TOBACCO INDUSTRY INVOLVEMENT IN COLORADO

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AMERICAN LUNG ASSOCIATION® of Colorado

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Table of Contents

ABSTRACT

Objective: To determine how the tobacco industry has worked behind the scenes in the state of Colorado to influence the public and defeat public health efforts to control tobacco.

Methods: Information for this study was gathered through examination of internal tobacco industry documents, Colorado Secretary of State records, local campaign contribution records, published articles, interviews, reports, web sites and telephone calls.

Results: The tobacco industry has been pervasively involved in fighting public health efforts to reduce tobacco use in Colorado since the early 1980s. Up until the early 1990s, the industry's involvement was apparent. Shortly thereafter, significant efforts were made to conceal its opposition in Colorado. The industry has primarily applied its resources to defeat tobacco tax increases, derail efforts to limit public smoking and preserve smoking as a socially acceptable behavior. Tactics include influencing and co-opting state legislative processes, strategic utilization of philanthropy, sponsorships and advertising to fight public health efforts, working to divert funding away from existing tobacco education and prevention programs, camouflaging corporate involvement , engagement of paid consultants and front groups, and extensive media and local policy involvement.

Conclusions: The tobacco industry has fought public health efforts to regulate tobacco at both the state and local levels in Colorado for more than two decades. Involvement in opposing public health initiatives has grown, but at the same time become less clear to the public. Industry opposition has been highly organized and well funded, and is increasingly carried out on the local level by third parties rather than the industry itself. The industry's efforts have slowed the progression of public health efforts to address tobacco issues in Colorado, primarily through derailing efforts to enact clean indoor air laws and blocking increases in state tobacco taxes.

BACKGROUND

The 1998 Master Settlement Agreement between the tobacco industry and 46 state attorneys general required the tobacco industry to make multi-million dollar payments to the states over the next 25 years. In addition, a lesser-known provision of the settlement compelled the industry to post tens of millions of its previously secret internal corporate documents on the Internet. These are documents that were involved in litigation with the 46 states.

Exposure of such a tremendous cache of previously hidden corporate documents is unprecedented and carries tremendous implications for public health. According to the United States Centers for Disease Control (CDC), over 27 million tobacco industry documents are currently available for viewing on the Internet, with more continuously coming on-line. Actual copies of the documents are housed in a warehouse in Minneapolis, Minnesota with digital copies are available on the Internet in various formats (.tif, .pdf, .gif, etc.). The tobacco companies are required to continue uploading newer documents and maintain web sites until June 30, 2010. No passwords are required to access the on-line databases; they are available to anyone in the world who has access to the Internet.

METHODS

We searched the on-line industry document archives of Phillip Morris, www.pmdocs.com; Brown and Williamson, www.brownandwilliamson.com; R.J. Reynolds, www.rjrtdocs.com; Lorillard, www.lorillarddocs.com; and Tobacco Institute, www.tobaccoinstitute.com. We also used two additional "meta-sites" currently operated by non-industry entities that allow readers to search across all of the above document sites at one time: the Legacy Tobacco Document Library (operated by the University of California San Francisco) at http://legacy.library.ucsf.edu/index.html, and Tobacco Documents Online (TDO) at www.tobaccodocuments.org, in Washington, D.C. TDO features the powerful additional feature of optical character recognition (OCR) scanning, which allows searching for keywords or entire phrases within the text of documents.

Initial search terms included combinations of keywords like "Colorado and tax," "Colorado and ban," "Fort Collins and ban," "Boulder and ban," "POGO" (acronym for a front group in Boulder), "Colorado Executive Committee" (set up by the Tobacco Institute in Denver to oppose tax increase), "Grand Junction," "Durango," "Telluride," "Montrose CO," "Colorado and ordinance," "Colorado and media," "Colorado and proactive," "Karsh and Hagan" (industry consulting firm in Colorado), "Hays Hays and Wilson" (industry lobbying firm in Colorado), "Pancho Hays" (industry lobbyist in Denver), and various combinations of these terms and the names of tobacco industry employees, representatives, contractors, allies, legislators, facilities, organizations and locations within Colorado. Searches were extended using the names of key individuals and organizations identified in relevant documents, as well as filenames, office locations, project dates, and adjacent reference Bates numbers. (Bates numbers are unique court identification numbers stamped on the lower corner of each document). Searches were conducted primarily between July 2003 and June 2004. Initial searches yielded thousands of documents. These were filtered and those most relevant to tobacco industry activities in Colorado were selected, yielding approximately 500 documents that were analyzed in further detail for this report.

The study was limited by the amount of time and the number of skilled personnel available to engage in research for the report. The industry's on-line document databases run approximately 16 to 24 months behind, so documents from 2003-04 were unavailable for examination. Since the Master Settlement Agreement compelled public exposure of the tobacco industry's documents on the Internet, company documents have been noted to be less disclosing of industry strategies, attitudes and intent.

INTRODUCTION

The tobacco industry's attention was first drawn to the growing sentiment favoring regulation of tobacco use in the United States in 1977, after Action Against Smoking and Health (ASH) and the Group Against Smokers Pollution (GASP) formed to advocate for nonsmoking sections in public venues. In 1977 the Group to Alleviate Smoking Pollution (GASP) of Colorado, (one of the earliest GASP groups to form in the United States) was created to advocate for smoke-free public places in Colorado. A year later the industry's attention was drawn to Colorado by proposals to restrict public smoking in Denver and Fort Collins, and efforts to post no-smoking signs in the city council chambers in Greeley, Colorado.(1)

Since that time, the industry has actively worked to counteract tobacco control activities in Colorado, using the general tactics of messaging and targeted strategies.

Tobacco Industry Attitudes Towards Public Health: The Motives Behind the Action

Documents show that the tobacco industry has long harbored antipathy towards public health authorities due to efforts to reduce tobacco-related disease. Philip Morris Corporate Affairs employee John Dollisson demonstrated the intensity of this corporate attitude in a 1988 corporate speech when he described public health advocates as **"snipers"** in a **"guerilla war"** who have **"laid minefields"** for the tobacco industry. In the speech, Dolisson referred to public health advocates as **"Meusli-eating, stool-watching joggers who know what is best for all of us**."(2) In a 1988 internal speech, Susan Stuntz (Director of Issues Management at the Tobacco Institute) referred to public health authorities as **"The Captain Kangaroos out there."**(3) In 1991, R.J. Reynolds executive Herbert Osmon demonstrated the industry's attitude towards public health proponents when he said, **"The goal** [of public health authorities] **was to scare** [smokers] **into quitting…They** [public health authorities] **will eventually be able to dance on our graves, because we won't be able to resist the pressures if we are not united**."(4)

The tobacco industry fights attempts to regulate tobacco use because such laws cut into their profits. In 1993 Philip Morris stated internally that the **"financial impact of smoking bans will be tremendous. Three to five fewer cigarettes per day per smoker will reduce annual manufacturer profits a billion dollars plus per year."**[5] Minutes of a Philip Morris internal strategy meeting point out that **"...Smoking bans are the biggest challenge we have ever faced. Quit rate goes from 5% to 21% when smokers work in nonsmoking environments."** Similarly, the industry fights increased taxes on cigarettes because higher cigarette prices provide a documented incentive for people to quit smoking.[6-8]

The industry has acted upon its adversarial attitude towards public health and its overriding concern for profits in Colorado for over thirty years, by conducting an extensive, multi-faceted battle to preserve smoking and hence cigarette sales within the state.

Industry Interference in Tobacco Tax Efforts in Colorado

The tobacco industry has interfered in efforts to increase the tobacco tax in Colorado for at least three decades. In the 1970s and 1980s, its opposition consisted of lobbying state legislators to oppose tax increases on tobacco products. Its lobbying efforts were remarkably successful in holding off tax increases on tobacco products for decades. In the wake of Colorado legislators' prolonged lack of will to act on the issue (and more recently as a result of the Taxpayer Bill of Rights, or TABOR amendment, which requires state-wide tax increases to be voted on by the people) the tobacco tax issue has moved to the ballot box. Since 1990, the industry has opposed two formal ballot initiatives to increase the tobacco tax in Colorado (1990 and 1994). Both times the industry was successful in defeating these efforts.

The 1990 Tax Effort

In 1990, Colorado citizens proposed an initiative to increase the tobacco tax by 25 cents per pack to fund various health plans. In response to this threat, the major American tobacco companies (Philip Morris, R.J. Reynolds, Lorillard and Brown & Williamson) geared up to fight the measure by jointly funding a Denver office called the *Colorado Executive Committee*. Together the tobacco companies anticipated spending more than $2 million to oppose the tax effort.[9] The Colorado Executive Committee commissioned Talmey Drake Research, Inc. in Boulder to perform a survey to find which arguments would most effectively persuade voters to oppose the tax. Talmey found that the three most powerful arguments motivating people against the tax were a) most of the revenue would be spent in the Denver area, b) the idea that a high percentage of the tax would go to a particular hospital in the Denver area, and c) that the tax would increase at a greater rate than inflation each year.[10] The Colorado Executive Committee employed all three of these arguments in a press release opposing the measure.[11]

The industry also employed a variety of other strategies to defeat the 1990 tax effort: they challenged the legal title of the initiative, and then the validity of the signatures gathered in support of the initiative. On April 27, 1990 an administrative law judge disqualified over 3,500 of the 50,668 signatures proponents had gathered to get the measure on the ballot.[12, 13] Proponents filed a lawsuit challenging the fairness of the procedure the Secretary of State used to invalidate the signatures. Ultimately the tax measure failed to qualify for the 1990 ballot by a mere 385 signatures[14]. Industry documents indicate that out-of-state tobacco companies budgeted $2.08 million to oppose the 1990 tax measure, including costs of advertising.[15] Campaign contribution records account for only a portion of this amount, however. Based on records filed with the Secretary of State for the time between January 11, 1990 and June 29, 1990, contributors to the campaign opposing the 1990 cigarette tax initiative spent $651,471. Tobacco company funding was reported as:

Amount	Contributor, location
$18,186	Smokeless Tobacco, Washington, D.C.
$42,732	Brown & Williamson Tobacco, Kentucky
$47,525	American Tobacco, Connecticut
$55,385	Lorillard Tobacco, Inc., New York
$68,664	Tobacco Institute, Washington, D.C.
$206,354	R.J. Reynolds Tobacco, North Carolina
$212, 625	Philip Morris U.S.A, California
$651, 471	**TOTAL reported contributions to defeat 1990 tax effort**

The 1992 Tax Effort

The lawsuit over signature invalidation in the 1990 tax effort was still winding its way through the courts when a different group started exploring the possibility of pursuing an increased tax on cigarettes in Colorado in 1992. Documents show the industry anticipated that a potential 1992 tax effort, if it materialized, would be more formidable than the 1990 effort. Bob Macadam (Vice President of Special Projects at the Tobacco Institute) wrote in a memo: **"Unlike the 1990 cast, the 1992 proponents are sophisticated and well-funded."**[16] Frank "Pancho" Hays (head of the Tobacco Institute's Colorado Executive Committee and a member of the Denver firm Hays Hays and Wilson) commented, **"**[the 1992] **group includes some professionals who appear to have some financing behind them to do the job in a correct and more threatening manner.**"[17]

As a result of preparing to fight the 1990 tax effort, the industry had the infrastructure established in Colorado to fight further tax efforts. The industry planned to **"rejuvenate a lot of the work we have done a year and a half ago"** to fight a 1992 tax effort.[17] The 1990 court case over signatures was due to be resolved in 1992, and the industry believed that if the ruling favored the proponents, the 1990 tax measure would reappear on the 1992 ballot. To ready itself against this threat, the four major tobacco companies (Philip Morris, R.J. Reynolds, Lorillard and American Tobacco) once again began pouring funds into their **"in-state industry team,"** the *Colorado Executive Committee*, to fight any 1992 tax effort that might materialize.[18, 19] The industry estimated it could take as much as $3.5 million to fight a 1992 tax effort.[20]

Interestingly, by 1992 the industry's attention was also drawn to an entirely different ballot threat. It was the Douglas Bruce Election Reform Initiative, a constitutional amendment that would **"dramatically liberalize the initiative law"** in Colorado. The industry was greatly threatened by Bruce's initiative since it would make it easier for citizens to get proposals on the statewide ballot. Randy Morris, Regional Vice President of the Tobacco Institute in Denver, described why Bruce's measure was so threatening to the tobacco industry: **"Should this initiative pass, it would undermine future efforts to disqualify signatures in the initiative process…"** and "**[T]his initiative strikes at the heart of our industry's interests."** The industry planned to pull together a coalition of businesses, team with the Colorado Association of Commerce and Industry (CACI) and invest about $80,000 to stop Bruce's election reform initiative.[21]

Ironically, while the tobacco industry was working to kill Bruce's election reform measure, it was also using his anti-tax efforts to their benefit. Bruce had two measures on the 1992 ballot: the Election Reform initiative and a tax limitation measure (the Taxpayer Bill of Rights, or TABOR amendment). Bruce had once before, however, attempted to place a tax limitation measure on Colorado's ballot, in 1990. Tens of thousands of registered voters signed Bruce's petitions to get the measure on the ballot. The tobacco industry accessed these petitions, gathered information on the voters who had signed them and built a massive database of more than 50,000 registered voters who had thus **"expressed an interest in restricting increases in taxes."** The industry intended to use this as a mailing list to energize anti-tax voters to oppose a cigarette tax. In 1992, when Bruce pursued the Taxpayer Bill of Rights he gathered **"in excess of 70,000 signatures"** to qualify the measure. The Tobacco Institute once again planned to access Bruce's petitions, saying, **"It is our intention to begin the process of analyzing** [Bruce's] **petitions for the purpose of updating our mailing list. When concluded, we will have cross-referenced the present list with the 1990 list and hope to have somewhere in the neighborhood of 70,000 to 80,000 registered voters…"** Thus the industry used Douglas Bruce's petition-signing work to their advantage while fighting him on his election reform measure. [17]

In 1992, proponents of the 1990 tax were awaiting a court resolution of the 1990 signature matter when an entirely separate group began an effort to raise the state's cigarette tax by 35 cents. The industry challenged the latter groups' ballot language. By late summer of 1992, the court had ruled in favor of the 1990 proponents, but by then the amount of time left to coordinate signature gathering before the election was short. Ultimately a ballot measure to raise the tobacco tax in 1992 did not materialize.[22] Instead, public health advocates used the lessons they had learned about industry interference, and the organizational groundwork laid in both the '90 and '92 tax efforts, to pursue an increased tax in 1994.

