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PROPOSED NATIONAL TOBACCO SETTLEMENT SYMPOSIUM: ESSAY: **ADOLESCENTS AND THE PROPOSED TOBACCO SETTLEMENT**

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**SUMMARY:**

... THE \$ 368 billion tobacco settlement proposed with great promise and fanfare by tobacco company executives and a consortium of state attorneys general in June of 1997 met a quick demise in Congress. ... First, why is adolescent smoking at the heart of the litigation brought against the tobacco companies, and at the heart of discussions in Congress over tobacco legislation? Second, what provisions in the proposed tobacco settlement are most likely to contribute to lower rates of smoking among American adolescents? Third, how can the goal of reducing adolescent smoking be promoted now that the proposed settlement has slouched into oblivion? ... Although views of the ultimate content of tobacco legislation differ sharply among politicians, many of them have declared a common determination to pass legislation that would be effective in reducing adolescent smoking. ... The proposed settlement contained three key provisions that hold substantial promise for reducing adolescent smoking. ... The experience with these campaigns suggests that a national anti-smoking media campaign would be effective in reducing adolescent smoking nationwide. ... Reducing Adolescent Smoking in a Post-Settlement Environment ... What can be done to achieve the goal of reducing adolescent smoking now that the settlement in its original form is virtually dead? ...

**TEXT:**

[\*653]

Introduction

THE \$ 368 billion tobacco settlement proposed with great promise and fanfare by tobacco company executives and a consortium of state attorneys general in June of 1997 met a quick demise in Congress. Nevertheless, the features of the proposal are worth analyzing for their merits in reducing smoking among minors. Some of the features may be included in future legislation.

We are developmental psychologists whose research focuses on health risk behavior among adolescents. The first author has served as a consultant and expert witness on adolescent development to attorneys for the states in litigation against the tobacco companies. Our primary focus with respect to tobacco issues is on the present and future well-being of adolescents, and the focus of this paper will be on the features of the proposed tobacco settlement that promoted this goal. We will deal with three central questions in this article. First, why is adolescent smoking at the heart of the litigation brought against the tobacco companies, and at the heart of discussions in Congress over tobacco legislation? Second, what provisions in the proposed tobacco settlement are most likely to contribute to lower rates of smoking among

American adolescents? Third, how can the goal of reducing adolescent smoking be promoted now that the proposed settlement has slouched into oblivion?

### I. The Central Role of Adolescents

Although there were numerous elements in the proposed settlement, efforts to reduce smoking among adolescents were essential to it and have been among the most widely-discussed provisions discussed in potential legislation. Although views of the ultimate content of tobacco legislation differ sharply among politicians, many of them have declared a common determination to pass legislation that would be effective in reducing adolescent smoking.

Why is adolescent smoking at the heart of the tobacco litigation and legislation? Despite overwhelming evidence that smoking is detrimental to health and contributes to premature mortality, more Americans begin smoking each year and virtually all of them are adolescents.<sup>11</sup> Using data from four nationally representative data sets, the [\*654] Department of Health and Human Services concluded that 92-96% of smokers had tried their first cigarette before they were seventeen-years-old, and the mean age of becoming a "regular" smoker was 17.7 years old.<sup>12</sup> In other words, persons who do not begin smoking as minors, as adolescents, are unlikely ever to become smokers. A second reason for the prominence of adolescents in the proposed settlement and in other discussions of legislation is the increase in smoking rates among adolescents aged twelve to seventeen that has taken place since 1990. The Monitoring the Future study, an annual national survey of adolescents in the United States, found that after declining steeply during the late 1970s and declining slightly in the 1980s, rates of smoking among adolescents rose for five consecutive years between 1991 and 1996 among eighth, tenth, and twelfth graders.<sup>13</sup> Similarly, the Centers for Disease Control's (CDC) biennial Youth Risk Behavior Survey, also a national survey of American adolescents, reported in 1998 that the prevalence of cigarette smoking among high school students in grades nine through twelve increased from 28% in 1991 to 36% in 1997.<sup>14</sup> Additionally, the survey found that in 1997, 43% of students had used tobacco products (cigarettes, cigars, or smokeless tobacco) in the past thirty days.<sup>15</sup> Although studies have not yet explored directly the reasons for this increase, the fact that the increase in adolescent smoking took place following the initiation of the Joe Camel campaign is viewed by many researchers as more than a coincidence.<sup>16</sup> Moreover, overall expenditures on cigarette advertising and promotion increased sharply in the early 1990s, to \$ 6 billion by 1993.<sup>17</sup>

In sum, the fact that virtually all new smokers are aged eighteen or younger, and the fact that smoking among minors has increased sharply since 1990, have combined to make adolescent smoking central to the proposed settlement and to proposed tobacco legislation. The proposed settlement contained three key provisions that hold substantial promise for reducing adolescent smoking. These elements remain worthy of consideration for future tobacco legislation: (1) restrictions on advertising (including a ban on tobacco promotional items and events), (2) restrictions on access to tobacco products, and (3) the development of anti-smoking media campaigns.

