US Tobacco Industry Interference Index 2020
Facts for Context

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

Tobacco Industry Priorities

- The tobacco industry wants to prevent effective tobacco control to maximize tobacco use.
- They have a fiduciary responsibility to their stakeholders to maximize their profits.
- Evidence shows that their tactics interfere with tobacco control policies.

“215 BILLS DEFEATED IN 43 STATES.”

Article 5.3 of the WHO FCTC states: “In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”
U.S. Report & Limitations

➢ U.S. has signed but not ratified the WHO FCTC.

➢ The scope of US domestic policy making.

➢ WHO FCTC Article 5.3 prohibited activities that are constitutionally protected in the U.S.

➢ *Regardless of these limitations there is much that can and should be done to expose and neutralize tobacco industry interference.*
U.S. Score 2020

How the U.S. Compares

- U.S. score is 66/100
- The higher the score the more tobacco industry interference
- The U.S. ranked 42nd highest out of 57 participating countries in the 2020 global index.
- The top 3 countries with the best rank (lowest level of tobacco industry interference) were #1 Brunei Darussalam (score 14), #2 France (score 27) and #3 Uganda (score 31).
- The bottom 3 countries with the worst rank (highest level of tobacco industry interference) were #55 Zambia (score 78), #56 Indonesia (score of 82) and #57 Japan (score 88).
Indicators

- Level of Participation in Policy Development
- Industry-Related CSR Activities
- Benefits to the Tobacco Industry
- Forms of Unnecessary Interaction
- Transparency
- Conflict of Interest
- Preventive Measures
Level of Participation in Policy Development

“I don’t think I’d set money above public health...(But) I have responsibilities to employees, stockholders, to the community generally...I would say they’re all equally important”

~(Quote from testimony of Geoffrey C Bible, CEO and Chair of the Board of Philip Morris Companies, Wall Street Journal, March 3, 1998)
Tobacco Industry CSR &
Benefits to the Tobacco Industry

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

Forms of Unnecessary Interaction

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

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

~Philip Morris USA. Interoffice Correspondence. Phil PAC. Download to Oklahoma PAC. June 16, 1992.
Preventative Measures

“I would be more cautious in using the phar mirac-medical model—do we really want to tout cigarette smoke as a drug? It is, of course, but there are dangerous F.D.A. implications to having such conceptualization go beyond these walls. . . Perhaps this is the key phrase: the reinforcing mechanism of cigarette smoking. If we understand it, we are potentially more able to upgrade our product.”

~Feb. 19, 1969 Philip Morris memo from William L. Dunn to researcher Dr. Helmut Wakeham.

**INDICATORS 16-20: Preventative Measures**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
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<tbody>
<tr>
<td>Indicator 16</td>
<td>The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)</td>
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<tr>
<td>Indicator 17</td>
<td>The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)</td>
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<td>Indicator 18</td>
<td>The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (Rec 5.2)</td>
</tr>
<tr>
<td>Indicator 19</td>
<td>The government has a program/system/plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)</td>
</tr>
<tr>
<td>Indicator 20</td>
<td>The government has put in place a policy to disallow the acceptance of all forms of contributions/gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (Rec 3.4)</td>
</tr>
</tbody>
</table>
In 2006, a federal court ruled that Altria, Philip Morris USA, R.J. Reynolds, and other tobacco companies had committed at least 145 violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). The tobacco industry not only lied to the public, but also lawmakers.

The court found that the companies would likely continue to commit fraud.

After 11 years of legal appeals, the tobacco companies began disseminating court-ordered “corrective statements” in November 2017.

The RICO case is still active in federal court, with tobacco companies now fighting to avoid placement of the corrective statements at retail points-of-sale.
A recent analysis of internal tobacco industry documents show that since the 1990’s tobacco companies have led successful efforts to defeat — separately and in all 50 states — proposed legislation to:

1.) restrict public smoking,
2.) raise tobacco taxes,
3.) limit tobacco marketing,
4.) develop tobacco prevention or research, and
5.) reduce youth access to tobacco.