The 1994 Tax Effort: "Going underground"

By 1994 the industry had learned some important lessons. After losing several local efforts around the country to restrict smoking in restaurants and public places, the industry radically changed its tactics.

Prior to the mid-1980s, public health proponents around the country had had little success in beating the tobacco industry anywhere: in legislatures, at the ballot box, statewide, or locally. Throughout the 1980s the industry depended on its close relationship with Colorado's powerful House Speaker Carl "Bev" Bledsoe (R-Hugo) to support its interests. In response to a tobacco tax measure proposed in the legislature in 1987, M. Hurst Marshall (Tobacco Institute Vice President) wrote, **"Attempts...were made** [by the legislature] **to increase** [Colorado's] **cigarette taxes even higher, to a 10 cents per pack rise. These were unsuccessful, however, due to efforts by Speaker Bev Bledsoe and other sympathetic legislators."**(23) A 1991 R.J. Reynolds report says, **"Bledsoe, a smoker, could be counted on by the industry to bottle up all the anti's bills in committee."**(24) Indeed, the industry exuded confidence in its ability to control Colorado's state legislature on tobacco issues. A 1991 Tobacco Institute legislative analysis discussed the possibility that legislation restricting public smoking might be introduced in Colorado that year. The report says**, "The tobacco industry enjoys sufficient support in the** [Colorado] **Senate and House that such legislation can be controlled."**(25) Also, to help assure that no tobacco marketing or smoking restrictions would get through Colorado's legislature, the industry organized its own internal "grassroots network" called the Tobacco Action Network (TAN). TAN was made up of tobacco business-related employees, such as vending and retail allies that sell and distribute tobacco products, and hospitality groups like the Colorado Restaurant Association. The industry pressed its TAN members into action whenever a cigarette tax or smoke-free measure came before the state legislature. TAN members in turn would flood state legislators with calls and letters opposing public health measures to control tobacco. A 1987 internal Lorillard memo states, **"All Colorado TAN activists and other allies have been alerted to the** [tax] **situation and are applying all possible pressure on legislators to reject tobacco tax increases."**(23)

If the tobacco industry's control of the Colorado legislature failed for any reason, it could outspend tobacco-related public health initiatives at the ballot box.

Through timeworn methods of currying favor with legislators, the industry managed to resoundingly defeat ballot measures nationwide until the early 1980s. (26) In 1983, the tobacco industry encountered its first major setback when the city of San Francisco, California became the first community in the nation to beat the industry at the ballot box (Proposition P, a workplace smoking restriction measure). Proponents of Proposition P had employed an entirely new tactic in their campaign: they took advantage of the industry's poor image, exposed the industry's interference in local affairs and told tobacco companies to "butt out of local politics."(27) Colorado public health proponents seized on this successful strategy, and used the same tactics to pass the first clean indoor air ballot measure in Colorado. The town was Fort Collins and the year was 1984. Similar themes were subsequently used successfully in smoking restriction campaigns in Colorado Springs in 1985 and 1987, and in Littleton in 1987. In each of those campaigns, the tobacco industry waited until the last possible moment to file its campaign disclosures to try and obscure its involvement in the campaigns. In Fort Collins, **"The tobacco industry tipped its hand just 17 days before the election."**(28) A July 11, 1985 internal document by Tobacco Institute lobbyist Stan Bowman, advised the industry to keep a low profile in Colorado Springs to avoid highlighting the industry's opposition:

> **"A major factor to be considered when formulating plans to combat the Colorado Springs ballot issue is the public attitude toward the tobacco industry in general and The Tobacco Institute in particular. Experience with the recent Fort Collins election demonstrated anti-smoking groups' success at distilling the public smoking issue to an 'Us against big tobacco' matter."** (29)

But waiting until the last moment to reveal its involvement wasn't enough to save the industry from experiencing more losses at the local level. After being soundly beaten in several local ballot measures in Colorado (as well as in Michigan, California and Massachusetts), the industry started to see that its interference in local policymaking was a liability. Even worse for the tobacco industry, other businesses were losing their willingness to partner with it against tax measures for fear of being associated with a discredited, marginalized industry. A 1994 tobacco industry report called *Colorado Initiative Strategic Plan* confirms this difficulty:

> **"Traditionally, the industry has had difficulty incorporating diverse groups in its fight against tobacco tax increases. Some groups…are simply fearful of being associated with the tobacco industry and the associated negative publicity..."** (30)

The industry also started to realize that voters believed that taxing tobacco to pay for health care is a reasonable proposal with intrinsic appeal. James Cherry, Associate General Counsel for Lorillard Tobacco Company, lamented in a memo about Colorado's 1994 ballot measure:

> **"On straight tobacco issues we are routinely faced with voter attitudes which are about 70 to 30 against us. These attitudes reflect a judgment on the tobacco industry and its product…*Another immediate voter attitude is that the taxation of tobacco in order to fund health care is a proposition of almost mathematical elegance,* but this too is an attitude undiluted by other considerations, even those as closely related as views of physicians and medical institutions…"** *[Italicized emphasis added.]* (31)

The Tobacco Institute's "Pre-Campaign Plan" for fighting the 1990 Colorado tax initiative focused on the need to start using allies and front groups to advance industry arguments, paying them if necessary, to get their complicity:

> **"The value of prominent individuals and organizations not connected with the tobacco industry speaking out against the initiative cannot be overstated…The**

> **Committee should contract with such people on an as-needed basis and direct them…"** [13]

For all the above reasons (public resentment of local interference, lack of credibility and inability to recruit allies) by 1994 the industry realized that it could no longer participate openly in elections. The industry started working to disguise its involvement in ballot initiative campaigns and hide its opposition to smoking restriction and tax measures by funneling opposition through more credible allies.

Tina Walls, Senior Vice President of Corporate Affairs at Philip Morris, gave an internal speech in 1993 that described the industry's strategy of hiding behind more credible allies:

> **"...we try to keep Philip Morris out of the media on issues like taxation, smoking bans and marketing restrictions. Instead, we try to provide the media with statements in support of our positions from third party sources, which carry more credibility than our company and have no apparent vested interest..."** [32]

Another factor in the 1994 tax effort (besides the industry's overt disappearance from the opposition radar screen) was the ASSIST Project (American Stop Smoking Intervention Project). ASSIST was a multi-year, multi-state effort to reduce smoking rates. Started in 1991 and funded jointly by the American Cancer Society and the federal government's National Cancer Institute, ASSIST's strategy was to build on the successful tobacco prevention efforts around Colorado by establishing volunteer coalitions throughout the state and empowering more local tobacco control activity. The industry was greatly threatened by ASSIST's grassroots organization, funding, strategies and members' dedication to increasing the tobacco tax. Although they knew ASSIST and its activities were legal, the industry sought to hobble ASSIST by claiming its activities were against the law:

> **"The opposition has created a complex but legal set of overlapping structures and leadership that allows them to maximize the use of taxpayer dollars for their effort without violating the law. While we continue to challenge the legality of some of these activities, it is clear that this effort will result in an overall well-financed campaign."**[33]

The industry sought to undermine ASSIST by aggressively charging that project participants were illegally using federal funds to lobby at the state level. However, in 1996 lawyers for the U.S. Department of Health and Human Services ruled that all ASSIST project grantees and subcontractors could continue their activities because their funding pre-dated the law the industry cited as restrictive of such activity.[34, 35]

Having weathered several tax increase efforts in the recent past, the industry was also aware that Colorado's tax advocates would be more sophisticated opponents in 1994 than ever before. Citizens were starting to recognize the industry's strategy of diverting attention away from the health issue by introducing non-health issues like individual rights and government waste. As Philip Morris executive Tina Walls stated in a 1993 speech to industry insiders,

> **"...Finally, we try to change the focus on the issues. Cigarette tax**[es] **become an issue of fairness and effective tax policy. Cigarette marketing is an issue of freedom of commercial speech. Environmental tobacco smoke becomes an issue of accommodation. Cigarette-related fires become an issue of prudent fire safety programs. And so on."** (32)

In an internal memo about Colorado's 1994 tax effort, a consultant to the Tobacco Institute lamented how the educational attainment of Colorado citizens worked against the industry:

> **"…[W]e need to come to grips with the conclusion that our traditional approach to the initiative campaign is not working any more. Our usual strategy is to find something wrong with the initiative itself, a particular provision or consequence, and run a campaign on that issue, without ever discussing smoking or the tax…However, in the end I don't think this will get us much further because it is more difficult to get people off the subject of smoking. Our opponents are smarter than they used to be, and perhaps even the voters are a bit smarter: in short, it may be more difficult to get voters focused on our issues rather than on the smoking issue. As in Sacramento** [and] **Massachusetts…*there are too many people in Colorado with a college degree*."** (36) [Italicized emphasis added.]

Another Tobacco Institute document reveals the industry's strategy to defeat the1994 tax effort by fostering feelings of ill will and distrust for government:

> **"Our strategic plan involves …identifying persuadable voters and conveying potential issues of waste, fraud and abuse to them in a manner which identifies with their natural proclivity to oppose taxes and distrust government; and ... by raising enough concerns about the purpose and implementation of the measure that will supersede their natural inclination to support the initiative."** (37)

Despite the increased sophistication of both Colorado's public health advocates and voters, the tobacco industry still managed to defeat the 1994 cigarette tax by employing the following tactics:

1. Using the American Constitutional Law Foundation (ACLF) to tie up staff of the Colorado state Health Department's ASSIST project, by making over 13,000 requests for copies of documents through the Freedom of Information Act. (More than half of the copies were never picked up). The industry also paid the ACLF $60,000 to initiate a legal challenge of the Colorado Department of Health's use of ASSIST funds in the tax effort.(38)

2. Creating a front group with the appearance of spontaneous, large-scale, citizen-led opposition to the tax. (In 1994, the industry's front group was called "Citizens Against Tax Abuse and Government Waste.")[39]

3. Using surveys to determine the most potent arguments that would sway voters to oppose the tax, and then deploying these arguments widely through television, radio and newspapers. The industry disseminated these arguments through allies, to disguise their origin. The arguments used to defeat the 1994 tax were:

    a. Supporters of the tax, including voluntary nonprofit groups, just wanted to boost their personal and organizational wealth,

    b. Bureaucrats would misspend the tax money and these expenditures would be beyond the taxpayers' control,

    c. A constitutional amendment creating the tax would permanently eliminate oversight by the legislature and would be **"an unwarranted exercise of state power,"** [40]

    d. The committee that would oversee the tax would be able to **"spend** [the money] **any way it wants,"** [41]

    e. The measure would fuel rampant waste and abuse in government.

It is worth noting that the industry uses similar marketing methods to defeat state excise taxes as they use to market cigarettes to specific markets. First, they "segment" the market into specific groups of people with similar psychological needs and aspirations, and then they tailor advertising messages to the emotional and psychological needs of these audiences. For instance, the industry has targeted advertising for low tar and ultra-light cigarettes to those smokers who are most worried about their health (termed by the industry the "health concerned segment.")[42-45] A 1994 internal Tobacco Institute document called *Colorado Strategic Plan* shows that the tobacco industry similarly parsed Colorado voters into sub-groups of "tobacco consumers," "persuadable" and "unapproachable" voters. The industry then tailored specific messages to the policy beliefs of the first two segments. Industry-commissioned polls from 1994 showed that the industry could count on only 64 percent of smokers to oppose a cigarette tax increase. To increase that percentage, the industry tailored specific messages towards smokers aimed at convincing them to vote against the tax. Those messages were: a) the tax increase was **"picking on smokers,"** b) **"other groups will be targeted by government if** [the tax] **is permitted,"** c) **"this constitutes prohibition in disguise,"** d) **"this asks too much,"** and e) **"this should not be part of the state constitution."**[46] The industry also targeted messages at smokers telling them that they were being singled out to **"pay for programs that are the responsibility of the entire state."**

"Persuadable" voters were to be reached using a telephone "push poll." The American Association for Public Opinion Research (which encourages quality survey methods) defines a push poll as "an insidious form of negative campaigning disguised as a political poll that is designed to change opinions, not measure them." According to AAPOR (http://www.aapor.org), typical "push poll" questions are: "Would you be more or less likely to vote for [name of candidate] if you knew he/she had avoided the draft/falsified his resume/been arrested/gone through bankruptcy/patronized prostitutes/failed to pay child support/failed to pay income taxes?" The industry used push polls to help defeat tobacco tax increases in Colorado in both 1990 and 1994.