### II. Restrictions on Advertising

Critics of the tobacco industry have long argued that tobacco companies market their products to adolescents in the hopes of recruiting new smokers and establishing a brand loyalty that they will maintain throughout adulthood.<sup>18</sup> Although the tobacco [\*655] companies have denied for decades that their advertising and promotion is directed toward minors, numerous tobacco industry documents released in recent years as part of the tobacco litigation indicate that the companies have been acutely aware that new smokers are adolescents and that tobacco companies must appeal to them if they are to survive and prosper.<sup>19</sup> For example, a planning document for 1977-86 produced by the R.J. Reynolds Tobacco Company stated: "Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the Industry is to be maintained over the long term."<sup>20</sup>

Several recent studies have examined the relation between cigarette advertising and smoking in various age groups over the past several decades.<sup>21</sup> These studies provide persuasive evidence that tobacco advertising is an important influence toward persuading adolescents to take up smoking.<sup>22</sup> Perhaps most notably, Richard Pollay and colleagues traced tobacco companies' advertising expenditures in relation to rates of smoking among adolescents (ages twelve to eighteen) and adults over the period 1979-1993.<sup>23</sup> He concluded that the effect of advertising on brand choice was three times as strong for adolescents as for adults.<sup>24</sup>

In another important study, John Pierce, Lora Lee, and Elizabeth Gilpin examined trends in smoking initiation from 1944 to 1988.<sup>25</sup> They found that for girls aged fourteen to seventeen, a sharp rise in smoking initiation coincided with the introduction of three brands targeted at females - Virginia Slims, Silva Thins, and Eve - between 1967 and 1973.<sup>26</sup>

There was no such increase during this period for girls aged ten to thirteen or eighteen to twenty, nor for males.<sup>117</sup> The ad campaigns were evidently particularly effective among - and targeted to? - adolescent girls in the age range when smoking initiation was most likely to take place, ages fourteen to seventeen.<sup>118</sup> (These campaigns echoed a campaign from the 1920s, when females were urged to "Reach for a Lucky instead of a sweet"<sup>119</sup> and the rate of smoking among females increased sharply).

An article by Gilpin and Pierce traced smoking initiation rates among fourteen- to seventeen-year-olds between 1979 and 1989.<sup>120</sup> They found a slight decline in [\*656] prevalence in the early 1980s, followed by a slight increase during the late 1980s.<sup>121</sup> The increase in the late 1980s came mainly from males, whites, and people who did not go on to attend college.<sup>122</sup> For females, rates were flat throughout the 1980s, while rates for blacks declined steadily.<sup>123</sup> For college attendants, there was an increase in the late 1980s, but not as much as for young people who did not go on to attend college after high school.<sup>124</sup> The authors attributed the increased rates in the late 1980s to tobacco companies' intensive marketing of promotional items - caps, backpacks, lighters, etc. - bearing tobacco advertising logos and obtainable through purchasing cigarettes.<sup>125</sup> Gilpin and Pierce charted how tobacco advertising strategies changed markedly during the 1980s. The amount devoted to advertisements in print media (including billboards) declined steeply while the amount devoted to promotional items rose steadily. By 1989 the tobacco companies were spending more on promotional items than on print media.<sup>126</sup> In the survey presented by the authors, these promotional items were found to appeal especially to males, whites, and those who did not go on to attend college after high school - precisely the groups for whom smoking rates rose the most in the late 1980s.<sup>127</sup>

Also of interest with respect to adolescents and cigarette advertising is the research on advertisements featuring Joe Camel. The Joe Camel advertising campaign was highly successful between its introduction in 1988 and RJR's cancellation of the campaign in 1997, in response to public criticism. Its success was especially strong among adolescents.<sup>128</sup> Prior to 1988, Camel cigarettes were smoked mainly by older adults and were smoked by less than 1% of adolescent smokers.<sup>129</sup> However, according to CDC figures, eighteen months after the campaign began, the prevalence of adolescent smokers preferring Camels had risen to 8%, and by 1993 to over 13%.<sup>130</sup> Camel sales also increased among adults after Joe was introduced, but not by nearly as much as among minors.<sup>131</sup> This success provoked great consternation among public health advocates, and has inspired numerous studies over the past several years.

