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Publication Date

2008-01-29

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Supported in part by National Cancer Institute Grant CA-61021, the Cahan Endowment provided by the Flight Attendant Medical Research Institute, and other donors. Opinions expressed reflect the views of the authors and do not necessarily represent the sponsoring agencies. This report is available on the World Wide Web at <http://repositories.ucsf.edu/ctcre/tcpmus/Arizona2007>. Reports on other states and nations are available at <http://repositories.cdlib.org/ctcre>.

EXECUTIVE SUMMARY

- Tobacco control in Arizona flourished from 1997-2007, thanks to public support at the ballot box and the hard work of Arizonan tobacco control activists.
- Arizona's state-run Tobacco Education and Prevention Program (TEPP), created by Proposition 200 in 1994 from 23% of a 40 cent tobacco tax increase, provided a key component in Arizona tobacco control, spending between \$15 and \$36 million annually.
- Tobacco control advocacy between 1997 and 2007 resulted in more than tripling tobacco excise taxes from 58 cents to \$2.00, enacting comprehensive local clean indoor air ordinances, defeating tobacco industry counter-initiatives, and passing Smoke-Free Arizona, Arizona's statewide comprehensive clean indoor air law.
- Arizona tobacco control advocates instituted 18 local clean indoor air ordinances between 1997 and 2007. The tobacco industry has never won at the ballot box in Arizona, locally or statewide.
- On November 7, 2006, Arizona became the 16th state to pass a comprehensive clean indoor air act. The law went into effect on May 1, 2007. The Arizona Department of Health Services enforces the law with revenues from a 2 cent tobacco excise tax included in the Smoke-Free Arizona initiative. Any tax funds not used to enforce clean indoor air go to Arizona's tobacco control program TEPP.
- Tobacco taxes were raised to 58 cents per pack by Arizona voters in 1994. In 2002, voters raised tobacco taxes 60 cents to \$1.18 per pack, with the revenue going to the Arizona Health Care Cost Containment System (AHCCCS). Tobacco taxes were raised again by voters in 2006 to \$2.00 per pack with 80 cents paying for early childhood care.
- Deciding how to spend Master Settlement Agreement (MSA) money was contentious and politically difficult, as illustrated by an unwillingness to compromise among the Legislature, Governor, and County Health Departments. Ultimately voters decided in November 2000 to allocate all of the MSA funds to AHCCCS to expand Arizona's medicare program to 100% the federal poverty level. No MSA money goes to tobacco control.
- The Tempe smokefree ordinance, passed by initiative in May 2002, became Arizona's first 100% clean indoor air act including bars. Dr. Leland Fairbanks led the Arizona tobacco control organization Arizonans Concerned About Smoking (ACAS) to spearhead the successful effort and defended Tempe's smokefree ordinance against the ensuing legal challenges and attempted referendum by pro-tobacco groups.
- Local efforts to pass other clean indoor air ordinances in Arizona often led to compromises that routinely exempted bars. Also, elected officials in Phoenix resisted adopting a smokefree ordinance despite tobacco control leaders' concerted efforts. Tempe's successful comprehensive clean indoor air act in 2002, however, paved the way with Guadalupe (2002) for Prescott (2003), Coconino County (2003), Flagstaff (2005), and Sedona (2006), to successfully pass comprehensive clean indoor air acts of their own.
- In FY2002 Governor Jane Hull and the Legislature, looking for available funds during a recession period, diverted \$60 million from the Health Education and Research Accounts, which fund TEPP and research on tobacco-related disease. These funds were never recovered.

- To prevent further seizures of TEPP funds, in November 2002 voters passed the referendum Proposition 303 which increased the tobacco tax 60 cents (two per cent of which went to tobacco control) and re-enacted the original 1994 Proposition 200 tobacco control measure bringing TEPP under voter protection, preventing it from further legislative tampering. Voluntary health organizations now turned their attention from protecting TEPP funds to translating their electoral success into a comprehensive statewide smokefree campaign.
- While TEPP expenditures exceeded the Centers for Disease Control (CDC) minimum recommended levels for state tobacco control expenditures (at the time, \$27.8 million) from FY1999 through FY2001, in October 2007 the CDC increased its Best Practices estimate for Arizona to \$68.1 million annually, a figure Arizona has not yet approached in its tobacco control spending.
- In 2004, prompted by citizens (but not the ALA, AHA, or ACS), Arizona Legislator Linda Lopez (D-Tucson) introduced a statewide clean indoor air bill including bars into the Republican-controlled House. The bill, however, was assigned to three committees, denied a hearing, and died in the Commerce Committee.
- In Arizona, the tobacco industry spent a total of \$16,201 in direct campaign contributions between 1997 and 2006 on legislators, constitutional officers, and political parties. Tobacco industry lobbyists spent \$25,367 on legislators during this period. Republicans received more than 5 times the tobacco companies' contributions as Democrats.
- In the 2006 election cycle RJ Reynolds mounted an \$8.8 million counter-initiative (Proposition 206, the Non-Smoker Protection Act) in an attempt to confuse voters and preempt local tobacco control. The campaign concentrated much of its resources attacking Proposition 201, the health group-driven Smoke-Free Arizona initiative. Despite Reynolds' superior resources and negative campaigning, 57.3% of voters rejected Reynolds' initiative, while 54.8% of voters approved Smoke-Free Arizona.
- TEPP's media campaigns with Riester-Robb from 1996-2001 enjoyed commendations nationally. The TEPP-contracted ad agency sold over 2 million units of merchandise with the media campaign's tagline Tobacco: Tumor causing, teeth staining, smelly puking habit. In July 2001 the Arizona Department of Health Services (ADHS), which manages TEPP, did not renew the media contract with Riester-Robb, instead favoring the E.B. Lane agency. This rough transition from one agency to the next occurred just as the Legislature appropriated TEPP's funds, throwing TEPP into disarray, resulting in a dead year (approximately Fall 2001-Fall 2002) under the E.B. Lane contract when tobacco control media came to a virtual halt. E.B. Lane provided TEPP's lower intensity media campaigns from 2002 through 2005. From 2005 to 2007, TEPP did not coordinate media through a contracted ad agency, instead working on a more fragmented ad hoc basis. In late 2007, TEPP contracted again with the Riester firm, though with a smaller budget.
- TEPP suffered from a lack of leadership since the program's inception, with a revolving-door Office Chief position, inconsistent directives from the ADHS, and overcautiousness concerning crossing the lobbying-advocacy/advocacy-education line. Between 2005 and 2007 every TEPP employee left, leaving the agency without many employees having any prior experience in tobacco control. As a result, many tobacco control advocates perceived TEPP as an ineffective program, not making best use of its resources. While TEPP leadership in 2007 painted an optimistic vision of TEPP's future, concrete programmatic action that reflects current best practices remains to be demonstrated

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INTRODUCTION

Tobacco industry advertising in Arizona reached \$173 million in 2005¹ compared to only \$31 million spent in Arizona on tobacco control in FY2007* out of the \$403 million in tobacco-generated revenue Arizona collected that year.^{2,3} In 2005, Arizona spent approximately \$1.3 billion on health care costs directly related to smoking, \$316 million a year of which is paid for by AHCCCS (Arizona's Medicaid).⁴ Tobacco also costs Arizona an additional \$1.5 billion due to smoking-related losses in productivity.⁵ Because of Arizona's active tobacco control efforts, in 2006 only 18.2% of adult Arizonans smoked, less than the national average of 20.1% (Figure 1).⁶ Likewise, in 2005 Arizonans consumed an average of 43.2 packs of cigarettes per person per year, compared with the US 2005 average of 67.0 packs per person (Figure 2).⁷ As of 2005, 20% of high school students in Arizona smoked, compared to 23% nationwide.⁸

Arizona tobacco consumption has fallen from 79 packs per capita per year in 1994 to 43.2 packs per capita per year in 2005, indicating that smokers are smoking less (Figure 2) and fewer Arizonans are smoking. While Arizona is typical in that its consumption rates fell faster than prevalence rates, indicating that continuing smokers are cutting the number of cigarettes smoked, Figures 3 and 4 indicate that the most consistent decrease in prevalence is not among youth and young adult smokers, but rather in adults age 35 and over.⁹ Arizona's once considerable gains in terms of lowered youth tobacco use prevalence has stagnated starting in FY2002 (Figures 3 and 4). 18-34 year old smoking prevalence has also climbed after 2002 (Figure 3).

Arizona's tobacco control policies resulted from incremental but strategic successes. Comprehensive smokefree workplace, restaurant, and bar local ordinances, such as Tempe's in May 2002 elevated Arizona tobacco control to contemporary standards. As the first of its kind in Arizona, Tempe proved that including bars in clean indoor air ordinances was politically tenable. The Tempe victory paved the way for ensuing comprehensive smokefree laws as well as Proposition 303 in November 2002, which secured voter-protection** for TEPP while increasing Arizona's tobacco tax. This momentum, built over a decade of grassroots efforts, culminated in the passage of the

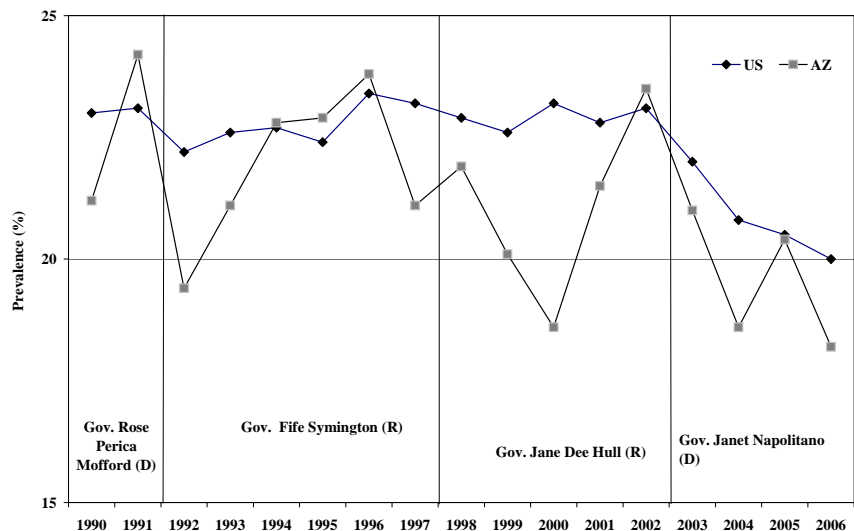


Figure 1. Arizona smoking prevalence has tended to be lower than U.S. prevalence, but it has not been consistent. FY2002's spike in smoking prevalence coincides with Governor Hull and the Legislature diverting \$32.8 million away from TEPP, and the simultaneous collapse of TEPP's anti-tobacco media program. The reduction in smoking prevalence in FY2003 and FY2004 is likely due to a 60 cent tobacco tax increase instituted in November 2002.

* Fiscal Year (FY) 2007 extends from July 1, 2006 to June 30, 2007.

** Arizona voters approved a constitutional amendment in 1998 that "voter protected" initiatives by stripping the Legislature of the power to undo a voter initiative or referendum by limiting its power to repeal or amend a voter initiative or referendum, or to appropriate or divert funds created or allocated to a specific purpose by initiative or referendum. (Article 4, Section 1(6) of the Arizona Constitution). However, because this amendment was not retroactive, Proposition 200 (1994) had to be reenacted (passed again) by voters to obtain the benefits of voter-protection.

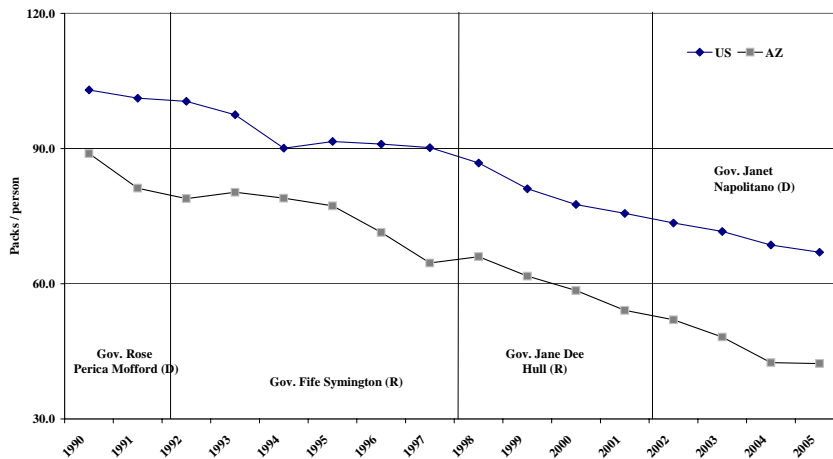


Figure 2. Arizona cigarette consumption rates from 1990 to 2005 have been lower than overall U.S. rates. TEPP began in 1995 in conjunction with an additional 40 cent tax on tobacco, driving down cigarette consumption in Arizona in 1996 and 1997. With TEPP underfunded and without strong leadership, consumption rates stalled in 2005.

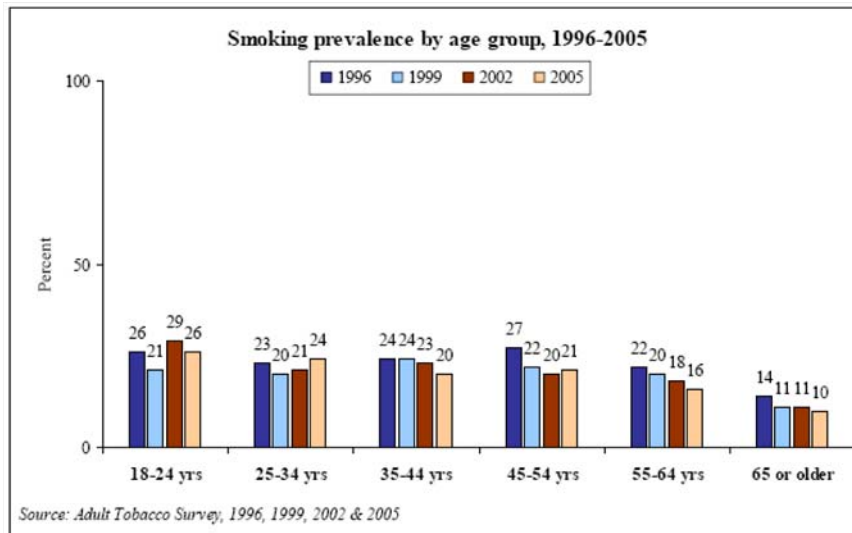


Figure 3. 18-24 year old smoking prevalence increased from 1999 to 2002, and was the same (26%) in 2005 as in 1996, after 10 years of TEPP. For 25-34 year olds, smoking prevalence rates were slightly higher in 2005 than in 1996. This failure to lower young adult smoking prevalence rates after 1999 suggests that tobacco control measures in Arizona have not adequately addressed the adolescent and young adult populations.

BACKGROUND

As described in our earlier report, *Tobacco Control in Arizona 1973-1997*,¹¹ Arizona has won many tobacco control successes. In 1973 Arizona was the first state to institute a smoking control law, ending smoking in municipal buildings. Betty Carnes, the founder of Arizonans Concerned About Smoking, coined the phrase “Thank you for not smoking.” In 1983 Tucson became the first U.S. city to adopt, by initiative, a workplace protection ordinance that also set aside non-smoking sections in restaurants. Importantly, in 1994, Arizona voters passed Proposition 200 increasing the tobacco tax by 40 cents and allocating 23% of the money raised to create Arizona’s Tobacco Education and Prevention Program (TEPP). Five per cent of the revenues

statewide Smoke-Free Arizona initiative in November 2006, creating clean indoor air for all workplaces, restaurants, and bars statewide, while defeating a RJ Reynolds Tobacco-backed \$8.8 million counter-initiative.

With the statewide clean indoor air law enacted and Arizona cigarette taxes raised to \$2.00 per pack (the 4th highest rate in the country at the time) in the same 2006 election,¹⁰ tobacco control advocates in Arizona demonstrated they had achieved all the elements necessary to promote a tobacco-free Arizona. Advocates created a well-funded state tobacco control program, passed strong local ordinances, raised excise taxes on tobacco products, and won a comprehensive statewide clean indoor air law. Despite these gains, the Arizona Department of Health Services (ADHS), with the exception of the FY1998-FY2001 period, did not effectively employ the resources given to TEPP to create an effective tobacco control program. As of 2007, TEPP fielded a new staff with management professing a renewed commitment to tobacco control. With support from ADHS and health voluntary organization allies, the potential existed for Arizona to once again establish a nationally-recognized tobacco control program.

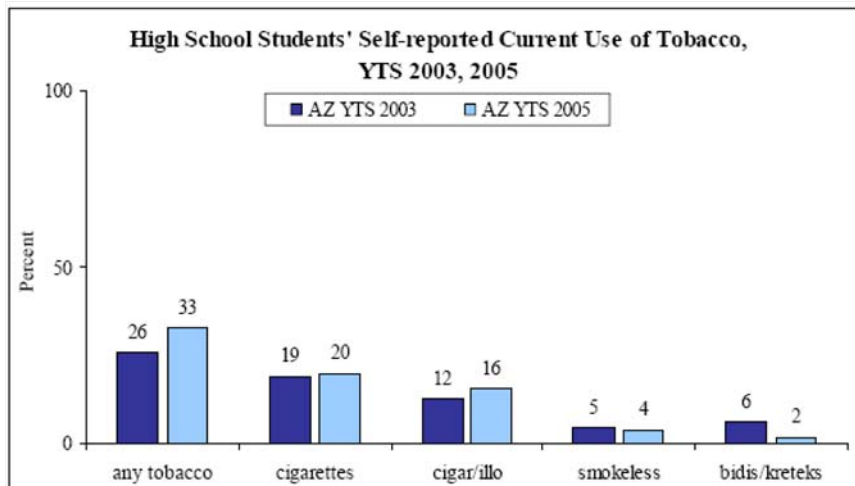


Figure 4. The increase in high school tobacco use between 2003 and 2005 signals TEPP's ineffectiveness during this period.

media campaign (albeit, initially focused on children) in 1995-1996 inaugurated the “golden age of TEPP” (1997-2001), involving a highly motivated and dynamic tobacco control community with one of the highest funded per capita tobacco control programs in the country.^{12,13} When the first US Centers for Disease Control and Prevention *Best Practices for State Tobacco Control*¹⁴ was published in 1998, Arizona was one of only three states (along with California and Massachusetts) that already met or exceeded the minimum CDC funding recommendations.

Nongovernmental organizations’ tobacco control advocates have led Arizona to its tobacco control gains. Arizona’s first major tobacco control group was Nonsmokers, Inc., the group responsible for winning Tucson’s Clean Indoor Air Act in 1983 and a sustaining tobacco control force in Tucson from 1976 until its dissolution in December 1998.¹⁵ Along with the tobacco-free advocacy organization Arizonans Concerned About Smoking (ACAS), the Arizona chapters of the American Lung Association (ALA), American Heart Association (AHA), and American Cancer Society (ACS) were the driving forces in Arizona’s tobacco control efforts. These advocates and others created in 1990 the Coalition for Tobacco-Free Arizona, which was encouraged by a Robert Wood Johnson Foundation grant.¹¹

The comprehensive Mesa clean indoor air ordinance passed by voters in 1996 came under continued threat from tobacco industry front groups, but was upheld in March 1998 when the tobacco industry funded an unsuccessful referendum to repeal the ordinance. The repeal attempt was defeated 69% to 31%, representing a decisive victory for Arizona tobacco control activists. However, the tobacco industry front groups had previously extracted compromises from the Mesa city council that weakened the ordinance to include exemptions for all bars with 50% or more of their gross revenue derived from alcohol, and allow smoking in separately ventilated accessory bars. Nonetheless, Mesa’s clean indoor air ordinance was progressive for its time, covering most establishments including workplaces and restaurants.

In 1997, Arizona’s Republican Governor Fife Symington, who held a strong pro-tobacco industry position, was convicted of fraud and forced to resign in September. Governor Symington had tried to stop Arizona from joining other states in suing the tobacco industry after tobacco industry representatives (headed by attorney William Maledon, representing Philip Morris) agreed to provide him with a “public relations fund” to defray the political costs of the unpopular stance of defending the tobacco industry.¹⁶ In 1996 Governor Symington ordered Arizona Attorney General Grant Woods (R) to drop the Arizona Health Care Cost Containment System (AHCCCS) from the \$500 million lawsuit against the tobacco companies in an attempt to stop the lawsuit completely.¹⁶ While Woods did drop AHCCCS from the suit, he amended the complaint to keep the suit alive by pursuing the tobacco companies on charges of consumer fraud and racketeering on behalf of the citizens of Arizona instead of the AHCCCS. Woods later reintroduced the AHCCCS as party to

raised were allocated to fund tobacco-related disease research, with the rest going to Arizona’s Medicaid program, the Arizona Health Care Cost Containment System (AHCCCS). Despite being outspent three-to-one by the tobacco industry (primarily the Tobacco Institute), Proposition 200 passed with 50.7% of the vote on November 8, 1994.

The creation of TEPP, the increased tobacco tax, effective local partnerships in tobacco control, and a statewide

the suit after Secretary of State Jane Hull (R) succeeded Symington as governor. (As a result, Arizona participated in the Master Settlement Agreement (MSA) in November 1998 that settled its suit along with similar suits by 46 other states; the MSA provides Arizona with about \$90 million per year from the tobacco industry.) While an internal RJ Reynolds memo at the time commented that, “Secretary of State Jane Hull, a moderate Republican, ...will not be as good a friend to the industry as Governor Symington,” Hull would later prove the tobacco industry wrong by diverting more than \$32 million from TEPP.¹⁷

Lack of good ongoing evaluation of TEPP was cited in *Tobacco Control in Arizona 1973-1997*¹¹ as one of the major problems TEPP encountered. When the Arizona Auditor General released an audit of TEPP in September 1999¹⁸ one of the chief programmatic weaknesses identified was the lack of standardized evaluations. The fact that the top levels of the Arizona Department of Health Services (ADHS) administration at the time had hindered collection of adequate baseline data on youth and adult tobacco use before the program started in 1995 undermined TEPP’s ability to demonstrate that it had an effect.¹¹ Particularly in the early years this lack of evidence of program effectiveness made TEPP more vulnerable to political attack.

Until 2002, when TEPP set up the University of Arizona TEPP Evaluation Unit, no standardized complete evaluations of Arizona youth smoking prevalence existed. Furthermore, energy and resources went into incomplete evaluations that did not use the same methods as previous or subsequent evaluations, wasting effort and resulting in little reliable evaluation data TEPP could use.¹⁹ Nevertheless, the 10 years between 1997 and 2007 produced substantial gains on the local and state level in terms of increasing tobacco taxes and smokefree lawmaking. The public has always supported the goals of Arizona’s tobacco control advocates, and no tobacco control measure has ever lost at the ballot. Yet, the recurring weaknesses of Arizona’s state tobacco control program TEPP in terms of leadership, funding, and commitment to assertive tobacco control resulted from failing to draw on the resources which had in the past led to Arizona’s public advocacy success.

STATE GOVERNMENT’S RESISTANCE TO TOBACCO CONTROL

The Arizona Legislature has consistently been hostile to meaningful tobacco control policy, requiring the voters to enact tax increases and other tobacco control policies at the state level through the initiative process. Tobacco industry campaign contributions to individual politicians do not appear to play as large a role in Arizona as they do in other states in determining legislative behavior, though party affiliation does (Figure 6). Tobacco industry influence impacts law makers’ decisions through campaign and political party contributions, lawyers and lobbyists, and contributions to various industry-allied groups (such as the Arizona Licensed Beverage Association) that defended tobacco interests.

Tobacco Industry Campaign Contributions

Low levels of tobacco industry contributions to political candidates in Arizona stem in part from stringent campaign finance laws (§16-905) which greatly restrict the amount individuals and companies can give to candidates and political committees.²⁰ The period

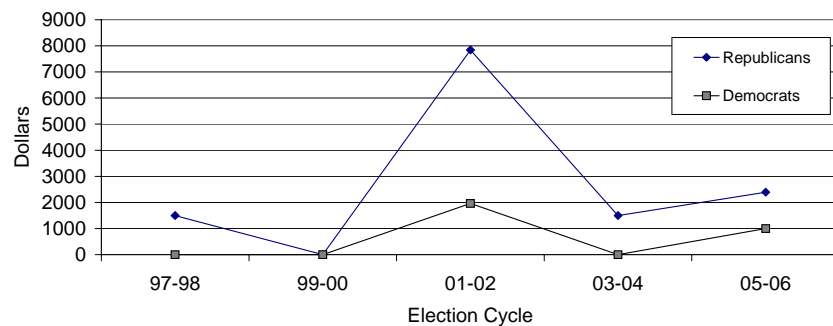


Figure 5. Direct Tobacco Industry Contributions to Arizona Elected Officials and State Electoral Campaigns were higher for Republicans than Democrats. Republicans received 5 times as many tobacco industry contributions as Democrats did from 1997 through 2006.

between 1997 and 2007 saw little activity in terms of direct campaign contributions from the tobacco industry (Figure 5). A 1996 Tobacco Institute budget request for Arizona notes under the category “Campaign Contributions: Not allowed in Arizona.”²¹ Additionally, because campaign contributions to candidates (but not ballot measures) were restricted to \$390 per individual and per political committee (PAC) contributor

(2007 figures), few incentives remained for the tobacco companies to make direct contributions to candidates. (Contributions to political parties and ballot measures are not restricted). This low threshold of traditional campaign contributions decreases the influence of any single contribution. Additionally, legislative candidates are only entitled to \$16,150 in total contributions from all contributors (except themselves). If candidates are able to raise maximum allowed funds from other sources, then they are unlikely to seek tobacco-related dollars, which may potentially elicit negative political attention.

“Direct tobacco industry contributions” refers to any and all recorded contributions given by tobacco companies directly to candidates or parties (Figure 5). Though contributors can create special PACs (Super PACS), differentiated from regular PACs to contribute nearly five times more to candidates at a maximum \$2,000 per candidate (rather than at the \$390 maximum for regular contributions) the tobacco industry only utilized this option once during the 1997-2007 period. In 2002 Altria and Philip Morris USA used Super PAC status to give \$2,000 each to Senator John Greene (R-District 24) for his failed re-election campaign.²² (Greene was a well-known ally of the tobacco industry,²³ most notably in 1994 when he threatened to remove the voluntary health organizations’ nonprofit status if they went ahead and ran the Proposition 200 campaign which created TEPP.²⁴) Because large contributions to political parties do not require Super PAC status, the tobacco industry has also given intermittent \$500-\$2,000 contributions to the Arizona Democrat and Republican parties.

Most direct tobacco company contributions went to Republicans, who received 82% of the \$16,201 contributed between 1997-2006,²² probably because the party’s values have traditionally aligned with tobacco industry interests and because Republicans controlled both houses of the Legislature for all sessions between 1996-2008.