In 1990, the industry's poll asked voters the following questions:

Answer (True or False):

--"If the cigarette tax passes, only a small portion of the money it generates will actually go toward helping the poor,"

--"The proposed increase in the cigarette tax is just a first step in a long line of other tax increases that are sure to follow," and

--"The proposed increase in the cigarette tax will do more to help the doctors and the hospitals than it would to help the poor." (47)

In the industry's 1994-push poll, telephone pollsters asked,

--"The spending programs [resulting from the tax] **will be administered by the State Department of Health, which has a history of wasteful spending...Do you feel strongly about that?"**

--"Because it increases cigarette taxes by a very large amount, this initiative would lead to increased smuggling and might create a black market for cigarettes…Do you feel strongly about that?"

--"The sponsors of this initiative gave away baseball tickets to get people to sign the initiative, which is a violation of Colorado election law...And do you feel strongly about that?"

--"The people who would be in charge of spending the tax money have used these programs in the past to pay for unnecessary expenses like hotel bills, catered lunches and banquet dinners…And do you feel strongly about that?"(48)

After contacting voters through the push-poll, the industry reinforced the negative attitudes they fostered by the poll by sending tailored mailers to voters, based on how they responded to the issues raised in the poll. The mailings were designed to reinforce voters' negative feelings about the tax. As with many phone surveys, the people who were polled remained unaware of who funded the poll.(48) The tobacco industry's use of the push-poll technique provides an example of how the industry used subtle messaging to alter public opinion.

Smuggling and Cigarette Taxes

The industry also uses the cigarette smuggling issue to help defeat cigarette tax increases. At the first mention of a tax effort, tobacco companies will often state that a tax will contribute to increased cigarette smuggling and cross-border sales. By creating and fostering fears that a tax increase will boost black market cigarette sales and stimulate cross-border smuggling, the industry leverages fear to help defeat the tax. To maximize the smuggling issue, the industry either creates its own "anti-crime" front group or uses an existing group to put forth messages about smuggling. The industry will recruit and pay credible individuals to draw media attention to the idea that an increased cigarette tax will exacerbate smuggling in a given venue.

The industry used this strategy in Colorado in 1994. In response to Colorado's 1994 tax effort, and to address a cigarette tax increase proposed in Arizona at the same time, R.J. Reynolds clandestinely formed a group called the *National Coalition Against Crime and Tobacco Smuggling* (NCACTC). A 1994 memo reveals that RJR was the sole creator of this group: **"RJR made the initial grant to get the organization formed and to pay for its first activity — a major study of the current U.S. contraband tobacco situation."** RJR used former Royal Canadian Mounted Police Assistant Commissioner Rod Stamler to disseminate the results of the industry-commissioned cigarette smuggling study to the media in Arizona and Colorado. The memo describes how the industry could use Mr. Stamler, who carried a high level of credibility with the media, to help defeat ongoing tax efforts in Colorado and Arizona. The memo even contains an instructional section entitled **"Avoiding Direct Ties To 'The Tobacco Industry'"** wherein RJR describes how to avoid connecting Stamler and his activities back to the tobacco industry. Further investigation of NCACTC revealed a **"highly confidential"** internal document about how to respond to questions raised about the organization's origins. In response to questions about how the organization is funded, readers are instructed to say, **"Members fund the organization through membership fees, grants and contributions."**[(49)] Yet a "highly confidential" 1999 budget estimate for NCACTC, however, reveals the organization's only projected income was from two tobacco companies: Brown & Williamson (B&W) and R.J. Reynolds. No dues were anticipated from membership fees. RJR and B&W each contributed $225,000 to start NCATC. The only other income described for NCATC was bank interest earned from these deposits.[(50)] The example of NCATC demonstrates how the industry creates front groups to disseminate messages in opposition to public health efforts.

In sum, the tobacco industry spent over $5.3 million to defeat the tobacco tax in Colorado in 1994. The companies shared the expense of defeating the initiative by dividing up the costs according to the market share of their brands:

Company	Percentage	Amount Spent to Defeat Colorado's '94 Tobacco Tax effort
Philip Morris	43.5%	$2,322,407
R.J. Reynolds	30.4%	1,620,856
Brown & Williamson	11.8%	629,924
Lorillard	7.3%	391,012
American Tobacco	6.8%	365,111
TOTAL		**$5,329,310** [51]

Despite the costs and difficulties involved in battling a tax increase, circumstances suggest that the tobacco industry will continue fighting citizen-led efforts to raise the cigarette tax in Colorado. In July 2002 Philip Morris announced that it would publicly fight any attempt by Colorado to adopt a tax increase.[52] In a May 18, 2004 article in the Rocky Mountain News, the tobacco companies invoked the smuggling issue while saying they would fight the tax. Jamie Drogin, a spokesperson for Philip Morris, said the company was concerned with new taxes because they **"tend to decrease legitimate sales of tobacco products and increase the sales of contraband."** The News article also discussed the state legislature's effort to preempt the 2004 citizen-led cigarette tax effort by passing a bill that would "gut" current health programs on Jan. 1, 2005—the day the initiative would go into effect. According to the News, legislators passed the bill to block the tax campaign "so the money raised by the new tobacco tax would not supplement current funding but would replace already appropriated state money."[53]

Preemptive & Proactive Legislative Activities

To "preempt" something means to take an action that makes it pointless or impossible for someone else to do what he or she intended. In this case, preemption refers to actions the tobacco industry takes to stop municipalities from enacting smoking restrictions. A statewide *preemptive* law would make it illegal for a municipality to enact a smoking ordinance any stronger than the state law.

"Proactive" means taking action in advance of problems to head them off. The tobacco industry introduces *proactive* bills to stop public health advocates from advocating laws regulating tobacco use and sales. The tobacco industry has engaged in both *preemptive* and *proactive* behaviors in the Colorado legislature.

Enacting preemptive public smoking legislation became one of the tobacco industry's main goals in Colorado—and in the U.S.—in the 1990s. To enact a preemptive measure, the industry introduces its own weak, statewide legislation, touting the uniformity of these laws as an asset over less uniform, but often stronger local policies. The industry argues (through allies) that such bills will enable businesses to compete fairly across the state and will remedy a confusing a "patchwork" of local regulations.[54] Preemptive bills often appear to be tobacco control measures, albeit weak ones. The industry designs preemptive laws to stop local communities from enacting strong tobacco control policies, but also to roll back or eliminate strong laws already in place regulating the sale or use of tobacco products.

The industry introduces *proactive* legislation in advance of difficulties it anticipates from public health efforts. Proactive legislation provides a host of benefits for the industry that may not be obvious at first glance. Such legislation can address a variety of different topics, many of which may not involve tobacco at all, but will still have the desired effect of minimizing the impact of issues that would affect the tobacco industry's profits.

For instance, a 1988 Tobacco Institute document entitled *Proactive Legislation* describes how the tobacco industry operated proactively in Colorado, Kansas, Missouri, New Mexico, Oklahoma, Texas and Wyoming.

In 1988, the industry noted increasing public sentiment in Colorado in favor of a statewide smoking restriction law, and that even its usual ally, the Colorado Restaurant Association, favored such legislation. To head off the measure, the industry planned to introduce a weaker statewide proactive smoking restriction law **"with moderate provisions"** to **"institutionalize certain smokers' rights and dramatically weaken one of the strongest statewide GASP organizations in the country."**

The industry typically approaches tobacco-friendly legislators to carry its proactive and preemptive bills. In this case the 1988 memo identified Bill Owens, a Colorado House Representative (who served in the legislature 1982-94 and is currently the Governor of Colorado) as a **"a friendly member of the House Local Government Committee (consistently favorable to tobacco interests)"** who could **"offer a substitute bill with desirable provisions with a good chance of having it adopted and passed out of committee..."**

The memo describes the industry's strategy of introducing and advancing a weak smoking restriction bill:

> **"Publicly, tobacco industry advocates should express the position that NO smoking restriction law is desirable. If pressed, they should acknowledge that uniform regulation throughout the state is preferable to the state of confusion, which now exists. Privately, our lobbyists would of course encourage legislators' support of the substitute bill."**[(55)]

Another 1988 Tobacco Institute memo describes steps for passing a proactive law, including the selection of legislators to carry the bill, gaining control of public hearings for the bill, and **"scheduling grassroots efforts"** to coincide with the movement of the legislation:

> **"General Strategy… Select key sponsor or sponsors for introduction and control of the proposed legislation. Contact leadership to determine their support and blessing of this effort. Establish a realistic and practical timeline for moving the bill prior to introduction. Develop a controlled hearing**

> **scenario. Use expert….witnesses for best impact… Develop favorable op-ed pieces by local** [authors] **where possible…Build coalition effort… Develop grassroots mail program...focus on specific legislators' home districts. Schedule grassroots efforts to coincide with movement of legislation..."**(56)

The industry also uses proactive bills to divert the time, attention and resources of public health organizations. A 1990 Tobacco Institute memo describes how the industry introduced a bill addressing sales to minors (to create uniform sales, sampling and vending machine regulations) to waste the time and efforts of the public health community, saying,

> **"This legislation is unlikely to be enacted; it is intended to dissipate the energies of the anti-tobacco forces and put them on the defensive."**

The industry also employs proactive bills as a form of public relations, to improve its image with state legislators. The same memo (above) states, **"The efforts to promote this legislation should contribute to legislator's positive perception of the industry as concerned about the minors issue."**(57)

Philip Morris introduces proactive legislation as a strategy to **"put antis** [public health authorities] **on the defensive."**(58) According to one strategy, Philip Morris will introduce multiple bills (like **"Indoor Air Quality Standards,"** and **"restaurant bills"** brought by local restaurant associations) to **"scatter the antis resources"**(58) and "**seize the initiative and put** [the antis] **on the defensive."**(59)

Legislators may be unaware that they are carrying a tobacco industry bill, since the industry works to disguise the origins of proactive bills. The industry is careful to introduce proactive bills through third parties—like restaurant and hospitality associations or labor unions— and focus the bills (where possible) on non-tobacco-related topics, such as privacy, anti-discrimination, or property rights, so that legislators will be unaware of tobacco industry involvement. A Tobacco Institute document about introducing proactive legislation shows how the industry strives to hide this type of legislative activity, saying

- "…**it is imperative that the Tobacco Institute not be identified as a major player in this effort…"**
- **"This legislation would be postured as a labor and not a tobacco issue,"**
- **"The Institute will direct legislative efforts through third party contact,"** and
- **"...the new bill will focus on 'ventilation standards,' not 'clean indoor air'... it is imperative that the Tobacco Institute not be identified as a major player in this effort."**(60)

A 1989 Tobacco Institute memo entitled *Proactive Legislative Plans* describes a program to introduce a wide variety of proactive bills in state legislatures across the entire country:

"This document outlines our plans for proactive legislation in the states in 1990. We have targeted 35 states for legislative action, with one or more of the following objectives in each state:

- **Preemption of local smoking restrictions,**
- **Rollback or modifications of existing smoking restrictions,**
- **Protection of smokers' rights against discrimination in employment,**
- **Adoption of indoor air quality and ventilation standards,**
- **Preemption of local tobacco taxing authority,**
- **Preemption of local sampling bans and advertising restrictions,**
- **Other measures favorable to the industry."** (61)

Indeed, bills fitting the above industry agenda were introduced or passed in Colorado in the years immediately after the above memo was written. By December of 1990, the Tobacco Institute had introduced "smokers' rights" legislation in 27 states and passed these laws in nine of them. (62) Such a "smokers rights" bill designed by the industry went into effect in Colorado in 1990 without the governor's signature.(63) The bill was termed an "anti-discrimination" bill, and prevented employers from requiring their workers to be non-smokers. A bill to preempt local smoking restrictions (HB 1163) was introduced in 1993, but failed. In 1996, State Senators Norma Anderson and Tom Norton introduced SB 69, a Philip Morris private property "takings" bill that would have made it vastly more difficult for local governments to enact public health laws, including smoking restrictions. The bill did not mention tobacco, but would have placed far heavier burdens on municipalities that attempted to pass laws to protect public health. Under the bill, an activity like smoking would have been classified as a "property right" that could be taken away by smoking regulations. Philip Morris successfully moved SB69 through Colorado's Senate and House, but the then-Governor Roy Romer vetoed the bill. (Portraying smoking as a "property right" was a tactic so novel and germane to Colorado issues that a portion of this report is dedicated to the topic.) In 1999, Philip Morris sought to introduce proactive bills in Colorado on the topics of privacy (**"seek a bill to include lifestyle choices"**), and **"sound science."**(64)

Industry Influence and State Treatment of Tobacco Prevention Programs

The Philip Morris Tobacco Company's goal is to divert public health funding away from tobacco control programs and into programs that do not threaten the industry's viability. A 1992 Philip Morris document entitled *Industry Summary* states, "**Work with grass roots organizations to divert state health department funds…to support other health programs (pre-natal care, half-way houses, etc.)."**(65) In a 1994 presentation, Tina Walls (Vice-President of State Government Affairs for Philip Morris), talks about **"diverting the anti's resources."**(66) A corporate goal listed by Philip Morris in 1996 was to **"Reallocate** [tobacco control] **funds for other purposes such as youth education."**(58)