One notable study was conducted by Nicola Evans and colleagues, who focused on adolescent nonsmokers in order to explore the appeal of cigarette ads to adolescents who might be at risk for taking up smoking.<sup>132</sup> They asked these adolescents to name their favorite cigarette ads, and found that Joe Camel ads were their favorites, followed by Marlboro.<sup>133</sup> In response to a question about what cigarette they would smoke if they did smoke, Camel and Marlboro were also at the [\*657] top.<sup>134</sup> The authors also created an Index of Receptivity to Tobacco Marketing and found it to be related to the adolescents' susceptibility to smoking initiation. Thus, the results of the study suggest a connection between the appeal of cigarette ads and the initiation of smoking.<sup>135</sup>

In another study, adolescents were shown ads for five different brands of cigarettes - Camel, Marlboro, Lucky Strike, Benson & Hedges, and Kool - and asked various questions about their responses.<sup>136</sup> The ads for Camel and Marlboro were the ads the adolescents had seen the most, the ads they liked the best, and the ads they were most likely to see as making smoking appealing.<sup>137</sup> In a number of respects, smokers' responses to the ads were more favorable than the responses of nonsmokers. For all brands, smokers were significantly more likely to indicate that they liked the ad and more likely to indicate that the ad made them want to smoke cigarettes of that brand. For the Camel and Marlboro ads, but not for the other brands, smokers were more likely than nonsmokers to indicate that the ad made smoking more appealing.<sup>138</sup>

In addition to these studies of adolescents, several studies have examined young children's responses to the Joe Camel campaign. Paul Fischer and associates aroused a great deal of attention and concern when they published a paper indicating that most children aged three to six recognized the Joe Camel character and associated it with cigarettes in a matching task.<sup>139</sup> Subsequently, Richard Mizerski<sup>140</sup> and Lucy Henke<sup>141</sup> replicated Fischer's finding of a high rate of recognition of Joe Camel among young children. However, these two authors also found that the children's views of cigarettes were overwhelmingly negative, and each concluded that for this reason the Joe Camel campaign may make children less likely to smoke in adolescence, because of the negative association they would have developed between cigarettes and cigarette advertising.<sup>142</sup> Despite this, the results of the studies indicating that adolescents find the Joe Camel ads appealing, and that adolescent smokers are especially likely to find the ads appealing, effectively refutes the claims of Mizerski and Henke that Joe Camel actually served as an anti-smoking ambassador to young children.

### III. International Comparisons

As health concerns over tobacco have increased in recent decades, an increasing number of countries have instituted restrictions on tobacco advertising and [\*658] promotion.<sup>n43</sup> These restrictions provide us with an excellent natural experiment. If tobacco consumption decreases following restrictions on advertising, then this would indicate that tobacco advertising influences people to smoke, not just to switch brands.

Two studies have examined the results of the natural experiment in a wide range of developed countries. The most important of these is the study by Murray Laugesan & Chris Meads, who analyzed the effects of advertising restrictions on tobacco use in twenty-two developed countries during the years 1960 to 1986, controlling for changes in the price of cigarettes and income per capita. They found that from 1960 to 1973 cigarette use actually increased slightly in response to countries' advertising bans, but from 1973 to 1986 advertising restrictions were found to have a significant negative effect on tobacco consumption.<sup>n44</sup> Similarly, the New Zealand Department of Health commissioned a report on changes in tobacco consumption in relation to ad restrictions in thirty-three developed countries from 1970 to 1986, and found that ad restrictions resulted in decreases in tobacco consumption, with the greatest decreases taking place in countries that instituted a total ban on tobacco advertising and promotion.<sup>n45</sup> Furthermore, they found that the greater the extent of government restrictions on tobacco advertising and promotion, the greater the average annual decrease in the prevalence of smoking among "young people."<sup>n46</sup>

As noted above, the marketing activities of the tobacco companies have shifted in recent years away from advertising and toward promotion, especially since 1990. James Sargent and colleagues noted that tobacco industry expenditures on cigarette promotional items increased from \$ 0.31 billion and 7.7% of the cigarette advertising budget in 1990 to \$ 1.25 billion and 25.8% of the budget in 1994.<sup>n47</sup> Recently, several studies have examined tobacco promotional activities in relation to adolescent smoking. Joseph DiFranza and colleagues conducted a study of various aspects of tobacco use among 721 Boston-area adolescents aged ten to seventeen.<sup>n48</sup> Thirty percent of the adolescent smokers in the study indicated that they had purchased a particular brand to obtain a free promotional item such as a t-shirt or a lighter.<sup>n49</sup> Two-thirds of these had sought promotional items for Camel cigarettes (featuring Joe Camel) in particular.<sup>n50</sup>

The Sargent study addressed the prevalence of adolescents' possession of cigarette promotional items (CPIs)<sup>n51</sup> in relation to their smoking behavior. They surveyed 1265 Vermont and New Hampshire adolescents in sixth through twelfth grade, aged [\*659] ten to nineteen, concerning CPIs and smoking.<sup>n52</sup> The results indicated that about one-third of the students owned at least one CPI, with ownership unrelated to grade or gender. Students with poorer school performance were more likely to own CPIs, as were students with family members and friends who smoked.<sup>n53</sup> Marlboro was the most popular logo appearing on their CPIs (58%), followed by Camel (31%) (paralleling the popularity of Marlboro and Camel ads among adolescents that has been found in other studies).<sup>n54</sup> Most importantly, students who owned CPIs were four times more likely to be smokers than those who did not.<sup>n55</sup> This indicates that the CPIs they obtain are not just for fashion, but may be an inducement to smoke (in order to obtain CPIs) as well as a reflection and reinforcement of their smoking behavior once they start.

