

How The Food Industry Uses Big Tobacco's Playbook



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01-19-2024 ~ The strategy used by Big Tobacco is called state or “ceiling” preemption: promoting weaker state public health laws to override stronger local laws.

In the 1960s and 1970s, Big Tobacco and public health advocates were locked in a battle. The anti-smoking supporters were gaining ground as cities were [innovating ways to reduce smoking](#) and protect public health during this time. As former tobacco industry lobbyist Victor L. Crawford [observed](#), you’d “put out a fire [in] one place, another one would pop up somewhere else.”

But in the mid-1980s, this momentum stopped. [Big Tobacco](#) had discovered a way to reverse local gains. According to a 2020 [study in the American Journal of Public Health \(AJPH\)](#), the industry’s counteroffensive has led to more disturbing and enduring ramifications for public health—and our democracy—than previously understood.

The State Preemption Strategy

The strategy used by Big Tobacco is called state or “ceiling” preemption:

promoting weaker state public health laws to override stronger local laws. [Between 1986 and 1991, the tobacco industry rammed through seven state preemption laws.](#)

The industry gained steam over the [next five years](#), imposing 17 additional preemption policies on states. Laws restricting youth access to tobacco products would be reversed or never see the light of day. Laws establishing smoke-free environments were overridden. Tobacco tax increases were stalled. Restrictions on tobacco retail licensing were relaxed.

Perhaps the most concerning finding of the [study published in the AJPH](#) is that it takes an average of 11 years to repeal these laws—if they're repealed at all. As of 2019, no preemption laws on youth access or tobacco marketing—and [fewer than half of state preemption laws on smoke-free places—have been repealed.](#)

The tobacco industry has a [long-documented](#) history of targeting people in low-income communities and communities of color with the very tactics—like children-targeted marketing—preemption laws sought to protect. Consider the costs to public health and progress—especially in Black communities and other communities of color—when scarce resources are bound up in undoing bad policies versus securing new public health protections.

Research indicates that smoking-related deaths accounted for around [15 percent](#) of the decrease in the life expectancy gap between African-American men and white men at age 50 in 2019. [Disproportionate childhood exposure to second-hand smoke and target marketing of products](#) such as menthol are among the heightened risk factors for the Black community.

Preemption Harms Consumers—and Workers

As of 2018, Coca-Cola, McDonald's, and the larger food and beverage industry have already seen the enactment of at [least a dozen laws](#) preempting local public health policies like soda taxes, product labeling, and restrictions on junk food marketing to kids.

This has allowed the industry to continue its racist marketing campaigns targeting Black youth and other [youth of color](#). Understanding these tactics is key to undoing and preventing further proliferation of the industry's preemption push.

The four tobacco industry tactics outlined below are being modeled across

industries, such as the food and beverage sector, disproportionately affecting communities of color and exacerbating diet-related disease crises.

Lobbying

First, to give Big Tobacco's political agenda credibility, tobacco giants like R.J. Reynolds Tobacco Company have invested heavily in trade associations and [front groups](#) to do their bidding, from so-called "smokers' rights groups" to restaurant, hotel, and gaming associations.

Unsurprisingly, a similar cast—like state affiliates of the [U.S. Chamber of Commerce](#) and the [National Restaurant Association](#) (NRA)—is again the muscle behind state preemption pushes to block new soda taxes, as well as critical policies to assure food workers' health and well-being, such as new paid sick leave requirements and minimum wage increases.

Examples include the Texas Supreme Court [quashing city efforts](#) to guarantee municipal paid sick leave in 2020 and the Minnesota Supreme Court [ruling against](#) the Minnesota Chamber of Commerce's contention that Minneapolis's paid sick leave requirements were preempted by state law during the same year.

The Power Coalition for Equity and Justice, a group of social justice organizations in Louisiana, has been [mobilizing](#) to undo what a spokesperson of the coalition—in a 2020 article in *Scalawag*—called, "yet another tool of white supremacy" and an example of the "plantation [mentality's]" manifestation in state politics: state preemption of local minimum wage increases.