The Appendix shows the relationship between a legislator’s voting record on various pieces of tobacco legislation and the amount of campaign contributions he or she accepted. The Appendix also lists tobacco industry campaign contributions disbursed between 1997 and 2006 to legislators and constitutional officers according to the Arizona Secretary of State’s records. The tobacco industry’s main contribution during this period was R.J. Reynolds’ \$8.8 million expenditure on The Non-Smoker Protection Act (Proposition 206) in 2006, as discussed in the last section of this report.

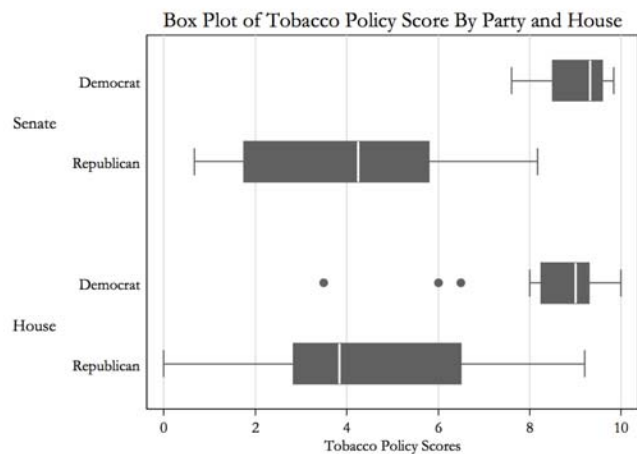


Figure 6. *Forty-Seventh Arizona Legislature tobacco policy scores revealed that party affiliation accounted for over 50% of the variance in Arizona tobacco policy scores.*

Clean Money Elections Contributed to Reducing Tobacco Industry Contributions

As already noted, Arizona has had a low level of direct tobacco industry contributions compared with other similar sized states (such as Colorado, Missouri, and Oregon).²⁵ For example, in 2002 the tobacco industry spent \$10,000 in direct campaign contributions in Arizona (the most by a factor of four during the entire 10-year period), while they spent \$119,985 in Colorado, \$35,345 in Missouri, and \$85,511 in Oregon.²⁵ This low level of direct campaign contributions may result in part from Arizona’s Citizens’ Clean Election Act, which was enacted by initiative in 1998. The Act rewards candidates who agree to accept campaign contribution limits by providing state funding for their campaigns. These state-funded campaigns have grown in popularity to such a degree that in 2006 60% of candidates running for office declined standard campaign

contributions in order to receive state campaign funding. The publicly financed Clean Elections Act had the effect of reducing tobacco industry contributions by obviating their need.

Tobacco Policy Scores

For the 2005-2006 Forty-Seventh Arizona Legislature, *tobacco policy scores* were obtained for all members. Each member's score reflects the average of scores assigned by 6 individuals polled who demonstrated knowledge and experience with the Arizona Legislature and tobacco control policy. Each legislator was evaluated on a 0 to 10 scale, with 0 indicating a legislator was extremely pro-tobacco industry and 10 indicating the legislator was extremely pro-tobacco control. Legislators with scores ranging from 0.0 to 3.9 are considered pro-tobacco industry, those with scores from 4.0 to 6.0 are considered neutral or inconsistent, and those with scores from 6.1 to 10.0 are considered pro-tobacco control (see Appendix).

The average (5.9) for policy scores in the House and Senate were the same, but there were large differences between the two parties (Figure 6). Republicans in the Senate had an average tobacco policy score of 4.2 while Democrats had an average tobacco policy score of 9.0. In the Senate Edward Ableser (D- District 17) and Ken Chevront (D-District 15) shared the highest tobacco policy scores of 9.8, while Jack Harper (R-District 4, tobacco policy score: 0.7) and Robert Burns (R-District 9, tobacco policy score: 1.5) had the lowest. In the House, Meg Burton Cahill (D-District 17), Martha Garcia (D-District 13), and Linda Lopez (D-District 29), all shared pro-public health tobacco policy scores of 10, while Ted Carpenter (R-District 6, 0.0), Russell Jones (R-District 24, 0.0), and Steven Yarbrough (R-District 21, 1.3) had the lowest (most pro-tobacco industry) scores.

In regression analysis, the relationship between campaign contributions from 1997 through 2006 and tobacco policy scores for 2004-2006 legislators was not statistically significant. Neither direct contributions from the tobacco industry, tobacco industry lobbying, nor tobacco lobbyist personal campaign contributions to candidates showed statistical significance in relation to tobacco policy scores. These other measures of the tobacco companies' expenditures to candidates were included in the tobacco policy score analyses because of the low number and small amounts of direct tobacco industry contributions in Arizona.

Lobbyists

The tobacco industry hires powerful, well-connected lobbyists in Arizona (Table 1). Often, the more influential tobacco company lobbyists have other significant non-tobacco clients, sometimes obscuring which client's interests are represented when these lobbyists make campaign contributions to candidates. The question of potential conflicts of interest also arise when Arizona's lobbyists for the two largest tobacco companies, John Mangum for Philip Morris and Don Isaacson for R J Reynolds, also represent medical groups, including the Mayo Clinic, and health insurance companies (Table 1).

Arizona tobacco industry lobbyists contributed \$52,391 in personal campaign contributions to Arizona candidates from 1997 through 2006, more than three times as much as the tobacco industry did.²⁶ These contributions to candidates were made personally by lobbyists who represent the tobacco industry (and the Arizona Licensed Beverage Association, an industry ally) among other clients; so no clear link can be made between a particular contribution and the tobacco industry. Confidential retainer agreements from 1997 and 1998 between lobbyist Phillip MacDonnell and R J Reynolds (just one of several tobacco companies operating politically in Arizona –Table 1) for \$50,000 a year plus expenses and Don Isaacson, (whose Tobacco Institute retainer was \$70,000 in 1997) show that in addition to their salaries, these lobbyists were also permitted the monthly reimbursement of “expenses” in performing “all services and assistance necessary and appropriate to perform effectively” representing tobacco company interests.^{21, 27, 28} Tobacco companies are often a significant client of the lobbyist. It cannot completely be ruled out that none of tobacco industry lobbyists' personal campaign contributions to candidates were given on behalf of a tobacco company client.

Money represented in the Appendix does not necessarily reflect all money candidates received from lobbyists because many entries in the Arizona Secretary of State’s database of lobbying expenditures on the behalf of tobacco companies do not show who the expenditure went to or how much was given.^{22,26} These gaps in information decrease the usefulness of the disclosures because the recipient is not always named. Even so, the Arizona Secretary of State records show that lobbyists spent \$25,367 on politicians between 1997 and 2006 on the behalf of the tobacco industry (Table 2).²² By comparison, the tobacco industry spent \$16,201 (Figure 6) in direct campaign contributions to candidates during this same period.

Lobbyist	Tobacco Company Client Represented	Duration	Medical-Related Interests Represented
John K. Mangum	Phillip Morris	1997 to 2007	Eli-Lilly & Company
	(Miller)	2001 to 2007	Sciencecare Anatomical Inc.
	(Kraft)	2001 to 2007	
Rip Wilson	Philip Morris	1997 to 2007	
Jack Kelly Dillard	Philip Morris	2001 to 2007	
Pat Inmann	Philip Morris	1997 to 1998	
		2001 to 2003	
Virginia Corwin	Philip Morris	1998, 2001	
Don Isaacson and Steven Duffy	R J Reynolds Tobacco Co	2004 to 2007	Golden Rule Insurance Co.
	Brown and Williamson	1999 to 2004	Pfizer
	Lorillard	1999 to 2002	State Farm Insurance
	Tobacco Institute (Arizona Licensed Beverage Association)	1997 to 2007	Southwest Ambulance Az Association of Homes and Housing for the Aging
Philip K. Macdonnell	R J Reynolds Tobacco Co	1997 to 2005	State Farm Insurance
	(Arizona Licensed Beverage Association)	1997 to 2002	
Jennings Strouss & Salmon	Pipe Tobacco Council	2005 to 2007	Mayo Clinic Arizona
	Cigar Association of America	2005 to 2007	Mayo Foundation for Medical Education and Research
			Cigna Healthcare of Arizona
Charles L. Strouss Jr.	R J Reynolds Tobacco Co.	1998 and 2004 to 2005	
Jim Duran	R J Reynolds Tobacco Co.	1997 to 2005	
Fennemore Craig PC	Smokeless Tobacco Council	1997 to 2004	
Latham and Watkins LLP	Top Tobacco, Inc	2004 to 2005	
Norton and Associates	Council of Independent Tobacco Manufactures of America	2004 to 2005	

Brown & Williamson	Cigar Association of America	Philip Morris	RJ Reynolds	Tobacco Institute	Smokeless Tobacco Council
\$135	\$3,760	\$12,048	\$6,991	\$93	\$1,234

Strategic Alliances Between the Tobacco Industry and Other Trade Associations

The tobacco industry has allied with powerful Arizona hospitality and trade associations for many

years by becoming dues paying members.²⁸ The Tobacco Institute paid dues to the Arizona Licensed Beverage Association, the Arizona Restaurant and Hospitality Association, The Arizona Retail Grocers Association, the Arizona Retailers Association, the Tucson Chamber of Commerce, and the Arizona Tax Research Association throughout the 1990s.^{21,28} These organizations generally allied with the tobacco industry for specific issues,²⁹ usually around elections. Working through local hospitality association affiliation is an important strategy for the tobacco industry, because it allows the tobacco industry involvement in politics and public health issues while keeping out of the public eye.³⁰⁻³³ In addition to assistance with lobbying and public relations, the restaurant and licensed beverage associations and several chambers of commerce aligned with the tobacco industry on tobacco public policy, first to oppose Proposition 200 in 1994, which increased the tobacco tax and created Arizona's tobacco control program, which the tobacco industry labeled as bad for business. As elsewhere,³⁰⁻³³ the tobacco industry had convinced these Arizona industries their business would suffer if Arizona tobacco taxes were increased or workplaces were made smokefree. Independent research has consistently shown that smokefree laws have no effect or a positive effect on hospitality industry business.³⁴⁻³⁷

The Arizona Licensed Beverage Association

The tobacco industry developed a sustained working relationship with the Arizona Licensed Beverage Association (ALBA). ALBA received more Tobacco Institute funding than any other trade organization in Arizona and provided consistent support for pro-tobacco policies and resistance to clean indoor air, both locally and statewide. The tobacco industry and ALBA worked together since at least 1992, with the tobacco companies doing more than just paying their annual \$1,000 in dues.^{29, 38} ALBA worked with the Tobacco Institute and the National Smokers Alliance to weaken the Mesa smokefree ordinance in 1996, lobbied against the proposed OSHA rule prohibiting smoking at all workplaces also in 1996 (see below), and mounted a statewide initiative campaign to preempt the proposed statewide clean indoor air initiative in 2006.^{11, 39, 40}

While the tobacco industry and the National Licensed Beverage Association had been in communication since the early 1980s, ALBA president Lee Tilford was one of the first industry allies to help the tobacco industry organize and mobilize liquor association members to counter local tobacco control ordinances.²⁹ The relationship the Tobacco Institute developed with ALBA in 1993 was so successful that the Tobacco Institute was inspired to replicate their partnership model with ALBA in other states.²⁸ A 1993 letter from Randy Morris, Regional Vice President of the Tobacco Institute in Denver to Ronald Morris (who would become a TI Vice President) suggested:

This memo will update you on my recent meeting in Phoenix with Don Isaacson, Esq., TI's Legislative Consultant in Arizona [and ALBA lobbyist], and Lee Tilford, President of ALBA. It is our suggestion that a dialogue be opened between yourself, Pat and/or Kurt and Debra Leach, Executive Director of NLBA, to discuss how TI and NLBA might work together on issues of common concern. Ms. Leach's phone number is...

You will recall that the Tobacco Institute and ALBA have already been working hand in hand in a cooperative fashion on issues of mutual interest in Arizona at the state level and in many Arizona communities. Lee Tilford [president of ALBA] has been an invaluable ally on our issues and it seems to Don [Isaacson, joint lobbyist for ALBA and TI] and I that the cooperative relationship we have developed in Arizona could be expanded upon in other states.²⁹

The joint efforts of ALBA and the tobacco industry are demonstrated in the consistent opposition by ALBA members (both officially representing ALBA and presenting themselves as individual bar owners) to local ordinances beginning in 1993 and continuing through 2006, when ALBA leadership chaired, treasured, advertised, organized, and financially contributed to RJ Reynolds' 2006 (unsuccessful) preemptive Non-Smoker Protection Act initiative (Proposition 206) which would have created a weak statewide clean indoor air law and rolled-back strong local smokefree ordinances. Campaigns to overturn important local smokefree ordinances in Tempe (2002-4) and Prescott (2003-5) were carried out by bar owners. While the Tempe and Prescott pro-smoking campaigns received no apparent financial support from the tobacco industry in Tempe or Prescott, the

investment the industry had made over the years through ALBA and similar efforts at the very least promoted the myth that clean indoor air ordinances would hurt bar owners.³⁰ It is also possible, however, that because the Tempe and Prescott campaigns are more recent developments, tobacco industry documentation (available at www.legacy.library.ucsf.edu) is not yet available that might reveal support by the tobacco industry for these anti-clean indoor air ordinance efforts.

ALBA also supported the tobacco industry's policy positions at the national level. In 1996, under Tilford, ALBA commissioned a poll by Roper Starch Worldwide (which did polling for the Tobacco Institute) as part of the tobacco industry's effort to oppose federal workplace smoking regulations proposed by the Occupational Safety and Health Administration in 1994.^{33, 41} A Philip Morris "OSHA Communications Report" dated September 20, 1996 relates that "The Arizona Licensed Beverage Association has agreed to sponsor a state survey," as Philip Morris "[c]onsultants [were] lining up sponsors for state specific polls."⁴² On October 7, 1996, six weeks prior to the release of the poll on November 26, Tilford wrote Ted Lattanzio, Director of Philip Morris Worldwide Regulatory Affairs, requesting a \$20,000 "grant" to "protect the interests of the hospitality industry in Arizona" from the "negative impacts created by federal government entities like OSHA."⁴³

The Philip Morris-funded poll³⁹ interviewed 150 bar and 155 restaurant managers or owners in attempt to "show that owners and managers of restaurants, bars and taverns in Arizona expect the proposed regulations to have a significant harmful effect on their businesses."³⁹ Among the results of the poll, bar owners believed 90% of their "smoking customers would come less often" and 40% of restaurant owners believed "revenues would decrease" if the OSHA regulations went into effect.³⁹ Like other similar polls conducted by the tobacco industry and interests allied with the industry,³⁵ the poll claimed that the recently enacted city of Mesa clean indoor air ordinance (March 1996) was "causing problems" for restaurants and bars, claiming that the proposed OSHA regulation "would have the same effect as the anti-business initiative that was enacted in Mesa last spring. The proposal would Mesa-ize the hospitality industry across Arizona and the nation."³⁹ (Studies published by groups affiliated with the tobacco industry without exception show a negative economic impact from smoking restrictions, based largely on subjective "data" (opinion surveys); high quality studies using objective data (like tax receipt information) and proper analysis consistently show no effect or a positive effect.³⁵) In its press releases, ALBA did not mention the fact that Philip Morris recruited ALBA to do the poll, although it did note that the survey "was funded by an unrestricted grant from Philip Morris."³⁹

Attorneys General

Arizona's Attorneys General have played a prominent role in tobacco control by fighting to pursue Arizona's lawsuit against the tobacco industry, advocating for youth access legislation to prevent children from smoking, and ensuring that Arizona received full payments from the tobacco industry under the Master Settlement Agreement. Arizona Attorney General Grant Woods (R, 1991-1999) persisted in making Arizona a party to the lawsuit against the tobacco companies despite opposition from Governor Symington. Janet Napolitano* (D, 1999-2002) successfully fought for laws prohibiting sending cigarettes through the mail, the sale of "kiddie packs" (packs of cigarettes containing less than 20 cigarettes), restricting buying cigarettes on the internet and free cigarette give-aways. Attorney General Terry Goddard (D, 2002-) actively enforced full MSA payments.⁴⁴

In 1999, when RJ Reynolds sent unsolicited cigarettes in the mail to an Arizona non-smoker who had been dead for 10 years, his widow complained to Attorney General Napolitano, who opened an investigation of similar incidents.⁴⁵ Following up on the case, Napolitano contended that Reynolds had violated Section

* Janet Napolitano was appointed in 2003 to the American Legacy Foundation (founded with MSA money for tobacco control) Board of Directors by the National Governors Association after her success combating the tobacco industry in her capacity of Arizona Attorney General. As of this report's publication in January, 2008 Napolitano was still a Legacy board member.

III(g)2 of the Master Settlement Agreement's restrictions on distribution of free samples of cigarettes. This provision of the MSA disallows tobacco product sampling giveaways outside of adult-only venues unless age and identity certification can be reliably certified. Napolitano challenged RJ Reynolds' process of certification by showing many fraudulent or forged certification cards. She had citizens who had received unwanted cigarettes examine "their" RJ Reynolds adult smoker verification cards, collecting affidavits from recipients of RJ Reynolds tobacco products based on certification cards not signed by them and with incorrect information given. On December 14, 2000 RJ Reynolds agreed to certify the age and identity of all persons to which it would mail cigarettes. Reynolds continued to mail cigarettes to Arizonans under this additional restriction.⁴⁶ Given the evidence gathered that insufficient safeguards existed to ensure only legal-aged consenting smokers received mailed cigarettes, on January 12, 2000 Napolitano sent RJ Reynolds a Thirty-day Notice of Intent to Initiate Enforcement Proceedings concerning Free Samples Delivered to Arizona Residents demanding RJ Reynolds "cease and desist" from mailing cigarettes to Arizonans.⁴⁵ Napolitano failed to follow through with her promise to prohibit the company from mailing cigarette sample packs to Arizonans. Working with the Legislature, however, she did insure that should Reynolds slip up and send unsolicited cigarettes to Arizonan households, or sell cigarettes to kids, the state would have to power to levy significant fines.

Napolitano publicized RJ Reynolds' violations of the MSA in the media, and as the MSA had recently been agreed upon, she took the opportunity to publicly demonstrate her enforcement of the MSA. Napolitano approached the Legislature asking to give her increased powers to levy fines on offending cigarette companies. In an unlikely partnership with House Speaker Jeff Groscost (R-Mesa, the recipient of \$250 in direct tobacco contributions and \$355 in tobacco lobbying money who had originally tried to divert TEPP's funds to the General Fund in 1995¹¹), Napolitano worked with the Legislature to pass HB 2658, which was signed into law April 24, 2000. HB 2658 gave Arizona's Attorney General power to fine the sender up to \$5,000 for each unsolicited delivery of tobacco products through the mail. This bill prohibited the unsolicited delivery of cigarettes or tobacco products.

Napolitano's tobacco control position also led to a bill in the Legislature restricting the sale of single cigarettes in Arizona. With Groscost, Napolitano secured passage of HB 2557 (2000) which banned the sale of single stick cigarettes or cigarettes in packs containing less than twenty sticks.⁴⁷ The originally proposed legislation was to ban the sale and manufacture of cigarettes in packages under 20 in Arizona, which would have made the Single Stick tobacco manufacturer, a minor non-MSA-participating tobacco company, move to another state.⁴⁸ Single Stick was the only company that would have been effected by HB 2557, though various legislators and Don Isaacson (lobbyist for ALBA and RJ Reynolds) supported weakening the bill.⁴⁸ While the Master Settlement Agreement made the sale of single stick cigarettes illegal, participating states were required to enact this as a law by December 31, 2001, otherwise single stick cigarettes would continue to be legal. Additionally, as the MSA restrictions only applied to participating companies, HB 2557 extended the 20-unit per pack minimum sale requirement across the industry. The lobbyist for the voluntary health agencies (American Cancer Society, American Heart Association, and American Lung Association), Kevin DeMenna, spoke in support of stopping the sale, manufacture, and distribution of cigarettes in units of less than 20 at a House committee hearing.⁴⁸ After pro-tobacco arguments by Senator John Huppenthal (R-District 20, Tobacco Policy Score: 4.8) and Single Stick representatives, Senator Mary Hartley (D-District 20, \$288 in tobacco lobbying from 1996-2002) agreed to weaken HB 2557 by including the Grace Amendment, which removed the originally planned regulation against manufacturing and distributing, so that only the sale of pack with less than 20 cigarettes was restricted.⁴⁸ Single Stick then would still be able to manufacture single cigarettes in Arizona for sale in other states, but not in Arizona. Senator Huppenthal moved to adopt the "Grace amendment" (proposed by Health Senate Committee Chair and co-author of the bill Sue Grace, R-District 24) which allowed the manufacture of less than 20 cigarettes per pack as well as their sale in Arizona sold face-to-face at venues that only admitted people aged 21 and over. The revised bill that became law did prohibit sale outside such venues, a minor win for those who wanted to limit purchases of packs under 20 cigarettes to minors. But because of the weakened bill still allowed the sale (though limited), manufacture, and distribution of cigarettes in packs less than 20, Single Stick also won.

In January 2002, Attorney General Napolitano told legislators that Arizona law was not sufficient to meet the enforcement requirements of the federal Synar Amendment, which required states to enact and enforce laws limiting youth access to cigarettes in order to maintain federal block funding for substance abuse.⁴⁹ (Arizona was in danger of losing at least \$11.2 million a year because of its failure to bring the percentage of tobacco sales to minors under 20%; in 2001 20.3% of retailers inspected sold tobacco to minors.⁵⁰ See TEPP section on Youth Access.⁴⁹) As a result of Napolitano bringing attention to Arizona's high youth access noncompliance rates, SB 1340, sponsored by Senators Sue Gerard (R-District 18), Herb Guenther (D-District 5), and Representative Rob Cannell (D-District 5, Tobacco Policy Score: 8.7), sought to authorize courts to fine retail merchants selling cigarettes to minors. Arizona law at the time fined the minor, and required the state to prove that the sale of tobacco to a minor was done "knowingly" to fine the retailer. SB 1340 would have made selling tobacco (cigarettes and smokeless) a class 3 misdemeanor for the merchant (with a fine up to \$300) and given courts the power to prohibit the sale of tobacco by retailers who repeatedly were caught selling tobacco to minors.⁴⁹ However, this bill was held in the Commerce Committee by Committee Chair John Verkamp (R-District 2, recipient of \$100 in tobacco industry direct contributions and \$151 in tobacco lobbying expenditures).⁵¹ While Verkamp stated he would ask the President of the Senate for an extension to hear the bill, the SB 1340 was never heard again.⁵¹

Synar Amendment

The Synar Amendment is federal legislation coupling mental health and drug abuse prevention block grant funding with meeting targets of reducing the sale of tobacco products to minors. The ADHS Division of Behavioral Health Services is responsible for conducting the inspections used to determine eligibility under the Synar Amendment to receive federal Substance Abuse and Mental Health Services Administration (SAMHSA) SAMHSA's block grants to the state require tobacco youth access noncompliance rates of 20% or lower to receive full federal funding.⁵² Although Arizona could combine its Synar inspections with youth access law enforcement efforts in Arizona as some other states do, ADHS chooses not to.⁵² While at first glance Arizona's history complying with the Synar Amendment appears positive and uneventful, with a low 7.6% violation rate in 2006 (down from 20.3% in 2001), other government agencies' differing reported youth access compliance rates raise questions about the situation.^{9,53}

ADHS' Behavioral Health Division subcontracts with the Pima County Partnership and Community Bridges organizations to actually inspect tobacco retailers, which yielded the 7.6% noncompliance rate, which is well below the 20% threshold.⁵² This retailer noncompliance rate, however, is significantly lower than the noncompliance rates observed by Arizona Attorney General's Office (AGO) working with TEPP, which found 23% noncompliance. Law enforcement accompanies most AGO youth access compliance inspections,⁹ and, as a result, one would expect the AGO's compliance checks to find higher – not lower – compliance.^{9,53}

Potential reasons for the discrepancy given in Arizona's application to receive SAMHSA funds include Behavioral Health and the AGO checking different retailers, drawn from different lists.⁵² For example, Behavioral Health does not check Native American Reservations, while the AGO checks do. Arizona's AGO makes more than twice the amount of compliance checks that ADHS does, and also routinely brings law enforcement along to cite the offending retailers. The fact that the more vigorous AGO-TEPP youth access compliance checks are reporting retailer noncompliance rates three times that reported by the ADHS Division of Behavior of Health Services' checks raises serious questions about the reliability of the data Arizona is submitting to the federal government to document its compliance with the Synar Amendment.

THE MASTER SETTLEMENT (DIS)AGREEMENT

The process that led to the Master Settlement Agreement (MSA) began when the states of Mississippi and Minnesota sued the tobacco industry in 1994 to recover the costs of smoking-caused illness for state healthcare programs and to win restrictions on cigarette marketing, particularly those directed toward youth. Despite opposition from Governor Symington (discussed below), in August, 1996 Arizona sued the tobacco

industry.¹¹ In 1998, Arizona was one of 46 states participating in the “Master Settlement Agreement” that resolved the state litigation in exchange for monetary payments to the states and the tobacco industry accepting some restrictions on its marketing activities.⁵⁴ The MSA yielded \$3.1 billion to Arizona over the first 25 years. In the end, all the MSA money went to the state Medicaid program (AHCCCS), with no funds for tobacco control. The voluntary health agencies (American Lung Association, ALA; American Heart Association, AHA; American Cancer Society, ACS), which had led the 1994 initiative creating the state’s tobacco control program (TEPP), made only minimal efforts to secure the MSA money as a source of funding for Arizona’s tobacco control program. They did not pursue the MSA to fund tobacco control because in 1999-2000 when decisions on spending the MSA money were made, Arizona had one of the highest per capita expenditures for tobacco control in the U.S. and its funding seemed secure. Ironically, an unintended effect of Arizona’s MSA allocation actually would contribute to TEPP’s evisceration in FY2002.

The Lawsuit Against the Tobacco Industry

Our earlier report described Governor Symington’s opposition to suing the tobacco industry.¹¹ Because we now have access to internal tobacco industry documents, details of the tobacco industry’s behind-the-scenes activity leading Symington to oppose the lawsuit of the tobacco industry are now available. Before the lawsuit was filed, the tobacco companies were already working on plans to get the Governor to oppose the lawsuit.