John Pierce and colleagues also addressed the issue of CPIs in relation to adolescent smoking.<sup>n56</sup> The subjects were 1752 California adolescents aged twelve to seventeen who were contacted randomly and interviewed over the telephone. The authors predicted smoking behavior on the basis of a variable they called "receptivity to tobacco promotional activities."<sup>n57</sup> This variable included two aspects: having a CPI or being willing to use one, and having a favorite cigarette advertisement.<sup>n58</sup> Adolescents who owned a CPI or were willing to use one were rated as more receptive than other adolescents; adolescents who indicated a favorite cigarette advertisement were rated as more receptive than adolescents who did not. Degree of receptivity to tobacco promotional activities at the initial telephone interview was found to predict progress toward smoking initiation in a follow-up interview three years later. The more receptive adolescents were to tobacco promotional activities at the time of the first interview, the more likely they were to have begun smoking three years later. As in other studies, Marlboro and Camel were found to be the two favorite ads.<sup>n59</sup>

In sum, studies of cigarette advertising and promotion in relation to adolescent smoking provide a strong case for placing severe restrictions on tobacco advertising. The proposed settlement specified that only advertisements with black text on white background would be allowed.<sup>n60</sup> Billboards and print ads with human beings or cartoon characters would be banned.<sup>n61</sup> In other words, figures such as Joe Camel and the Marlboro Man would be permanently exiled from American media. In addition, no outdoor advertising, such as billboards, posters, and placards, would be allowed within 1,000 feet of any primary or secondary school or playground.<sup>n62</sup> Furthermore, the sale, distribution or offering of non-tobacco products that display a cigarette logo [\*660] or any other indicator linking the products to tobacco would be prohibited. This provision would also prohibit the sponsorship of sporting events or teams under any kind of identifying insignia that is linked to tobacco products.<sup>n63</sup>

The tobacco companies agreed to these restrictions as part of the proposed settlement. However, with the demise of the settlement, the companies can be expected to challenge the restrictions in court if they are included as part of legislation that is passed against the protests of the companies. The restrictions are likely to face a four-part test, clarified in *Central Hudson Gas & Electric Corp. v. Public Service Commission*.<sup>n64</sup> To constitutionally limit commercial speech (1)the speech must concern lawful activity and not mislead the public; (2)the asserted government interest in limiting commercial speech must be substantial; (3)the restrictions placed on advertising must directly advance that state's interest; and (4)the restrictions must be no more than necessary to serve the state's interest.<sup>n65</sup> At present, it is unclear whether the proposed restrictions would pass this test if challenged in court.

#### IV. Restricting Minors' Access to Cigarettes

Although the legal age for purchasing cigarettes is now eighteen in nearly all of the fifty states, these laws have been ineffective in preventing adolescents from obtaining cigarettes.<sup>n66</sup> The American School Health Association found that 79% of eighth graders and 92% of tenth graders considered it very easy or fairly easy to obtain cigarettes.<sup>n67</sup> In a national study of adolescents aged twelve to seventeen years, the CDC found that most adolescents who smoke buy their own cigarettes.<sup>n68</sup> This same study found that, in 1993, 18% of twelve- to fifteen-year-old smokers and 10% of sixteen- and seventeen-year-old smokers bought cigarettes from vending machines, an indication that vending machines make cigarettes accessible to the youngest adolescents.<sup>n69</sup> The most common purchase venue for all adolescents, however, was small stores, where 89% of all adolescent smokers had bought cigarettes.<sup>n70</sup> These data also indicated that less than one-fourth of adolescents who buy cigarettes in stores are asked for a proof of age.<sup>n71</sup>

Two studies show that enforcement of laws restricting minors' access to tobacco can have dramatic effects - and also show, indirectly, that access laws without enforcement are of little use. The two studies show that the laws that most states have on the books concerning minors' access to tobacco are widely violated, but that [\*661] vigorous enforcement of access laws can dramatically lower the prevalence of cigarette use among adolescents.