Campaign Contributions

Second, Big Tobacco lavished money on federal elections. In 1998 alone, [the tobacco lobbies contributed more than \\$70 million](#). Predominantly, Republican candidates have received more than \$50 million from the tobacco industry since 1990. In this same period, the NRA and its most prominent corporate members—like McDonald's, Darden, and Yum! Brands—spent [more than \\$60 million](#) in disclosed federal contributions.

[An analysis by my organization, Corporate Accountability](#), in partnership with [Restaurant Opportunities Centers United](#), [Food Chain Workers Alliance](#), [Berkeley Media Studies Group](#), and [Real Food Media](#), found a disturbing correspondence between NRA campaign contributions and the propensity of those receiving them—like Senator Mitch McConnell and Representative Kevin McCarthy, both

Republicans—to oppose progressive policies such as improvements to food labeling, stronger worker protections, and minimum wage increases.

Local Preemption

Third, the industry obscured preemption through legislative channels. As if making an end-run around local democracy wasn't bad enough, Big Tobacco slipped preemption into a [wide array of bills](#)—from property taxes to pesticides.

In 2006, the industry spent more than \$100 million to fight tobacco control measures and funded an Ohio measure (“[Smoke Less Ohio](#)”) that would have [rolled back local smoke-free laws](#) and prevented their adoption in the future. Ohioans [voted against](#) the ballot measure.

Twelve years later, in 2018, Big Soda [spent millions](#) on a California ballot initiative that made it harder to impose soda taxes and increase any taxes. In exchange for dropping the ballot initiative, lawmakers and then-Governor Jerry Brown agreed to prohibit new taxes on grocery items—including sugar-sweetened beverages—until January 1, 2031, as part of a larger tax overhaul.

According to California state Senator Scott Wiener, a Democrat, the industry basically [aimed](#) “a nuclear weapon at [the] government in California and [said], ‘If you don't do what we want, we're going to pull the trigger, and you're not going to be able to fund basic government services.’”

Legal Threats

Fourth, Big Tobacco issued legal threats. Despite being ineffective at overturning laws, the industry has pursued dozens of cases as a deterrent to the passage of new laws. In Michigan, Big Tobacco sponsored a Michigan Restaurant Association and Michigan Chamber of Commerce [lawsuit attempting to strike down a local smoke-free policy in 1998](#).

The lawsuit tied up the town of Marquette in legal proceedings for about five years despite only succeeding in repealing a small part of the law.

But after years of being on the receiving end of the industry's tactics, the public health community has regrouped. They [generated](#) media coverage that exposed Big Tobacco's chicanery in advancing state preemption policies and—instead of putting out fires once preemption had been introduced or adopted—advocates implemented proactive lobbying approaches.

One of the earliest examples is from 1996 when the [Indiana Campaign for Tobacco-Free Communities](#) helped compel then-Governor Evan Bayh to veto a law preempting “virtually non-existent” local tobacco control laws.

Meanwhile, in 1994, a national preemption task force was [formed](#) by leading health organizations. It attracted prominent political figures like Hillary Clinton and former Representative Henry Waxman, a Democrat, and mobilized grassroots movements and more coherent counterstrategies. By 2000, the Centers for Disease Control and Prevention [advocated eliminating ceiling preemption laws](#).

The public health movement also helped expand legal networks. From coast to coast, [states helped fund legal resource centers](#) that worked with health departments in drafting tobacco control laws that could weather industry challenges.

But history is repeating itself. For example, e-cigarette maker Juul has worked tirelessly to [ensure state increases in the minimum age to purchase tobacco products are paired with preemptions](#) on local governments taking any further actions to regulate vaping (like flavor bans).

Business groups have [filed lawsuits against Los Angeles County, Palmdale, California](#), and [Edina, Minnesota](#), seeking to nix local prohibitions on flavored e-cigs, claiming these laws are preempted by federal law. The COVID-19 pandemic, which has compromised the respiratory health of its victims, does not seem to have caused this destructive industry one bit of pause.

It is critical for those taking on the food industry to get ahead of attempts at [preemption](#).

We can scarcely afford more industry-driven policies denigrating public health and deepening already profound health inequities. There will be no shortage of bills and ballot initiatives intent on supplanting popular democracy with narrow corporate prerogatives. But we have the solutions because we’ve faced this problem before.

By Gigi Kellett

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