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

Preventable Illness, Death & Economic Costs

National, State & Local Lawmakers

Effective Bills Proposed

Effective Bills Killed, Weakened or Delayed

Tobacco Industry Interference

Stronger, Healthier Society

Less Effective Laws

Preventable Illness, Death & Economic Costs
As the leading preventable cause of death, tobacco kills an estimated 480,000 family members, friends and neighbors in the U.S. each year. We will never know how many lives could have been saved if not for decades of tobacco industry interference in lawmaking. Moving forward, it is clear that regular monitoring and public reporting of such interference has become a moral imperative.
1. RAISE AWARENESS
2. EMPLOY AVAILABLE RESOURCES
3. LEVERAGE PUBLIC SUPPORT
4. TRACK LOBBYING ACTIVITIES
Recommendations

5 INCREASE TRANSPARENCY
6 ADOPT OFFICIAL CODES OF CONDUCT
7 REJECT TOBACCO INDUSTRY GIFTS
8 DIVEST FROM TOBACCO
Industry Interference in Maryland: 
Preemption of Local Regulation

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December 10, 2020
PRINCE GEORGE’S COUNTY AND BALTIMORE CITY CIGAR PACKAGING LAWS

• *Baltimore City Health Commissioner Regulation*
  – Dr. Josh Sharfstein, Baltimore City Health Commissioner
  – Executive authority to issue cigar minimum packaging regulation
  – Received public input, including from industry
  – Industry filed suit immediately upon issuance of final regulation

• *Prince George’s County Council Ordinance*
  – Prince George’s County Council passed cigar minimum packaging ordinances (in two steps)
  – Plenty of industry presence at public hearings
  – Industry filed suit as ordinance was set to go into effect
Altadis v. Prince George’s County: The Altadis Decision

Altadis v. Prince George’s County, 431 Md. 307 (2013)

- The tension between state law and local law reinforces the conclusion that state law regulating the packaging and sale of other tobacco products, including cigars, preempts local ordinances.

- We shall hold that state law occupies the field of regulating the packaging and sale of tobacco products, including cigars, and thus impliedly preempts the two ordinances enacted by the County Council of Prince George’s County.
The “Fall Out”

- Locals are **prohibited from passing NEW local** laws related to tobacco sales and distribution;

- **Locals** hesitate to enforce **EXISTING** tobacco related law
Blocked Opportunities

• Cigar pack size
• T21
• Flavored tobacco products
Attempts at Reversal

• 2016:
  – HB1485: *Altadis* reversal; failed in Committee

• 2019:
  – MACo/LOCAL bill: Prohibiting judicial determination of implied preemption generally, not public health specific and not directly reversing *Altadis*; did not proceed with bill

• 2021:
  – *Altadis* reversal with explicit non-preemption of local tobacco control powers; Priority bill for tobacco-centered public health advocates
Miscellaneous Musings

*Time Permitting* . . .

Insert here random thoughts from Kathi’s 20+ year career in Maryland tobacco control and prevention . . .
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Stay Involved

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NEXT WEBINARS:
Thank you for your participation!
We would like to wish you and your loved ones a happy, healthy and safe holiday season.
Please stay tuned for announcements about our upcoming 2021 webinars.

ADDITIONAL RESOURCES

• ASH US Tobacco Industry Interference Index 2020
  https://ash.org/2020index

• ASH US Tobacco Industry Interference Index 2019
  https://ash.org/tobaccointerference/

• STOP (Stopping Tobacco Organizations and Products) Global Tobacco Industry Interference Index: https://exposetobacco.org/global-index/

Recordings from previous webinars and Live Chats on social media, under “Resources from ASH” here:
ash.org/coronavirus-update

Toolkit for Advocates
Talking with government and media about the COVID-19 and tobacco use co-morbidity and policies to protect the health of everyone during the pandemic.

ash.org/covid19