Leonard Jason and colleagues studied the effect of a new local tobacco access law in Woodridge, Illinois.<sup>n72</sup> The new law was modeled after existing alcohol access laws, and contained provisions for licensing vendors, enforcing the law, penalizing merchants selling tobacco to minors, and penalizing minors for possessing tobacco. The authors had twelve- and thirteen-year-olds attempt to buy cigarettes, before and after the law went into effect. After passage of the law, the rate of sales to minors plummeted, ranging from 60-79% before the law to 0-36% in the first six months after the law, and to 0-4% in the next twelve months.<sup>n73</sup> Furthermore, a school survey of seventh and eighth graders showed that before the law 46% of adolescents were experimenting with cigarettes and 16% were regular smokers, whereas two years after the law took effect only 23% of adolescents reported experimentation and only 5% were regular smokers.<sup>n74</sup>

Ellen Feighery and colleagues conducted a similar study in four Northern California communities.<sup>n75</sup> No new law was implemented, simply a new enforcement program of an existing law prohibiting minors from purchasing cigarettes. The program began with an educational intervention in which merchants were provided with a copy of a survey showing the prevalence of sales to minors, a copy of the law, a statement on why it is important to follow the law, a sticker for the register declaring that it is illegal for minors to purchase cigarettes, educational materials for distribution to employees, and a list of individuals and community organizations supporting the program. The second part of the program involved a stepped-up enforcement of the law, with citations for merchants who violated it.<sup>n76</sup>

The authors had fourteen- to sixteen-year-olds attempt to purchase cigarettes before the program, after the educational intervention, and again after the enforcement program. Successful over-the-counter purchases by the adolescents dropped from 72% before the program to 62% after the educational intervention, and more steeply to 21% after the enforcement program. However, the rate of successful vending machine sales was unchanged by the program - over 80% each time.<sup>n77</sup>

In addition to these two intensive but localized studies, a national analysis of access policies also provided evidence of the importance of restricting adolescents' access to tobacco products. Using data from the second National Health and Nutrition Examination Survey, Wasserman and colleagues constructed a state regulation index and used this index to model teenage tobacco consumption.<sup>n78</sup> The [\*662] authors concluded that restrictive access regulations resulted in significantly lowered rates of adolescent smoking.<sup>n79</sup>

The proposed settlement included a nationwide program to restrict minors' access to cigarettes. Retailers would be required to obtain a state license for selling tobacco products. The minimum age for purchasing tobacco products would be eighteen in all states. Each state would be required to develop an enforcement program to ensure that retailers do not sell tobacco products to anyone under age eighteen. The effectiveness of these enforcement programs would be assessed

by a federal agency, and failure to develop an effective program would have cost the states a proportion of their funds from the settlement. It seems clear from research that an effective program to reduce minors' access to tobacco products would have a substantial influence toward reducing adolescent smoking.

#### V. Anti-Smoking Media Campaigns

The final provision in the proposed settlement that we will address is the provision for a large-scale anti-smoking campaign, funded (but not designed) by the tobacco industry and directed particularly toward adolescents. Although studies of the effectiveness of anti-smoking campaigns are not abundant, existing studies suggest the potential effectiveness of this approach to reducing adolescent smoking. Several studies have examined the effectiveness of smoking prevention and found that anti-smoking programs had moderate to strong impacts on reducing rates of adolescent smoking.<sup>n80</sup> The consistency of these findings is notable given that studies have been limited by large variabilities in the scope of intervention programs and differences in the communities and cultures in which the programs were undertaken.<sup>n81</sup>

Two examples of the effectiveness of anti-smoking media campaigns come from studies of recent anti-smoking campaigns in California and Massachusetts. In both states, voters approved ballot propositions raising cigarette taxes by twenty-five cents and specifying that a proportion of the revenues would go toward an anti-smoking campaign.<sup>n82</sup> California's campaign began in 1990, Massachusetts' in 1994.<sup>n83</sup> Both campaigns have had striking success.

James Popham, along with several colleagues, analyzed the effects of the anti-smoking campaign in California conducted from 1990 to 1991.<sup>n84</sup> They included data on smoking attitudes and behavior collected before the campaign and three times after the campaign began. Their results showed that the campaign was successful in [\*663] a number of respects, including reducing smoking prevalence, decreasing nonsmokers' interest in starting, and promoting more negative attitudes toward smoking.<sup>n85</sup> In Massachusetts, studies have also shown that cigarette smoking has declined as a result of the campaign and that following the initiation of the campaign, adolescents in Massachusetts had stronger anti-smoking attitudes than their counterparts in states without such campaigns.<sup>n86</sup>

Lisa Goldman and Stanton Glantz included both the California and the Massachusetts campaign in their analysis.<sup>n87</sup> They analyzed data from 186 focus groups involving over 1,500 adolescents and adults, conducted by the advertising agencies that designed the anti-smoking campaigns, in order to assess the effectiveness of the campaigns. Their analysis found that the most effective techniques according to both adolescents and adults were the ones that emphasized industry manipulation and secondhand smoke.<sup>n88</sup> Adolescents especially were aroused to resentment by ads that portrayed industry attempts to manipulate them and exploit their youthful vulnerabilities. Adolescents like to think of themselves as becoming independent, and adolescent smokers often see cigarette smoking as a symbol of their independence.<sup>n89</sup> However, making them aware that the tobacco industry exploits their desire for independence in advertisements to lure them into smoking was effective in defusing their desire for independence as a motivation for smoking. Less effective (especially with respect to adolescents) were ads emphasizing long-term health effects of smoking.<sup>n90</sup> Also ineffective were ads that emphasized the short-term effects of smoking (yellow teeth and fingers, unpleasant-smelling clothes and hair), and romantic rejection.<sup>n91</sup> Overall, however, the focus group responses indicated that the ads were effective in discouraging adolescents from beginning to smoke.<sup>n92</sup>

