking and for effective tobacco control laws. This support can be demonstrated and leveraged using organizational resolutions, constituent petitions, letter-writing campaigns and other grassroots mobilizations to help build a strong consensus among elected leaders to reverse decades of tobacco industry interference, including correcting current laws written or influenced by tobacco companies and their front groups (e.g., preemption, inadequate tobacco taxes, smoking law loopholes, etc.).

## **4 TRACK LOBBYING ACTIVITIES**

While a complete ban on corporate lobbying would be unconstitutional in the U.S., all states require some form of lobbying registration and reporting. As already required in some states, such requirements should include timely reporting of all expenditures for or against specific legislation and what proportion of lobbyists' services or campaign contributions, meals or gifts are financed by each of their clients, including tobacco companies.

## **5 INCREASE TRANSPARENCY**

In addition to full reporting of lobbying expenditures, government officials could reasonably be required to report virtually all interactions with any corporate entity that has an adjudicated record of federal racketeering. Since the tobacco industry operates as furtively as it can, disclosure of all interactions with lawmakers – including full transcripts of meetings – would help to deter interference.

## **6 ADOPT OFFICIAL CODES OF CONDUCT**

Public office is a public trust. The principal objective of each public official is the welfare of the people. Hence, official codes of conduct – including strict rules against conflicts of interest – should be adopted to prevent or lessen interference from regulated industries. Such action is especially warranted to protect against interference from the uniquely destructive tobacco industry.

## **7 REJECT TOBACCO INDUSTRY GIFTS**

In the private sector, officers and boards should adopt organizational policies to reject any "Corporate Social Responsibility" (CSR) activities or other proposed partnerships that could be used by the tobacco industry to provide political cover that might help defeat, weaken, or delay essential public policies.

## **8 DIVEST FROM TOBACCO**

Several states and localities have already voluntarily complied with the FCTC Article 5.3 requirements to divest all public funds (including all government pension funds) from tobacco; others should follow.

# Examples of Interference

## Oregon



The tobacco industry, including JUUL, was successful in derailing what would have been the first flavor ban in Oregon. On January 8, 2020, the Clatsop County Board of Commissioners (BoCC) adopted a Tobacco Retail License ordinance (TRL), the strongest in the state of Oregon because of its inclusion of prohibitions on price discounts and coupon redemption. The final proposed ordinance contained a flavor ban on all nicotine containing products and sailed through the BoCC first reading without a hitch and was supported by all five city councils. Before the second reading, the Public Health Director received a call from a representative of a national tobacco retailer association just inquiring about the TRL. Each commissioner also received a letter from a JUUL representative offering to help write a better ordinance.

The night of the second reading several retailers, smokers and vapers showed up to protest the flavor ban and accused advocates of “bait and switch” because an earlier copy of the ordinance did not include the flavor ban. The JUUL lawyer showed up and repeated her offer of assistance to help write a better ordinance. As a result, the Chair called for an uncommon third reading. In the meantime, county management and the BoCC decided it was best to take out the flavor ban and get the ordinance in place first and then go back with the flavor ban at a later date. The pandemic hit shortly after and the flavor ban is no longer on the radar.

## Texas



The tobacco industry attempted a last-minute change on a proposed tax on e-cigarettes in 2019. The **new language was drafted by Altria lobbyists** and brought to the governor’s staff the night before the vote. The change would have imposed a nominal tax on e-cigarettes that would have had no impact on public health. Ultimately, the bill died due to an administrative technicality.[36]

## Utah



In 2020, the Utah state legislature was poised to pass strong legislation to address youth e-cigarette use in the state, but **industry interference resulted in a weakening of the policies**. Vaping industry lobbyists with close ties to state representatives worked behind the scenes to reduce the impact of vaping-related bills, including lowering the level of the originally proposed e-cigarette tax, adding exemptions to a strong proposal to prohibit the sale of flavored e-cigarettes, and amending a proposal so that vape shops could continue to sell products in areas frequented by kids.[37]

[36] <https://www.dallasnews.com/news/texas-legislature/2019/05/09/big-tobacco-texas-gov-greg-abbott-push-late-changes-bill-taxing-e-cigarettes-vape-products>.

[37] <https://www.sltrib.com/news/politics/2020/03/24/utah-lawmakers-passed/>.

# Resources

- Action on Smoking and Health. Publications.
- Americans for Nonsmokers' Rights. United States v. Philip Morris USA Inc., et al.: The Case against Big Tobacco.
- Campaign for Tobacco Free Kids. Tobacco Industry Interference with State Policy.
- Campaign for Tobacco Free Kids. Industry Watch: Policy Interference.
- Campaign for Tobacco Free Kids. Big Tobacco: Exposing its Deadly Tactics.
- Campaign for Tobacco Free Kids. U.S. Racketeering Verdict: Big Tobacco Guilty as Charged.
- Campaign for Tobacco Free Kids. Corrective Statements: Ads and Social Media.
- Minnesotans for a Smoke-free Generation. Big Tobacco Lies have Served them Well – Until Now.
- Public Health Law Center. United States v. Philip Morris (DOJ Lawsuit).
- Public Health Law Center. Racketeers at the Table: How the Tobacco Industry is Subverting the Public Health Purpose of Tobacco Regulation.
- Public Health Law Center. The Verdict Is In: Findings from United States v. Philip Morris.
- **STOP: Global Tobacco Industry Interference Index.**
- **STOP: Crooked Nine: Nine Ways the Tobacco Industry Undermines Health Policy.**
- TSET Health Promotion Research Center: Tobacco Regulatory Science
- UCSF Truth Tobacco Industry Documents. Topical Collection: Tobacco Industry Influence in Public Policy.
- UCSF Center for Tobacco Control Research and Education. Reports on State Tobacco Policy Making.
- United States Department of Justice. Litigation against Tobacco Companies.
- World Health Organization. Tobacco Industry Interference with Tobacco Control.
- World Health Organization. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry.

# U.S. Tobacco Industry Interference Index

HQ@ash.org  
(202) 659 - 4310  
Washington, D.C.



@ASHorg



Facebook.com/ASHglobalAction

# ASH

ACTION  
ON SMOKING & HEALTH

*Dedicated to ZERO Tobacco Deaths*