Another Philip Morris corporate strategy is to allow states to enact small, incremental tax increases periodically as "concessions" to external pressures on the industry, while blocking enactment of larger tax increases earmarked for tobacco prevention. A 1992 document lists the industry's rules of bargaining with governments and states the industry is willing to give up, and under what circumstances:

> **"CONCESSIONS...**
>
> **(1) Incremental, intermittent tax increases**.
>
> **...KEY VULNERABILITIES:**
>
> **(5) State ballot initiatives —Large tax increases earmarked to antis...**
> **(7) Statutory funding of antis...**
>
> **STATE BALLOT INITIATIVES**
>
> **Threat: Large tax increases earmarked to the antis...**
> **Concession: Smaller increases with different or no earmarking."** [67]

To head off the 1994 citizen-led cigarette tax initiative, the industry considered placing a competing initiative on the Colorado's ballot that would increase the cigarette tax, but by a lesser amount than public health advocates proposed. The industry's initiative would put the tax revenues toward prison construction or programs to reduce gang violence instead of health or tobacco prevention and education.[68] In another effort to prevent tax increases earmarked to **"the antis,"** Philip Morris began a program **"to reform state initiative process to make it more difficult** [for citizens] **to place tax initiatives on the ballot."**[67]

Since the Master Settlement Agreement (MSA) went into effect, Colorado's legislature has seemed to reflect Philip Morris' strategies by working to divert settlement funding from tobacco prevention programs. In 2003, the legislature diverted money from tobacco control programs by selectively cutting the budgets of MSA-funded tobacco prevention programs. Tobacco-related programs were cut by over 50 percent, while non-tobacco programs, such as an elementary school reading program and a home nursing program, received substantially smaller cuts. The budget for the Colorado Tobacco Research Program through CU Boulder (which funded this report) was eliminated completely. When public health groups began pursuing a 64-cent increase in the state cigarette tax in early 2004, State Senators Bob Briggs (R-Jefferson) and Bob Hagedorn (D-Aurora) introduced a competing bill (HB1410) that would increase the cigarette tax by 50 cents and put the funds towards non-tobacco-related programs, like a health insurance program for low-income children, and buying drugs for seniors.[69] Their bill failed, but immediately after it died a new bill surfaced mandating that funds collected from the proposed cigarette tax initiative be used to "back-fill" funding for a variety of public health programs (HB 1455). That bill passed and is awaiting the Governor's signature. Early in Colorado's 2004 legislative session, State Senator Norma Anderson (R-Lakewood) brought a bill to securitize (sell off) the state's Master Settlement Agreement payments in exchange for a one-time payment to the state. Senator Anderson's bill would have effectively de-funded tobacco prevention programs, as it failed to guarantee continued funding for existing tobacco prevention programs.

The above string of recent examples show how public health organizations in Colorado must constantly fend off efforts to divert tobacco prevention funds into non-tobacco related programs. These scenarios also fit Philip Morris strategies to **"Introduce legislation to scatter anti's resources...",**[70] **"put antis on the defensive"** by introducing multiple bills to **"scatter the antis resources"**[58], undertake political actions to "**refocus** [the] **antis**" [70], and **"create a flurry of legislative activity to confound the antis by introducing various bills and measures to put them on the defensive."**[71]

Front Groups and Allies in Colorado

After the industry went underground in Colorado, it continued to exert powerful influence and avoid detection statewide by using third parties and front groups as conduits for its activities. The industry either works through existing groups or creates organizations to achieve its means. Such organizations, called "surrogates" or "proxies," enable the cigarette makers to remain invisible while continuing to exert powerful opposition to public health measures throughout Colorado.

A 1998 memo to Philip Morris employee David Quast (from Philip Morris consultants Lindsey Zimmerman and John Head of Russell, Karsh and Hagan in Denver) indicates that the company's use of third parties in Colorado has served them well. Zimmerman and Head write,

> **"PM's third-party allies are relatively strong 'behind the scenes' here in Colorado. They will go to bat for us on bills in the legislature that make sense for them and also assist with the fight at the local level…They do not like to be at the forefront with the media, but they will sign op-eds, letters-to-the-editor and put their name on occasional press releases…"** [72]

Industry proxies and allies in Colorado are well noted in the documents. The Colorado Restaurant Association (CRA, formerly the Colorado-Wyoming Restaurant Association) has long acted as an important surrogate for the tobacco industry, putting forth industry arguments in opposition to smoking restrictions statewide.[73-75] Documents reveal that ties between the CRA and the Tobacco Institute have been quite strong. A 1989 draft speech brags about how the tobacco industry was able to **"set the agenda"** in state legislatures. Kurt Malmgren (Senior Vice President of State Activities at the Tobacco Institute) spoke of **"using allies like the Colorado Restaurant Association"** to help the industry.[73]

Other established Colorado groups listed as tobacco industry allies at one time or another (and used for various issues) include:

- The Colorado-Wyoming Petroleum Marketers & Convenience Store Association
- The Colorado Retail Council

- Rocky Mountain Food Industry Association
- Rocky Mountain Food Dealers Association
- Rocky Mountain Oil and Gas Association
- Colorado Automatic Merchandising Association
- Colorado Association of Tobacco and Candy Distributors
- Gannett Outdoor Advertising in Colorado
- Colorado Association of Distributors
- Colorado Licensed Beverage Association
- Colorado Hotel and Lodging Association
- Colorado Farm Bureau (even though Colorado is not a tobacco-growing state)
- Colorado State Bowling Proprietors Association
- National Association of Truck Stop Operators
- Colorado Casino Owners Association
- Colorado Association of Commerce and Industry (CACI)
- The Independence Institute
- Local Chambers of Commerce
- Pro-business civic groups (Rotary, Kiwanis)

(76),(74)

Colorado Indoor Air Coalition

In 2001 Philip Morris created a front group called the "Colorado Indoor Air Coalition" (CIAC) to promote the notion that adequate ventilation in restaurants is the sole solution to secondhand smoke exposure (a tobacco industry tactic to prevent workplaces from becoming 100 percent smoke-free). The CIAC is headed by the Colorado Restaurant Association, along with the Rocky Mountain Association of Energy Engineers and Philip Morris USA, under the name "Options." Philip Morris's "Options" program disseminated information on studies which concluded that smoking bans lead to severe drops in income for businesses, and promoted the idea that smoking restriction laws take away business owners' "choice."[(77)] Other members of the CIAC include the Colorado Hotel and Lodging Association, Casino Owners Association of Colorado, and the Colorado State Bowling Proprietors Association. Pete Meersman, head of the Colorado Restaurant Association, served as President and CEO of the Colorado Indoor Air Coalition. In 2001, Meersman denied that the coalition's purpose was to thwart clean indoor air ordinances.[(78)] In April 2004 the CIAC's web site directed inquiries to Philip Morris consultant Jennifer Hurst of Injenuity, Inc. Marketing and Communications, of Dillon, Colorado. The toll-free 800 number given on CIAC's web site in May 2004 connected to an answering service whose employees have no knowledge about the organization, who heads it, its purpose or location.

Independence Institute

A 1999 document from the Philip Morris web site entitled "Media Plan" lists the Independence Institute (a public policy "think tank" located in Golden) as a **"third party ally"** to Philip Morris.[(79)] According to its web site, the Independence Institute describes itself as “a concentrated source of expertise on education, the environment, transportation, personal freedom, government reform, local government, and criminal justice.” John Caldara, President of the Institute, seeks and receives regular support from Philip Morris for the Institute’s activities. In 1997, Philip Morris paid the Institute $25,000, [(80)] and in 1998, $10,500.[(81)] In 1999, the Institute received $7,500 from Philip Morris.[(82)] In 1999, Caldara wrote Philip Morris’ Colorado lobbyist Ginny Corwin asking the cigarette maker for $25,000 to fund the Institute’s “Personal Freedom Center.”[(83)] The “Personal Freedom Center” generates editorials and op-eds opposing public health authorities on tobacco issues. In 1998, Linda Gorman (a senior fellow in health policy at the Institute) published an op-ed in the Rocky Mountain News that branded public health efforts aimed at reducing tobacco use as **“anti-smoking hysteria.”** Gorman argued that an increase in Colorado’s cigarette tax was not justified because smokers’ **“shorter lives result in savings from lower Social Security and pension costs."** [(84)] In 1998, while serving as chair of the board of Denver’s Regional Transportation District (RTD), John Caldara argued in favor of reinstating tobacco advertising on Denver’s buses.[(85)]

National Conference of State Legislatures (NCSL)

The National Conference of State Legislatures (NCSL), based in Denver, serves as a national resource for state legislators and others in state government. NCSL provides state-level policymakers with publications, seminars, research, technical assistance and opportunities to exchange ideas on state issues. As an organization whose purpose is to help shape the opinions of legislators from all 50 states, NCSL has constituted an irresistible target for the tobacco industry. The industry uses NCSL as a perch from which it monitors and works to head off public health activity regarding tobacco. An undated Tobacco Institute presentation about state activities says, "[Tobacco Institute] **headquarters and field staff… closely monitor and maintain an active presence at such groups as...the National Conference of State Legislators...Here we can catch wind of trends toward restrictive legislation, any model legislation in the works, etc. Hopefully, we can head such proposals off before they reach the state and local level."**[(86)] A 1987 Tobacco Institute report states, **“We** [the Institute] **also work with legislative groups like…NCSL…to generate support or cut off opposition on our positions.”**[(87)]

Philip Morris has fostered a close relationship with NCSL. Philip Morris’ Colorado lobbyist Pam Inmann (Director of State Government Affairs for Philip Morris Management Corporation in Denver) has for several years maintained a presence on the board of the NCSL Foundation.

The tobacco industry provides substantial financial support to NCSL. NCSL was listed as a regular beneficiary of funds disbursed from a Tobacco Institute account designated to support **“Allied and Other Organizations.”**[(88)] In 1995 alone, NCSL accepted $30,000 towards its annual meeting and another $6,000 in “general support” from the Tobacco Institute.[(89)] After the Institute was dismantled in 1998 (as a requirement of the Master Settlement Agreement) NCSL continued to accept support from Philip Morris, which gave the organization $25,000 in 1999.

A number of NCSL's published materials disproportionately emphasize the tobacco industry's positions over public health positions. For instance, Philip Morris opposes earmarking taxes for tobacco education and prevention programs, saying **"large tax increases earmarked to the antis** [public health agencies]**"** pose a **"threat to the industry."**(67) Another Philip Morris document refers to earmarking of taxes as a **"potent force in marketing restrictions"** against the industry.(90) In accordance with this view, a 1996 NCSL study regarding earmarking of state taxes concluded that earmarking is a poor practice. In an internal Philip Morris email about the study, an employee states,

> **"I am pleased to send you a copy of a study that was conducted by the National Conference of State Legislatures. The study, which was paid for in part by Philip Morris USA, documents the extent to which state taxes are earmarked for certain programs. In addition, the report contains a discussion of *why earmarking may not be a good practice for state governments to undertake."*** [Italicized emphasis added.](91)

A Philip Morris email dated January 21, 2000 indicated the cigarette maker's control over a 2000 NCSL study on earmarking taxes, saying, **"We** [Philip Morris] **have a new earmarking study—almost done—for release by NCSL. We can build off that and try to gain some non-traditional allies…"**(92)

In April of 2003, NCSL published the *Tax Policy Handbook for State Legislators (second edition),* which lists different types of state taxes, and compares and contrasts tax rates among all 50 states. It also serves as a resource for governors and state legislators for budget proposals and the budgeting process. The "Preface and Acknowledgements" section of the handbook thanks two tobacco companies—Altria Corporate Services (Philip Morris' parent company) and U.S. Tobacco— **"for their support"** in creating the manual. It also thanks John Dunham of Dunham & Associates for his input into the manual. (John Dunham was employed as Manager of Fiscal Issues for Philip Morris Management Corporation from 1995-2000). The section of the handbook on tobacco taxes reflects strong tobacco industry influence with statements like **"cigarettes are not a stable source of revenue," "cigarette and tobacco taxes are highly regressive,"** and **"some in the public health community believe that any rational tax strategy should be based on the relative risks of various tobacco products."** The handbook cautions legislators against earmarking tobacco taxes for any health-related programs, saying **"Any program that relies on tobacco taxes is likely to see declining revenues in the future."** Well-established reasoning by public health authorities in favor of increased tobacco taxes does not appear at all in the report. For example, the report fails to mention that the U.S. Surgeon General's 1994 report, *Preventing Tobacco Use Among Young People,* concluded that increasing cigarette taxes disproportionately reduces youth smoking rates, accelerates quit rates and prevents more people from starting to smoke. The NCSL handbook also fails to mention that states that have increased their cigarette taxes have experienced a substantial increase in revenue even while reducing smoking, or that the public overwhelmingly supports such taxes.(93) The NCSL report states that **"bootlegging** [of cigarettes] **is an important issue,"** but fails to mention that the majority of cigarette tax increases have been implemented successfully and without undue problems related to smuggling, and that in places where smuggling has become a problem (like Canada), the tobacco industry itself was found to have encouraged the smuggling.[94]

In 2003 NCSL issued a report, *State Management and Allocation of Tobacco Settlement Revenue 2003* that described how the 50 states had allocated Master Settlement Agreement funds. The section on Colorado stated, **"funding for tobacco prevention and education programs were reduced substantially"** from previous years. It also reported how in both 2003 and 2004 the Colorado legislature diverted money from the Tobacco Settlement Trust Fund (an endowment intended to assure continued funding for tobacco prevention and other programs established by the settlement) into the General Fund. In 2000, Colorado allocated $15 million of the settlement money for tobacco prevention programs. By 2004, that amount was down to $3.9 million, while the governor's elementary school reading program continued to receive substantially more funding, at $10.7 million.[95]

Political Allies in Colorado

In 2001 Governor Owens appointed Karen Reinertson to be Executive Director of the Colorado Department of Health Care Policy and Financing. Reinertson previously worked for the Denver law firm of Hays Hays and Wilson, [96] a lobbying firm that has worked for the tobacco industry since the early 1980s, according to available documents and newspaper reports. Prior to working for Hays and Wilson, Reinertson was employed directly by the Tobacco Institute. Owens placed Reinertson in charge of the government department that administers Medicaid funds.[97]

Governor Owens also consistently advocates using settlement money for non-tobacco related programs, like upgrading school buildings [98] and an elementary school reading program called "Read to Achieve."