It is notable that when Massachusetts added the twenty-five cent per pack tax, the tobacco companies lowered the prices of their cigarettes by that amount, effectively eliminating any price increase from the tax.<sup>n93</sup> Consequently, any change in cigarette consumption could reasonably be attributed to the anti-smoking campaign rather than to the price increase. According to Goldman and Glantz, per capita consumption of cigarettes in Massachusetts declined from 1992 to 1996 indicating that the media campaign had a substantial impact on smoking.<sup>n94</sup> Also, as noted above, Massachusetts adolescents were more likely than adolescents from states without anti-smoking campaigns to cite more reasons for not smoking, be more knowledgeable about tobacco use, and hold stronger anti-smoking attitudes.<sup>n95</sup> [\*664] Clearly, the anti-smoking campaigns in California and Massachusetts, both funded by increases in cigarette taxes, have been effective in reducing smoking. The experience with these campaigns suggests that a national anti-smoking media campaign would be effective in reducing adolescent smoking nationwide.

#### VI. Reducing Adolescent Smoking in a Post-Settlement Environment

Because of the promise the proposed settlement held with respect to restrictions on advertising, restrictions on access, and anti-smoking programs, we believe that it would have led to a substantial reduction in the proportion of adolescents who become smokers. However, it is clear by now that nothing close to the original settlement is going to be enacted

into law. What can be done to achieve the goal of reducing adolescent smoking now that the settlement in its original form is virtually dead?

With respect to anti-smoking programs and restrictions on access, the answer to this is straightforward and easy. If legislation is passed that increases revenue through raising cigarette taxes rather than, as in the original proposal, through voluntary contributions by the tobacco companies, part of that revenue could and should be used toward anti-smoking and access programs at a level of funding resembling the levels specified in the proposed settlement. However, actually making this happen is likely to be neither straightforward nor easy. Although anti-smoking programs have been widely discussed by legislators and the President as being part of tobacco legislation, the access program that was part of the proposed settlement has been entirely missing from public discussions of the legislation thus far. We believe that this program is a key part of an overall effort to reduce teen smoking, and should be included as part of any legislation.

With respect to restrictions on advertising, the issues are more complex because of the First Amendment issues involved. As noted above, a case could be made for restricting tobacco advertising in a way that would not violate the First Amendment. However, it is unclear whether the courts would support this argument. Without these restrictions, tobacco companies will undoubtedly continue to develop advertising campaigns that appeal to adolescents.

We would like to propose a possible solution to this dilemma. The question is, how can we achieve the goals of the restrictions on advertising and promotion without granting an unpalatable and politically problematic immunity from litigation to the tobacco companies? The answer, we believe, lies in past experience with restrictions on tobacco advertising. Recall the circumstances that led to the "broadcast ban" of 1971, which prohibited tobacco advertisements on television or radio.<sup>n96</sup> Although legislation supporting the broadcast ban was passed by Congress and signed by the President in 1971, the tobacco companies voluntarily agreed to end TV and radio advertising before the broadcast ban became law.<sup>n97</sup> Why did they agree to this?

[\*665] The reason appears to be that in the late 1960s, the Federal Communications Commission ruled that, as part of the Fairness Doctrine, anti-smoking advertisements must be carried on television and radio in some proportion to the pro-tobacco advertisements.<sup>n98</sup> These ads were highly effective, and they had an immediate effect on public attitudes toward cigarettes and toward smoking, and on cigarette sales as well.<sup>n99</sup> The tobacco companies evidently decided that it would be in their interests to end TV and radio ads for cigarettes, in order to end the anti-smoking ads as well.<sup>n100</sup>

How is that history related to our current dilemma? It suggests that a promising strategy would be to include in legislation a non-broadcast version of the Fairness Doctrine policy of the late 1960s. For every tobacco advertisement in newspapers and magazines, let there be an anti-smoking advertisement, funded by increased taxes on cigarettes and other tobacco products. For every billboard celebrating the Marlboro Man, let there be a billboard satirizing the Marlboro Man.<sup>n101</sup> One possibility would be to include a large and vivid anti-smoking message as part of every tobacco advertisement. Instead of the puny and easily dismissed Surgeon General's warning that is now required in tobacco advertisements, require a warning equal in size to the advertisement itself. England now requires something like this. It can be quite stunning to see happy smokers frolicking with their cigarettes on one half of an ad and something like SMOKING CAUSES DISEASE AND EARLY DEATH in huge block letters on the other half.

None of this would require the cooperation of the tobacco companies, and none of this would be vulnerable on First Amendment grounds. This may be a way to get a key benefit of the proposed settlement, and concede little or nothing to the tobacco companies that would condone or reward their decades of deceit and hypocrisy.