Industry efforts to enlist the governor to oppose the suit started on August 19, 1996, when Brian Michael Goodwin (of Mitten, Goodwin & Raup), an Arizona lawyer representing RJ Reynolds, wrote Philip McDonnell (legal counsel for RJ Reynolds⁵⁵ at the Arizona law and lobbyist firm Jennings, Strouss & Salmon) reporting, “I enclose for you the most recent draft of the Memorandum that is being suggested for delivery to the Governor.” The “Memorandum” described the tobacco industry’s attempt to convince Governor Symington to pressure Arizona Attorney General Grant Woods to drop the state’s lawsuit against the tobacco industry by privately meeting with Governor Symington and presenting Symington with reasons to drop Arizona’s suit against the tobacco companies. Goodwin’s letter requests guidance on how to best approach the governor, requesting McDonnell’s

thoughts about the wisdom of this approach, the content of the memorandum, whether it should be presented contemporaneously to Lisa Hauser, Esq., the Governor’s in-house counsel (as you are considering) and whether we really need to wait for Don Isaacson [*sic*. Lobbyist for RJR and ALBA] to return from vacation to deliver this [memo to the governor]. I believe that PM and RJR would like to move on this before week’s end. On the other hand, your thoughts on timing will be considered.⁵⁶

The next day, August 20, 1996 Attorney General Grant Woods filed the lawsuit *State of Arizona, et al. v. American Tobacco, Inc., et al., CV 96-14769* with the support of Governor Symington, disrupting the tobacco industry’s plan to convince Symington to stop the suit before Woods filed it.¹¹ This suit included filing on the behalf of AHCCCS. Despite the awkwardness of having Woods file and then withdraw it, Philip Morris and RJ Reynolds representatives decided to delay their meeting with Symington a few weeks, until September 9, 1996, because industry heads believed Symington would be most receptive if their memorandum was delivered by tobacco industry representatives he already knew well, such as Don Isaacson.⁵⁶

On September 9, 1996, Gov. Symington met in his eighth floor conference room with representatives from the tobacco industry to discuss Arizona’s pending lawsuit against the tobacco industry.⁵⁷ The governor’s attorney Lisa Hauser, policy advisor Jay Heiler and aide Nancy Baehre also attended. William Maledon, Arizona attorney for Philip Morris (who would later represent Philip Morris in Arizona’s lawsuit against the tobacco industry to recover Medicaid expenses), described who was present at the September 9, 1996 meeting in an letter dated October 7, 1998, to industry lawyer James P. Rouhandeh concerning the media’s discovery of this meeting:

In addition to myself, R.J.Reynolds' Arizona counsel was present and the lobbyist attorneys for Philip Morris, Reynolds, Brown & Williamson, and the Tobacco Institute were present at the meeting . In addition to those six defense attorneys, there was Governor Symington, his Chief of Staff (Jay Heiler), his Administrative Counsel (Lisa Hauser), and an Administrative Assistant [Nancy Baehre] who took the notes that are the subject of the newspaper article.⁵⁸

The names of the other representatives are not known, although the name “Fagin–RJR” on the memo from the meeting⁵⁹ indicates the identification of the RJ Reynolds attorney.⁶⁰) Paul F. Eckstein represented American Tobacco and Brown and & Williamson during the period the meeting occurred; Don Isaacson was the Tobacco Institute’s Arizona Attorney. The August 19 letter⁵⁶ from Goodwin and McDonnell indicated that the main reason for delaying the meeting until September 9 was to allow Don Isaacson to personally deliver the memo asking Symington to drop Arizona’s lawsuit.

Maledon prepared a memo (Figure 7) before the meeting with Symington outlining the arguments and talking points the Governor could use to oppose the lawsuit⁵⁸ based on a more complete document the tobacco industry already had prepared.⁶¹ A copy of Maledon’s memo,⁵⁹ including hand-written notes from the September 9, 1996 meeting taken by Nancy Baehre (Figure 7), Symington’s assistant legislative director, was uncovered in Symington’s office during discovery after he was forced to resign on September 7, 1997 following a federal conviction including seven counts of bank fraud.⁵⁷ The memo, distributed and annotated during the September 9 Maledon-Symington meeting, also referred to a “public relations fund” for Symington (Figure 7). The handwritten note reads: “F.S. [Fife Symington] Public relations fund - what are they going to do. Maledon to support Gov. Gov. wants to know in writing what they will do,”⁵⁹ The public relations fund, according to an *Arizona Republic* article two years later, was to defray the negative publicity costs Symington would incur for ordering Attorney General Grant Woods to drop the state’s tobacco litigation.⁵⁷

Baehre’s notes on the memo indicated that one of the outcomes of that meeting would be that Symington would “take [the] highroad [and write a] letter to A.G. [Attorney General Woods] outlining reasons for AHCCCS to be taken off lawsuit – Maledon to draft letter.”⁵⁹ The notes also mentioned that “Mike Greene, Carol S[pringer], and Bob B[urns] [all legislators who received tobacco industry contributions] would be very receptive to saying hell no to putting state money into paying attorney fees.”⁵⁹

Identical language from this memo⁵⁹ and the longer industry document⁶¹ that formed the basis for the memo, later appeared in Symington’s October 15, 1996 demand to Attorney General Grant Woods to dismiss the case and in AHCCCS Director Jack Kelly’s October 17, 1996 letter to Woods instructing him to drop AHCCCS.⁶² Maledon’s draft report detailing reasons why Arizona suing the tobacco industry was a bad idea, said the “door would be opened for state-instigated suits against other lawful and tax-generating industries - for example, the beef industry, the oil and gas industry, and the alcoholic beverage manufactures.”⁶¹ Symington’s letter to Grant Woods stated that suing the tobacco industry would open “claims against beef growers, liquor distillers, wineries, dairy farmers” and other industries.⁶³ In an exchange two days after the industry’s meeting with the Governor, RJ Reynolds legal consultant and industry Arizona litigation representative⁶⁴ Brian Goodwin wrote to Bill Maledon: “enclosed is a markup of your September 11, 1996 10:07 a.m. draft of the letter from Director Kelly ... As soon as I have an opportunity [to] look at the Governor’s letter, I will do a follow up memo.”⁶⁵ The evidence showing Maledon and other tobacco industry lawyers engineered the withdrawal of AHCCCS from the lawsuit against the tobacco industry, and that Maledon (and other industry representatives) helped prepare Symington’s and Kelly’s letters to Attorney General Grant Woods is unequivocal.

Despite this meeting and Maledon’s agreement to draft the letter for the Governor, Maledon told the Associated Press he had “nothing to do with that letter.”⁶⁶ Maledon said in a press statement that he had “not had a chance to study the letters”:⁶⁷

We have learned that the Governor and the Director of AHCCCS have sent letters to the Attorney General today

**THE LAWSUIT BY THE
ATTORNEY GENERAL AGAINST THE TOBACCO INDUSTRY**

A. The Lawsuit Is Unauthorized, Unsound and Poor Public Policy.

1. Federal law requires Medicaid decisions in each state to be made by a "single state agency." AHCCCS is that agency in Arizona. Only the Governor and the Director of AHCCCS can initiate such a Medicaid suit.
2. Subrogation is the only viable claim for recovery of Medicaid expenses (see A.R.S. § 36-2915). The Attorney General has not brought such a claim, and the claims he has brought are legally unsound.
3. Any recovery would be paid mostly to the federal government (at least 66%) and the plaintiffs' attorneys (at least 18%). *(executor provision raises issue like a PMA.)*
4. The retention of outside counsel on a contingent fee basis is illegal. The State may be forced to pay these attorneys with appropriated public funds.
5. The litigation was initiated by outside counsel. These are many of the same attorneys who made hundreds of millions suing the asbestos companies.
6. Tobacco sales are lawful in Arizona and are heavily taxed by the State. Suing such companies is poor public policy.
7. These issues are for the Legislature, not the courts.
8. *Injunctive Consent issue.*
9. *Capitated system - (fee for service)*

B. The Governor Should Insist That the Lawsuit Be Dropped.

1. AHCCCS should demand that it be dismissed from the lawsuit.
2. The Attorney General should be instructed to dismiss the lawsuit because it was brought without authority and it is contrary to the best interests of the State of Arizona.
3. If the Attorney General refuses to dismiss the lawsuit, the Governor should intervene and ask the Court to dismiss the action.

Maledon-

DISPOSITION OF
N. Baehre
PLF. EXHIBIT # 1 DATE 7-6-98
B. JACKSON

206891.1

Figure 7 (Front and Back). This memo, written by Philip Morris lawyer William Maledon and presented by him and six other tobacco industry lawyers and lobbyists to Arizona Governor Fife Symington at a secret meeting on September 9, 1996, outlined reasons why Arizona should drop its lawsuit against the tobacco industry. Symington's aide Nancy Baehre's handwritten notes describe the meeting with the tobacco industry, including the description "Maledon to draft letter" that Symington's would give to Attorney General Grant Woods demanding Arizona drop its lawsuit against the tobacco industry. The memo also refers to Symington asking about a "Public Relations Fund," asking the tobacco industry "what are they going to do?"

This makes no sense from check & cents standpoint.
 Adverse effect on ability of delivering services
 (Approp. standpoint)
 If success take out - lawsuit dies?

Step I - remove success? - why did they do it (success)
 - what will A.G. do.

II - Gov tell A.G. to remove himself -

III - then private take him Court

Jay:

(Malco Company going to settle these suits? - Malson insist
 the company is not going to settle -

Philip Morris

Fagin-RSE-

Mico Steen

Carol S. + Bob S. d to my receipt to saying hell no
 on putting state money into paying attorney

F.S. Public relations fund - what are they going to do. Malson d
 support Gov - Gov want to know in writing what they will do.

Gov - take high road letter to A.G. outlining reasons for success if
 he taken off lawsuit - Malson to draft letter.
 Malson - Private Cando now w/o success but won't be as
 powerful.

TR: J

98259622

expressing their concerns about the litigation filed against the tobacco companies last August. Although we have not had a chance to study the letters, we believe that the Governor and the AHCCCS Director are right to be concerned about this litigation and how it will adversely impact the State and particularly AHCCCS.⁶⁷

An Associated Press article revealed an additional private letter Kelly wrote Woods in October 1996 supplementing his public announcement that AHCCCS would be dropped from Arizona's lawsuit:

"Does suing the tobacco companies send any greater message to people who have been ignoring the warnings on the [cigarette] packages the entire time they have been smoking?" Mr. Kelly wrote. *"If it does, and smoking actually does go down, then Arizona's revenue under the tobacco tax will decrease."* Mr. Kelly listed that argument in a page-and-a-half of "cons," which he said "clearly outweigh the pros" of the \$500 million lawsuit, filed in August by state Attorney General Grant Woods.

...Arizona is risking millions of dollars for costs in this risky proposition," Mr. Kelly wrote. "Ironically, there is absolutely no reason for Arizona to be in this case at this time! Arizona can just sit back and let the other states proceed. If they lose, the issue goes away, and it did not cost Arizona anything. If they win, Arizona just files an identical lawsuit." Mr. Kelly couldn't be reached for comment.⁶⁸ [emphasis added]

These arguments were all in the materials that Philip Morris gave Symington.^{61, 62}

While Governor Symington succeeded in forcing Attorney General Woods to drop the AHCCCS from the lawsuit, Woods did not drop the lawsuit quietly, but rather exposed Symington and Kelly's orders to the media. Woods remarked in an October 18, 1996 Associated Press interview, "He's not the first governor to be bought out by big tobacco."⁶⁹ As noted above, Woods continued the lawsuit against the tobacco companies representing the citizens of Arizona, adding charges of consumer fraud and racketeering, as well as contribution of the delinquency of minors for cigarette sales to minors.¹¹

After Symington resigned from office on September 7, 1997 following a federal conviction on seven counts of fraud, Woods found the Symington-tobacco industry memo in Symington's office asking for the "public relations fund" in exchange for dropping the suit. As more evidence accumulated of Symington's wrongdoing, Woods asked U.S. Attorney General Janet Reno on September 16, 1998 to investigate the incident as a "possible violation of the Hobbs Act, a federal law that prohibits officeholders from receiving a benefit for the public actions they take."⁶² Symington was never prosecuted under the Hobbs Act and his criminal fraud convictions were pardoned by President Bill Clinton on January 20, 2001.

After Symington resigned and Republican Secretary of State Jane Dee Hull became Governor, Hull reinstated the AHCCCS to the suit on October 28, 1997.⁷⁰ In a legal status report to the court, Woods explained that AHCCCS was being added back as a plaintiff because "[r]ecent disclosed evidence reveals that the defendants [the tobacco companies] engineered the withdrawal of the AHCCCS" from the initial suit.⁷¹ Maledon, now defending Philip Morris against the State of Arizona's lawsuit, responded by claiming that re-introducing AHCCCS to Arizona's suit "'will add greatly to the amount of discovery that will have to be done in this case,'" confirming many Arizona officials' fears over "scorched-earth litigation strategy" requiring the state to produce millions of pages of state documents for the defendant tobacco companies.⁷⁰

On November 23, 1998, Philip Morris and the other major US tobacco companies settled with Arizona when they signed the MSA, which included paying Arizona an estimated \$3.1 billion over the first 25 years.

Battling over the MSA Money

Arizona is one of only four states (Alabama, Michigan, and Tennessee) where none of its initial MSA money was spent for tobacco control.⁷² In FY2000, when the MSA funds became available, Arizona had the third highest funded tobacco prevention funding per capita among all 50 states at \$34.5 million (FY2001 \$36.6 million, about \$7 per capita), above the CDC minimum annual spending recommendation (\$27.3 million) from

the existing TEPP tobacco control program funded by Proposition 200. As a result, there was a consensus among legislators, voluntary health groups, and tobacco control advocates that there was no need for additional money for tobacco control from the MSA. All the money eventually went to pay for medical services.

The battle in the Legislature for the MSA money ensued during the 1999 legislative session and, after an impasse among the Legislature, the local county health agencies, and the Governor, two ballot initiatives competed over the allocation of the funds in the November 2000 elections. To not be totally stripped of their decision-making powers regarding the MSA, the Legislature and the Governor banded together in 2000 to allocate a portion of the funds only after they realized that their inability to compromise on spending the funds had created a situation where the ballot measures would decide for them. The Legislature approved \$100 million in one-time appropriations to fund specific programs including behavioral health services, the construction of a new state mental health hospital, and other programs⁷³ as they awaited the outcome of the 2000 election (Table 3).

Diverse interests made proposals for using the MSA funds in the 1999 Legislature (Table 3). Governor Hull suggested spending Arizona's share of MSA money on creating a program called Arizona's Positive Action for Tomorrow's Health (PATH). At a National Governor's Association meeting discussing the MSA in early 1999 Hull's plan was detailed:

Governor Jane Dee Hull of Arizona has proposed: building medical facilities and permanently funding a variety of health care programs; forming a trust fund for research and education on smoking cessation; establishing an up-front payment for a new state mental hospital, new state health laboratory, and rural health clinics; and funding a county health care block grant.⁷⁴

Of the 13 proposals put before the Legislature (Table 4), only Hull's and Gerard (R-District 18) Leff (R-District 24), and Allen's (R-District 28) proposed HB 2665 allocated any MSA funds to tobacco control. Other interested parties – the House, Senate, counties, and eventual propositions placed before the voters – did not include meaningful tobacco control spending. Long-term tobacco control supporter (and, after 2005, ADHS Director) State Representative Susan Gerard (Chairwoman of the Health Committee), described the scramble for MSA money: "It's a feeding frenzy. I see myself standing here with a huge fly swatter saying, 'Back, back,' but they still keep coming."⁷⁵ None of these proposals was enacted.⁷⁶

Chair of Maricopa County Board of Supervisors Jan Brewer* (on behalf of Arizona's counties) fought for allocating a portion of the MSA monies for county health departments. Governor Hull's PATH proposal would have given the counties 25% of the overall settlement, recognizing that county health departments incurred significant costs for medical services for smokers. The counties wanted 33% of the settlement money, and when Governor Hull's initial proposal of 25% was derailed by the Legislature along with her PATH plan, the counties filed a lawsuit against the same tobacco industry defendants as in the state suit in an attempt to reclaim health care costs spent on smokers.⁷⁸ The terms of the MSA precluded recovering any more by government entities, however, including local county governments. Any monies won by the counties therefore would have to come directly out of the state's payments. Even so, the counties pursued their suit in an attempt to pressure the state for more MSA funds; the Arizona Supreme Court dismissed their lawsuit.

Arizona was one of six states (along with Arkansas, Montana,⁷⁹ Oklahoma, Oregon,⁸⁰ and Utah)

*Jan Brewer (R) was Arizona Secretary of State in 2007 (since 2003), served as Arizona State Senate Majority Whip from 1993 to 1996, and as a legislator in both houses from 1983 through 1996. She also appeared on a 1994 Tobacco Institute contact list of "legislators and business people who have assisted in recent local issues" to comment against OSHA's clean indoor air proposal.⁷⁷

Table 3. Master Settlement Agreement Expenditures, FY2000 through FY2007 (in millions)

<u>SOURCES</u>	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002</u>	<u>FY2003</u>	<u>FY2004</u>	<u>FY2005</u>	<u>FY2006</u>	<u>FY2007</u>
Beginning Balance	0	100.6	62.1	2.8	0	0.8	0.1	0
MSA Payments	120.3	88.5	112	109.5	92.6	94	86.2	92
Transfer In				3				
Interest	0.2	2.1	2.0	0.4	0.1	0.1	0.1	0
Total Available	<i>120.6</i>	<i>191.1</i>	<i>176.1</i>	<i>115.7</i>	<i>92.7</i>	<i>94.9</i>	<i>86.4</i>	<i>92</i>
<u>USES</u>								
ASH Construction	20	20						
Behavioral Health								
SMI		50						
Children's		20						
Proposition 204								
AHCCCS		12.6	140.3	69.5	45.0	48.1	86.4	92
DHS			10.6	46.3	46.8	46.8		
'Lottery' Programs								
Healthy Families		5.4	5.5					
Board of Regents		4.3	4.4					
Teenage Pregnancy		3.2	3.3					
Health Start Program		2.2	2.2					
WIC Program		1.1	1.1					
Disease Control Research		2.2	2.2		0	0	0	0
Health Care Group		8	3.5		0	0	0	0
Total Expenditures	<i>20</i>	<i>129.1</i>	<i>173.2</i>	<i>115.7</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
Balance	100.6	62.1	2.8	0	0.8	0.1	0	0

Table 4. Important MSA Funds Proposals in Arizona (none enacted)

Bill	Session Proposed	Sponsors	Use of MSA funds
HB 2498	1999, First Regular Session	Gerard, Preble, Horton, Knaperek	\$8 million a year for AHCCCS deficit reimbursement to Health Care plans
HB 2627	1999, First Regular Session	Schottel	15% for health insurance risk pool premium reduction fund.
HB 2642	1999, First Regular Session	Knaperek, Nichols, Horton	AHCCCS funding at 100% of federal poverty guidelines, the Premium Sharing Demonstration Project Fund, preventative care programs and health care programs.
HB2665	1999, First Regular Session	Gerard, Leff, Allen, et. al.	One-third of Settlement money to ADHS controlled health trust. Principal from MSA payments not to be spent. Allows for interest to be appropriated for smoking cessation, health education, health research and health treatment programs. *New AZ state hospital, laboratories, county health programs
SB 1002	1999 Third Special Session	Grace, Burns B, Day, Freestone, Bowers, Bennett, Wettaw, Spitzer, Petersen, Cirillo	\$75.8 million over 4 years to fund the creation of a state mental hospital.
SB 1004	1999 Third Special Session	Brown, Rios P, Cumiskey, Aguirre	Gives 28% of yearly MSA revenue to counties for health services. The rest of MSA revenue goes into a trust fund for AHCCCS, healthcare for the uninsured, elderly, children's mental health programs, and underserved populations
SB 1357	1999 First Regular Session	Grace	\$8 million a year to AHCCCS, first year coming from the Tobacco Tax (supported by ACS, AHA, ALA)
SB 1359	1999 First Regular Session	Grace, Day, Solomon, Gerard	\$76 million for a new state hospital and \$30 million for a new state laboratory before appropriations are made (supported by ACS, AHA, ALA). Died by amended with a strike-everything.
Governor Hull	1999	Governor Hull	One-third of Settlement money into a new health trust fund, with interest to go to permanent funding for health research and treatment programs, including tobacco. New state mental hospital, health laboratory, rural health clinics, and sharing funds with the counties to help cover health care program need.
SB 1541	2000, Second Regular Session	(House strike-everything amendment, Appropriations. Chair Robert Burns)	One-time permanent salary increase of at least \$1000 for all Arizona school teachers Create a trust fund with remaining money going to teachers, schools, and senior care
SB 1457 HB 2112	2000, Second Regular Session	Grace, Gerard	45% to AHCCCS, 20% to mental health, 15% long-term medical care, 10% tp county medically underserved areas and medical scholarship fund, 10% research and development and disease prevention.
SCR 2037	2000, Second Regular Session	Gerard, Preble, Grace, Day	45% to AHCCCS, 20% to mental health, 15% long-term medical care, 10% to county medically underserved areas and medical scholarship fund, 10% cancer research fund.
SCR 1015	2000, Second Regular Session	Burns B, Day, Bee, Bennett, Cirillo, Bundgaard, Grosco	Attempted to refer additional measure to November 2000 ballot to create endowment fund for teacher salary increases, classroom renovation, county programs for the elderly, disease research, and repaying the state budget stabilization fund.

in which the question of how MSA monies should be spent was decided by the voters through ballot initiatives. While the Legislature was debating the issue, Tucson physician Mark Osterloh and the Arizona Hospital and Healthcare Association (AzHHA) each put competing Arizona initiatives on the November 2000 ballot to allocate the MSA money. An *Arizona Republic* article summed up the MSA spending situation as of January 2000:

Gov. Jane Hull, House Speaker Jeff Grosco, and Senate President Brenda Burns are all pushing different plans that they would like to see on next November's ballot. Most lawmakers would prefer a legislative resolution of the issue, but two initiatives set to be on the November ballot would, if passed, nullify any decision the Legislature makes regarding the tobacco money. Lawmakers are unwilling to put extra effort into what promises to be a bitter fight if the results are going to be rendered irrelevant. The three proposals generally emphasize programs for tobacco use prevention, health care, and some sort of taxpayer benefit.⁸¹

Both Proposition 200 (AzHHA) and 204 (Osterloh) allocated all the MSA money for health services to fund Arizona's Medicaid, leaving nothing for tobacco control.

Propositions 200 and 204 in 2000

Proposition 200, "Healthy Children, Healthy Families," would have provided prevention services for preschool-age children and families, health insurance (including behavioral) coverage for eligible uninsured parents, schools to enroll uninsured children in KidsCare, hospice care for the terminally ill, and fund early detection and prevention for the most common causes of death in Arizona including cancer and stroke. Proposition 200 was sponsored by the AzHHA and their ally the Children's Action Alliance.

Proposition 200 had the endorsement of the voluntary health organizations which had worked with the AzHHA to pass the 1994 tobacco tax (also named Proposition 200) because the 2000 Proposition 200 would have secured TEPP funding from the kind of legislative diversions that had occurred in the past.^{11, 24} In addition to allocating MSA funds, Proposition 200 (in 2000) would "reenact" Proposition 200 of 1994 to "voter protect" the 1994 proposition. "Voter protection" in Arizona refers to a law created by a 1998 initiative (incorporated in Arizona Constitution Section 1, Article 4) stating that all ballot measures passed by the voters of Arizona are not subject to legislative change except under narrow circumstances. Because the voter protection amendment was not retroactive, it did not apply to the 1994 Proposition that created TEPP and its funding source, the 23% allocation from the 40 cent tobacco tax. By including the text of the 1994 Proposition along with the allocation of the MSA funds, the 2000 Proposition 200 would voter-protect 1994's Proposition 200 and prevent the Legislature from raiding TEPP's funding.

Rival Proposition 204, the "Healthy Arizona Initiative," was started by Mark Osterloh, a physician in Tucson, who wanted to expand the eligibility for AHCCCS to 100% of the federal poverty level (then about \$16,500 for a family of four). (Osterloh is a Democratic political activist who over the years ran several successful ballot campaigns and unsuccessfully ran for Governor against fellow Democrat Janet Napolitano in 2002.) Proposition 204 required that AHCCCS serve everyone up to the federal poverty level and allocated all the MSA funds to help pay for doing so. The state would be obligated to provide services to these people, even if the MSA funds were not adequate to cover the costs. Proposition 204 aimed to provide healthcare to "approximately 130,000 uninsured poor people through extension of the existing state health program, AHCCCS."⁸² The initiative noted that at the time "only those with very low incomes—less than \$5,500 a year for a family of four, or one-third the federal poverty level—[were] eligible for AHCCCS."⁸² Proposition 204 not only increased the number of working poor eligible for medical care coverage, but also expand health education, nutrition and prevention programs, premium sharing,* and other health care programs.

*Premium sharing was an AHCCCS program to enable Arizona's medicaid to provide a greater number of qualified patients with healthcare by charging patients a monthly premium (in addition to copayments) subsidized by the state.

After a failed attempt to implement Healthy Arizona in 1996 when it passed on the ballot but the Legislature refused to fund it from the General Fund, Osterloh decided that the MSA funds were a perfect opportunity to expand Arizona's Medicaid program. By April 1999 he had started to gather contributions

Table 5. Expenditures for Propositions 200 and 204 (2000)			
Proposition 200: Healthy Children, Healthy Families		Proposition 204: Healthy Arizona	
Contributor	Amount	Contributor	Amount
Arizona Hospital and Healthcare Association	467,500	El Rio Health Center	240,000
Banner Healthcare System	50,000	Az. Assoc. of Community Health Centers	80,250
Children's Action Alliance	50,000	Salt River Pima-Maricopa Indian Com.	50,000
Greater Phoenix Leadership	50,000	Mark Osterloh (Loan)	34,000
Caronderet Health Network	30,000	Virginia Furrow	15,000
Catholic Healthcare West	30,000	Sunset Community Health Center	13,000
Scottsdale Healthcare	30,000	Maria Auxiladora, Inc.	10,000
Arizona Public Service Company	25,000	Pinal Gila Behavioral Health	10,000
Mayo Clinic Arizona	25,000	Sun Life Family Center	10,000
TMC Healthcare	25,000		
University Medical Center	25,000	<i>In-Kind Contributions</i>	
John C Lincoln Health Network	20,000	Az. Assoc. of Community Health Centers	8,839
Northern Arizona Healthcare	20,000	El Rio Health Center	5,500
Phoenix Children's Hospital	20,000	Mark Osterloh	1,568
VHS Phoenix Baptist Hospital	20,000		
Yuma Regional Medical Center	20,000	Contributions under \$10,000 and interest	81,684
Chandler Regional Hospital	15,000		
Havasupai Regional Medical Center	15,000	Total Contributions	\$559,841
Intergroup Prepaid Health Service	15,000		
Kingman Regional Medical Center	15,000		
Maryvale Hospital	15,000		
Phoenix Memorial Hospital	15,000		
Sun Health Corporation	15,000		
United Healthcare of Arizona	15,000		
Yavapai Regional Medical Center	15,000		
Arizona School Boards Association, Inc.	10,000		
Bank One Corp.	10,000		
Bashas, Inc. and Edward Basha	10,000		
Casa Grande Regional Medical Center	10,000		
Cobre Valley Community Hospital	10,000		
Honeywell	10,000		
Mt. Graham Community Hospital	10,000		
Navapache Regional Medical Center	10,000		
Pacificare	10,000		
Sierra Vista Community Hospital	10,000		
St. Luke's Medical Center	10,000		
Wells Fargo	10,000		
AzHHA (Loan)	7,567		
<i>In-Kind Contributions</i>			
AzHHA	38,616		
Children's Action Alliance	22,093		
Bashas Print & Sign Dept.	3,447		
Contributions less than \$10,000 and interest	154,921		
Total Contributions	\$1,389,144		

to finance his proposed initiative (Table 5). He took out his first loan to fund his planned MSA initiative on September 29, 1999.⁸³ AzHHA CEO John Rivers and his colleagues at the AzHHA saw the MSA money as an opportunity for funding hospital expenses for Medicaid. After Osterloh's committee announced its initiative intentions for the MSA money, the gate was opened for Rivers' initiative. To get the support of the health voluntaries and to appease tobacco control advocates – and because of Rivers' long history of strong support for tobacco control, dating back to his leadership in passing Proposition 200 in 1994^{11, 24} – the AzHHA included the text of the original 1994 Proposition 200 in their initiative to voter-protect the TEPP funds.