State Senator Norma Anderson (R-Lakewood) has also backed bills that are drafted and supported by the tobacco industry. In 1993 Senator Anderson voted for HB1163, a preemption bill drafted by Philip Morris that would have weakened local smoking controls throughout the state. By 1994, Philip Morris had successfully drafted and passed such laws in 29 states, and was going for all 50. Ellen Merlo, Senior Vice President of Corporate Affairs for Philip Morris stated in a 1994 speech:

> **"So far, over the past few years, we have passed some form of…pre-emption legislation in 29 states...One of PM USA's most important political objectives… into the future is to obtain some form of…pre-emption in all 50 states…."**[99]

In 2004, when Governor Owens proposed securitizing Colorado's Master Settlement Agreement payments, Senator Anderson subsequently proposed a bill to securitize the payments, to the detriment of existing tobacco control programs. In 2002, Senator Anderson proposed a bill to limit the amount of appeal bonds that tobacco companies would have to pay during an appeal of an adverse court ruling. In 2001, Governor Owens proposed diverting some of Colorado's tobacco settlement funds to pay for a breast and cervical cancer-screening program. Even though breast cancer organizations opposed the shift in funding from tobacco to breast cancer programs, Senator Anderson carried the bill to divert the payments.[(100)]

A September 14, 1997 Rocky Mountain News article revealed that Philip Morris put on a golf tournament at Red Rocks Country Club to benefit Norma Anderson. The invitation to the event read, "Greens fees (including golf, cart, dinner and incidentals)…will be paid by Philip Morris Management Corp." It further requested participants make a "Contribution to Citizens for Norma Anderson, $100." The article described the careful crafting of the event to circumvent campaign finance reforms that were enacted in Colorado under Amendment 15, which strictly limited amount of money, goods, and services that various individuals and organizations could contribute to candidates for state offices.[(101)]

In October of 1999 Senator Anderson attended a lavishly catered party thrown by Philip Morris in a suite at Mile High Stadium during a Denver Broncos football game. The party was attended by Philip Morris lobbyists and legal department employees.[(102)] The extensive menu included spiced jumbo shrimp, herb-crusted beef tenderloin and bar service. (According to Philip Morris' legal department, food served in connection with entertaining legislators is a "perishable or non-permanent" item that need not be reported as a lobbying expense.)[(103)] It was during the next legislative session that Senator Anderson introduced SB 71, a bill to apportion Master Settlement funds, which allocated only 15 percent of the funds towards tobacco control—10 percent less than the amount recommended by the U.S. Centers for Disease Control to adequately fund comprehensive tobacco control programs. (The CDC recommends states put a minimum of 25 percent of their settlement money into tobacco control programs). SB71 put 19 percent of the settlement funds towards the elementary reading program favored by Governor Owens— 4 percent more than tobacco control programs received.

Smokers' Rights Groups

One of the most difficult obstacles the tobacco industry has encountered is that smokers themselves tend to both favor smoking restrictions and abide by them with little opposition. An R.J. Reynolds survey study indicated (to the industry's surprise) that most adults, including smokers, favored smoking restrictions in public places:

> **"The first fact that emerged from the research we conducted is that a majority of all adults want smoking restrictions in public places… What was even more surprising for us to find was that smokers in regulated areas want restrictions more than smokers in non-regulated areas. They would vote for such legislation…It is easy to understand why this sentiment exists. Smokers feel less self-assured about public smoking than ever before and by having stricter regulators laws, they obtain a tighter definition of what constitutes their**

> **territory. As a result, regulation helps smokers overcome many of the social confrontations they have experienced in recent years**." (104)

Given that most adults favor smoking restrictions, and that over three-quarters of the U.S. population are non-smokers, little natural opposition to smoking restrictions in fact exists. The industry thus realized that unless it started fabricating opposition to smoking restrictions, smoking bans would be the wave of the future.

In 1987 Philip Morris held a secret strategy meeting to figure out how to deal with the highly damaging issue of secondhand smoke (sometimes called environmental tobacco smoke, or ETS). In a secret meeting called the *Operation Downunder Conference*, Philip Morris executives observed:

> "[IN the] **U.S.** [there is a] **political perception of NO RISK to politicians on ETS issue. Therefore we have to create risk to politicians…** [We need to] **make it hurt for public official and policy makers to take us on."** (105)

The document contained an extensive list of ideas the company could potentially employ to defeat the ETS issue. Ideas included "**Undermine** [U.S. Surgeon General] **Koop et al," "Attack anti groups where they hurt," "Enact legislation with smoking as protected activity," "Create greater pressure on politicians,"** and develop an **"NRA** [National Rifle Association] **type force for us."** The document also said, **"We've got to get to people on the street, but we are constrained because we can't say** [ETS] **is safe."** (105)

Thus Philip Morris—and, that that time, other tobacco companies—embarked on a campaign to manufacture opposition to smoke-free laws by developing vast programs aimed at preserving the social acceptability of smoking.

One of the first moves the tobacco industry made in the 1980's was to press into service massive databases of personal information it had collected from smokers, contact them and begin organizing protest groups. Smokers' personal data was—and currently still is—gathered through coupon and rebate offers that require smokers to fill in their personal data on mailer-cards. For example, through one Denver-area promotion in 1994, RJR sought to collect personal information on 200,000 customers through a single in-store Camel promotion, offering store owners 25 cents per **"usable name."** (106)

In 1987, R.J. Reynolds (RJR) became the first cigarette maker to deploy a national master plan to turn smokers into advocates for the tobacco industry. The plan, called the "Partisan Project," involved organizing massive numbers of "smokers rights-groups" throughout the U.S. RJR hoped to use these groups to motivate smokers to help the industry **"move the needle"** on tobacco issues. (107) The goal of the "Partisan Project" project was **"to foster the largest, most vocal constituency of individuals in America."**(108) RJR's objective was to project the outward appearance of a powerful grassroots movement spontaneously rising up in favor of smoking, and to **"foster an informed, visible and vocal 'public voice' comprised of millions of individuals**

<u>speaking out</u>…on their own volition." Once the Partisan program was in place, RJR planned to use **"a public relations program** [to communicate] **to the general public that opposition to smoker discrimination is growing..."** The company established toll-free, 800 hot-line numbers and urged the smokers they contacted to provide the company with the names of other smokers who would be interested in joining. The Partisan Project **"grass-roots operation center"** was located in Winston-Salem, RJR's company headquarters. RJR planned to put $37 million into the plan by 1990. (109)

RJR employed state and local recruiters to organize smokers in cities and towns across Colorado, and paid "field organizers" to keep them motivated. The company used public relations experts to maximize the groups' effectiveness. RJR's goal was to establish 25 local smokers' rights groups in Colorado alone. By 1991, RJR's field coordinator William Fox had established smoker's rights groups in Denver, Englewood, Pueblo, Greeley, Fort Collins, Aurora, Arvada, Colorado Springs, Longmont, Loveland, Boulder, Lakewood, Grand Junction, Gilpin County and Lamar, and planned groups in Littleton, Northglenn, Thornton, Westminster and Broomfield.(24)

RJR piloted its Partisan Project in California, Oregon and Colorado, since the industry was facing excise tax increases and smoking ban initiatives in these states. The company planned to deploy smokers' rights groups **"in all metro areas over 25,000 population and other targeted areas"** in all 50 states and the District of Columbia. (108) RJR also employed Mike Stratton of the Denver firm Stratton, Reiter, Dupree and Durante to organize smokers' rights groups in Colorado.(110) Stratton is currently serving as manager of Attorney General Ken Salazar's senate campaign.(111)

The idea of building a "smokers' rights movement" caught on within the industry. In 1988, Philip Morris began to mimic RJR's efforts to organize smokers with an effort of its own. Philip Morris USA's 5-Year Plan stated the company's intent to:

> **"…create local smokers' rights associations throughout the U.S. The basis for these associations will be a network of 50,000 'block captains' who will monitor local smoking issues, write or visit political decision-makers, write letters to local newspapers and generally serve as a grass roots voice for smokers' rights. We intend to link these "captains" to local, state and ultimately a national rights organization. Once the national organization is established and funded, we will… create a self-sustaining membership organization similar to the National Rifle Association."** (112)

Six years after RJR started the Partisan Project, Philip Morris commissioned the public relations firm Burson Marstellar to organize the National Smokers Alliance (NSA). Philip Morris funded the NSA with an estimated $4 million in seed money, along with some minor financial help from Brown & Williamson, Lorillard and some fifty smaller tobacco industry players.(113, 114) Like RJR's Partisan Project, the NSA was to have the appearance of a spontaneous grassroots uprising against smoking restrictions throughout the U.S. By the mid-1990s, the NSA was boasting that it had 3 million members nationwide.

It wasn't until 1998 that public health advocates discovered the real origins of the National Smokers Alliance. Americans for Nonsmokers Rights (ANR) in California investigated the NSA's annual reports to the Internal Revenue Service for the first three years of its existence, and found that less than 1 percent of the organization's earnings actually came from membership dues, and that ninety-six percent (96%) of the organization's funds in fact came solely from the Philip Morris Tobacco Company.[115]

Philip Morris used the National Smokers Alliance to carry out its oppositional activity in Colorado, allowing the cigarette maker to keep its corporate involvement in local policymaking affairs hidden within the state.

Tobacco Industry Sponsorships and Philanthropy in Colorado

Several key documents describe how sponsorships and corporate philanthropy serve the tobacco industry. Documents show that the tobacco industry uses sponsorships to blunt attacks from public health advocates, give the tobacco industry a more favorable public face, and to curry favor with politicians. Corporate philanthropy also gives legislators political cover to vote against public health authorities' recommendations on bills, and much more.[116] A 1990 Philip Morris Corporate Affairs document explains a major benefit the cigarette maker derives from sponsorships:

> "[S]**ponsorships and community contribut**[ions] **create constituent goodwill that benefits PM by influencing public opinion/action… Therefore sponsorships/community involvement programs can only be of real value of they succeed in gaining us political friendships and the opportunity to engage key Government decision makers in an on-going dialogue that may be to our benefit."** [117]

A 1990 internal document analyzing the tobacco industry's losses in the "PR War" mentions the use of sponsorships to preserve political allies,

> **"...If one takes the pessimistic view of present trends, the tobacco industry could lose almost all its political clout within two years. Overstated? Not really. If you take away advertising and sponsorship, you lost most, if not all, of your media and political allies."** [118]

The tobacco industry also uses sponsorships to try and create a favorable public image, preserve the social acceptability of smoking and reassure smokers that nicotine addiction is normal. A 1991 Philip Morris Corporate Affairs document states,

> "**Regarding the companies' cultural and social sponsorships, our goal is to restore smoking acceptability by building smokers' confidence and by projecting PM's good public image via coherent, high quality sponsorship programs."**[119]

In pursuit of the above goals, the tobacco industry engages in extensive sponsorship and support of community activities throughout Colorado. Sponsorships within Colorado include:

- Colorado AIDS Project (non-profit, community-based HIV and AIDS service and education agency in Colorado). Sponsor: Philip Morris Companies, Inc., 1999: ($10,000).
- Project Angel Heart (supports the nutrition needs of men, women, and children living with HIV/AIDS in the Denver area through meal delivery). Sponsor: Philip Morris Companies, Inc. 1999 ($20,000).
- Philip Morris Doors of Hope national grant-making initiative, in partnership with the National Network to End Domestic Violence Fund. 1999 Colorado Doors of Hope grant recipients were: The Center for the Prevention of Domestic Violence (Colorado Springs, CO); and Women's Resource Center of Montrose, Colorado (Montrose, CO).
- Arts Against Hunger — a Philip Morris nationwide initiative to help fight hunger while exposing new audiences to the arts, created in partnership with local arts organizations. Years of Sponsorship: 1997, 1999. Amounts of sponsorship are unknown.
- Senior Helpings Initiative — a Philip Morris program that provides more than one million meals each year to elderly Americans, through grants made to local organizations. This initiative is a partnership between Philip Morris and the National Meals on Wheels Foundation. 1999 Colorado recipients of Senior Helpings grants were: Meals on Wheels of East Boulder County (Lafayette, CO); and The Senior Hub, Inc. (Federal Heights, CO). Funding for program nationally totaled $2.1 million.
- American Indian College Fund (Denver), created by the 30 tribal colleges to raise scholarship money and support endowments and operating funds. According to the Office of Minority Health website in 1998, Philip Morris was a corporate supporter of the Fund.
- Colorado Ballet - Philip Morris was a 1997 contributor to the Colorado Ballet.
- Colorado Dance Festival, CU Boulder Theater, is considered one of the most important summer dance festivals in the United States. According to a Denver Center for the Performing Arts website news article, Philip Morris was a 1997 contributor to the Colorado Dance Festival.
- Denver Center for the Performing Arts — During the 1998-1999 season, Philip Morris sponsored the choreography for the Denver Center Theatre Company's production at the Denver Center for the Performing Arts through its New Works Fund. This production was also a part of the Philip Morris Arts Against Hunger program. Audience members who brought two cans of high-protein food received a ticket discount and the food was donated to the hungry in Colorado, with the assistance of Food Bank of the Rockies.
- Denver Center for the Performing Arts Legislator's Night— Legislator's Night is held annually, and gives state and federal legislators in Colorado a chance to mingle with arts advocates in Colorado and to see the importance of state arts funding.