#### Summary and Conclusions

Although the proposed tobacco settlement has met a quick and little-lamented demise, useful legislation toward reducing adolescent smoking may yet rise from its ashes. We believe that provisions to restrict tobacco advertising and promotion, to restrict adolescents' access to tobacco products, and to create a broad and intensive anti-smoking media campaign should be the key elements of legislation intended to reduce adolescent smoking initiation. The literature reviewed above shows that legislation that included these provisions would likely be effective. Because over 90% of smokers begin smoking by age eighteen, the tremendous toll that cigarettes take on health, well-being, and the longevity of millions of Americans each year could best be reduced by effectively discouraging adolescents from beginning to smoke.

#### Legal Topics:

For related research and practice materials, see the following legal topics:

GovernmentsAgriculture & FoodProduct PromotionConstitutional LawBill of RightsFundamental FreedomsFreedom of SpeechCommercial SpeechAdvertisingTax LawState & Local TaxesAlcohol & Tobacco Products TaxTobacco Products TaxGeneral Overview

#### FOOTNOTES:

n1. See, e.g., Centers for Disease Control and Prevention, Tobacco Use Among High School Students - United States, 1997, 47 *Morbidity & Mortality Wkly. Rep.* 229 (1998); Nicola Evans et al., Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking, 87 *J. Nat'l Cancer Inst.* 1538, 1538 (1995).

n2. Office on Smoking & Health, U.S. Dep't Health & Human Servs., Preventing Tobacco Use Among Young People: A Report of the Surgeon General 67 (1994) [hereinafter Preventing Tobacco Use Among Young People].

n3. Cigarette Smoking Continues to Rise Among Teen-agers in 1996, News Release: University of Michigan News and Information Services (1996).

n4. Centers for Disease Control and Prevention, *supra* note 1, at 229.

n5. *Id.*

n6. Jeffrey Jensen Arnett & George Terhanian, Adolescents' Response to Cigarette Advertisement: Links between Exposure, Liking, and the Appeal of Smoking, 7 *Tobacco Control* 129, 129-30 (1998).

n7. Evans et al., *supra* note 1, at 1545.

n8. See Arnett & Terhanian, *supra* note 6, at 129.

n9. Joseph R. DiFranza et al., Tobacco Acquisition and Cigarette Brand Selection Among Youth, 3 *Tobacco Control* 334, 334 (1994).

n10. Philip J. Hilts, Smokescreen: The Truth Behind the Tobacco Industry Cover-up 75 (1996).



n11. See Arnett & Terhanian, *supra* note 6, at 130.

n12. *Id.*

n13. Richard W. Pollay et al., *The Last Straw? Cigarette Advertising and Realized Market Shares Among Youths and Adults*, *J. Marketing*, Apr. 1996, at 1, 13.

n14. *Id.*

n15. See John P. Pierce et al., *Smoking Initiation by Adolescent Girls, 1944 Through 1988: An Association with Targeted Advertising*, 271 *JAMA* 608, 610 (1994).

n16. *Id.*

n17. *Id.*

n18. *Id.*

n19. *Id.*

n20. Elizabeth A. Gilpin & John P. Pierce, *Trends in Adolescent Smoking Initiation in the United States: Is Tobacco Marketing an Influence*, 6 *Tobacco Control* 1 (1997).

n21. *Id.* at 3.

n22. *Id.* at 4.

n23. *Id.* at 3.

n24. Id.

n25. Id. at 2-3.

n26. Id. at 3-4.

n27. Id. at 5.

n28. Evans et al., *supra* note 1, at 1545.

n29. Id.

n30. Centers for Disease Control, Changes in the Cigarette Brand Preferences of Adolescent Smokers - United States, 1983-1993, 43 *Morbidity & Mortality Wkly. Rep.* 577, 580 (1994).

n31. Pierce et al., *supra* note 15, at 608.

n32. Evans et al., *supra* note 1, at 1538-39.

n33. Id. at 1540.

n34. Id. at 1540 tbl.

n35. Evans et al., *supra* note 1, at 1544.

n36. Arnett & Terhanian, *supra* note 6, at 130.

n37. *Id.* at 131.

n38. *Id.*

n39. Paul Fischer et al., Brand Logo Recognition by Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel, 266 JAMA 3145, 3146-47 (1991).

n40. Richard Mizerski, The Relationship Between Cartoon Trade Character Recognition and Attitude Toward Product Category in Young Children, *J. Marketing*, Oct. 1995, at 58, 68-69.

n41. Lucy L. Henke, Young Children's Perceptions of Cigarette Brand Advertising Symbols: Awareness, Affect, and Target Market Identification, *J. Advertising*, Winter 1995, at 13, 26.

n42. *Id.* at 27; Mizerski, *supra* note 40, at 69.

n43. 61 Fed. Reg. 44,396, 44,491 (1996) (discussing restrictions in some foreign countries).