Normally, if both initiatives passed, both would go into effect, with the provisions of the one receiving more votes taking priority in case of a conflict. The AzHHA, however, included additional “poison pill” language to ensure that the AzHHA allocation of funds would take priority if they won, creating a situation where only the initiative that received the most votes would go into effect if both passed. AzHHA included this language so that the Osterloh's initiative would not go into effect should the AzHHA initiative get more votes, but it also prevented the AzHHA's provisions should Osterloh's campaign receive more votes.

A legal challenge Proposition 204's proponents filed against the State of Arizona demanding retraction of the sample ballot statement of the possible ramifications of the initiative may have contributed to their success at the ballot. The Arizona Legislative Council and the Joint Legislative Budget Committee (JLBC) includes analysis of each ballot measure in literature voters receive to assess each measure's fiscal impact on the state. The JLBC's initial analysis of Osterloh's Proposition 204 stated:

It is estimated that annual revenues from the Arizona tobacco litigation settlement fund would be insufficient to cover the cost of this program after July 1, 2003...at the latest...
...the tobacco settlement monies will need to be supplemented by other state funding sources unless federal monies are received for the expanded AHCCCS program. Without the federal monies, the state will need to contribute \$135 million annually from its general [fund] or other revenues by 2005. The prospects of additional federal funding are uncertain due to the cost of the proposal to the federal government.⁸⁴

Proposition 204 proponents challenged this statement in court (*Healthy Arizona Initiative PAC v. Groscoast et al.*) and eventually won a decision by the Arizona Supreme Court, barring from inclusion in the Legislative Council analysis the concerning the future fiscal impact of expanding AHCCCS beyond the MSA's revenues.⁸⁴ The Healthy Arizona Initiative committee prevented the public from knowing the full ramifications of passing Proposition 204,⁸⁴ even though the disputed analysis would in FY2002 become Arizona's reality.

In a 2006 interview, Rivers remarked that expanding AHCCCS eligibility “was a goal that we [Proposition 200] supported 100% but we knew there wasn't enough tobacco settlement money to do that and that was where the divide occurred between our measures. We allocated the tobacco settlement money for early childhood development money and expanded access to our AHCCCS program, *but only within the available resources of the MSA.* [emphasis added]”¹² To fully fund the AHCCCS up to the federal poverty level, much more money was required than the MSA would provide. By design, Proposition 204 was an underfunded program unalterable by the Legislature, which would suck resources from other program areas and the general fund. This situation would ultimately happen in FY2002, when \$32.8 million was transferred from TEPP to AHCCCS.

Both initiatives passed in the November 7, 2000 election, with Proposition 200 receiving 54% and Proposition 204 receiving 58% of the vote. The Proposition 200 “poison pill” language (originally inserted to protect their funding designations should they win more votes than Proposition 204) provided that in the case of both propositions passing, the one with the most votes would go into effect while preventing the less successful measure from having any effect. Had the poison pill provision not been included, Proposition 200

would have voter protection the 1994 Proposition 200 even though 204 received more votes. Instead, the hospitals' "poison pill" clause would have the unfortunate side effect of preventing the voter-protection provisions in Proposition 200 from going into effect, opening the door for a legislative raid on TEPP.

The Tobacco Industry's Response

The tobacco companies were closely watching the allocation of the MSA money in Arizona, as they were in all the states. The industry was prohibited from playing any direct role in the debate over allocation of MSA money because the MSA provides that no Participating Manufacturer "may support or cause to be supported (including through any third party or Affiliate) the diversion of any proceeds of this settlement to any program or use that is neither tobacco-related nor health-related in connection with the approval of this Agreement or in any subsequent legislative appropriation of settlement proceeds."⁸⁵ Nonetheless, tobacco industry lawyers grew concerned over the reenactment of the 1994 tobacco tax increase that Proposition 200 contained; they mistakenly thought Proposition 200 intended to double the 1994 40 cent tobacco tax by reenacting it.⁸⁶

Because of this false belief, the industry preferred Proposition 204 to Proposition 200.⁸⁶ Despite the MSA's restrictions on tobacco industry interference with decisions regarding spending the MSA funds, an email from Ginny Corwin (PM lobbyist in Arizona) to Ted Lattanzio and Pam Inmann (Philip Morris Regional Director for Governmental Affairs) among others, reported that, "we are looking at meeting in Phoenix on August 16 or 18 to determine interest by the industry in opposing [Proposition] 200."⁸⁶ Opposition to Proposition 200 did not appear to relate to voter-protection of the TEPP funds; the industry's preoccupation revolved around Proposition 200's actual language and its mistaken belief in an additional 40 cent tobacco tax.⁸⁷

In a draft of a letter to Arizona Attorney General Janet Napolitano, Rip Wilson, lobbyist for Philip Morris, thanks Napolitano for meeting with him and Paul Eckstein (lobbyist for Brown & Williamson and American Tobacco) "regarding ambiguities that we believe may be present in Proposition 200 regarding the repeal and implementation of the current \$.40 per pack tax on cigarettes."⁸⁸ He goes on to provide four paragraphs arguing that Proposition 200 does not create an additional 40 cent tax, and asks Napolitano to communicate to him or his associate "should [she] be presented with an argument that indeed claims that the current tax on tobacco should be doubled under the provisions of Prop. 200."⁸⁸ Apparently Philip Morris felt comfortable enough with Napolitano's reassurance that Proposition 200 did not change the tobacco tax that no documented tobacco industry involvement in the MSA propositions occurred.

RJ Reynolds representatives spoke with Arizona's Attorney General Janet Napolitano in early October 2000, finding her "strictly 'unofficial' and 'off the record' reaction" to the tobacco industry attorneys' argument that Proposition 200 did not increase the tobacco tax reassuring.⁸⁷ This opinion led RJ Reynolds counsel Henry Stokes to report to Philip MacDonnell: "It was the consensus of the conference call group that the industry should stay out of the Initiatives. In the discussion I stated I would recommend to RJ Reynolds that we stay out of the campaigns. I stated that if we did anything further it might undermine our legal position. There was general agreement."⁸⁷

THE CONTINUING BATTLE OVER TEPP FUNDS

Arizona's Tobacco Education and Prevention Program has continually been under attack by legislators. The fact that the Symington administration prevented collecting baseline data before the program started laid the foundation for future attacks on program funding. Indeed, while our previous report *Tobacco Control in Arizona*¹¹ noted health advocates' success in preserving TEPP's funds in 1995-6 when various pro-tobacco legislators and lobbyists fought to appropriate TEPP's funds to the General Fund, it concluded that "the lack of evidence of the program's progress could jeopardize the program's future making it more vulnerable to attacks by the Legislature and the tobacco industry."¹¹ The lack of a baseline survey that could

be compared with smoking prevalence changes in response to the program made it easy to attack the program on the grounds that TEPP was not making the best use of its funds.¹⁸ Additionally, in part because between 1997 and 2007 TEPP consistently was one of the best funded tobacco control programs per capita in the U.S., some Arizona officials viewed the program as over-budgeted and ripe for diverting funds to other uses.

Initial Funding

As noted above, Arizona's TEPP was created by the successful 1994 Proposition 200 sponsored by the AzHHA and voluntary health organizations to raise the cigarette tax by 40 cents. The revenues were allocated as follows:

- 23% to the Health Education Account, which the Legislature was to appropriate to TEPP, run by the Arizona Department of Health Services (ADHS).
- 5% to the Health Research Account to award grants for medical research associated with tobacco or tobacco-related illness, run by the Arizona Biomedical Research Committee (ABRC) state agency.
- 70% to the Medically Needy Account (AHCCCS, Arizona's Medicaid) to fund health care for the poor.
- 2% to backfill the programs that originally benefitted from the 18 cent tobacco tax already in place in Arizona prior to 1994: the general fund and the Department of Corrections.

The Legislature resisted funding TEPP at the level specified in the initiative. There were immediate efforts to divert the money to the General Fund, which were prevented with the help of former U.S. Senator Barry Goldwater.¹¹ As a compromise to get some money appropriated to tobacco control, the resulting enabling legislation for Proposition 200, HB 2275, the Tobacco and Health Care Act (sponsored by Representative Sue Gerard, R-Phoenix), passed in 1995 capping expenditures for tobacco control in FY1996 at \$10 million and FY1997 at \$15 million.¹¹ While revenues deposited into the Health Education Account for these two years were \$27 million and \$28.9 million respectively, the capped funds accrued a \$30.9 million reserve in the account until they became available in FY1998 for subsequent allocation. After July 1, 1997 (the beginning of FY1998), TEPP was free to use the full account accrual of annual income and the accumulated reserves, limited only by TEPP's capacity to create and develop programs.

Not only did failing to appropriate all of the money voters allocated to TEPP mean the program would be smaller and less effective, but it also created a situation that invited future diversion of the funds away from tobacco control. In a 2006 interview, Kevin DeMenna, long time lobbyist for the ALA, AHA, and ACS, noted that the pressure not to allocate all the TEPP funds and create the reserve came from Senate Majority Whip Jan Brewer (R-Phoenix) "at the request of the tobacco companies."⁸⁹ (Brewer had in the same legislative session failed in her effort to divert the Proposition 200 funds from the Health Education Account to the General Fund.⁹⁰) DeMenna explained, "If you know anything about state budgeteers, [creating a fund reserve is] like painting a target on your forehead. In order to finally get that money loosened up [from pro-tobacco legislators to create the TEPP program], we had to give a little to get."⁸⁹

HB 2275 also was amended by pro-tobacco legislators to prohibit the health voluntary groups involved in Proposition 200 from receiving any TEPP funds by specifying with which agencies TEPP could contract. This move retaliated against the voluntary health organizations for their role in bypassing the Legislature's authority by going to voters with Proposition 200.¹¹ These health groups, which had the most practical knowledge of tobacco control, were barred from participating in TEPP's formation process and service provider network. (When the health voluntaries won Proposition 303 in 2002 which overrode this clause, they began subcontracting through TEPP by providing Chronic Disease services, but not tobacco control services.) Joel Meister, who during the time directed TEPP's parent Center for Prevention and Health Promotion, concluded that when the Legislature selected permissible recipients of state contracts the purpose of specifying agencies achieved "intentionally excluding all other private, nonprofit agencies," such as the health voluntaries.⁹¹

After the initiative and implementing legislation passed, the voluntary health organizations played a minimal role in monitoring and overseeing the program, which contributed to Symington’s ADHS Director initially restricting the scope of TEPP’s media campaign to only pregnant women and children. In a 2006 interview John Rivers spoke to the lack of health voluntary interaction and support in ensuring TEPP’s development and effective tobacco control programming in the initial years:

The bad news is, I am not sure we are any better today [in 2006] in supporting the tobacco control activities at the Department of Health Services [than in 1995]. The thing that Heart, Lung, and Cancer wanted badly in 1994 was money to support the tobacco education effort; and yet I was astonished at how after Prop. 200 passed they seemed to pay so little attention to what got developed at DHS or how it got developed. I know for a fact that Governor Symington had told them at the Health Department, “don’t do anything on tobacco control” – there’s a surprise. But the head of the Health Department [Dillenberg] had to do something, so he simply delayed [developing TEPP] as long as he could.

A pretty effective control program was eventually developed over there. But it wasn’t because the voluntaries were paying a lot of attention to it; it was because there are statutory requirements that the department do something.¹²

While the health voluntary organizations were excluded from receiving TEPP grants, they still worked to protect the funds from legislative diversion. In TEPP’s first few years, the voluntaries were successful in fending off many legislative attempts to divert TEPP’s funds,¹¹ even though they failed to pressure ADHS to develop and implement the most effective tobacco control program possible.^{11, 24}

TEPP’s Episodic Funding

Three major periods covered in this report warrant separate budgetary consideration: (1) FY1997-2001 when all funds allocated in Proposition 200 were appropriated to TEPP including the original reserve, providing funding levels above the minimum CDC standard*;¹⁴ (2) FY2002-2003 when TEPP funding was halved from its prior budget; and (3) FY2004-2007, with TEPP still suffering the reverberations of the FY2002-2003 cuts, slowly returning to the tobacco control program’s FY1999-2001 strength (Figure 8 and Tables 6 and 7).

The Golden Age of TEPP

Despite TEPP’s original problems during FY1995-1996, FY1997-2001 is often referred to as the “golden age of TEPP” because the synergy of solid funding, TEPP staff’s program innovation, committed local projects, and a well-funded and crafted (though

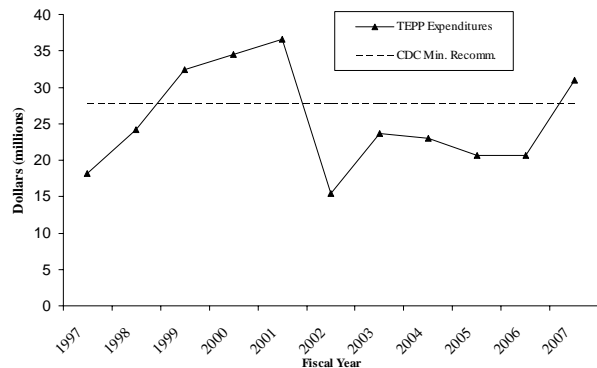


Figure 8. TEPP expenditures have fluctuated versus the CDC’s minimum recommended expenditures. In late 2001 Governor Hull and the Legislature cut TEPP’s funding in half, diverting \$32.8 million in funds from TEPP by the end of FY2002. This caused a dramatic cut in TEPP spending from its previous expenditures, which were artificially high due to accumulated funds in TEPP’s reserve account from FY1996 and FY1997 when TEPP’s expenditures were capped at \$10 million and \$15 million (respectively), despite revenues of ~\$25 million a year. In 2007, under new leadership, TEPP increased its expenditures.

*The Centers for Disease Control released updated *Best Practices for Comprehensive Tobacco Control Programs* figures in October 2007. For Arizona, the new recommended annual total funding for its state tobacco control program is \$68.1 million. The CDC recommends \$29 million for state and community interventions, \$8-24 million on health communication interventions, \$11.8-30.4 million for cessation interventions, \$5.9 million for surveillance and evaluation, and \$3 million for administration and management.⁹² The CDC best practices recommendations used in this report refer to the original 1999 report.¹⁴

Table 6. TEPP Revenues (in millions of dollars)												
	FY1996	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total Tax receipts from Proposition 200	125	124	114.5	112.4	112.4			102.5			100.8	
Actual amount allocated to Health Education Account from Prop. 200 funds	27.1	29.4	26.8	26.2	25.8	25.5	25.3	24.6	23	24	25.1	25.6
Proposition 303 (2002) Backfill Revenue	-	-	-	-	-	-	-	1.3	2.8	2.9	3.0	3.1
Health Education Account Balance Forward	13	32.4	46	51.4	42.7	39.8	31.1	4.3	1.6	5.8	10.7	16.8
Total Funds Available - Includes Interest	40.0	61.8	75.5	80.8	71.1	67.7	57.5	30.2	27.4	32.8	39.3	45.7
Allocated from Health Education Account to ADHS	9.7	18.2	24.2	32.5	34.5	36.6	25.4	21.1	22.6	20.6	20.7	22.5
Actually spent by TEPP	9.7	18.2	24.2	32.5	34.5	36.6	15.6	23.6	22.6	20.6	20.7	31
Discrepancy between Appropriation and Expenditure	0	0	0	5.7	0.7	0	10	-2.5	0	0	1.5	0
Discrepancy between balance forward (yr2-yr1)						3.9				2.6	-0.5	-0.2
Fund Sweep:												
Medical Services Stabilization Fund							15	5				
Medically Needy Account							10					
Transfer to AHCCCS							2.8					
Appropriation, Biotechnology								2.5				
Prevention and Detection, Leading Causes									0.4	1.4	0.2	
Administrative Adjustments/Encumbrances									1.3			
Balance Forward (out)	30.3	43.6	51.4	42.7	35.8	31.1	4.3	1.6	3.2	11.2	17.1	14.7
Initiatives that year			Voter Protection Passed		Proposition 200 (failed) and Proposition 204 (passed) MSA Allocation		Prop. 303 protected TEPP funds from future misallocations				Arizona state clean indoor air law passed; tobacco taxes raised to \$2.00/pack	
What the Governor and Legislature were doing		Removed TEPP funding caps for FY1996 and FY 1997	Lifted Advertising Restrictions		MSA Proposals		Raid on TEPP Funds					
TEPP Programmatic		Riester-Robb ad agency starts TEPP's "Tumor Causing" media campaign	1998-Cessation program began; 1999-Secondhand smoke media allowed		Media Contract Switch from Riester-Robb to EB Lane		Inhale Life and Cold Turkey campaigns; Evaluation Unit established July 2002		TEPP media contracts ended (2005), ad hoc media through FY2007			
Source: Arizona Joint Legislative Budget Committee and ADHS TEPP												

Table 7. TEPP Expenditures, FY1997-2007 (millions of dollars)											
	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Local Projects	3.1	6.2	10.6	13.5	13.9	11.9	8.9	3.0	8.6	8.1	9.6
Administration	0.8	0.6	0.6	0.7	1.9	15.8*	1.0	1.0	0.8	0.6	1.2
Media	11.5	13.2	14.1	13.0	12.1	7.6	6.5	9.6	4.5	5.9	12.5
Other Contracts	2.5	2.8	3.8	4.8	3.4	4.0	4.6	4.0	2.6	4.5	4.1
Planning Contracts /Evaluations	0.1	1.3	3.2	2.4	1.3	3.9	2.7	0.7	2.5	1.5	3.5
Adjustments						<i>43.3 in expenditures minus 27.8 in Diversions*</i>					
TOTAL	\$18.2	\$24.2	\$32.5	\$34.5	\$36.6	\$15.4	\$23.6	\$23.0	\$20.6	\$20.7	\$31.0
* \$27.8 million of the Legislature's TEPP funding diversion (the first wave) was included in various expenditure categories in TEPP's FY2002 budget.											
Source: ADHS TEPP and TEPP Biennial Report											

initially limited in scope) media campaign. This combination of efforts turned TEPP into one of the most effective tobacco control programs in the country during this period.^{12, 13, 93} (The details of the program are discussed later in this report.)

Although revenue produced by the tobacco tax for the Health Education Account that funds TEPP only totaled \$26.2 million for FY1999, \$25.8 million for FY2000, and \$25.5 million for FY2001 (Figure 9), TEPP was able to spend more than these amounts because of the reserve that had accumulated funds in FY1995 and FY1996 (Table 6). TEPP's budget for FY1997 totaled \$18.1 million, FY1998 \$24.2 million, FY1999 \$32.5 million, FY2000 \$34.5 million, and FY2001 \$36.6 million (Table 7),⁹⁴ exceeding the US Centers for Disease Control and Prevention's¹⁴ minimum of \$27.8 million recommended for Arizona tobacco control program spending for FY1999 through FY2001 (Figure 8). Using the reserve account, beginning in FY1999, TEPP aggressively expanded its program focus beyond its initial emphasis on media alone (aimed only at youth and pregnant women) and local projects to include working towards secondhand smokefree workplaces and schools, cessation, and enlarged its information clearinghouse and evaluation networks by collaborating with Arizona's three major universities. TEPP expanded by drawing down the reserve account from \$51.4 million at the end of FY1998 to \$31.1 million at the end of FY2001. The money in the reserve account was adequate to support this increased level of spending through the end of FY2004 (Table 6).

The funds were not challenged during the golden age of TEPP, from FY1997-FY2001, as they had been in the initial legislative sessions (1995-1996) after TEPP's founding. The public perception of tobacco industry manipulation and obfuscation stemming from the Gov. Symington's obstruction of Attorney General Woods' lawsuit against the tobacco industry may have heightened the public's support for tobacco prevention and education. TEPP's highly visible and lauded media campaign, its expanding services and its presence as a major public health force in Arizona all contributed to safeguarding TEPP's finances during this period.

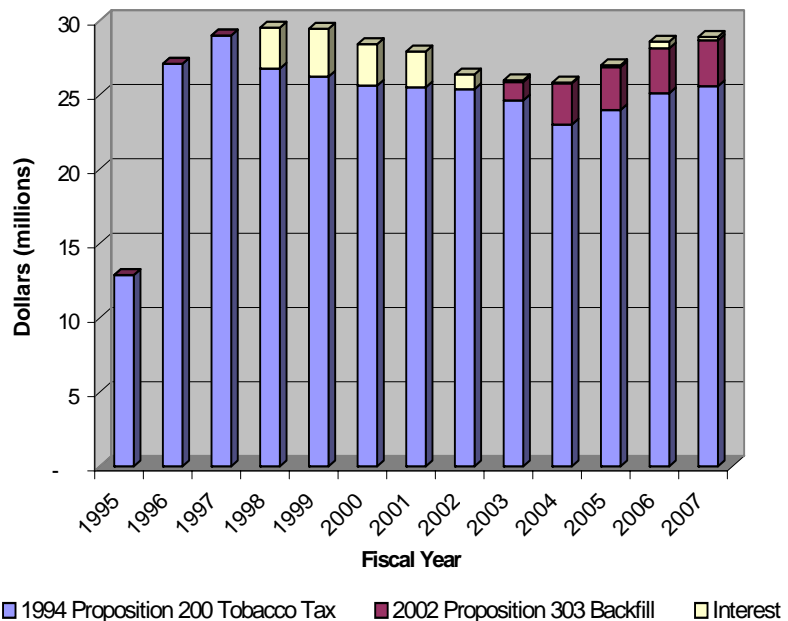


Figure 9. The Health Education Account, which funds TEPP, remained around \$25 million through FY2007. However, due to a 80 cent tobacco tax increase (Proposition 203) in 2006 that did not provide backfill for the Health Education Account, it is likely that the Account's revenues from its tobacco excise tax source will decrease in the future.

The Unraveling of TEPP Funding

This golden age did not last. TEPP's budget was reduced by more than half from a high of \$36.6 million in FY2001 to \$15.4 million in FY2002, gutting many programs and partnerships that took years to cultivate and refine. Then-Governor Jane Dee Hull (R) and the Legislature raided the Health Education Account which funds TEPP and the Health Research Account for \$60 million over the 5 years between FY2002 and FY2007. While the Health Research Account ended up bearing almost half of the \$60 million

in funding cuts to tobacco control, TEPP never recovered the \$32.8 million in diversions, and only in FY2007 did TEPP begin to regain its lost momentum.

TEPP's ADHS infrastructure was poorly prepared to deal with this financial blow. At the same time TEPP had already been weakened by a six-month period without an Office Chief and a rocky transition to a new media contractor. These concurrent disruptions aggravated the severe budget cuts' effect on the program, undoing much of the program's infrastructure up to that point. The Arizona Department of Health Services was "complicit" with the budget cuts, according to health lobbyist Kevin DeMenna in a 2006 interview; "they had other priorities" than protecting the TEPP funds.⁸⁹ These cuts had a discernable effect on smoking: Smoking prevalence increased after the cuts (Figure 1), and per capita cigarette consumption fell at a slower rate (Figure 2).

A confluence of four factors contributed to the diversion of Health Education Account funds. First, in April 2001, seven months before the proposed initial diversions, a \$250 million budget shortfall and "slumping economy" confronted Arizona, even prior to the recession Arizona faced in the wake of the September 11, 2001, terrorist attacks in New York City and Washington D.C.,⁹⁵ particularly because Arizona's economy relies heavily on tourism. Second, at the time of Governor Hull's first proposal to cut TEPP funding on November 5, 2001, the unspent Health Education Account reserve totaled \$31 million, which the governor and Legislature viewed as money available for other purposes. Third, Proposition 204 created a need for additional money because the available funds from the MSA were not adequate to finance AHCCCS at 100% of the federal poverty level. Fourth and finally, the fact that Proposition 204 rather than Proposition 200 went into effect resulted in the Health Education Account remaining "unprotected" by the 1998 Voter Protection Act.

On November 5, 2001, Governor Hull announced her plan to balance Arizona's budget in light of an anticipated \$1.5 billion deficit over two years. Part of her proposal included eliminating the entire TEPP program by using its reserve fund (\$31.1 million) and yearly revenue (roughly \$28 million) to fund AHCCCS (Medicaid) programs for indigent healthcare.⁹⁶ The Legislature also had its own designs for the TEPP funds. A week earlier, Speaker of the House Jim Weiers (R-District 10, Tobacco Policy Score: 1.8, recipient of \$3,121 in tobacco-related money between 1997 and 2006) had promised \$4.3 million of the TEPP funds to trauma centers in southern Arizona. While Weiers' plan was unsuccessful, this proposed diversion of TEPP funds unleashed legislators to drain TEPP finances for pet projects.

Within weeks, the Arizona State Legislature transferred, in separate expenditure allocations, \$27.8 million from the Health Education Account to the AHCCCS, nearly emptying the Account's reserve and proposed to take \$5 million per year from the Health Education Account for the AHCCCS. As soon as the health groups realized in November 2001 that the Governor and Legislature were planning to dismantle TEPP, they scrambled to voter-protect the funds as soon as possible. But the next election, in November 2002, was too late to stop the funds diversion of money from TEPP.

The initial proposed diversion of TEPP funds to medical services (\$60 million publicly called for by Governor Hull) would have reduced TEPP's budget for FY 2002 and FY 2003 to a third of its previous budget. To this end, Hull supported HB 2019, which would have transferred \$40 million for FY2002 and \$18 million for FY 2003 (\$58 million in total, approximating Hull's request) from the Health Education Account to AHCCCS to provide the medical services Proposition 204 required.⁹⁷ The ACS, ALA, and AHA actively opposed these diversions, both by making public statements and working through their lobbyist Kevin DeMenna. As a result of this resistance, the Senate amended the bill so the originally proposed \$58 million diversion over two years was reduced to \$32.8 million over two years.