According to the Center's website, the 1999 Legislator's Night was sponsored by Philip Morris.

- Denver Art Museum—Philip Morris was a 1997 contributor to the Denver Art Museum.
- Colorado Cattle Women, Inc. — Colorado Cattle Women was founded to give women a voice in the beef cattle industry. In 1998, Philip Morris (through its Foods Division) provided $1,000 to support the annual CCW Legislative Luncheon, which hosted nearly one-third of the legislators in the Colorado General Assembly.(120)

While a current list of tobacco industry sponsorships in Colorado has not been produced since 1999, the industry continues to sponsor events and organizations in the state. For instance, in January 2003, Lorillard Tobacco Company sponsored the ESPN Winter X Games at Buttermilk Mountain (Aspen). The company's sponsorship produced a firestorm of controversy and Lorillard discontinued sponsorship of the event. Philip Morris continues to sponsor concerts in Colorado through its food and beer subsidiaries of Kraft and Miller Genuine Draft ("MGD").

Tobacco Industry Interference at the Local Level in Colorado

The tobacco industry has been actively involved in Colorado policymaking at the municipal level in cities as large as Denver and as small as Telluride (population fewer than 2,000). The industry has become active wherever smoking restrictions have appeared on the ballot—no matter how remote the town—in places such as Durango (population approximately 14,000) in 1993, and Montrose (population 11,000 in 1998).

Denver

In early July 1990, Denver Mayor Federico Pena issued an Executive Order banning smoking in all city-owned government buildings, including Stapleton Airport and the new Denver International Airport (DIA). The tobacco industry became concerned. A report found among Philip Morris' documents states,

> **"As the most populous and most influential city and county** [in Colorado], **Denver is perhaps the single-most important messenger regarding smoking, as well as an important role model for other local governments. Mayor Pena's ban on smoking at Stapleton International Airport indicates potential to remove pro-smoking cues from other Denver facilities..."** (121)

Tobacco industry representatives met with Mayor Pena in early December of 1990 to fight his order to eliminate smoking at the airport and push for "accommodation of smokers" at Stapleton and the new airport, Denver International Airport (DIA). That same month, Denver City Councilwoman Cathy Reynolds introduced an ordinance to overturn Mayor Pena's order. Reynolds' ordinance mandated construction of separately ventilated smoking areas at Stapleton Airport, and required the existing smoking areas be preserved until the news ones were built.(122) Reynolds argued that international travelers wouldn't stop in Denver if they couldn't smoke between flights, and that people making domestic air connections would avoid Denver if they couldn't smoke there.(123) The mayor vetoed Reynolds' bill. After a tumultuous back-and-forth fight, Pena agreed to allow separately enclosed smoking lounges to be built at DIA, if the tobacco industry paid to build them. Walker Merryman of the Tobacco Institute stated (in a November 1991 article in the Rocky Mountain News) that cigarette companies would not pay for special rooms with ventilation for smokers at Denver International Airport saying, **"Smokers already pay $60 million in excise tax in Colorado on cigarettes. There's no justification for forcing them to pay for the kind of accommodations they should expect at a public facility."**(124) Despite this pronouncement, documents reveal that Philip Morris did, in fact, pay to build the smoking areas at DIA, making an initial payment of $77,000 on March 31, 1994 to the owners of Pour Le France restaurant, which was to operate the smoking areas.(125) The cigarette maker estimated the filtration systems alone would cost $90,000, and the total estimated cost to build and equip two lounges was $300,000 to $400,000.(126) To obscure its hand in preserving the smoking areas, though, Philip Morris made a deal with PLF Airport Executive, Inc., the company that owns the Pour Le France restaurants in DIA.(127) Philip Morris funneled money to build the smoking lounges through PLF Airport Executive, Inc., and arranged for PLF to carry the publicity for their opening. Philip Morris provided PLF with talking points for the media about the opening of the smoking lounges.(128) An internal February 1994 Philip Morris email states, **"The deal at Denver** [airport] **is not…public. We are doing an advertising deal with a restaurant there. We get advertising in exchange for paying for the ventilation system for the two lounges. All press reports have given the restaurant—Pour Le France, PLF—complete credit. That is just the way we like it**."(129)

To make the most of its effort, Philip Morris planned to launch a new Benson and Hedges "empathy" advertising campaign to coincide with the opening of the smokers' lounges in DIA. The advertising theme was to mimic humorous Benson & Hedges ads from years past that played on the theme of the plight of the smoker in an environment hostile to smoking. Documents reveal that objectives of the ad campaign went beyond simply advertising the cigarette brand to smokers, though. The campaign and its timing were carefully devised to help thwart ongoing public health efforts by **"maintain**[ing] **control of the story** [of the opening of the smoking lounges], **preempt**[ing] **potential activists' criticism of ads,"** and **"reinforc**[ing] **messages re: desirability of accommodating smokers…."** The cigarette maker's strategies were carefully crafted to **"preempt possible activists claims of victory,"** around the smoking restrictions at the new airport, to **"frame appropriate messages regarding** [secondhand smoke]**"** and to **"focus on the general theme of accommodation rather than bans."** (130)

Boulder

In 1995, the Boulder city council passed a law tightening an existing smoking regulation by banning smoking in all restaurants, bars and workplaces within the city. A group called POGO (People Opposed to Government Over-regulation) sprang up to oppose the law. Documents indicate POGO received assistance with their campaign from the tobacco industry. POGO gathered enough signatures to get a repeal measure on the local ballot. Boulder City Council then placed a compromise law on the ballot that would still permit smoking to continue, albeit in fully enclosed, separately ventilated rooms of restaurants and bars. This compromise law passed on November 7, 1995 by a margin of 55 percent to 45 percent.

The proponents of the stronger law, Fresh Air is a Right (FAIR), raised $24,297 and spent $17, 412 while the opposition (POGO) raised $22,255 and spent $18,654 according to the Boulder newspaper (the Daily Camera, 11/18/95). Campaign disclosures indicated that POGO's largest contribution was $5,000, given by "Host Pac," the Colorado Restaurant Association's (CRA) political action committee. The Boulder chapter of CRA contributed $1,000. The Colorado Restaurant Association has been identified in a number of documents as a close ally of the tobacco industry.(73-75) Still, until the very end of the campaign, POGO stated it would neither accept tobacco industry money nor seek industry help. POGO's campaign manager, Adam Kaplin, said, "We don't want tobacco money. It's important to us that we stay local and grassroots." Kaplin said again his group "has no plans to accept money from the industry—for now."(131) However, internal documents indicate that the industry was already well involved and had been helping the opposition in Boulder since at least July of 1995.

Proponents of the ordinance (FAIR) believed that various tobacco industry consultants were helping the opposition behind the scenes and not reporting it to the city clerk, however, no concrete proof was available during the campaign to verify this.

Internal documents confirm that Philip Morris and other tobacco industry consultants had assisted Boulder's opposition campaign with petitions, writing and submitting letters to the editor, composing op-ed pieces, arranging editorial board meetings, press conferences and radio interviews, developing messages, preparing press releases, preparing opponents for radio shows and press conferences, contacting news media to generate unfavorable press, assisting with PR activities in a lawsuit, and day-to-day consulting. Documents also indicate that the opposition began using the services of a Philip Morris consulting firm as early as July 1995—almost five months prior to the election.(132)

POGO needed to collect 6,500 signatures of registered Boulder voters to repeal the law in less than a month.(131) POGO succeeded in putting the law passed by the council on hold while the city clerk verified signatures.(133) The effort fell short when several thousand signatures were tossed out, but POGO was able to make up the difference in the next week. "In 21 days, we got almost 9,000 signatures with a grass-roots movement and almost no paid help, said J.J. McCabe's Manager Adam Kaplin…"(134)

In fact, the industry was very involved in the signature drive. POGO set up tables at University of Colorado to get signatures, portraying the effort as a way for students to register to vote. Tobacco lobbyist Shayne Madsen obtained the registration forms. In a September 13 memo from Boulder lawyer Madsen to Philip Morris lobbyist Pam Inmann, Madsen writes:

"I have enclosed the voter registration forms. You will notice there is no notary requirement and they are set up as self-mailers. We can get as many of these forms as you desire, but the clerk must receive the forms 30 days before the election for the registration to be effective." (135)

Another document dated August 18, 1995 indicates that Philip Morris prepared a telemarketing script to recruit registered voters to help with the petition drive. The text of the script said:

"Boulder citizens may have the opportunity to vote on the issue in the November election. If enough signatures can be gathered on a petition, this question will be included on the ballot, and the citizens may decide to over-ride the ban. Would you be willing to volunteer some time?

"IF WILL VOLUNTEER: Great! Someone will be calling you within the next couple of days to let you know how to get involved and will give you more information as well as answer any further questions you may have. When would be the best time to reach you?"(136)

Internal documents indicate that the Denver public relations firm Russell, Karsh & Hagan (RKH) was retained by Philip Morris to actively assist the opponents of the 1995 Boulder smoking restriction ballot issue from July through November 1995. A September 1995 memo indicates that Charlie Russell assisted POGO with writing letters to the editor, setting up radio interviews, and training spokespeople:

"Ongoing agency-developed LTE's on behalf of Boulder coalition, People Opposed to Government Overregulation, in regards to opposing smoking ban/ballot initiative slated for November 7 Boulder city ballot. Distribute to Boulder Daily Camera, Boulder County Business Review, and the Colorado Daily on impact of smoking ban to restaurant and bar business and overall opposition to recent decision by city council."

"Agency assistance in pitching Boulder restaurant manager and spokesperson for citizen's coalition opposing the smoking ban, People Opposed to Government Overregulation to Denver's #1 talk radio station, KOA and the "Mike Rosen Show." An interview will be scheduled for spokesperson and a city council member in the near future, closer to the election. Agency will assist in securing interview, supplying background materials to radio station, as well as media train and rehearse spokesperson for interview."(137)

A July 1995 memo indicates that Russell penned an op-ed piece for POGO:

"Op-ed piece and LTE's to Boulder Daily Camera, Boulder County Business Review and the Colorado Daily on the impact of smoking ban to restaurant and bar business drafted by R&H for director of POGO — People Opposed to Government Overregulation and on behalf of Boulder restaurant and bar owners/managers."(132)

An October 1995 memo indicates that Russell continued to help write letters to the editor, prepare radio interviews, arrange editorial board meetings, and discuss campaign strategy:

"Ongoing LTE's in Boulder's newspapers about the continued smoking ban issue slated for the Nov. 7 ballot."

"Agency inspired 'Letters from Gil Spencer' column from former editor Gil Spencer, Denver Post, on the excessiveness of the proposed Boulder smoking ordinance."

"Vote No on 2C proactive media strategies — Assistance with Boulder coalition and proactive media activities for Ballot Issue 2C including arranging editorial board meetings, conducting radio interviews and preparation for the press conference. In addition, ongoing assistance with the development of messages, press releases, LTE's [letters to the editor] **and op-ed pieces opposing the issue."**

-- Submission of op-ed in Boulder Daily Camera.
-- Lengthy Letter to the Editor in the Boulder Business Report
-- Press release on complaint filed against Boulder city council for usurping the petition process. (138)

Another October/November 1995 memo indicates that Charlie Russell and Philip Morris worked together to coordinate all the public relations aspects of the campaign.

Denver [Russell, Karsh & Hagan]:
"Continued media assistance and development of ongoing media materials on behalf of Boulder coalition, People Opposed to Government Overregulation."(139)

According to the Boulder City Clerk's office, in-kind contributions like those Russell provided are campaign expenses, and should have been reported.(140) Charlie Russell's time and expenses in coordinating the opposition campaign in Boulder, however, were never reported to the city of Boulder.

Philip Morris did funnel some money through the Colorado Restaurant Association's political action committee, Host-Pac. Host-Pac gave opponents of the Boulder ballot issue (POGO) $6,000 during the campaign. According to public records filed with the Secretary of State, Host-Pac received $5,000 from Philip Morris at the end of 1995 and another $7,500 at the beginning of 1996.