n44. Murray Laugesan & Chris Meads, Tobacco Advertising Restrictions, Price, Income, and Tobacco Consumption in OECD Countries, 1960-1986, 86 *British J. Addiction* 1343, 1349 (1991).

n45. Toxic Substances Board, Dep't of Health (Wellington, New Zealand), *Health or Tobacco: Summary and Recommendations* 11 (1989).

n46. *Id.* at 12.

n47. James D. Sargent et al., Cigarette Promotional Items in Schools, 151 *Archives Pediatric & Adolescent Med.* 1189, 1189 (1997).

n48. DiFranza et al., *supra* note 9, at 335.

n49. *Id.* at 336.

n50. *Id.*

n51. Typical CPIs include caps, t-shirts, coats, and backpacks featuring a cigarette logo. Sargent et al., *supra* note 47, at 1191.

n52. Sargent et al., *supra* note 47, at 1189.

n53. *Id.* at 1192.

n54. *Id.*

n55. *Id.* at 1193 tbl. 3.

n56. John P. Pierce et al., Tobacco Industry Promotion of Cigarettes and Adolescent Smoking, 279 JAMA 511, 513 (1998).

n57. *Id.* at 512.

n58. *Id.*

n59. *Id.* at 513.

n60. Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents, 60 Fed. Reg. 41,314, 41,315 (1995).

n61. Id.

n62. Id.

n63. Id. at 41,328.

n64. 447 U.S. 557 (1980).

n65. Id. at 566.

n66. Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents, 60 Fed. Reg. 41,314, 41,315 (1995).

n67. American School Health Ass'n et al., U.S. Dep't Health & Human Servs., The National Adolescent Health Survey 93 tbl. 2-50 (1989).

n68. Centers for Disease Control, Accessibility of Tobacco Products to Youths Aged 12-17 Years - United States, 1989 and 1993, 45 Morbidity & Mortality Wkly. Rep. 125, 126 (1996).

n69. Id. at 128.

n70. Id. at 127.

n71. Id. at 129.

n72. Leonard A. Jason et al., Active Enforcement of Cigarette Control Laws in the Prevention of Cigarette Sales to Minors, 266 JAMA 3159, 3160 (1991).

n73. *Id.* at 3160 tbl.

n74. *Id.* at 3160.

n75. Ellen Feighery et al., *The Effects of Combining Education and Enforcement to Reduce Tobacco Sales to Minors: A Study of Four Northern California Communities*, 266 *JAMA* 3168, 3169 (1991).

n76. *Id.* at 3169-70.

n77. *Id.* at 3169.

n78. J. Wasserman et al., *The Effects of Excise Taxes and Regulations on Cigarette Smoking*, 10 *J. Health Econ.* 43, 58 (1991).

n79. *Id.* at 58, 61.

n80. See W. Bruvold, *A Meta-analysis of Adolescent Smoking Prevention Programs*, 83 *Am. J. Pub. Health* 872 (1993); B. Flay, *Adolescent Smoking: Onset and Prevention*, 7 *Annals Behav. Med.* 9 (1985); T. Rundall & W. Bruvold, *A Meta-analysis of School-based Smoking and Alcohol Use Prevention Programs*, 15 *Health Educ. Q.* 17 (1988).

n81. See generally *Preventing Tobacco Use Among Young People*, *supra* note 2.

n82. J.E. Harris et al., *Cigarette Smoking Before and After an Excise Tax Increase and an Antismoking Campaign - Massachusetts, 1990-1996*, 45 *Morbidity & Mortality Wkly. Rep.* 996, 996 (1996).

n83. *Id.*

n84. W. James Popham et al., *Effectiveness of the California 1990-1991 Tobacco Education Media Campaign*, 10 *Am. J. Preventive Med.* 319, 322-24 (1994).

n85. *Id.* at 323.

n86. Harris et al., *supra* note 82, at 996.

n87. Lisa K. Goldman & Stanton A. Glantz, Evaluation of Antismoking Advertising Campaigns, 279 JAMA 772, 773 (1998).

n88. *Id.* at 776.

n89. *Id.* at 774.

n90. *Id.* at 775.

n91. *Id.* at 775-76.

n92. *Id.* at 776.

n93. *Id.* at 773-74.

n94. *Id.* at 774.

n95. *Id.*

n96. Public Health Cigarette Smoking Act of 1969, Pub. L. No. 91-222, 84 Stat. 89 (codified as amended at 15 U.S.C. 1335 (1996)).

n97. Andrew S. Golin, Improving the Odds of the Central Hudson Balancing Test: Restricting Commercial Speech as a Last Resort, 81 Marq. L. Rev. 873, 943 (1998).

n98. Pierce et al., supra note 15, at 610.

n99. Id.

n100. Golin, supra note 97, at 913.

n101. California has developed such satires as part of their anti-smoking campaign funded by increased cigarette taxes.