Stemming the Legislative raid on TEPP funds

The first diversion came in HB 1919, which, after amendments, appropriated \$15 million from the Health Education Account to the “medical services stabilization fund” (in AHCCCS) and was signed by the governor on December 19, 2001. (This bill was sponsored by Representatives Laura Knaperek (R-District 17, Tobacco Policy Score: 3.0), Carolyn Allen (R-District 28, Tobacco Policy Score: 8.2), James Weiers (R-District 10, Tobacco Policy Score: 1.8, received \$200 in direct tobacco industry contributions), et al.) The second transfer from the Health Education Account occurred when SB 1007 (Ruth Solomon (D-14), Timothy Bee (R-9, Tobacco Policy Score: 5.3), Randall Gnant (R-28), Jack Brown (D-4), et al.) appropriated \$2.8 million from the Health Education Account to the AHCCCS, and became law without the signature of the governor on December 21, 2001. The last segment of this transfer came late in the fiscal year. HB 2004 (Sec. 15) (James Weiers (R-District 10, Tobacco Policy Score: 1.8) transferred \$10 million from the Health Education Account to AHCCCS March 21, 2002, and was signed by the governor.

In addition to diverting money from TEPP to fund AHCCCS coverage, pro-tobacco legislators sought to divert an additional \$5 million a year for five years (for a total of \$25 million) from the Health Education Account to a new project called the Translational Genomics Research Institute (TGen). The statewide public-private TGen was created by a group of business, science, and government leaders (led by Dr. Jeffrey Trent) in February 2002 and operates with a \$90 million budget from the Flinn Foundation, the Arizona State government, and businesses. This \$5 million a year would be about 30% of TGen’s overall operating budget, and was promoted as a goodwill gesture on the part of the Legislature to demonstrate Arizona’s governmental commitment to the Institute. The majority of TGen’s \$90 million funding came from grants and private foundations (orchestrated by the Flinn Foundation, a powerful private biotech foundation).

This bill, HB2711, did not take TEPP funds and apply them to the state’s fiscal crisis as was often the rationalization for TEPP’s funding diversions,¹³ but instead appropriated them for new biotech development. The bill was sponsored by some of the legislators with the lowest (most pro-tobacco) policy scores, including Robert Blendu (R-District 12, Tobacco Policy Score: 1.6), Jake Flake (R-District 15, Tobacco Policy Score 3.5, recipient of \$442 in tobacco lobbying money), Linda Gray (R-District 10, Tobacco Policy Score: 3.3) Barbara Leff (R-District 11, Tobacco Policy Score 5.8, recipient of \$312 in tobacco lobbying money), Cheryl Chase (R-District 23, Tobacco Policy Score: 6.5), and Laura Knaperek (R-District 17, Tobacco Policy Score: 3.0). The bill, written at the same time as Proposition 303 (discussed below) to voter-protect the Health Education Account was being voted on by the Legislature, stated that if Arizona voters approved Proposition 303 prohibiting future legislative appropriations of TEPP funds, then TGen’s \$5 million a year would instead come from the Health Research Account that funded tobacco disease-related research.⁹⁸ Displacing the diversion from TEPP to the Health Research Account occurred because the voluntary health organizations and the Legislature agreed the Health Research Account would not be reenacted along with the rest of Proposition 200’s (1994) language, and therefore, the Health Research Account would not be voter-protected. HB 2711 was approved in May 2002 and signed by Governor Hull, extracting the \$5 million from TEPP for FY2003 even though the Legislature had already referred Proposition 303 to the November ballot.⁹⁸

On November 15, 2001, ten days after Hull announced her intention to divert the Health Education Accounts funds, Arizona Attorney General Janet Napolitano held a press conference with the previous Attorney General, Grant Woods, decrying Hull’s proposed diversions.⁹⁹ Napolitano said Hull’s actions were “short-sighted,” would hurt children, and ignored the will of the voters who approved the Health Education Account.⁹⁹ Woods expressed his disappointment in Hull, calling her diversion “a theft from the voters and from the children of Arizona.”⁹⁹ Disagreeing with Hull’s attack on the funds, Napolitano said she intended to lead an initiative to increase the excise tax on cigarettes from 58 cents at the time to somewhere between 70 cents and \$1.08 to generate new revenue for TEPP while voter-protecting the Health Education Account from further diversions.^{99,100} While Napolitano and Woods’ defensive efforts did not stop the raid on TEPP’s

finances, their opposition to Hull's plan not only animated the voluntary health organizations to take their own initiative to save as much of TEPP's funds as possible, but also planted the seed for Proposition 303.

Proposition 303: Enlightened Self-Interest

The health voluntaries and Arizona tobacco control advocates felt their "hands were tied" during the raid on TEPP because they were unable to preserve TEPP's funding, even if they did reduce the proposed diversions.¹³ But the voluntary health organizations knew a piecemeal approach to defend TEPP from the Legislature was not going to effectively safeguard the program in the long run. Determined to protect TEPP, tobacco control advocates went back to the ballot to voter-protect the Health Education Account by reenacting it. Proposition 303, which would voter-protect TEPP and raise Arizona's tobacco tax 60 cents, ultimately involved the AzHHA providing most of the campaign funding and the Legislature referring the measure to the ballot. Proposition 303 was predicated on each party's "enlightened" self-interest: Voter-protecting the Health Education Account would not only free up tobacco control advocates to focus on other activities such as passing clean indoor air ordinances, but it would also create a Chronic Disease Fund, ultimately providing several million dollars a year for disease detection and prevention, allowing the health voluntaries to be major recipients of these funds as contracted service providers. The AzHHA, which helped lobby the Legislature to refer Proposition 303 and got Arizona hospitals to contribute more than half of the overall funds to run the campaign, would reap a huge return on their investment, receiving roughly \$30 million a year in hospital reimbursements for unpaid services. The Legislature also gained by referring the measure to the ballot rather than allowing the health voluntaries to decide where the tax increase would go: the Legislature used the majority of Proposition 303's tobacco tax increase, \$100 million a year, to relieve their fiscal obligation to use general fund money to fulfill the requirements of the 2000 Proposition 204 mandate to fund AHCCCS at 100% the federal poverty level.

The Coalition to Protect Kids from Tobacco

Initially, when the voluntary health organizations thought Hull would cut TEPP's revenue of about \$25 million a year to \$5.4 million a year, they considered a referendum to stop Hull's proposed budget bill.⁹⁹¹⁰⁰ This would have required gathering over 51,000 signatures in 90 days to prevent the bill cutting TEPP from going into effect, and would have sent Hull's bill to the 2002 ballot.⁹⁹ Given the expenses of signature gathering, and the fact that the health voluntaries managed to reduce Hull and the Legislature's diversions so TEPP lost \$32.8 million instead of \$60 million, the health voluntaries decided voter-protecting TEPP warranted more attention than fighting already approved cuts.

In early 2002, after the devastating raid on TEPP's funding, the voluntary health organizations followed Attorney General Napolitano's rallying call and began gathering signatures to place an initiative on the November 2002 ballot. Their initial proposal would raise the tax on tobacco products by 60 cents, allocate most of the funds to prevent and treat chronic disease (as opposed to tobacco), and reenact the language of Proposition 200 (1994) to remove the Legislature's ability to make any further diversions of TEPP funds.¹³ (A 60 cent tax increase was expected to generate about \$150 million a year in new tax revenues.) "We saw the writing on the wall," said Matt Madonna, ACS Southwest Division CEO at the time and a major tobacco control advocate in Arizona since the early 1990s, "and that is why we decided to do the initiative because we knew that we weren't going to be able to save those [diverted TEPP] dollars, so the best thing we could do and the best strategy we could have [was] to voter-protect for the future."¹³

The first sign of a campaign to voter-protect TEPP's funds came from the health voluntaries, headed financially and politically by the regional ACS division. Matt Madonna chaired the group's initial attempt in March 2002 mounting a proposition voter-protecting TEPP, with the ALA Southwest Division CEO Bill Pfeifer as Treasurer. Together they formed the Coalition to Protect Kids from Tobacco initiative.

The Coalition to Protect Kids from Tobacco initiative never solidified its ballot language, but it did aim to spend almost all of the proposed 60 cent tax on creating a new Chronic Disease Fund, reserving only a small percentage, if any, to increase TEPP's funding. Health voluntaries reasoned that because of the difficult political climate facing TEPP in the Legislature, substantially increasing TEPP funding was not politically viable.¹³ Due to the lack of restraint the Legislature demonstrated by diverting TEPP's voter-approved funds, the Coalition specifically wrote into their drafted ballot language that the tobacco tax revenues raised could not be used to bail out the budget deficit. At a time when the Legislature was desperate to corral additional funds, this provision had the effect of giving legislators the idea to use the tobacco tax increase to alleviate Proposition 204's drain on the general fund.

The Coalition to Protect Kids from Tobacco registered with the Secretary of State on March 13, 2002, and had until July 4 to collect the 122,612 valid signatures needed to qualify their initiative for the November 2002 ballot. They quickly raised \$263,290, primarily from ACS (Table 8), and gathered over 33,000 signatures for their campaign by mid-May 2002. This visible financial commitment and on-the-streets signature gathering demonstrated the voluntary health organizations' resolve to address the Legislature's TEPP appropriations.

	Contributions	In-Kind
ACS	\$100,000	\$65,690
AHA	\$10,000	\$0
Arizona Assoc. of Community Health Centers	\$62,500	\$0
<u>Arizona Diamondbacks</u>	<u>\$25,000</u>	<u>\$0</u>
Grand Total	\$263,290	

The Tobacco Tax Team Reunites: Compromise between the Coalition and the AzHHA

Compromises and deal-making surrounded what would eventually become Proposition 303. In contrast to the unified tobacco control coalition that had passed Proposition 200 in 1994 to create TEPP, the AzHHA did not join the voluntary health associations in their Coalition, as the AzHHA instead began lobbying the Legislature to refer a similar bill to the ballot. The AzHHA worked the Legislature's self-interest of using the 60 cent tobacco tax to alleviate Arizona's financial crisis by presenting the Legislature with the option that rather than being specifically written out of the proposition, as the health group's intended, if the Legislature referred the proposal to the ballot they could gain control over designating its revenue. Having the Legislature refer the 60 cent tax measure would save hundreds of thousands of dollars in signature gathering for the campaign, likely money that the hospitals, as the best funded backers promoting the tax, would have to otherwise pay. Lobbying the Legislature would also allow the AzHHA to shape how the tax revenues would be spent, enabling the AzHHA to write itself into receiving a significant portion of the tax's yearly revenues. Neither the AzHHA nor the health groups, however, budgeted additional funding for tobacco control.

When the Legislature realized the health voluntaries were serious in their effort to raise the tobacco tax, legislators on the whole supported increasing the tobacco tax, but disagreed with the Coalition's allocation of the revenue. Because of voter-protection, Proposition 204 (2000) created a situation in which the Legislature was mandated to pay for AHCCCS to cover everyone needing medical service whose incomes did not exceed the federal poverty level, which cost roughly \$60 million more per year than the MSA revenues provided. The possibility of a tobacco tax to fill the AHCCCS deficit meant that the Legislature would no longer have to fund Proposition 204 partially from the general fund, which they resented. The

exchange the health voluntaries would offer, however, meant the Legislature could never again tamper with TEPP's Health Education Account.

The tobacco control advocates proved to legislators the public support they had for not only increasing the tobacco tax but also for voter-protecting TEPP by quickly gathering 33,000 signatures. Making sure the Legislature knew the public supported the voluntaries' proposal allowed the health voluntaries to play the radical card by proposing to use all of the tax revenue for a new chronic disease fund rather than funding Proposition 204, as the Legislature desperately needed. Threatening a tax increase that would not benefit the Legislature at all led the Legislature to follow the path of least resistance to achieve its aims: referring TEPP's re-enactment to the ballot meant the Legislature could use the 60 cent tobacco tax increase to free up the state from financial crisis, providing funding for Proposition 204.

While tobacco control advocates were collecting signatures for their initiative to voter-protect TEPP, the AzHHA's John Rivers started talking with state legislators to craft a tobacco tax referendum for hospital and trauma reimbursement and to finance Proposition 204's mandate to expand AHCCCS. The competing designations of the funds forwarded by the hospitals (working with the Legislature) and the health voluntaries' independent campaign sparked the Legislature's participation in the funding designation process to ensure they too could profit.

Yet, neither organization could go at it alone. The AzHHA needed the political support of the health voluntaries as much as the health voluntaries needed the AzHHA's financial resources to run the campaign and AzHHA's sway with the Legislature to turn the initiative into a referendum, saving resources that would otherwise go toward signature gathering. (The Coalition spent all their contributions on signature gathering except \$58,000 that they eventually transferred to the Proposition 303 campaign.²²)

Knowing competition between two tobacco tax increases would be counter-productive, the Coalition to Protect Kids from Tobacco agreed to abandon its tax proposal and the associated allocation of money for a Chronic Disease Fund after the Legislature put a referendum on the ballot that would voter-protect TEPP and provide a backfill for the effects of the tax in reducing consumption. When asked why they failed to use this tobacco increase opportunity to increase TEPP's revenues, Matt Madonna, who had chaired the Coalition, replied, "If we had demanded more money for the TEPP program in the referendum, it wouldn't have happened. It would have broken down the talks."¹³ Another reason given for the allocation of the 60 cents almost exclusively to AHCCCS was that the voluntaries were running a separate campaign while the Legislature's discussions over allocating the funds were first made.¹³ While the voluntary health organizations would not have signed onto a tobacco tax referendum that neglected to voter-protect TEPP and provide backfill to ensure its funding level, because the voluntaries had not proposed to use the tax to increase TEPP's funding, they did not expect the Legislature to either.

The paradox of the 2002 effort to voter-protect TEPP is that just as Arizona's Legislature was draining the Health Education Account funds with one hand, with the other it was granting TEPP a permanent reprieve: voter protection (Table 9). The Legislature's actions were not magnanimous, however. Rather, the Legislature subsumed what appeared to be a promising initiative campaign by the health voluntaries. Rep. Karen Johnson (R-District 18, Tobacco Policy Score: 5.0) specified that the "only reason lawmakers were backing the tax was to sidetrack the initiative drive,"¹⁰¹ while Rep. Bob Cannell (D-District 24, Tobacco Policy Score: 8.7) commented, "One of the reasons we ran this [referendum] was to trump the initiative."¹⁰¹ The reason the Legislature agreed to refer the bill was so they could control the use of the tax revenue.

Going for the referendum would save the voluntary health organizations a considerable amount of money that they had not yet raised. Matt Madonna related: "We raised money through this whole enlightened self-interest thing.... We were successful in getting some money, but without the Hospital Association we were hurting. So that is why the partnership and the team [that had run the 1994 initiative] coming back together was so important."¹³ Because they had gathered tens of thousands of signatures as their bargaining chips, the

health voluntaries could dialogue with the AzHHA and the Legislature to ensure the final version of the referendum included voter-protecting TEPP.

Table 9. Sequence of Events Leading to Proposition 303 (2002)			
Date	Voluntary Health Agencies	AzHHA	Legislature/Governor
Dec. 19, 2001			HB 2019 transferred \$15 million from the Health Education Account to AHCCCS
Dec. 21, 2001			SB 1007 transferred \$2.8 million from the Health Education Account to AHCCCS
March 13, 2002	Coalition to Protect Kids from Tobacco files with Secretary of State	AzHHA faces legislative funding cuts	
March 21, 2002			HB 2004 Sec. 15 transferred \$10 million from the Health Education Account to AHCCCS
April 26, 2002		AzHHA encourages referendum	Spearheaded by Sen. Sue Gerard, Legislature announces plans to run competing tax increase with revenue funding Proposition 204's deficit
May 15, 2002			Legislature approves referendum, HRC 2047, set to gain \$150 million if it passed
May 16, 2002	Health groups drop their initiative to join the Legislature's referendum.		
May 30, 2002			Legislature passes HB 2711 taking \$5 million a year for five years from Health Education Account, or in the event of the successful referendum, from the unprotected Health Research Account

In the words of voluntary health agency lobbyist Kevin DeMenna, voter-protecting TEPP was a “great example of when you become a big bad dog, people mess with you less. John Rivers and the voluntaries made it clear [to the Legislature] that the dynamic was halo and money, ‘you mess with our programs, we’ll see you at the ballot.’”⁸⁹ With their win against the tobacco industry in 1994 Arizona’s power brokers respected the health coalition, acknowledging their role as a major player in Arizona politics by negotiating for mutually acceptable ballot language between the Legislature, AzHHA, and the voluntary health organizations.

The Legislature was forced to compromise its singular ambitions for a tobacco tax windfall to appease tobacco control advocates. Before the health voluntaries signed on to the referendum, two separate tobacco tax propositions were slated to run in tandem, the health voluntaries’ Coalition to Protect Kids from Tobacco initiative and the AzHHA/Legislature referendum. The Coalition prudently refused to stop their initiative campaign until after the Legislature approved provisions acceptable to the health voluntaries. The *Arizona Daily Star* reported: “To gain support from the health groups, lawmakers agreed to provide some funding for disease prevention and research, as well as cash for community health centers.”¹⁰² Though these programs benefitting the health voluntaries comprised only a minuscule percentage of the taxes, they nonetheless indicated the Legislature’s good faith to the health voluntaries. That a significant portion of the tax would go toward funding hospital trauma centers and emergency rooms displayed the AzHHA’s early negotiations with the Legislature – and the fact the AzHHA contributed the bulk of the money to run the referendum mirrored their expected return on their investment (Table 10).

Table 10. Proposition 303 Revenue Designations			
Account	Purpose	FY 2003 JLBC Preliminary Estimated Revenues (in millions)	Party benefitting
Proposition 204 Protection Account (42%)	Funds health care for the expanded Medicaid population resulting from Proposition 204	\$63.4	Legislature
Medically Needy Account (27%)	Additional funds for health care services for medically needy, medically indigent, low income children and persons who cannot afford or access health care services	\$40.7	Legislature/ Public
Emergency Health Services (20%)	Funds reimbursement for uncompensated care and trauma center readiness	\$30.2	Hospitals
Health Research Fund (5%)	Additional funds for research on preventing disease	\$7.5	Legislature, to transfer ABRC funds to TGen
Administration/Adjustment Account (4%)	Provides backfill for existing tobacco tax programs, including TEPP	\$6.0	TEPP, other programs
Health Education Account (2%)	Funding for creation of new Chronic Diseases program under TEPP for prevention and early detection of the four leading disease related causes of death	\$3.0	Health Voluntaries

The pragmatic politics of the Proposition 303 campaign process amounted to 1) the hospitals getting the bulk of the funding as the principal AHCCCS service providers fulfilling Proposition 204, 2) the health voluntaries getting a small amount of money for chronic disease prevention and detection, 3) the health voluntaries achieving TEPP voter-protection while giving TEPP a new, stronger oversight committee, the Tobacco Revenue Use Spending Tracking (TRUST) Committee, and 4) freeing the Legislature from the burden of funding an underbudgeted medicaid program (Proposition 204) from the general fund.

Last-minute Legislative Raids

While the Arizona Legislature did refer Proposition 303 to the ballot, they were not willing to relinquish their rights to the Health Education Account funds without siphoning off more money. When the initial Coalition to Prevent Kids from Tobacco formed and hit the streets mid-March, the Legislature had only commandeered \$17.8 million of their eventual \$32.8 million from the Health Education Account, extracting another \$10 million days later (Table 9). The Legislature also had not yet tapped the Health Research Account, partly because it did not contain sufficient reserve funds to really entice, with a balance of only \$7 million. The Health Research Account did, however, offer a steady revenue stream of over \$5 million a year.

In exchange for voter-protecting the Health Education Account, the Health Research Account did not get voter-protected under Proposition 303, thus allowing HB 2711 (Knaperek, Blendu, O'Halleran, Leff, Kraft, et al.) to take \$5 million a year FY2003 through FY2007 from the Health Research Account, totaling \$25 million in diversions. This appropriation added to an already levied \$500,000 a year transfer from the Health Research Account through FY2013. Proposition 303 payed for this \$5.5 million (combined) per year appropriation from the Health Research Account by allocating five percent of the 60 cent tobacco tax increase to the Health Research Account, effectively more than offsetting the fund transfer. Yet, while the Legislature got their appropriation money either way, standing to gain even more if Prop. 303 passed (by not having to pay the AHCCCS bill), had Proposition 303 lost, the \$5 million-a-year appropriation would have come from the Health Education Account that funds TEPP instead of from the Health Research Account. The text of Chapter 320 of HB 2711 read: "if a Tobacco Tax referendum submitted to the voters on November 5, 2002

passes, the appropriations to the DCRC [Disease Control Research Commission, now ABRC] for allocation to a biotechnology non-profit foundation [TGen] will come from the Health Research Fund instead of the Health Education Account”¹⁰³ as per the original allocation (Table 9).

Passing the Referendum

While there was no formal opposition once the Legislature voted to put the referendum on the November ballot, tobacco lobbyists, most vocally represented in the press by RJ Reynolds’ lobbyist Phil MacDonnell, opposed HCR 2047, the legislation referring Proposition 303 to the ballot. Following standard tobacco industry arguments, the lobbyists warned that the tax would unfairly target the poor and create a black market for cigarettes.^{104, 105} Referendum proponent Rep. Deb Gullett (R-Phoenix) said in an *Arizona Republic* article that during the Legislature’s consideration of HCR 2047, the pro-tobacco lobbyists “really c[a]me out of the woodwork,” even asking the bill’s initial author Rep. Robert Cannell (D-Yuma, Tobacco Policy Score: 8.7) to exempt cigars and chewing tobacco from the tax, which he declined.¹⁰⁵ Arizona Legislators attributed the 26-25 initial vote against referring HCR 2047 to tobacco lobbyists.¹⁰⁵ After the *Arizona Republic* reported negatively on the influx of tobacco industry lobbyists influencing legislators’ votes, on a second attempt on May 15, 2002, HCR 2047 passed, referring to the November 2002 ballot Proposition 303.

Arizona for Healthy Futures

Filing with the Arizona Secretary of State on June 13, 2002, John Rivers, CEO of the AzHHA, chaired the campaign organization to pass Proposition 303, termed “Arizona for Healthy Futures.” The campaign used the same name as the campaign to pass Proposition 200 (1994) that created TEPP, as it again joined the AzHHA with the AHA, ALA, and ACS. Bill Pfeifer, CEO of the ALA Southwest Division served as treasurer for the campaign.

Formal ballot arguments supporting Proposition 303 (in the Secretary of State’s ballot information packet) appeared from Governor Hull, former U.S. Surgeon General C. Everett Koop, former Arizona Attorney General Grant Woods, and a long list of health professionals. Governor Hull’s statement in the ballot information packet said, “Without these additional tobacco tax dollars, the State will be forced to use additional General Fund revenues, necessitating reductions in or elimination of other services or programs.”¹⁰⁶ Proposition 303 had almost universal support and attracted support from pro-business interests, including the Tucson Metropolitan Chamber of Commerce, which had opposed the tobacco tax increase in 1994.^{21, 107}

While the tobacco companies did not actively oppose Proposition 303 once it was placed on the ballot, groups allied with the tobacco industry, including the Cato Institute and the Arizona Tax Research Association (both which have received tobacco industry money^{21, 108}) wrote opinion editorials warning that a tobacco tax increase would bring cigarette smuggling and that forcing smokers to pay for others’ healthcare constituted an unfair burden.¹⁰⁷ According to RJ Reynolds spokesperson David Howard (quoted in the *Arizona Daily Star*), RJ Reynolds planned “nothing proactive,” explaining that opposing Proposition 303 was “just not the best use of [RJ Reynolds’] resources” at the time.¹⁰⁷ Not a single argument “against” Proposition 303 was filed with the Secretary of State for the ballot information pamphlet.¹⁰⁶

The health voluntaries’ fundraising strategy to campaign for Proposition 303 focused on donors that had an interest in protecting the TEPP monies because they had been contractors for TEPP in the past. In a 2006 interview, Madonna noted that the Coalition “looked at where was the TEPP advertising dollar being spent... [we] got \$100,000 from the Suns and Diamondbacks,” teams that for years had received TEPP advertising contracts and understood that in contributing to the Coalition’s campaign, they were investing in their own future contracts with TEPP (Tables 8 and 11).¹³ Additionally, because of the popular and political support for the measure, Viacom and other media companies donated billboards and air play (Table 11).

With no opposition, Proposition 303 passed on November 5, 2002 with 67% of the vote, raising the tobacco tax from 58 cents to \$1.18, the nation's fifth highest rate at the time.

Although TEPP did not get any additional funding from 2002's Proposition 303, it did gain voter protection of its funding source through re-enacting the 1994 Proposition 200 and a strengthened oversight committee, the TRUST Commission (see section on TEPP below). Proposition 303 did allocate 2% of the 60 cent tax to compensate for the loss in revenue to TEPP due to the decreased cigarette consumption resulting from the higher tax. The success of Proposition 303 is evident in health voluntary lobbyist Kevin DeMenna's quip on passing the referendum, "I nearly worked myself out of a job" by voter-protecting TEPP's funds: "Forevermore the only challenge we face on [TEPP] is incompetence in its management."⁸⁹

Regrouping Arizona's Tobacco Control Efforts

As Arizonans coalesced behind Proposition 303, tobacco control advocates also worked diligently on the city and county level to pass clean indoor air ordinances. Despite the devastating cuts to TEPP and the exacerbated dysfunction that ensued at ADHS's most contentious department, tobacco control advocates busily passed one clean indoor air ordinance after another in this prolific period of clean indoor air ordinances. Proposition 303 secured the TEPP funds for posterity, and allowed Arizona's tobacco control community to turn their efforts increasingly toward clean air ordinances and tobacco control policy rather than preoccupying their time with TEPP damage control. Tobacco control advocates (except members of the TRUST Commission, TEPP's oversight board) neglected TEPP's weakened programming from FY2002 on, because in achieving Proposition 303 they accomplished as much as they could from outside ADHS. Yet, the freed-up time and resources brought by secured TEPP funding and the fifth highest tobacco tax in the nation (at the time) enabled tobacco control advocates to tackle local clean air issues on their way to a statewide smokefree campaign.