<u>Colorado Restaurant Association Contributions to POGO Reported to the Boulder City Clerk:</u>

CRA - Boulder Chapter	08-31-95	$1,000
CRA	09-14-95	$1,000
CRA	10-31-95	$2,000
Host-Pac CRA	11-04-95	$2,000

Durango

Evidence indicates that the tobacco industry assisted in defeating a 1994 ballot measure in Durango that would have eliminated tobacco smoke from restaurants, bars and taverns that served food. A Philip Morris document entitled *"CASE HISTORY: SMOKING BAN IN DURANGO, COLORADO: 'Bagging it Big Time'"* shows the extent of the industry's involvement:

> **"Jim Nelson, past president of the Durango chapter of the Colorado Restaurant Association, asked for technical advice and assistance in organizing the opposition to the proposed smoking ban. The goal was to defeat the proposal, thus preserving the beneficial business environment within Durango….[**W**]e determined that we could easily rally more than enough votes to defeat the proposal. "**

The document describes the development of several **"key messages which were used effectively throughout** [Durango's] **campaign."** None of the key messages addressed the health issues raised by the proponents. This strategy matches the tobacco industry's desire to avoid discussion of the health issues and instead, **"raise the flag of government intervention"** as a diversion.(141-143)

"The messages [used in Durango] **were**

- **This is not a smoking issue, it is a freedom of choice issue for local business.**
- **It is a blatant infringement on each business person's right to run his or her own business as customers dictate,**
- **Banning of smoking would force restaurants, bars and taverns to lay off workers…**
- **The loss of business…would significantly reduce the city's sales tax revenues."**

The tobacco industry assisted Durango restaurateurs in developing "collateral materials": fliers, posters, handouts, mailers, and print ads for the newspaper, radio ads opposing the smoking measure, training and "specific preparation for individual media events." As in Boulder in 1995, these resources were reportable as campaign donations, but were not disclosed, leaving proponents and the public completely unaware of the industry's involvement. Approximately $2,600 was raised locally to oppose the measure. This amount was touted to the local media as the only financial assistance the opposition received in Durango.[144]

Ultimately the Durango clean indoor air measure failed on a vote of 664 in favor to 998 against.[145] It was one of only two such measures ever to fail in Colorado.

Telluride

The other ballot measure to fail was in Telluride in 1993.

The town of Telluride referred a public smoking measure to the ballot in 1993. The effort brought relatively strong tobacco industry involvement to that small mountain town.

Documents, including a Tobacco Institute newsletter, reveal that the tobacco industry was monitoring Telluride in mid-1980s and became involved in local activities in October of 1987:

> **"The Telluride, Colorado Council approved a second delay in implementation of stringent smoking restrictions passed in June** [1987]. **The Council will work on possible changes with local business owners who have threatened to petition for a referendum.** ***TI*** [Tobacco Institute] ***is working with local allies on this effort*."** [Italicized emphasis added.][146]

Another Tobacco Institute newsletter warned In 1988, **"Telluride commission will put controversial** [smoking] **ordinance on April ballot."**[147]

The smoking measure apparently languished in Telluride until in March of 1993, when it re-emerged and an internal Philip Morris email warned: **"Telluride, CO Council votes 3/30 on smoking ban for workplaces and public places."**[148]

In August 1993, another industry newsletter warned that the Telluride town council was sending the smoking measure to the November ballot.[149] In October 1993, Philip Morris printed a notice about Telluride's proposed smoking restriction law in a national newsletter, *The Smoker's Advocate* ("A service of Philip Morris U.S.A."). Just days after the *Smoker's Advocate* article was published, the Tobacco Institute (TI) sprang into action to defeat the smoking measure in Telluride.

Why would the tobacco industry be so threatened by a smoking restriction measure proposed in such a tiny, rural place up in the mountains? An internal Tobacco Institute memo *("Subject: Telluride, Colorado Ballot Issue")* describes why:

> **"The City Council of Telluride has placed on the November 2, 1993 ballot a referendum seeking voter approval of a significant expansion of the current Telluride smoking ordinance. The ballot proposal extends prohibition on smoking to include all taverns, bars, nightclubs and restaurants and expands regulation of smoking in the workplace. Telluride, the picturesque county seat of San Miguel County, has significance far beyond its relatively small number**

> **of registered voters (2,600), due to its increasing importance as a ski resort and national publicity as a celebrity Mecca. Failure of the industry to resist this anti-tobacco referendum would be extremely injurious as it would send a message to anti-tobacco forces throughout Colorado that a public health vote is an effective means to promulgate their agenda. Indeed, from the anti-tobacco perspective…this angle of attack could prove most productive. Further…an easy victory in Telluride would give added impetus to the proponents** [of a statewide tobacco tax initiative], **as well as comfort to others of like ilk throughout the West."**

The same memo reveals that the Tobacco Institute pulled professional consultants from Denver and California to help defeat Telluride's ballot measure:

> **"Staff recommends that the Institute immediately retain the Dolphin Group of Los Angeles to augment C.R.L. Associates, the Philip Morris Denver/local Colorado legislative consultants' efforts with local members of the hospitality community in Telluride. Opportunity clearly exists for a local hospitality coalition in Telluride composed of restaurateurs, bar owners, and hotel/motel interests. A possible campaign theme of tourism and accommodation could be developed due to another ballot issue scheduled for the November 1, 1993 election, which seeks to increase the local lodging tax. Contacts with the Colorado Restaurant Association and the Colorado Hotel Lodging Association for assistance with this project are already underway."**

The tobacco industry placed at least three **"operatives"** on the ground in Telluride to influence the election, and spent almost $13,000 to defeat the smoking measure:

> **"This plan anticipates placing two** [tobacco industry] **operatives on the ground in Telluride during the week of October 19, 1993 for a two day period to work with local members of the hospitality community. In addition, they would be joined by an experienced operative from C.R.L. who has been working on this issue in Telluride since it surfaced in the late spring of 1993. The operatives would work hand-in-hand on coalition development…calls and mass mailings. The budget for this project is the sum of $12,800…Lastly, legal and campaign finance work would be handled under the auspices of** [Denver legal firm] **Hays & Wilson, our long-time Colorado legal counsel on these initiatives."**

The memo concludes by saying, **"It is our strong recommendation that industry put up a strong defense in Telluride and battle this challenge."**(150)

The industry's efforts worked. Telluride's smoking restriction ballot measure failed on a vote of 459 to 355. Because of the amount of money that documents indicate the tobacco industry spent in defeating Telluride's measure, we asked the Telluride Town Clerk to search the 1993 campaign donation records to see if there was any record of the industry's financial involvement in the issue. The Telluride Town Clerk reported finding no campaign finance filings in connection with the 1993 smoking issue.(151)

Montrose

Montrose is a rural community 60 miles south of Grand Junction in central southwest Colorado at the base of the scenic San Juan Mountains. In the late 1990s, Montrose's population was just over 11,000 people.

It appears that the tobacco industry began monitoring smoke-free activity in Montrose as early as 1988. A 1988 Tobacco Institute newsletter reported **"MONTROSE CO City Council is considering proposal to ban smoking in restaurants."**(152) That same year, a Tobacco Institute newsletter reported Montrose's ordinance attempt had been resolved in a manner acceptable to the industry: **"Montrose, CO City Council has rejected smoking restriction ordinance…adopted resolution urging nonsmoking areas in restaurants."**(153)

The smoking issue re-appeared in late 1997, when the Montrose Daily Press published two letters from local physicians expressing the opinion that Montrose needed a smoke-free law. Montrose City Council member Tom Cheney invited the doctors to a city council workshop to discuss the matter. At the Jan. 8, 1998 workshop, the doctors recommended Montrose restrict public smoking. After that meeting, the Montrose City Council directed city staff to draft an ordinance banning smoking in most public places.

Montrose released the text of the proposed ordinance in early February 1998. The proposed law would have eliminated cigarette smoking in all restaurants, lobbies, government buildings, airports, bowling alleys, bingo parlors and other public places in the city. Certain establishments, like bars, were exempted, and restaurants could apply for an exemption. A February 11 newspaper article reported that a Montrose merchant had phoned the National Smokers Alliance (NSA) in Alexandria, Virginia to alert them to the local smoking ordinance effort. Shortly after, the NSA flew three operatives (John Merritt and two others whose names are unknown) to Montrose to organize restaurateurs, provide resources, and discuss strategies to defeat the proposed ordinance.(154) NSA organizers met in the Starvin' Arvin's restaurant in Montrose to discuss the issue (155) and proceeded to supply Montrose bars with posters, pre-printed drink coasters and signs to be used to oppose a proposed clean indoor air ordinance.(154)

At the same time, Philip Morris consultant and lobbyist Virginia "Ginny" Corwin sent an email to Philip Morris' New York headquarters describing a conflict between Philip Morris and the National Smokers' Alliance over who was to be in charge of organizing the opposition in Montrose. Corwin's email reads, in part,

> **"The situation is this: a local ordinance (smoking ban) is being considered in Montrose, CO. We have our usual very capable team of folks at work on the situation and they have learned from the Montrose restaurateur with whom they are working that two women from NSA plan to be in Montrose next Tuesday. Our people feel they have the situation under control and do not want NSA (which has been reported in the local press to be funded by Philip Morris) on the scene. To NSA's credit—I assume—there have been a couple of**

> **excellent LTE's in the local paper. To my knowledge, no one in Colorado was informed of NSA's activities, presence, contacts, etc. in the state. Mr. Humber** [President of the NSA] **told me that his people were there** [in Montrose] **'since the beginning' at the request of their local members and that 'it is impossible' for them to stay away now. He knows they** [NSA] **received 'a considerable amount of funding' from Philip Morris, but he is committed to his members—he told them they were going to be here and they will!** ***Our local ordinance and media action people have asked me to keep NSA reps out of the mix due to the image of "big tobacco" coming in to represent its own interests. Our people are working very effectively with third party allies as is the usual mode of operation in local efforts….*****Our people will be happy to work with and coordinate with NSA but** ***a third party effort is much more desirable here."*** [Italicized emphasis added.](156)

An article in the Montrose Daily Press portrayed Jim Kerschner, owner of the Red Barn Restaurant, as the primary organizer of the opposition. Kerschner made no mention of receiving aid, advice or other resources from either the National Smokers' Alliance or Philip Morris. Rather, he told the media and city council that he was "fighting for his own cause," and said, "I'm representing myself here."(157) To the contrary, a Philip Morris document discovered in 2002 lists Jim Kerschner, owner of the Red Barn Restaurant in Montrose, Colorado, as a spokesperson for the cigarette company.(158)

At the next City Council meeting, Kerschner presented 1,602 signatures on an informal petition opposing the ordinance—gathered in span of approximately two weeks. A Tobacco Institute "Issues Update" about the Montrose situation indicated that the Institute either had sent someone to attend the hearings in person, or had placed someone at the meetings to monitor activities in Montrose and report back to the industry.(159)

In a February 12, 1998 article in the Montrose Daily Press, Kerschner stated that the smoking ordinance would constitute **"unwarranted government controls,"** a well-documented tobacco industry argument against smoking restrictions.(160-162) Still no mention was made of the role the Philip Morris played in providing resources to fight the public health proposal.(157) The Montrose City Council then met to decide on the issue, or send it on to the ballot. Instead of making a decision about the ordinance that night in any fashion, though—after Kerschner presented city council with the unofficial (and hence unverifiable) signatures—Council voted unanimously to send a completely different question to the ballot. They chose the route of asking Montrose citizens if they wanted to **"conduct a…study to determine the feasibility of adopting"** a smoking restriction ordinance. This "study" strategy, too, is well a known tobacco industry delaying tactic. (163-166)

Shortly after Council proposed the study, a March 5, 1998 issue of the National Smokers Alliance newsletter The Resistance touted victory in Montrose with a headline that read **"Montrose Resistance Trounces Smoking Ban."** The article claimed that a successful campaign against the ordinance had been led by **"Montrose business owners."**(167)

In the April 1999 election, Montrose voters turned down the “study,” and public health advocates continued pursuit of the original ordinance. Concluding that City Council did not want to act on the measure, proponents started gathering signatures to get the originally-proposed measure on November, 2000 ballot. The group fell short by 30 valid signatures, but continued gathering signatures until they collected enough to qualify the measure for the April 2001 ballot.(168) On April 4, 2001—more than two years after their first request for a smoking ordinance—the originally proposed measure went before the voters and passed by a margin of 54 to 46 percent.

In spite of this win, opposition continued. Soon after the measure passed at election, a man named Tim Jacobs identified himself to the Montrose Daily Press as co-chair of a group called *Committee to Preserve Private Property Rights* (“an arm of the Western Slope Libertarian Party”). Jacobs claimed the new smoking law represented “a loss for the rights of private property owners,” an argument advanced by the tobacco industry to fight restrictions on marketing tobacco and public smoking.(169)

Jacobs made several attempts to have Montrose’s new law thrown out. First, in May 2001, he challenged the validity of the new ordinance based on a typo in the article number (the ordinance title was changed from “Title VIII” to “Article VII” of the City Municipal Code).(170) That effort failed. Next, in June, Jacobs alleged that petitioners had filed false affidavits with the city, (171) and hired former state senator and Montrose attorney Arch Decker to immediately contest the vote with the secretary of state and Colorado attorney general. City Council defended their process and Jacobs’ second effort to have the new law suspended proved fruitless. Jacobs then circulated a petition seeking to repeal Montrose’s clean indoor air ordinance. He obtained enough valid signatures to get the repeal question on the November 2001 election ballot. Jacobs called his measure the "Property Rights Restoration Ordinance," invoking the notion that smoking is a “property rights” issue. City Councilor J. David Reed felt the property rights language would unfairly influence voters, and City Council eliminated the language referring to property rights.(172) At the next election, on Tuesday, November 6, 2001, Montrose citizens defeated the Libertarian Party’s attempt to repeal the smoking ordinance, with 60 percent of citizens voting to keep the existing ordinance in place.