Table 11. Proposition 303 Campaign Contributions		
	Contribution	In Kind
AzHHA	\$0	\$10,651
AzHHA (Loan: repaid)	25,000	0
ACS	0	5,405
ACS (Loan: repaid)	25,000	0
ALA	60,000	5,437
AHA	58,847	1,529
Coalition to Protect Kids from Tobacco	58,304	0
Arizona Association of Community Health Centers	50,000	25,420
Arizona Assoc. of Com. Health Centers (Loan: repaid)	25,000	0
Banner Health	67,000	0
Catholic Healthcare West	40,700	0
Scottsdale Healthcare	42,700	0
Carondelet Health Network	35,800	0
TMC Healthcare	30,900	0
Phoenix Baptist Hospital	42,000	0
University Medical Center	35,000	0
Phoenix Suns	50,000	0
Flagstaff Medical Center	29,100	0
Mayo Foundation	41,100	0
Reister-Robb	20,000	0
E.B. Lane	3,000	0
Diamondbacks	25,000	0
Viacom Outdoor	100,000	113,750
Clear Channel Outdoor	0	46,800
Subtotal	\$864,451	\$208,992
Other Contributions (Mostly Hospitals)	\$248,095	\$67,849
Total	\$1,145,850	\$271,404
Grand Total (Including receipts, interest, loans)	\$1,557,321	

The budget cuts, on the other hand, had a devastating effect on TEPP and as a consequence, on Arizona smoking prevalence. Adult smoking prevalence fell from 23.1% in 1996 to 18.3% in 1999 only to rise to 20.1% in 2002 (± 1.2).^{109,110} The media contracts between FY1997 and FY2000 averaged \$13 million, but for FY2002, only \$7.6 million was allotted, and starting FY2002, there was no sustained anti-tobacco media campaign for roughly a year. While smoking dropped to 19% in 2005, the 60 cent tax increase that occurred in 2002 likely caused this decrease, despite TEPP rather than because of it (see Figures 1-4 for smoking rates during this period).¹¹⁰ According to estimates of the impact tobacco price increases have on smoking prevalence, adult smoking prevalence should have dropped further if all other factors (chiefly anti-tobacco media expenditures) had remained equal.¹¹⁰

FY2004-2007: Settling into a new stride?

With the Legislature no longer a danger to the Health Education Account because TEPP's voter-protected re-enactment in Proposition 303, the only remaining issue was how to manage the available funds to maximize program effectiveness and continuity. Despite a steady yearly revenue of \$23-25 million in the FY2004-7 period, TEPP underspent its yearly revenue to the point where at the end of FY2006 a \$17 million reserve had accumulated. This sizable balance resulted from a failure of the TEPP leadership to rebuild from FY2002-2003 when TEPP out of necessity scaled-down its operations.

While TEPP spent \$30 million in FY2007 (\$12.5 million on media), a significant increase on par with spending during TEPP's golden age, this level of spending will need additional funding sources to sustain it. TEPP's yearly revenues decreased in FY2007 as a result of Proposition 203 in 2006, which increased Arizona's tobacco tax by 80 cents without providing backfill to TEPP. Especially given that the 2007 CDC update of *Best Practices for Tobacco Control* called for Arizona to spend \$68.1 million on tobacco control, a sum much larger than TEPP's current revenues provide, TEPP must find additional sources to ensure sufficient funding for the future.⁹²

With TEPP voter protected, the greatest long-term adverse impact on TEPP's fixed tobacco tax funding is inflation. The \$20.7 million of Health Education Account money TEPP spent in FY2006 is equivalent to only \$14.7 million in 1994 dollars, the year Proposition 200's tobacco tax passed. This means that TEPP has fewer real dollars to spend on tobacco control in FY2007 than it did while TEPP funding was capped by the Legislature in FY1997.

THE RESEARCH ACCOUNT

The Health Research Account to fund tobacco disease-related research was created in 1994 by Proposition 200 which allocated 5% of the 40 cent cigarette pack tax increase revenues for "research on preventing and treating tobacco-related diseases and addiction" through grants to Arizona researchers.¹¹¹ In 1995, the Legislature designated the Arizona Biomedical Research Commission (ABRC)* to administer the Health Research Account. The Legislature created the ABRC in 1984 to fund and solicit biomedical research proposals to "protect the public health and safety by funding research into the causes, treatments, and cures of disease," (A.R.S. §36-273) with no reference to tobacco.¹¹² ABRC grants have typically lasted three years and serve as a bridge for junior researchers to apply and be awarded federal research grants.^{112,113} The ABRC is an independent commission of nine governor-appointed and Senate confirmed members representing the general public, medical, and scientific research communities (Table 12). Until 1997 the ABRC was funded from the General Fund through the interest and penalties paid on delinquent income taxes and occasionally also received money from the state lottery funds.^{112,113} By FY1997, however, tobacco tax revenue represented 100% of the funds the Commission administered for new contracts.¹¹²

* ABRC was called the Arizona Disease Control Research Commission until 2005. We use the name ABRC throughout this report, since it was the same organization throughout.

Table 12. Arizona Biomedical Research Commission Members and Executive Officers (2007)			
Medical Community	Scientific Community	General Public	Executive Officers
Collen M. Brophy, M.D. <i>Chief of Vascular Surgery, Carl T. Hayden VAMC</i>	Manuel Modiano, M.D. <i>Arizona Oncology Associates</i>	David Landrith, <i>Chair Vice President for Policy and Political Affairs, Arizona Medical Association</i>	Dawn C. Schroeder, D.D.S., MA, <i>Executive Director</i>
Barbara H. Wuebbels, RN, MS <i>Director of Clinical Education, BioMarin Corporation</i>	Lon Owen, Ph.D. <i>Professor of Medical Anatomy and Physiology, Northern Arizona University</i>	David Jerman <i>Administrative Director, Arizona Alzheimer's Research Center and Arizona Alzheimer's Disease Institute</i>	James Matthews, M.P.A., HR.CP, <i>Deputy Director</i>
Eve Shapiro, M.D., MPH <i>Orange Grove Pediatrics</i>	Joan Shapiro, Ph.D. <i>Human Geneticist & Neurooncologist, St. Joseph's Hospital and Medical Center</i>	Gregorio Garcia, Esq.	

During the implementation of Proposition 200 (1994) by the Legislature, Representative Carol Springer took advantage of the Health Research Account funding to phase-out General Fund spending on the ABRC.¹¹³ HB 2108, created for this purpose, established a separate account for the ABRC for its regular contracts, explicitly barring the ABRC from using the Health Research Account funds for the ABRC's previous category of research.¹¹⁴ By FY1996 only continuing non-tobacco related contracts from previous years received general fund money, and by FY1997 the only funds the ABRC had at its disposal were earmarked for tobacco-related research from the Health Research Account.^{111, 115} Thus, Proposition 200 (1994) revived the ABRC by giving it a new mission and transformed its task from supporting biomedical research in general to managing the Health Research Account grants for tobacco-related disease research.¹¹

ABRC's resistance to specializing in tobacco disease-related research

The ABRC did not welcome the Health Research Account's statutory requirement that all grants given from its funds be tobacco disease-related. The ABRC's Executive Director Dawn Schroeder and Deputy Director James Matthews saw assigning the ABRC responsibility for administering the Health Research Account as a malicious act by Senate Appropriations Chair Carol Springer (R-District 1).¹¹³ In a 2007 interview Matthews said, "It was a personal thing, she didn't like the Commission. Her mission in life was to get rid of the Commission. So along comes the first of those tobacco tax initiatives, and she says 'so you can take money from the initiative, but you can only spend it on tobacco.' She didn't want to spend state-generated general funds for the Commission. She said, 'if you can collect it from tobacco, fine.'" ¹¹³ The Commission viewed the Health Research Account as a burden rather than an opportunity.

The tobacco-related "constraint" for funding research was cited as one of the major impediments facing the ABRC in an 1998 Auditor General Report Sunset Review of the ABRC.¹¹² The Report, commissioned by the Joint Legislative Budget Committee (JLBC) in a standard decennial automatic agency review, concurred with ABRC executive staff's perceptions that because the "Commission's statutory mission is not limited to supporting tobacco-related research," the "Commission and its researchers have been *heavily impacted* by its switch from general medical research to a more narrow focus on tobacco-related issues." [emphasis added]¹¹²

As a consequence, the ABRC begrudgingly restricted its requests for proposals between FY1997 and FY2001 to tobacco-related research. The Commission did not engage in any outreach to identify promising young investigators who could be interested in tobacco and – probably as a result – felt that the proposals decreased in quality because fewer of their grantees had moved on to federal grants than when the Commission offered unrestricted RFPs.¹¹³

The ABRC awarded 85 tobacco disease-related grants in FY1999 and FY2000.*

In February 1999, when Arizona first began debating where MSA money would be allocated, the ABRC attempted to secure funding for unrestricted research through the Legislature. SB 1095 (Senator Sue Grace, R-District 24) and HB 2490 (Representatives Sue Gerard (R-District 18), Lou-Ann Preble (R-District 8), and Herschella Horton (D-District 14)) would have continuously appropriated \$2 million a year from the MSA payments for supporting unrestricted projects.^{124, 125} The ABRC pushed both bills in hopes of obtaining funds to fulfill its original charter without modifying or attenuating the Health Research Account's tobacco-specific RFPs. SB 1095 addressed the ABRC's concerns that the "transition to tobacco tax revenues has restricted the type of research the Commission may support"¹²⁵ and cited the "Auditor General performance audit [which] contained a finding that researchers and the Commission have been heavily impacted by the funding shift."¹²⁵ Because these attempts to create a new unrestricted funding source failed, as did an effort in 2000 (HB 2672, author: Dunbar) to provide the ABRC unrestricted funding from the sale of special license plates,¹²⁶ ABRC gave up looking for new sources of funding and began exploring how they could relax the restriction that Proposition 200 funds be limited to tobacco-related research.

Decoupling the Health Research Account funds from tobacco

Unable to secure funds for unrestricted biomedical research, in 2001 the ABRC and its former grant recipients' targeted the Health Research Account for unrestricted research funds.^{124, 125} In 2001, ABRC's lobbying the Legislature won nearly unanimous passage of HB2595 (Senator John Huppenthal, R-District 20, Tobacco Policy Score: 4.8) which granted the ABRC unrestricted use of the Health Research Account for non-tobacco-related research. HB 2595 amended Statute 36-275, the statute which created the Health Research Account on May 8, 2001 to read:

[T]he commission shall only expend monies in the health research fund for research on the prevention and treatment of tobacco related disease and addiction *and research into the causes, epidemiology and diagnosis of diseases, the formulation of cures, the medically accepted treatment or the prevention of diseases including new drug discovery and development, and may include behavioral studies and attitude assessments, and for expenses incurred by the commission in carrying out the purposes described in section 36-773 [the section creating the Health Research Account].*¹²⁷

In decoupling the Health Research Account from tobacco, the Legislature also appropriated \$1 million a year from the Health Research Account to ADHS for Alzheimer's research, a move the ABRC opposed, but one it accepted as a political consequence of opening the Health Research Account to legislative alteration Table 13).

* In two known cases, recipients of ABRC's tobacco-related grants also concurrently applied for – and in one case received – grants from the tobacco industry-financed Council for Tobacco Research (CTR).¹¹⁶ Biomedical tobacco researcher Catherine Racowsky held a contract from the ABRC beginning 1996¹¹⁶ while she applied in 1996 and again in 1997 for a grant from the CTR to fund the same project.¹¹⁷ Racowsky's report was ranked "high in merit" by CTR reviewer Henry Lynch for its hypothesis which Lynch believed had the "possibility of resolving some of the issues regarding cigarette smoking and its [negative] pregnancy effects."¹¹⁷ Dr. Racowsky did not ultimately receive the CTR grant.¹¹⁸ Ronald Lukas, Ph.D., did however receive a multi-year renewed grant from the CTR from 1996 through 1999 in addition to receiving at least \$680,000 in ABRC tobacco-disease restricted grants during this period. Lukas also provided testimony as an expert witness for the CTR in *State of Texas v. American Tobacco Company, et al.* with the aim of corroborating the CTR's stance that "Researchers supported by such CTR grants or contracts have the same independence [as] accorded researchers sponsored by the governmental agencies or by voluntary health organizations or foundations."^{119, 120} Concurrent to his ABRC grants, Dr. Lukas received from CTR \$50,000 in FY1997,¹²¹ \$60,000 in FY1998¹²², and \$70,000 in FY1999.¹²³

Fiscal Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Balance Forward for Research	0.2	8.2	12.1	14.0	9.5	7.0	4.0	2.9	3.8	3.8	0.0	1.0
5% to go to tobacco research (Prop. 200)	7.7	6.0	5.8	5.7	5.6	5.5	5.2	4.9	5.0	5.2	.55	6.0
2002 tobacco tax fund (5% of 60 cent tax)								6.8	7.0	7.2	7.6	8.2
Appropriations:												
Anti-cancer Drug Discovery					2.0	2.0	1.0					
DCRC							0.1					
Biotechnology - Law 2002, Ch. 186								0.5	0.5	0.5	0.5	0.5
Biotechnology - Law 2002, Ch. 320								2.5	5.0	5.0	5.0	5.0
Alzheimers									1.0	1.0	1.0	1.0
Administrative Adjustment										2.2		
University of Arizona Liver Research Institute			0.5									
Actual Spent for medical research	3.4	1.8	4.0	10.0	6.1	6.1	4.2	4.4	5.5	4.8	5.5	5.5
Actual Spent on tobacco research	0.9	2.1	4.0	10.0								
<i>Source: Arizona Joint Legislative Budget Committee, Department of Revenue, ABRC funded grants, Auditor General's 1998 Report</i>												

When asked in a 2007 interview if tobacco control advocates had pushed to keep at least a portion of ABRC’s research strictly tobacco-related, Matthews replied: “They had their program that they wanted to get funded [TEPP], and it got funded so they’re happy. They don’t care what happens to the other [Health Research] Account.”¹¹³ The fact that tobacco control advocates did not reinstate tobacco disease-related research to ABRC when they reenacted and voter-protected Proposition 200 in their 2002 Proposition 303 demonstrates that tobacco control research was not on their radar. Tobacco control advocates were occupied with TEPP, leaving no oversight of tobacco control research in Arizona. Tobacco control advocates’ Proposition 303 even gave an additional \$7-8 million a year to ABRC, but there was no effort to link these new funds with the Health Research Account’s original purpose of funding tobacco-related research.

Giving away the Health Research Account to TGen

While the ABRC had always carried over funds because they were encumbered for the second and third years of the three-year grants, in FY1998 the Health Research Account’s balance grew much larger, to \$12 million, increasing further to \$14 million in FY1999 (Table 13). The reason given for this large balance was that the ABRC did not identify enough meritorious proposals for tobacco-related research, so ABRC was not able to spend all available funds.¹¹³ While defending this view, the ABRC did not take any proactive actions to promote or solicit tobacco disease-related proposals to use these revenues. By FY1999, this \$14 million unspent reserve created a target for legislative appropriation similar to what occurred with the Health Education Account.

The 2001 aim of ABRC commission members and executive staff was to shift the organization's focus to translational research, defined as taking research from the lab and "translating" it into consumer products, particularly drugs. TGen, created in 2002, was seen as a good mechanism to accomplish this goal. The ABRC took a positive view of HB 2711 (2002, see above) to shift \$5 million per year for 5 years to TGen by transferring money from the Health Research Account, seeing it as a strategic partnership with TGen.¹¹³ While this \$5 million a year transferred from the Health Research Fund to TGen was poised to sunset FY2007, clamors for an extension of this appropriation from the business community as well as ABRC's own interest in keeping TGen afloat (to foster collaboration among biomedical researchers) resulted in ABRC committing continued funding from the Health Research Account to TGen, \$5 million a year for an additional five years.¹¹³ A December 14, 2006 *Arizona Republic* editorial entitled "A quick ROI [Return on Investment] for Arizona" espoused preserving the tobacco tax Health Research Fund \$5 million-a-year appropriation to TGen because despite it being "a relatively small share of TGen's budget, it is crucial base support. ...In order to keep the momentum going, Arizona needs to continue supporting TGen."¹²⁸ When ABRC's funding of TGen expired June 30, 2007, ABRC unilaterally extended its funding through FY2012.¹¹³ ABRC continued to spend on TGen the money originally intended for tobacco related research.

While the restriction that the Health Research Account funds had to go to tobacco-related research had already been lifted, the little remaining funds that did go to tobacco-disease related proposals (out of the general batch of received proposals) diminished as the Health Research Account received additional diversions. Further erosion of funds available for tobacco research from the Health Research Account occurred in 2002 when the Legislature passed SB 1270, which took \$500,000 a year for 10 years from the Health Research Account for TGen, provided that TGen contribute matching funds from private donors.¹²⁹

Tobacco related disease research in Arizona has not been publically funded since 2000. The health voluntary organizations and tobacco control advocates at the time and subsequently largely ignored the Legislative diversions – and the ABRC's – that completely stripped the Health Research Account of its original purpose. As of 2006, the ABRC typically received around 140 proposals requesting funding a year, with on average only 10 of these proposals per year specifically addressing tobacco.¹¹³ 51 proposals were actually funded in 2006, with only four directly relating to tobacco receiving funding.¹³⁰ Unless legislation or vigorous advocacy alters its course, the Health Research Account has lost its *raison d'être* of funding quality tobacco-related research. While tobacco control advocates could not reenact the Health Research Account under Proposition 303 (as the Legislature had already given the funding to TGen), the additional funding the ABRC received from Proposition 303 could have been specified for tobacco control research. Tobacco disease related research is an important element of tobacco control that Arizona's advocates and government need to address by taking advantage of opportunities to either voter-protect the Health Research Account or create a new and secure funding source for tobacco related research.

ARIZONA'S TOBACCO EDUCATION AND PREVENTION PROGRAM (TEPP)

The Arizona Department of Health Services Tobacco Education and Prevention Program (TEPP), created after Proposition 200 passed in 1994, is the organization that coordinates Arizona's tobacco education, prevention, and cessation campaigns. TEPP's history is best viewed in four periods, each influencing programming differently. From FY1995-FY1997 TEPP had restricted programming but rapid development; from FY1998-FY2001 TEPP developed a robust tobacco control program; from FY2002-FY2003 TEPP experienced program breakdown, with a weak media component, and; from FY2004-FY2007 TEPP, propelled by an emerging smokefree state climate, modernized its program to keep up with Arizona's increasingly smokefree norms.

As noted in our previous report, TEPP suffered initial setbacks that constrained the areas of tobacco control it could address.¹¹ In 1995, ADHS Director Jack Dillenberg limited TEPP's target programming population to pre-adolescents, adolescents, and pregnant women and their partners.¹¹ This programmatic

limitation went against the consensus that comprehensive tobacco prevention media programming is most effective when it targets a broad audience, exposes the tobacco industry, highlights the dangers of addiction, and relates the harms of secondhand smoke.¹³¹⁻¹³³ This restriction slowed down TEPP’s programmatic development in secondhand smoke, prevention for older adolescents and young adults, disparate populations, cessation, youth access, and smokeless tobacco. Dillenberg initially argued that restricting the program’s scope occurred as a byproduct of the limited funds.¹¹ However, Dillenberg may have been forced to limit the scope of the campaign by Governor Symington’s attempts to sabotage the program.¹³¹ In a 2006 interview, Matt Madonna, one of the key members of the 1994’s Arizona for a Healthy Future coalition that created TEPP, said, “there was a time when the [ADHS] chief was a puppet of the governor [Symington] and the governor was not in favor of doing anything that was going to block tobacco... *We had to focus on pregnant women and children and that [decision] came right out of the governor's office* [emphasis added].”¹³

TEPP’s central administrative staff in Phoenix comprises its structural core, while TEPP services mainly operate through local projects at the county level and statewide contractors for media and evaluation (Table 14).

During its period of the high per capita funding from FY1998-2001, the US Centers for Disease Control and Prevention reported that Arizona smoking prevalence dropped rapidly (Figure 1), from 23.1% in 1996 to 18.3% in 1999.⁹³ The CDC also noted that the decline in smoking occurred across low income and low education groups, decreasing health disparities. The Arizona Adult Tobacco Survey (ATS) comparisons by the ADHS led the CDC in the 2001 Mortality and Morbidity Weekly Report to write: “On the basis of these findings, if all states implemented comprehensive programs similar to those in Arizona, the national health objective for 2010 of reducing the adult smoking rate by half during this decade could be achieved.”⁹³ One analysis estimated that roughly 61 percent of the reduction in smoking between 1993 and 2002 was due to price increases on tobacco products and 38 percent due to media campaigns.¹¹⁰

Our previous report, *Tobacco Control in Arizona* (covering 1973 to 1997) concluded that despite securing stable funding (at the time) for TEPP, “health advocates have generally failed to force the state to run an effective anti-tobacco program.”¹¹

CDC Best Practices Components	ADHS TEPP Contracts
I. Community Programs to Reduce Tobacco Use	Community Partnership Projects; Local Projects; Tribal Projects
II. Chronic Disease Programs to Reduce the Burden of Tobacco-Related Diseases	Arizona HealthLinks; Chronic Disease Projects; Tribal Projects
III. School Programs	Local Projects; Tribal Projects
IV. Enforcement	Attorney General, in conjunction with local enforcement agencies; Local Projects support through merchant education; Tribal Projects
V. Statewide Programs	Arizona HealthLinks; Arizona Interscholastic Association; Arizona Smokers’ Helpline; Healthcare Partnership; US Script
VI. Counter-Marketing (Media)	Statewide Media Campaign; Local Projects; Tribal Projects
VII. Cessation Programs	Arizona Smokers’ Helpline; Local Projects; Tribal Projects; US Script
VIII. Surveillance and Evaluation	University of Arizona Evaluation, Research and Development Unit; Arizona Criminal Justice Commission; Arizona Department of Education; Northern Arizona University
IX. Administration & Management	ADHS TEPP and all Contractors

Initially, TEPP was prevented by the Symington administration from collecting baseline data on both youth and adult smoking prevalence before the media program started.¹¹ Standardization of evaluation and surveillance did not become streamlined and consolidated into a single agency (the University of Arizona) until after 2002 when Proposition 303's language required TEPP to uniformize its procedures in this area by mandating biennial reports presented to the Arizona Legislature.

TEPP Administration

TEPP consists of an administrative staff in Phoenix, media contractors, and health service providers working in county health departments. The central office (Figure 10) is organized with the Office Chief (now called the Bureau Chief) as the managing position of TEPP, with senior and junior employees working in various program capacities. The Office Chief is the key liaison to the Director of the ADHS and the Governor's Office. The Office Chief wields a great deal of power in TEPP, and the success or failure of TEPP through the years has often depended on the Office Chief's actions.

Staffing and Administrative Issues

The prevention goal of TEPP has been compromised by political interference in the program, attempts by the Legislature to control the program and to weaken its efforts, insufficient attention directed at disparate populations and minority media markets, micro-management, large portions of the staff with no prior tobacco control experience, and high staff turnover.¹³⁵

TEPP from 1997 to 2006 encountered many problems as a result of a lack of leadership both from ADHS and internally. Bill Pfeifer, echoing other tobacco control advocates,¹³ recounted the leadership problems TEPP faced:

Back in 1994 when we wrote that [Proposition 200] language, we had to find a place to house that money. We could have done anything. We could have created a free-standing new quasi-governmental entity that would have been recipient of that money, would have operated with more of like a board of directors, but we chose not to, we chose to go through the State Department of Health. I don't think that was a bad decision, but I do think [ADHS] has been a little bit lax in keeping up with the times...

I don't know that I could stand up and in confidence say they are [in 2006] using this money wisely, [that] they are truly having a positive impact on reducing tobacco use in the State of Arizona, like we did back in the 90's and the early years, the golden years. I have been outspoken with the Department of Health on what I think they need, and I think what they need is leadership. They need to break out of the bureaucracy mindset and say "listen this is a 25 million dollar organization. You need to hire a CEO to run it like you would a 25 million dollar non-profit organization."¹³⁶

Pfeifer's perception that leadership problems plagued TEPP was shared by others within ADHS,¹³⁷ given that 15 TEPP employees left, including all of senior management, within the span of two years, beginning in 2005. TEPP employees contended that "communication has always been a challenge" within TEPP and that "you just may not get along with the individuals you are working with and you chose to move on," especially since the majority of TEPP positions are "uncovered," or at-will contracts, allowing ADHS or the employee to terminate the relationship at any time.¹³⁷

TEPP's tendency to orient the entire staff around the personality of the Office Chief became problematic when the head position went unfilled. One employee related, "because of the Office Chief position not being filled up, we just wait for that person to come aboard and then eventually we start getting those [other] positions filled up."¹³⁷ The majority of TEPP office staff in 2006 were for the most part "placeholders," filling up budgeted spots while not fulfilling the intended aims of the position.^{137, 138} While orienting TEPP around the Office Chief position could be beneficial, the high turnover of the Office Chief

Arizona Department of Health Services
 Division of Public Health Services
 Public Health Prevention Services
 Office of Tobacco Education and Prevention Program

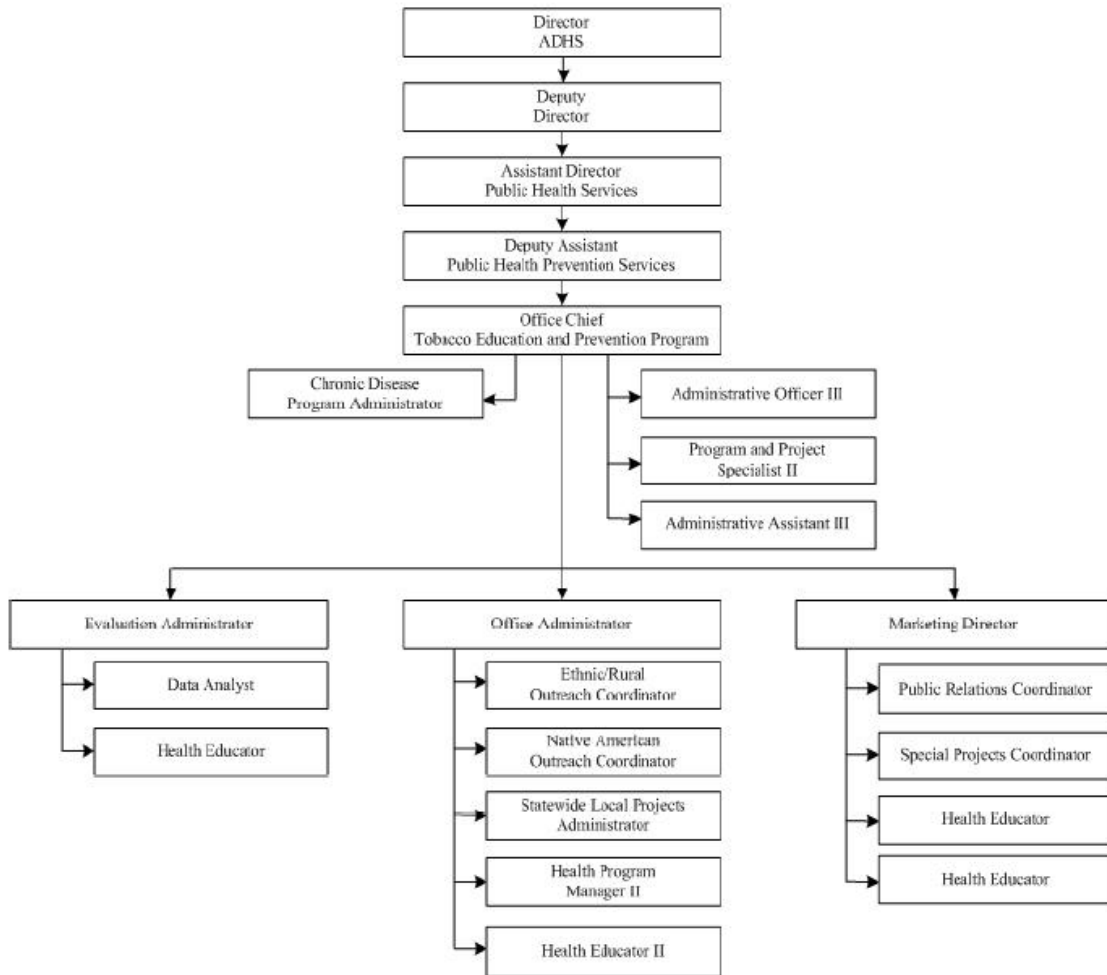


Figure 10. This TEPP organizational flow chart illustrates the structure of TEPP's administrative office. The Office Chief (called Bureau Chief after December 2007) is TEPP's link to the rest of ADHS and the Governor. Because the Office Chief controls the direction of the program to a high degree, when this position went vacant or lacked decisive leadership, coordination within TEPP suffered.

position, and the fact that the Office Chief often knew less about tobacco control than senior employees, made for a tenuous dynamic.

TEPP since its inception in 1995 experienced a high rate of staff turnover, both among office employees and the Office Chief. Several factors contributed to Office Chief and staff turnover, including uncompetitive remuneration, hiring from within ADHS instead of seeking external applicants, and making the Office Chief position political by having it be an appointed position and at the will of the ADHS director instead of the position covered by the state merit employment procedures. The Office Chief position is

subject to removal by executive branch superiors, which has contributed to more conservative and less effective programming, especially regarding media. Jesse Nodora, the second longest serving person in TEPP's office from 1995-2005 observed in a 2006 interview, "the program went through four office chiefs in my tenure, from Martha Cliff to Rosalie Lopez to Kathy Bischoff to Patricia Tarango. And, you know, oddly enough, none of those people were ever recruited externally, under open searches, which is kind of the typical thing" for government recruitment at the manager-level and above.¹⁹ This lack of external job postings in the hiring process dragged into the equation political alliances and debts from hiring internally, and hindered the Office Chief from furthering TEPP's aims to their fullest capability.¹³⁹ Especially during the years 2003-2006 when the program was in administrative and financial disarray and turnover was even more detrimental to the organization, the constantly vacant Office Chief position made it difficult for TEPP to sustain a consistent program. While TEPP's local projects service providers kept TEPP from collapsing, the central administrative decision-making harmed the program and prevented it from being effective.

The legislative budget cuts brought programmatic problems which were exacerbated by poor administrative handling of TEPP's new financial situation, causing the dismantling of more programs than necessary. The *Arizona Republic* ran stories in 2001 describing how Governor Hull's proposed TEPP defunding "guts" or "would end the nationally known... anti-smoking campaign."^{140, 141} Then-TEPP Office Chief Cathy Bischoff appears to have taken that prediction as a directive. Disproportionately decreasing the amount spent on media – TEPP's most effective tool for tobacco prevention – while building up a reserve of unspent funds in TEPP's Health Education Account weakened Arizona's tobacco control program more than the actual budget diversions themselves required. As Office Chief of TEPP from 2000-2003 Bischoff played a decisive role in undoing Arizona's successful tobacco control program. Nina Jones remarked that Bischoff "took a sinking ship [TEPP] and let it sink,"¹³⁸ refusing to spend TEPP's available funds on media efforts, and cutting key programs. Bischoff helped create the situation in TEPP as if Hull had gotten her originally requested \$60 million from TEPP rather than the actual \$32.8 which was transferred. Instead of aggressively sustaining (or modestly cutting back) existing programs which had proven successful, Bischoff instead wiped out the Arizona Cessation Training and Evaluation unit, the Arizona Tobacco Information Network, and other effective programs that TEPP developed. When many of these programs were cut, up to a year after the original budget cuts, TEPP had already been voter protected, its funds secured. Yet instead of spending the full revenue it received yearly, TEPP began building up a reserve of unspent funds it could have used instead to maintain and bolster its programs.

From 2003 through 2006 TEPP endured large gaps of time without an Office Chief. While Patricia Tarango filled the Office Chief role from mid-2004 through the first half of 2006, Tarango provided TEPP with only the minimal leadership and programming required to keep it afloat, and from June 2006 to March 2007 the Office Chief position was again vacant.

In 2006 ADHS Director (and former tobacco control champion in Arizona's Senate) Sue Gerard invited TEPP's oversight committee, the TRUST Commission, to assist in a nationwide search for a new TEPP Office Chief. Gerard also included a higher salary range, which gave tobacco control advocates and ADHS staff optimism they would be able to retain future officers.¹³ On January 29, 2007, ADHS announced Wayne Tormala as the new Office Chief (renamed as Bureau Chief to increase the salary under state pay scales) of TEPP.¹⁴² The Bureau Chief Position paid \$106,000, increased from previous TEPP Office Chief salaries from 2004 to 2006 of \$69,000 and \$80,000. While Tormala had no experience in tobacco control, he had worked as the City of Phoenix's Community Initiatives Coordinator, and was viewed as a leader who could bring disparate members of Arizona's tobacco control community together. Several TRUST Commission members noted as a positive sign Tormala's willingness to attend a TEPP-TRUST Commission retreat to help foster relations between the program and the oversight committee. Previous TEPP directors had viewed the TRUST Commission less as an ally to reducing tobacco use and more as a committee they were forced to present reports to. In 2007, TEPP restructured, completely replacing its central office staff, with no employees working in TEPP in 2005 remaining. TEPP also engaged in a lengthy strategic planning campaign, aiming to receive input from all those invested in Arizona tobacco control, such as county health

departments, service providers, local project coordinators, and tobacco control advocates. TEPP also changed its name in December 2007 to BTEP – the Bureau of Tobacco Education and Prevention – in an effort to emphasize that TEPP was turning over a new leaf, breaking from the negative connotations some Arizonan leaders linked with TEPP’s history.

Self-censorship and Over-caution

Censorship, real or perceived also reduced TEPP’s effectiveness. A long-time TEPP employee working at the county level felt that for the first 10 years of TEPP “any kind of education that would influence anybody” was restricted and that “the staff were terrified of doing anything which would influence anyone.”¹⁴³ Consistent with tobacco industry efforts to restrict tobacco control programs from working to promote public health policies to reduce tobacco use (such as clean indoor air laws),¹⁴⁴ part of the Health Education Account’s enabling legislation to implement Proposition 200 in 1994 restricted “lobbying”: “Monies from the tobacco tax and health education account shall not be expended for lobbying activities involving elected officials or political campaigns for individuals or any ballot measures.”¹⁴⁵ The ADHS Director and TEPP Office Chief circulated a memo entitled “Policy Guidelines for Lobbying Activities,” citing the laws TEPP operates under, with added interpretation prohibiting any activity “which will affect the outcome of a proposed law, ordinance, ballot initiative or election campaign.”¹⁴⁵ While these clarifying guidelines were useful in detailing what TEPP employees could and could not engage in, they explicitly forbade “attending advocacy meetings,” which would set the tone for TEPP and its employees, distancing them from Arizona’s voluntary health organizations and tobacco control advocates.¹⁴⁵

This dilemma diminished the potential allies tobacco control advocates could call upon to speak at city council meetings in support of clean indoor air ordinances or campaign for the statewide smokefree law, Proposition 201. In a 2006 interview, Bill Pfeifer, CEO of the ALA Southwest Division, explained:

Those people that do receive tobacco tax funding are more cautious and more careful and rightfully so that they don’t get too deeply involved [in tobacco control advocacy]. But if they do get involved it is clearly done on their own personal time as opposed to time that they are getting paid by state tobacco tax funding... I think that in some cases [ADHS] may have been over-cautious and almost put the fear of God in [their employees and subcontractors], so I would say it has kept some people on the sidelines who probably would have enjoyed being more actively involved in Proposition 201 or any other public policy issue.¹³⁶

Regarding Proposition 201, a TEPP employee related that many TEPP employees would not attend planning meetings because “they did not want to give the perception that they were... in there doing something they shouldn’t.”¹³⁷ While members of TEPP’s initial advisory board, the Tobacco Use Prevention Advisory Committee (TUPAC), particularly Executive Director of ACAS Don Morris, made it very clear at meetings that what people did on their own time did not fall under the purview of the “lobbying” restrictions,¹⁴⁶ this message encountered years of resistance from ADHS. The spillover effect of ADHS’ no-lobbying-while-working policy carried over into the private lives of TEPP affiliates, prompting many cases where TEPP-funded local groups or individuals refused to participate in tobacco control policy on their own time because they were under the impression this constituted a breach of their ADHS contract. The line between working-hours and after-hours permissions remained hazy for many.¹³⁹

Media Campaign

Arizona’s anti-tobacco counter-advertising has never challenged the tobacco industry and seldom has squarely addressed the issue of addiction. While this policy originally resulted from ADHS Director (under Governor Symington) Jack Dillenberg’s decision,²⁴ no subsequent ADHS director decisively expanded TEPP’s media campaign to focus on secondhand smoke or tobacco industry manipulation. (Secondhand smoke did appear occasionally in media campaigns after 1999, and more prominently in 2006.) From 1996-1998 TEPP focused roughly half of its resources on its media campaign while limiting its focus to pre-

adolescent and pregnant women, opening it up to adult cessation in 1998 and nominally to secondhand smoke in 1999.

From 1996 to mid-2001, TEPP contracted with Riester~Robb (now Riester), a Phoenix-based advertising agency to handle its media campaign. TEPP's contract was the largest public media contract in the state at the time.¹⁴⁷ Because ADHS Director Jack Dillenberg had limited TEPP's media audience to only children and pregnant women and their spouses, Riester believed the target audience would best be reached by approaching tobacco as "gross" and disgusting, accentuating dramatizations of the short- and long-term effects of tobacco (Figure 11).¹⁴⁷ Riester's "*teeth-staining, tumor-causing, smelly, puking habit*" tagline was widely recognized, and TEPP went on to sell at-cost more than 2 million pieces of the "tumor-causing"-branded merchandise to local projects contractors from TEPP and schools and prevention agencies across Arizona, with substantial sales to other states' tobacco control programs as well.¹⁴⁷ The "tumor-causing" campaign was highly visible in Arizona from 1996 through 2001, depicting tobacco as a gross habit with severe adverse health consequences.

A popular component of Riester's initial 1996 "tumor-causing" campaign included a Hummer-towed 46-foot interactive traveling anti-tobacco exhibit that youth could walk through termed the "Ash Kicker." TEPP Office Chief Rosalie Lopez at the time called the Ash Kicker "a pied piper that is leading [children] to a tobacco-free life."¹⁴⁸ By the end of 1997, 27% of Arizona teenagers had toured the Ash Kicker, and in 1998 Riester revamped the Ash Kicker (which ran until 2001) as a "bio-hazard laboratory under siege from the effects of tobacco," remodeling the previous version into a decaying human body, diseased by tobacco use.¹⁴⁸ The Ash Kicker also served as a distribution center for anti-tobacco branded merchandise. While there is no evidence that the Ash Kicker actually affected the smoking behavior of youth, it did provide media attention and served as a high-profile attraction that would bring youth to anti-tobacco events.

Riester's graphic television commercials contained shocking and humorous images geared toward adolescents. Numerous Riester~Robb commercials won awards and have been used by 38 states and Canada.¹⁴⁹ One of them, "Theater Snacks," shows a girl, thinking she's sipping her soft-drink, inadvertently drinking out of her date's spit tobacco cup at the movies, shrieking in horror as the character in the movie does. "P.P." shows two boys smoking on a street corner. Their smoke hits the face of their Jack Russell Terrier, which in response urinates on the lit cigarette. "Maggots" depicts a girl who is smoking, who finds



Figure 11. Riester's "PP"¹⁵¹ (1998) and "Smoking Drill"¹³⁵ (1999) counter-marketing advertisements won notoriety for TEPP. Part of the "*Tobacco. Tumor-Causing, Teeth Staining, Smelly, Puking Habit*" campaign, TEPP's advertisements through the Riester firm from 1996 through June 2001 accentuated the grossness of tobacco to appeal to youth.

that her face soon falls apart and disintegrates with maggots crawling out of her mouth. This advertisement achieved high recall rate and impact on kids but offended a large number of adults. A TEPP employee at the time noted that “‘Maggots’ offended people inside the movement too.”¹³⁸ While the target audience, kids, could handle it, the adults could not, and controversy created by the public backlash the advertising agency received reached the point where Riester included a warning announcement before the commercial notifying viewers of the graphic content of the commercial.¹⁴⁷ Because graphic intensity and grossness were thought to be effective in reaching young viewers, Riester’s “Smoking Drill” later created in 2000 elevated these qualities to a new level.¹⁵⁰

The graphically repulsive and gross Riester commercials were effective in getting the attention of viewers (principally children), according to evaluations by the University of Arizona for TEPP.^{147, 150, 152} The *1999 Arizona Adult Tobacco Survey Report* released in May 2000, showed a 21 percent drop in Arizona adult tobacco use prevalence from 1996 to 1999. The ADHS acting director at the time credited Riester’s media campaign as the major contributing component.¹⁵²

In September 1998, TEPP launched its first cessation media campaign, breaking the previous bar on tobacco-prevention counter-advertising to adults. Their “Chuck” (in English) and “Carlos” (in Spanish) cessation campaigns were each comprised of a series of TV spots showing the protagonists’ progression toward quitting tobacco to encourage smokers to meet the challenges of quitting. Quitline calls increased dramatically during this period, as it was tied in with the commercials. While their “Chuck” campaign was a success, Riester-Robb and TEPP soon realized through the very low response rates from Spanish-speakers to the “Carlos” advertisements that language translations required accompanying cultural translation to succeed.¹⁴⁷

TEPP used social marketing to disseminate their anti-tobacco message through print, TV, radio, movie on-screen billboards, websites, mall kiosks, and outdoor billboards. In an effort to mitigate Hollywood’s glamorization of tobacco in the movies, in FY1999 TEPP budgeted \$156,000 for six different pre-movie on-screen billboard stills in 50 theaters across Arizona. TEPP tried to get the long form anti-tobacco clips they made into the movie theaters, but at the time the theaters would not put Public Service Announcement anti-tobacco commercials before movies.¹⁴⁷

Smelly, puking bidding process

Riester’s contract with TEPP was set to expire December 2000, but because TEPP was so impressed with Riester’s performance, TEPP extended the contract another 6 months before bidding for TEPP’s next five-year media contract commenced. The Tobacco Merchants Association newsletter said this delay in opening the bidding process on the new media contract would “anger the agency’s competitors who were hoping to bid for the contract when it was due for review.”¹⁵³ Because of the widespread recognition of Riester’s campaign,¹⁵² the agency seemed poised to renew their contract. However, in June 2001 ADHS awarded the E.B. Lane advertising firm TEPP’s media contract. Riester was shocked at the decision,¹⁵⁴ especially since E.B. Lane was the highest bidder for the contract, taking 17 percent of TEPP media money in fees, compared to roughly 10 percent Riester proposed for their continued campaign.¹⁵⁵ The five-year contract had at the time an estimated billing of \$7 to \$10 million in advertising and \$3 to \$5 million in public relations per year, making it the most lucrative media contract in Arizona.¹⁵⁶ Beau Lane’s firm teamed with eight specialty firms that focused on regional advertising and specific market segments, specifically, ethnic minorities. Lane called the multicultural components of their proposal “absolutely key” to winning the bid.¹⁵⁶

Riester, along with the Moses Anshell advertising agency, which had also bid for the contract, filed complaints in July 2001 over the bidding process conducted in June 2001, challenging the seven-member evaluation committee’s decision to award TEPP’s media contract to E.B. Lane.¹⁵⁵ They objected that “the state did not follow its own evaluation criteria and did not keep records of how committee members scored their bids.”¹⁵⁵ After a state procurement administrator established a “reasonable probability” that Riester’s

protests were valid and ordered a stay on granting the contract to E.B. Lane, ADHS officials reopened the bidding process rather than confront a possible legal challenge from Riester.¹⁵⁵ Because the bid evaluation committee membership was unchanged, Riester withdrew its bid to protest ADHS' "tainted" bidding process.¹⁵⁵ In an *Arizona Republic* letter to the editor on November 24, 2001, Tim Riester and his partner at the time, Dave Robb, explained why they opted out of the new bid process:

After a false start due to procurement irregularities, the health department decided to change the whole program... to allocate only 30 percent of the marketing budget to advertising, as opposed to 90 to 95 percent during the past five years [when Riester executed the media contract]. The remaining 70 percent will be split among five or six firms in an outreach public-relations program. *Short of completely eliminating the program, the tobacco industry could not have scripted a finer scenario.* There is not one single model in the United States that would support such a dispersion of funds as being effective.¹⁵⁷ [emphasis added]

The highly funded Riester advertising campaign in Arizona led some legislators and pro-smoking advocates to attack TEPP's expenditures, arguing that the media campaign was extravagant. This argument appeared in a November 2001 speech in which Gov. Hull told the Arizona Legislature, in an effort to shift \$10 million a year in TEPP's advertising budget to general health programs, "I don't want one child to even start [smoking]. But when it comes down to either a new antismoking slogan or a doctor visit for a sick patient at the state hospital, in my book the patient comes first."¹⁵⁸ In this address Hull proposed the Legislature strip \$60 million from TEPP over 5 years to pay for much needed services and to keep the state fiscally afloat. Hull's comment is a standard pro-tobacco rhetorical strategy used against media campaigns.^{131, 133, 159}

ADHS senior staff told TEPP employees that the reason they chose E.B. Lane over Riester was because "their company and their sub-contractors they worked with were more culturally competent. They had subcontractors that worked with Hispanics, they had subcontractors that worked with Native Americans..."¹⁴³ The changing of contracts was seen internally as taking TEPP contract funds and "spreading it around" to other agencies, to let Arizonan know TEPP was not defined by a single slogan or advertising scheme.¹⁹ Because of the imbroglio surrounding TEPP's lack of transparency in their media contract decision process and their repeated RFP process due to irregularities, the transition to E.B. Lane as the succeeding media contractor was rocky. The perception that E.B. Lane received the contract due to Cathy Bischoff's personal politics and that "Cathy picked them out" because Bischoff could not handle Riester's creative independence, reinforced the negative association between a new era of micro-managing in TEPP and a less edgy media campaign with E.B. Lane.¹³⁸

During FY2002, the year the media campaign roughly transitioned from Riester to E.B. Lane, TEPP aired far less anti-tobacco advertising. Not only had they already used the advertisements they had developed, but the legislative budget diversions made TEPP leadership overcautious of overspending their halved budget (see previous section). Nonetheless, a 2005 CDC *Morbidity and Mortality Weekly Report* found that out of 37 states, Arizona was ranked ninth highest in monthly anti-tobacco television advertisements seen by adolescents aged 12 to 17 between the years 1999-2003,¹⁶⁰ indicating that even with the lack of media in FY2002 TEPP still had a relatively high tobacco control media presence.

Figure 12 shows the pronounced drop in 2002 and 2005 in radio and television anti-tobacco messaging perceived by Arizonans. This drop in visibility likely had an impact on youth initiation of tobacco use. Youth prevalence increased as anti-tobacco media diminished between 2002 and 2005, according to the Arizona Tobacco Survey and the Youth Tobacco Survey.^{8, 109} With less spending on media and a less aggressive marketing strategy, thousands of youth started smoking that would not have had TEPP's media

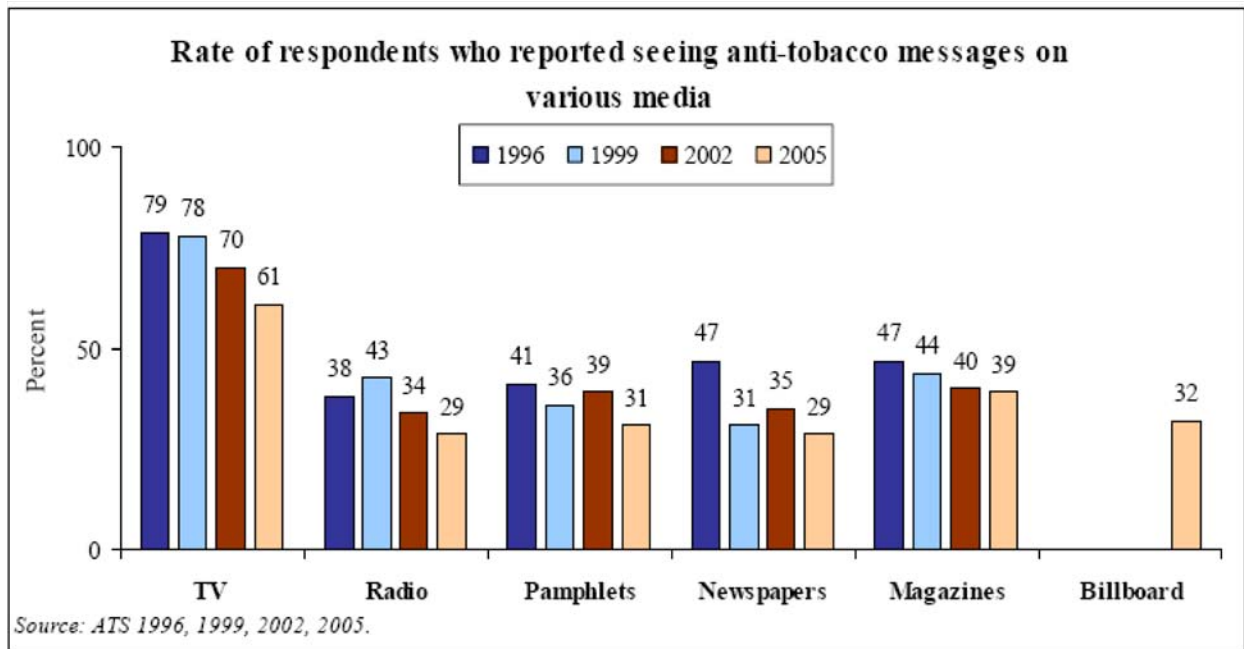


Figure 12. Between 1999 and 2005, TEPP media spending declined along with the quality of TEPP's counter-marketing.¹⁶¹ In every category, survey respondents reported seeing less anti-tobacco messaging in 2005 than they had in 1999.

component remained strong.

A "Cold Turkey" Media Campaign

The media campaign under E.B. Lane (2002-2005) suffered from many factors that made their job harder. Their funding was cut dramatically from the media budgets available to Riester. Whereas Riester's contract averaged \$13 million per year, E.B. Lane's contract averaged only \$6 million per year for media (Figure 13).¹⁶² E.B. Lane took the contract in late 2001, just as the Legislature cut TEPP funding and cleaned out the reserves that funded the nationally recognized Riester media campaign. In addition to the funding cuts, TEPP's media campaign under E.B. Lane was also weakened because TEPP administration micro-managed

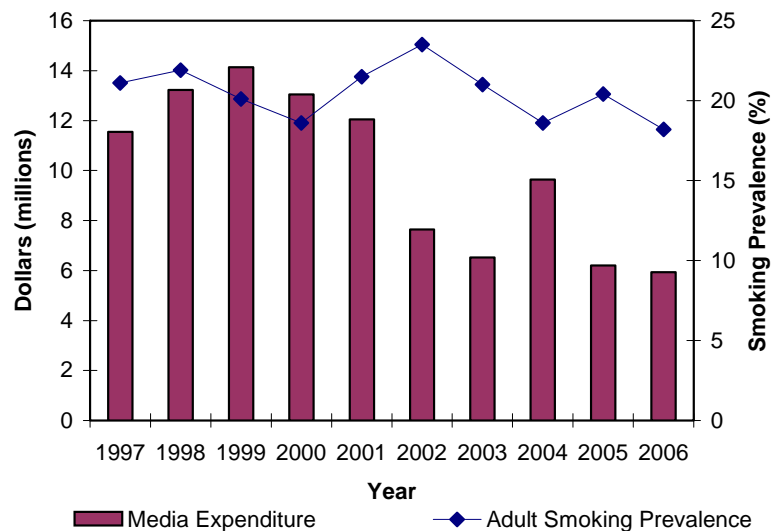


Figure 13. Arizona's adult smoking prevalence negatively correlates with TEPP media expenditures for FY1997-FY2006. As TEPP began counter-advertising to adults in 1998, adult smoking declined until 2000. In 2001, TEPP's funds were cut, and it spent less in media, with adult smoking prevalence peaking in 2002 as TEPP experienced a drastic reduction in media expenditures. Due to a 60 cent per pack cigarette tax increase occurring in November 2002, prevalence fell, but then briefly rose in 2005 as TEPP media expenditures again decreased. The drop in smoking prevalence in FY2003 is most likely due to the 2002 Proposition 303 60 cent tax increase, rather than a rebound in TEPP's media budget and capabilities.

the campaign. Nina Jones, a TEPP contractor at the time remarked in a 2006 interview:

E.B. Lane gave [TEPP] their absolute best effort, but Cathy [Bischoff, Office Chief] would attend meetings and consistently dismiss hours of planning and work. She would look at their presentation and simply tell them “no.” Then she told them what she wanted to see instead. She became a one woman ad firm. I know this because I attended many of the meetings. This was the norm in any meeting I attended with Cathy - strategic planning, materials development, etc. There was no real input, just a lot of wasted man hours. It was absolutely insane.¹⁶³

Bischoff involved TEPP in a bureaucratic morass, unilaterally cutting major programs like Arizona’s information clearinghouse ATIN while spending \$3 million a year on youth sports activities and sports coaching development when TEPP’s entire media budget was only \$6.5 million that year.¹⁶⁴ Bischoff micro-managed E.B. Lane, forcing the agency to abandon their prepared advertisements at her caprice.

In the four years E.B. Lane contracted with TEPP (2002-2005), the major media campaigns included “GearHeadz,” “Counter Acts,” and “Cold Turkey.” GearHeadz was an effort to incorporate anti-smoking messages on school busses by combining tobacco-free billboard messages on the side of school busses while distributing on-board playing cards with cartoon characters relaying the tobacco-free message.¹⁶⁵ The Counter Acts campaign aimed to prevent retailers from selling cigarettes to youth, collaborating with Hispanic, African-American, Asian-American, and Native American ad agencies to reach retailers with culturally tailored messaging. This youth access campaign also worked with the Attorney General’s Office, Maricopa County Sheriff’s Department, and the Arizona Food Marketing Alliance (recipient of yearly Tobacco Institute member dues¹⁶⁶) to reinforce the message that selling tobacco to minors is illegal and immoral.¹⁶⁵ E.B. Lane’s Cold Turkey television media campaign sought to encourage smokers wanting to quit smoking to take initiative and quit ‘cold turkey,’ offering “hints and tips” to help smokers give up the habit.¹⁶⁵ Among the accomplishments listed for this project on E.B. Lane’s website included “Generated warm fuzzy feelings: People who saw the ads were significantly more likely to feel positively about the State.”¹⁶⁵ Failing to actually lower smoking prevalence, especially amongst youth (Figures 3 and 4), the weak results from TEPP’s media campaign during this period contributed to the perceived ineffectiveness of the TEPP media campaign from 2001 through 2006.^{12, 13, 19, 89, 135, 143, 167}

At the February 15, 2005 meeting of TEPP’s TRUST Commission, Bill Pfeifer told the attendees “The American Lung Association, the Heart Association and the Cancer Society feel that the Department’s media campaign is not ‘hard hitting’ enough, [and are] concerned with the direction of the campaign, [the] need for stronger anti-smoking and prevention campaigns, [and the] future of second hand smoke campaigns.”¹⁶⁸ The health voluntary organizations’ concerns would go unmet. From FY2005-2007 TEPP did not field a concentrated media campaign tying tobacco-free branding to statewide media and local projects as it previously had under Riester.