The situation in Montrose has calmed substantially since that time, and a number of new restaurants have opened in the town.

Portrayal of Smoking as a “Property Right” in Colorado

Casting smoking as a “property right” as a way to fight restrictions on tobacco use appears in the industry’s documents in 1995. Documents indicate that the strategy came from Ian MacKenzie, policy advisor of a group called "Defenders of Property Rights." In 1995, MacKenzie wrote a letter to Craig Fuller, Senior Vice President of Corporate Affairs at Philip Morris, in which MacKenzie suggested that Philip Morris use a **"property rights"** argument about smoking as a strategy to deflect further regulation of the tobacco industry. MacDonald proposed Philip Morris **"take the moral high ground by making**

property rights the issue" instead of public health. Even former Colorado state attorney general Gale Norton was a member of the National Advisory Board of Defenders of Property Rights.[169] Documents show that the Defenders of Property Rights received substantial financial support from the Philip Morris tobacco company.[173, 174]

With property rights a hot issue in the western U.S. at the time, Philip Morris seized the strategy and built upon it in an attempt to block municipalities in Colorado from enacting smoking bans. Philip Morris argued that smoking restrictions constitute a government "taking" of private property. A Philip Morris email from 1996 shows Philip Morris parlayed the "property rights" argument into statewide legislation to prevent further local regulation of smoking. Philip Morris' Colorado lobbyist, Pam Inmann, emailed company executives in 1996 about a "takings" bill Philip Morris introduced in the Colorado legislature. Inmann says:

> **"Tomorrow barb will fax you a cc** [copy] **of SB 69** [a private property "takings" bill]...**I think this will work on smoking bans in the future..."**[175]

A review of the original text of SB 69 shows a law tailor-made to stop smoking bans from being enacted throughout the state. The bill, introduced by State Senators Tom Norton and Norma Anderson, was entitled **"Property Rights."** The text **"prohibit**[ed] **local governments from adopting laws or policies that burden the use of private property except when there is an established threat to the public health or safety…"** The bill then placed an extraordinarily heavy burden of proof on local governments to prove threats to public health or safety, and further gave **"property owners the right to claim compensation for any devaluation of their property resulting from violation of the act."** Placing even more of a burden on municipal governments, the bill required that **"local government shall pay the owner the amount of devaluation determined in the proceeding and confirmed by the court."** The bill passed both the House and the Senate in Colorado, and was on its way to becoming law when it was vetoed by then-Governor Roy Romer.

Property rights groups also appear on a list of tobacco industry **"coalition partners"** in a 1995 document listing the industry's **"grassroots constituencies."**[176]

Media Influence

Philip Morris documents reveal a comprehensive plan aimed at influencing Colorado media. A document entitled ***Media Plan for Colorado***, written by the Denver public relations firm Russell, Karsh & Hagen (RKH, the firm that helped Philip Morris fight Boulder's ordinance in 1995) states the intent of the program's plans:

> "[We] **will begin to reshape public opinion through the media..."** and **"...**[We] **are confident we can continue to shift the media's view, and, ultimately the view of the general public...toward issues affecting the industry."**

RKH planned to **"actively participate in a number of influential media organizations including, but not limited to, the Colorado Broadcasters Association and the Colorado Press Association."** More than simply being members, the goal of participating in these organizations was to attain positions within their decision-making bodies and then work from the inside to **"bolster industry arguments"** and influence the **"institutional dialogue"** of these media organizations. The plan states:

> "[B]**ecome actively involved in** [these organizations'] **key committee and decision-making positions to introduce and bolster our arguments inside the organizations so that they become an integral part of the institutional dialogue."**

Other plans to influence Colorado journalists include **"scheduling industry speakers," "providing sponsorships,"** and **"hosting hospitality suites"** for journalists' professional associations. In addition, substantial **"face time"** was to be devoted to selected reporters, editors, news directors and editorial boards who were singled out as influential. The purpose of concentrating on developing personal relationships was to influence members of the media to minimize or preempt public health viewpoints on tobacco issues: "**This proactive and personal approach will allow us to intercept anti-tobacco messages earlier in the media pipeline…"**

The above plan was part of a larger effort by Philip Morris to develop more tobacco-favorable media nationally. Called the *Media Action Network* (M.A.N.), the tactics of the program included **"increasing proactive contact with journalists," "creating media opportunities"** and **"pitching favorable stories"** to local news media in major cities across the country. Philip Morris's Media Action Network was comprised of 18 public relations firms located in the top 25 media markets in Philip Morris's "plant communities.'(177)

In 1995, Russell, Karsh and Hagan assembled a dossier on the smoking proclivities and attitudes of tobacco reporters throughout Colorado, and listed which media outlets could be relied upon to write positively on tobacco issues. Results ranged from the Boulder Daily Camera:

> **"In the so-called 'People's Republic of Boulder…the diet-conscious, environmentally aware, healthy populace is strongly anti-tobacco...Previous clips and attitudes expressed by the Boulder paper indicate we have little reason to believe they will be in our corner on many tobacco-related issues."**

…to the Grand Junction Daily Sentinel:

> **"They report …positively on tobacco issues, policy, opinions, etc."**(178) **"Local LTE's, op-ed pieces and columns favorable to our positions can be expected."**(179)

Surveillance of Public Health Groups and Employees

Documents also suggest strongly that RKH carried out covert surveillance of the ASSIST program on behalf of Philip Morris. A December 1992 Philip Morris document, *Report on Activities of ASSIST, Ft. Collins, Colorado, December 9, 1992,* consists of notes taken at an ASSIST meeting, which were clearly taken by an informant:

> **"I signed in as a student and hoped that my baggy clothes and backpack would make this credible…The 'close quarters' inhibited my note taking somewhat…Would advise future 'plants' to arrive late and leave early, avoiding the awkward small talk with other attendees that might create suspicion."**(180)

These notes were faxed to Philip Morris from the offices of Karsh and Hagan on December 14, 1992.

There is also evidence that the tobacco industry infiltrates public health groups to monitor their activities. An industry informant who attended the 1993 annual meeting of GASP of Colorado (where the 1994 tobacco tax effort was discussed) reported about the meeting to Karsh and Hagan, who faxed the information to Philip Morris.(181) Among Philip Morris' documents are minutes of meetings held by of the Coalition for Tobacco-Free Colorado.(182) A 32-page R.J. Reynolds document, "*Project ASSIST in Colorado,*" is a detailed dossier on people and organizations involved in public health in Colorado. It contains information on their salaries, previous employment, sources of funding for their organizations, and other activities.(183)

AFTERWORD

More investigation is needed into the extent of the tobacco industry's activities within Colorado. Other topics for examination could include tort reform, youth access, tobacco industry sponsorship through food and alcohol subsidiaries (such as Kraft foods and Miller beer, or MGD), how the industry has fought the more recent smoking laws enacted in communities like Pueblo and Greeley, the industry's involvement in Colorado media, and Colorado-specific marketing and promotions.

A fascinating illustration of further tobacco industry activities in Colorado is the Marlboro Train:

The Greatest Promotion that Never Was: Marlboro Unlimited

From 1993-96, Philip Morris engaged in a massive promotion of their flagship brand Marlboro called "Project Thunder," an ambitious, $44 million project to build a richly-appointed, 20-car double-decker luxury train complete with a 16-seat theater, library, openair car, dining car featuring five-star cuisine, hot tubs, casinos, and massage rooms. Each stateroom on the train was to have its own private bathroom, shower, television and VCR. The rooms on the top half of the train were to have glass-domed roofs, so passengers could sleep under the stars. The train would feature a hot-tub car with five Jacuzzi tubs, two massage rooms and glass walls 12 feet high. The ceiling would have wraparound glass to provide starlight views.

Philip Morris contracted with Rader Railcar of Denver to manufacture the train.

By December of 1995, Philip Morris was featuring the luxury train as the centerpiece of a national ad campaign. Ads in magazines and newspaper promoted the “Marlboro Unlimited” sweepstakes, which promised 2,000 smoker-winners the "ride of a lifetime" through "Marlboro Country." To win, entrants had to show birth certificates to prove that they were 21 or older, and sign affidavits swearing that they were smokers. Winners of the sweepstakes would get picked up from their homes by a limousine and receive $1,000 in spending cash for the trip. The train trip would start in Denver, and was to proceed on a carefully selected route through Colorado, Wyoming, Idaho and Montana.(184) The train would stop at various locations to allow passengers to take river raft trips, go horseback riding, attend concerts, and engage in other fun pastimes. The plan was for the train to run for a single season only—from May toSeptember of 1996.

Philip Morris anticipated a variety of emergencies that could happen while the train was operating, particularly since the majority of passengers would be smokers. In case of train emergencies, an instruction list described what to do if passengers caused on-board fires by smoking in bed, and what to do if the engineer had a heart attack or stroke. The emergency plan anticipated vandalism to the train **"especially due to PM's controversial nature."** The train’s windows were to be bullet proof in case **"overzealous protesters"** were encountered along the route. In the event a passenger died while on Marlboro's **"trip of a lifetime,"** the emergency plan stated, '**Train carries a body bag."**(185)

Curiously, the train never materialized. Examination of documents about "Project Thunder" and "Marlboro Unlimited" reveal that construction of the rail cars ran late. One memo revealed a list of more than 70 problems encountered during construction: faulty locks, electrical problems, showers that wouldn't drain properly and inadequate battery chargers.(186) A 1996 press release talks of train trips being rescheduled due to construction delays. A “train buff” newsletter, the Danville <u>Flyer</u>, revealed that delays were due in part to structural problems encountered in the cars that were to haul thousands of pounds of water for the hot tubs and spas, and reported that Philip Morris had to order a third locomotive to help power the train.(187)

Ultimately, Philip Morris canceled the promotion. A commentary in the Denver Post reported that Rader Railcar, Inc. laid off 249 manufacturing workers after Philip Morris canceled construction of the luxury train.(188) A phone call to Rader Railcar (now called Colorado Rail Car Manufacturing) on April 27, 2004 revealed that the cigarette maker hired an outside firm destroy the train. According to an engineer at Colorado Rail Car, the train was cut up into scrap using a huge “jaws of life” type metal cutting device.

Employees of Rader Railcar were compelled to sign documents saying they would not talk talk about the train or its demise.

DISCUSSION

What emerges from this study is a picture of an industry that has carried out widespread, multi-faceted and highly organized interference within Colorado politics and culture. The cigarette companies' fundamental disdain for public health combined with access to tremendous resources have fueled the industry's efforts to thwart reduction of tobacco use within the state. These efforts have significantly compromised citizens' and public health organizations' attempts to influence the state's destiny with respect to tobacco.

Low credibility requires tobacco companies to carry out their oppositional activities through allies and front groups. In turn, such allies have greatly aided the industry's battle against public health in Colorado. Businesses and individuals that benefit financially from sales or use of tobacco have served the industry by acting as crucial third-party conduits. Despite that Colorado is not a tobacco-growing state, the state legislature has supported tobacco industry interests over public health for decades. In addition, legislative support for the industry may have damaged the state in several other ways. For instance, to defeat tobacco taxes, the industry employs the strategy of fostering mistrust and anger towards state government, which breaks down citizens' confidence in the system. The industry's successful manipulation of legislative procedures leaves Coloradans jaded about the responsiveness of state government and leads citizens to abandon belief in the fundamental fairness and accessibility of these processes to average citizens. By failing for so long to increase the cigarette tax, the state has lost significant revenue that could have helped the state weather the current budget shortfalls. And by failing to step up efforts to reduce tobacco use, the state has increased its burden of the cost of medical care for those affected with smoking-induced diseases.

Furthermore, research shows that the battle is not over when smoking restrictions or a tax measure are passed. The industry continues to create difficulties in communities that pass smoking restrictions, and works to divert tax funds away from tobacco prevention and education programs wherever possible. The industry is likely to continue this behavior if it can continue to find organizations and legislators who will be complicit.

CONCLUSION

The release of the tobacco industry's documents is a momentous public health event. The documents have shown that the tobacco industry actually functions as two separate businesses in Colorado: a seller of tobacco products, and as a well-funded opponent to advances in public health. The information contained in the documents will advance human understanding of how this industry works to defeat societal progress against its damaging products. Specifically the documents have given us a window through which to view this industry's activities in Colorado, many of which were previously hidden from view.

A researcher at the London School of Hygiene and Tropical Medicine once said, "If you are trying to control an epidemic, you have to understand the way it spreads. Just as the mosquito spreads malaria, the tobacco epidemic is spread by the industry. You have to understand how the industry *works*."

The more Coloradans understand about how the tobacco industry works within our state, the more we can predict how it will act in the future. The more we know about its past activities, the sooner we will begin to recognize its current and future involvement in our state, and deal with it more knowledgeably and effectively. The more public health advocates, citizens and legislators understand about how the tobacco industry works, the sooner Colorado will be able to make real progress against the industry and advance the health of its citizens.

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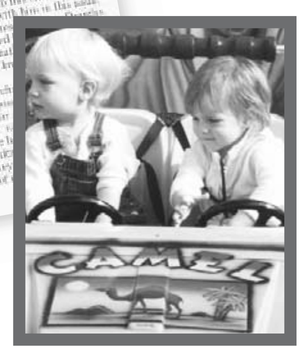

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