Since FY2006, when the E.B. Lane media contract expired and without an Office Chief to make executive decisions, TEPP’s media campaign became ad hoc, using different ADHS stock contractors for each media placement without a unified media campaign. These ADHS media contractors had no experience running a multi-million dollar counter-marketing media campaign. There were no RFPs issued for a new media contract. As ADHS Director Sue Gerard explained in a 2007 interview:

We have been forced basically to use advertising agencies that are already on the state contract, and to be perfectly honest with you, it has been somewhat disappointing.... We are hopeful that there will be new blood for us to chose from and then we will be able to get a new contract instead of what we have been doing, which is basically piecemeal... If not, I am going to go back to the governor’s office to pitch really hard to get us an exemption.¹⁶⁷

Gerard did ultimately get an exemption from ADHS’ state contracting pool in August 2007, and rehired the original advertising firm Riester for a portion of TEPP’s media efforts.

To TEPP's credit, it ran smokefree media spots (California's "Bubbles" advertisement) the summer before the 2006 November elections, although this a case of tobacco control advocates leading TEPP into action rather than TEPP taking the initiative. As of September 2007, a Maricopa County Tobacco Use Prevention Program (MACTUPP)/Arizona Fire Department three minute counter advertisement available on TEPP's website, mentioned for the first time in TEPP history the tobacco industry's efforts to get kids to smoke.¹⁶⁹ It was not clear if the advertisement will be made into television commercials or used for other purposes. Like California's early "Industry Spokesman," this gesture toward using messaging proven to be effective in preventing youth tobacco initiation was a step in the right direction, even though as of December 2007 TEPP did not have an integrated media campaign.^{133, 169}

TEPP's media campaign, despite its early acclaim from FY1997-FY2001, has failed to effectively keep up with Arizona's tobacco prevention and cessation needs. Changing from the Riester firm which concentrated heavily on visually and emotionally impacting prevention television and radio campaigns tied in thematically with local projects to E.B. Lane's focus on many separate smaller campaigns targeting specific demographics, dissipated public discussion and awareness of TEPP's messages. With the TEPP budget diversions cutting into media expenditures more than any other area, media contractors had fewer opportunities to maintain the public "buzz" the FY1997-2001 campaign generated.

Local Projects

The local projects and the media campaign are TEPP's main programmatic components benefitting the public. Not only are local projects the main point-of-service for cessation, prevention, and education, but they reach disparate populations and inform their local communities about tobacco control. Yet in 2006, even these basic elements only provided minimum services, with no solid media contracts or cohesive anti-tobacco campaign tying together TEPP's various efforts. Except for periods between FY1997 and FY2001, when TEPP local projects used Riester's media campaign as their thematic basis, coordination between the statewide media campaign and local TEPP projects has always been tenuous, as the local projects often did not have a message tied in with the statewide media campaign.

County Health Departments provide the bulk of TEPP's tobacco control services, from educating in schools about the consequences of smoking, to providing cessation services, to addressing workplace smoking and secondhand smoke issues. Starting in 1999, when programmatic content restrictions were lifted, TEPP made it a priority to provide outreach to disparate populations (i.e., minorities) to reduce the burden of disease, and created a variety of programs targeting these groups that were less targeted by TEPP's mass-media approach. For example, Ashes-to-Ashes, a group providing outreach to African-American communities, attends relevant events and works with community organizations to help African-Americans address tobacco issues.¹⁷⁰ In Pima County alone, Arizona's second most populous after Maricopa, several groups work in tobacco control including Tobacco-Free Ways and Students Working Against Tobacco (S.W.A.T.), in addition to the county health services and minority outreach programs.

The *Promotores de Salud* (commonly referred to as the *Promotoras*) represented one of TEPP's flagship local projects active from 1996 through 2007. The *Promotoras* system of community health workers and health educators was especially strong in Yuma county. The *Promotoras*, operating largely in Arizona's rural farming communities and border towns such as Dateland, San Luis, Somerton, Wellton, Cochise County, and Yuma, are voluntary lay health workers in the orchards and fields, guided by the model's creator, Emma Torres (who as of 2007 ran the program under the umbrella group Campesinos sin Fronteras). Originally funded by the Farmworker Justice Fund, through TEPP's Arizona Cessation, Training, and Evaluation (ACTEV) program, the *Promotoras* provide tobacco cessation services in the field to underserved Hispanic and Native populations, bringing cultural competence to tobacco prevention and cessation in this marginalized population.¹⁷¹ TEPP engaged the *Promotoras* because of the opportunity for people who lived in the community to deliver the message. Funding for *Promotoras* tobacco control from TEPP has decreased since 2000, and in the second half of 2007 the *Promotoras* received no TEPP funding. More than a reflection

of the program's merit, this funding cut reflected TEPP's shift in leadership with a new staff and priorities. (Beginning in 2007, the American Legacy Foundation supported the *Promotoras* program at a lower but still sufficient level to serve the population.)

Grassroots tobacco control programs and organizations providing prevention and cessation services flourished when they were fed resources, both financial and informational, by TEPP. Nonetheless, the local projects were barred from advocating for clean indoor air ordinances, leaving this work up to independent tobacco control advocates, private foundations, and the voluntary health organizations.

Cessation

TEPP provides direct cessation services, including the Arizona Smoker's Helpline (ASH, set-up in 1995) and programs through county health care facilities that subsidize pharmacotherapies for cessation and provide counseling. ASHline, operated by the University of Arizona since its inception but funded by TEPP after FY1997, fields all of the quitline calls in Arizona in English and Spanish. Calls to the national quitline 1-800-QUIT-NOW from Arizonans are routed to ASHline. ASHline provides recorded information, live phone counseling, and referral services to community-based classes offered once a week in each county. While the ASHline came under TEPP's umbrella since TEPP's beginning, face-to-face counseling classes and pharmacotherapy cessation services did not start until 1998. Before 1998, ASHline's services were largely informational. ASHline received roughly \$1.3 million annually during FY1997-2007 for telephone and related internet quit services, with between 9,000 and 12,000 calls per year, with 6,000 of these becoming new cessation clients (the rest received information only, sometimes automated).

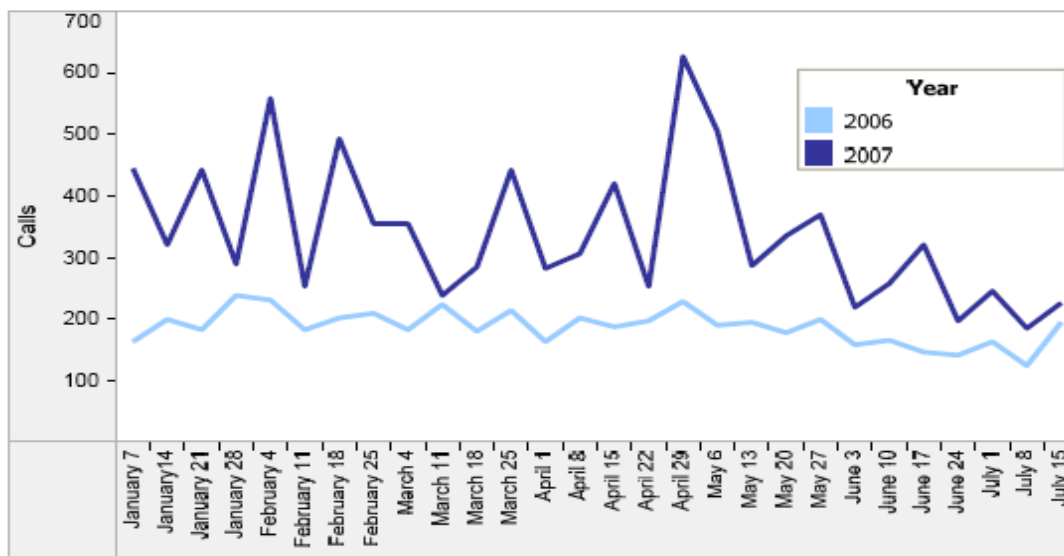
In 2001-2002, 43% of current smokers said they tried to quit in the last year, according to the Arizona Adult Tobacco Survey,¹⁷² and in 2005 46% of smokers reported they tried to quit during the last year.⁹ In 2003, 15% of all TEPP cessation clients reporting in year follow-up surveys that they had not used tobacco in the last 30 days.¹⁷² However, in FY2005 and FY2006, only 10% of cessation clients were still quit after three months.⁹ TEPP's prevention and cessation efforts are also coordinated with the quitline.

The Arizona Cessation Training and Evaluation (ACTEV) project served as TEPP's cessation training consortium from 1997-2003. ACTEV followed evidence-based guidelines for smoking cessation published by the Agency for Healthcare Research and Quality and coordinated these efforts through a tri-university consortium of Arizona State University, the University of Arizona, and Northern Arizona University. When ACTEV was eliminated in the program cuts in FY2002, cessation certification was outsourced to the University of Arizona under a streamlined version termed HealthCare Partnerships. Only in FY2007 did the HealthCare Partnership begin treating as many cessation clients as ACTEV did pre-FY2002.

The Healthcare Partnership "provides evidence-based, tobacco dependence treatment continuing education, certification, and training programs that are adapted for a variety of communities."¹⁷³ Implemented by the University of Arizona, the Healthcare Partnership holds workshops and trains healthcare professionals in smoking cessation skills, including their courses Tobacco 101 and a three-tiered training program for cessation specialists. This cessation training program is given to all local projects contractors, and provides *Promotoras* (rural Latino health workers) and other health service providers with the specific knowledge and techniques to address tobacco control, focusing on prevention and cessation.

As elsewhere, when Arizona actively advertised ASHline services, TEPP gained significantly more cessation clients than during periods without publicity. ASH received few calls between August and November 2006 because TEPP cessation services were reduced after TEPP lost its previous Office Chief. Yet after the success of Arizona's statewide clean indoor air act (Smoke-Free Arizona) and the subsequent cessation media campaign run by TEPP for smokers who wanted to quit as part of their New Year's resolution, calls to ASH and requests for cessation services reached close to 500 in the first week of January

Calls to the Arizona Smokers Helpline 2006 vs. 2007



Data Sources: NAU Panel Data, CIF Data, ASHLine Phone System Data

Figure 14. With a 82 cent per-pack tax increase on cigarettes instituted in December 2006, the Arizona Smokers’ Helpline received significantly increased call volume during the first half of 2007 compared to the first half of 2006.¹⁷⁴ When Arizona’s statewide smokefree law went into effect on May 1, 2007, ASHLine calls spiked between April 22 and May 13, before falling back to 2006 levels.

2007 with the ad campaign running.¹⁶⁷ In comparison, ASH received roughly 160 calls a week during the same period the previous year. In 2007 TEPP successfully attracted more smokers to ASH (Figure 14), and because of statewide policy changes and tobacco tax increases, more smokers sought TEPP’s cessation assistance.¹⁷⁴

Partnerships

To build partnerships across the many diverse groups in Arizona, TEPP issued community partnership contracts in FY2006 in addition to the local projects administered by the counties. These contracts included \$1,387,394 for the Inter-Tribal Council of Arizona (including 9 tribes and 3 urban American Indian centers), \$235,151 for the Tanner Community Development Corporation (supporting the African-American community), \$75,000 to the Mountain Park Health Center (supporting the low income community), \$69,967 for Chicanos Por La Causa (accessing the Hispanic community), \$84,952 for Asian Pacific Community in Action, \$67,640 to Wingspan (an LGBT outreach organization), and \$26,354 to the Phoenix Fire Fighters (outreach to schools).

Tobacco Clearinghouse

TEPP also created the Arizona Tobacco Information Network (ATIN) which served as an informational clearinghouse for all tobacco control related work in the state from 1996 to 2004. TEPP began this project by publishing manuals such as *A Good Day’s Work: A Guide for Tobacco-Free Work Sites in Arizona* and *Full Spectrum: A Guide for Tobacco-Free Schools in Arizona*, bringing their education and prevention mandate into the workplaces and schools of Arizonans. These guides gave resources for businesses and schools to voluntarily go smokefree in the absence of strong local and statewide smokefree laws. Based at Arizona State University in the capital, ATIN also had branches at the University of Arizona (which also operated the Rural Health Office’s Arizona Area Health Education Center) in Tucson and Northern Arizona University in Flagstaff. ATIN gained momentum during TEPP’s period of full funding, and was closed in

2004 by TEPP Office Chief Cathy Bischoff in the wake of the legislative budget diversions as a cost-saving measure.

Tobacco-Free Schools

For youth smoking prevention, TEPP's local projects have conducted outreach programs in schools targeting 4th through 8th graders.⁹ School outreach programs target only 4th to 8th grade children because, in contrast to most other tobacco control experts, TEPP administrators believed that high school populations were not responsive to tobacco control messaging. High school smoking prevention is a necessary component of an effective anti-tobacco school program that TEPP conspicuously omitted. Additionally, school-based tobacco prevention programs, while often required to receive federal Title IV funding (the Safe and Drug-Free Schools and Communities Act, part of the No Child Left Behind Act), are one of the least effective methods of preventing children from smoking in the long run.^{175, 176}

Most Arizona schools have received at least a brief anti-tobacco assembly or class presentation intervention, while select groups of schools with students deemed as "high-risk" for tobacco use were given more extensive lessons from an evidence-based anti-smoking curriculum followed up with evaluation. Over the 2005 and 2006 school years TEPP contractors gave courses at 668 schools, 47 percent of all schools containing grades 4-8 in Arizona with 3,363 classes taught and 87,830 students served. This reached almost half of schools deemed high-risk within this age group.⁹ As noted above, it is doubtful that these interventions were effective at actually reducing tobacco use.

In 2003, 30.1% of high school aged males and 22% of females were current smokers.¹⁷²

In FY2005-2006 TEPP put tobacco prevention messages on the sides of elementary school buses. This was the first time school buses had advertisements of any kind, so these TEPP messages were especially noticeable. TEPP also funded the Arizona Interscholastic Association to include tobacco control messaging in its outreach to athletic coaches, parents, teachers, and students. It is not clear why TEPP spent such a significant portion of its resources on funding sports and advertising to young children. Even in 2007 TEPP's prevention "Personal Foul" media campaign only targeted third graders, with no media campaign for young adolescents and adolescents. Based on evidence that using tobacco control program dollars to target young children is an ineffective use of resources.¹⁷⁵ In contrast to TEPP's program, the Pan American Health Organization (PAHO, a regional office of the World Health Organization) recommends instead that school-based programs develop critical-thinking skills in students by integrating "the science of addiction, the effects of second-hand smoke, the role of marketing in selling cigarettes and politics in protecting the tobacco industry, and [the] cost of use" into already existing academic curriculum.¹⁷⁶

Tobacco-Free Workplaces

Until Proposition 201 passed in November 2006, smokefree workplaces were legally mandated in less than half of Arizona, and employees, especially in non-office environments, encountered high levels of workplace secondhand smoke.^{9, 109} In 1999 TEPP published a booklet called *A Good Day's Work: A Guide for Tobacco-Free Work Sites in Arizona*¹⁷⁷ through the Arizona Tobacco Information Network (ATIN) aiming to 1) persuade businesses to voluntarily institute clean indoor air policy by discussing health and business benefits, 2) provide best practices information on how to actually go about instituting a clean indoor air policy, and 3) let employees and business know their rights under law and the resources available to those adopting fledgling smokefree work policies.¹⁷⁷ TEPP emphasized voluntary and individual business policies because TEPP would not get politically involved with clean indoor air policy.

TEPP's Arizona HealthLinks program, running from FY2003 to FY2007 provided worksites with technical assistance in setting up cessation and wellness programs, as well as risk assessment for secondhand smoke for the purpose of providing an intervention to protect workers.¹⁷² Arizona HealthLinks helped

businesses write smokefree workplace policies, fostered smokefree work environments and provided no-smoking signs. While TEPP helped workplaces already willing to institute smokefree business policies (aiding 565 workplaces to make some sort of smoking control policy change in FY2005 and FY2006), by focusing on voluntary case-by-case workplace changes instead of legal policy changes, TEPP took pressure off of communities to enact clean indoor air policies which would benefit all workplaces. TEPP did not develop any educational or capacity building infrastructure to support and encourage the development of local legislation mandating smokefree environments despite the evidence that secondhand smoke public policies were a good way to reduce smoking. TEPP systematically avoided such activities.

Youth-Access Measures

Arizona suffers from low compliance with youth-access laws. In 1996, 36% of retailers checked sold cigarettes to minors in Tucson, and only after a \$3 million grant over 1996-2000 from the Robert Wood Johnson Foundation’s Smoke Less States project did compliance rates improve (in some cases, non-compliance reached as low as 7% during this period in Tucson), while TEPP did little during this period to reduce tobacco sales to minors.¹⁷⁸ Retailer compliance checks are carried out by the Arizona Attorney General’s Office, subcontracted by TEPP starting FY2002. Prior to FY2002, some counties performed their own compliance checks, but aside from various creative forms of shaming the retailer (including publishing in local newspapers the names of retailers who sold cigarettes to minors), there was no consequence for breaking the law.

The Attorney General’s Office performs compliance checks in all 15 Arizona counties throughout the year, with more checks in areas heavier populated, such as Phoenix and Tucson (Table 15). Only police officers can issue a citation. If a retailer sells tobacco products to the undercover volunteer minor, the inspector sends out letters to the retailer, local police departments, and local health departments indicating the date and time of the compliance check and whether or not the retailer passed. Local law enforcement, when present with inspectors (50% of the time in 2006), can fine the retailer, but they cannot retroactively cite the retailer. Arizona’s sting operations helped lower the incidence of selling tobacco to minors from 25% of retailers approached in FY2005, yet FY2006 retail sales to minors nonetheless remained high with 20% of retailers approached violating the law.⁹ In comparison, New York announced that for FY2007 compliance levels reached only 11% of retailers approached sold to minors (n=11,000).¹⁷⁹

FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
736	362	1,296	2,177	2,710	4,643

Surveillance and Evaluation

TEPP’s evaluation management has changed over time, done internally from 1995-2001, contracted out to Arizona State University and the University of Arizona from 2002 through 2007. TEPP’s evaluation and surveillance was in disarray from its inception when it lacked a baseline prevalence measurement until 2001, providing unreliable tobacco use prevalence data, especially for youth. However, since 2002, the Evaluation, Research, and Development Unit at the University of Arizona has provided dependable evaluation statistics standardizing Arizona tobacco prevalence reporting.

The initial phases of evaluation lacked sufficient data and standardized as well as compiled evaluations. TEPP Health Educator Jean-Roberts Jeffroy explained in a 2006 interview that until 1999, “We didn’t have a centralized evaluation, each program individually was doing their own evaluation and my understanding was, there was a lot of evaluation out there, it just hadn’t been brought together, and that was the main criticism from the Auditor General, that we really needed to centralize our evaluations.”¹³⁷

Most of the data TEPP gathered on smoking prevalence between 1995 and 2001 cannot be considered reliable.¹⁹ TEPP used a hodgepodge of methodologies in its evaluation, making comparisons across time difficult. TEPP's 1997 Youth Tobacco Survey Baseline Report used telephone surveys targeting youth aged 10-17, and found 21.2% smoking prevalence for the 16-17 year-old group and 15% for 9th to 12th graders surveyed. The next youth evaluation TEPP conducted in 2000 only received valid surveys yielding a sufficient sampling size from middle school students surveyed; too many of the high school surveys were incomplete and deemed invalid by the CDC. TEPP was forced to omit the high school data, creating gaps in youth prevalence data, even though high school populations (grades 9-12) have substantially higher current smoker rates than middle school populations (grades 6-8). Unlike TEPP's media recall rates and the efficacy of its local projects (such as the number of cessation class participants in a given year), its smoking prevalence information was not methodologically consistent from year to year.¹⁹

From FY2002 through 2007, TEPP contracted the collection of surveillance data with the Northern Arizona University for the Adult Tobacco Survey (ATS). Other contracts were awarded to the Arizona Department of Education for administering the Youth Tobacco Survey (YTS), and the Arizona Criminal Justice Commission for the Arizona Youth Survey.⁹

Table 16 shows TEPP's published evaluations, describes their findings, and cites methodological problems, if any.

The Coalition for a Tobacco Free Arizona

The Coalition for a Tobacco-Free Arizona (CTFA), the tobacco control organization responsible for creating TEPP in 1994 by successfully passing Proposition 200, grew out of tobacco control advocates coalescing in 1990 to sponsor tobacco control policy proposals. While CTFA originally benefitted from ADHS staffing it, ADHS stepped out in 1994 as CTFA became politically involved in passing and implementing the initiative that created TEPP. Leaving ADHS was financially tenable at the time because the Robert Wood Johnson Foundation awarded CTFA a three-year implementation grant in excess of \$1 million to support the creation of TEPP.¹¹

Since 2000, however, when RWJF funding expired, CTFA returned to ADHS's umbrella, becoming completely dependent on ADHS for its funding. Because of this funding change and TEPP's lobbying restrictions, CTFA's previous advocacy operations halted. In order to receive TEPP funding, CTFA could not participate in tobacco control advocacy, and while its original charter included advocacy and policy change as a central tenant, CTFA was forced to amend its charter to remove this language. Without TEPP funding, CTFA could not exist. Yet, with TEPP funding, CTFA also ceased to be a focal-point for public health advocates to pursue tobacco control public policy. Reflecting TEPP's extremely restrictive rules on public engagement, Jill Gomez explained, "we can educate, but cannot advocate or lobby."¹⁸⁹

CTFA performs quarterly trainings for the county health departments and the local projects on a wide variety of tobacco control issues, ranging from "Innovative uses of technology for cessation" to "Smokefree environments." The Coalition also provides technical assistance for statewide projects for TEPP, such as providing speakers to educate TEPP staff members on new developments in cessation and prevention.

External Tobacco Control Programming

In FY1998, TEPP began spending its reserve funds to supplement its yearly revenues to expand the network of project partnerships in Arizona when the first wave of Robert Wood Johnson Foundation (RWJF) grants expired in 1999. RWJF grants originally funded the Coalition for Tobacco-Free Arizona, which brought tobacco control advocates together to pass Proposition 200 in 1994. The RWJF also funded a five-year (from Fall 1995-2000) \$3.17 million grant to develop and implement a youth tobacco use reduction program ("Full Court Press") in Tucson,¹¹ which was effective in decreasing youth prevalence in Tucson

Table 16. TEPP Evaluation Reports			
Year	Name of Report	Significant Findings	Methodological Issues
1996	1996 Arizona Adult Tobacco Survey Report ¹⁸⁰	24% of adult Arizonans smoked. 51.8% surveyed believed smoking should not be allowed in restaurants.	Telephone-based interview reduced number of socioeconomic respondents, and the sample did not survey American Indian Reservations.
1997	1997 Youth Tobacco Survey Baseline Report ¹⁸¹	91% of 10-17 reported no smoking in past 30 days. 97% saw or heard tobacco-prevention message in past month. 15% high-school students smoked.	Unreliable prevalence numbers: Released in May 1998, telephone interview with 5,479 Arizonan children ages 10-17. Low response rate (as low as 50% for Maricopa County).
1998	1997-1998 School Tobacco Policy Survey Report ¹⁸²		Some schools refused to participate.
1998	1998 Workplace Smoking Policy Survey Report ¹⁸³		
1999	1999 Arizona Adult Tobacco Survey Report ¹⁸⁴		
2000	1999-2000 Evaluation Findings for CHAMPS ¹⁸⁵		
2000	2000 Arizona Youth Tobacco Survey Report ¹⁸⁶		Only middle school (grades 6-8) students were evaluated, as TEPP lacked a sufficient volume of valid high school surveys.
2000	2000 School Tobacco Policy Survey Report ¹⁸⁷	Over 92% of schools surveyed adopted tobacco control policies that conform with the law.	
2004	2004 Biennial Report ¹⁷²		First standardized TEPP report.
2005	2003 Arizona Youth Tobacco Survey Report ¹⁸⁸		
2006	Arizona Adult Tobacco Survey 2005 ¹⁰⁹		
2006	Arizona Youth Tobacco Survey Report, 2005 ⁸		
2006	2006 Biennial Report ⁹		

beyond the state average.¹⁹⁰ Fortunately, as the RWJF phased out its tobacco education and prevention programming in Arizona, TEPP became increasingly responsible for other aspects of Arizona tobacco control besides their original confines of youth and pregnant women prevention and adult cessation.

Chronic Disease Fund

TEPP administers the chronic disease account, created in 2002 by Proposition 303, which dedicated 2 cents out of a total 60 cent tobacco tax increase to the Chronic Disease Fund for early detection and prevention of the four most common chronic diseases threatening the lives of Arizonans: cancer, heart disease, stroke, and pulmonary disease. None of this money goes specifically to tobacco prevention, education, or cessation. Yet, many health providers who provide prevention and screenings for these diseases, such as ACS and the ALA, also work in tobacco control. ADHS put the chronic disease projects under TEPP's umbrella so detection and prevention of chronic diseases (for which smoking is the most preventable contributing risk factor) were coupled with tobacco prevention and education, and vice-versa.

TEPP's Oversight Committees

Tobacco Use Prevention Advisory Committee

Following passage of Proposition 200 in 1994, HB 2275, the enabling legislation creating TEPP, authorized the 11 member Tobacco Use Prevention Advisory Committee (TUPAC) to oversee the TEPP funds and programs. TUPAC reported biannual reviews of TEPP evaluation program outcomes and cost effectiveness¹¹⁵ to ADHS, to the governor, the president of the Senate, and the speaker of the House.¹¹⁵ The initial TUPAC board contained both tobacco control advocates and tobacco industry allies from the retail and distributors associations.^{11,24} Despite its general ineffectiveness, TUPAC and its subsequent incarnations did provide a modest institutional barrier to legislative attempts at diverting the Health Education Account funds. Notably, Don Morris, Executive Director of Arizonans Concerned About Smoking (ACAS) and TUPAC board member, worked to expand TEPP's scope to include a cessation program against the will of industry-allied board members.¹⁴⁶ He also was instrumental in achieving TEPP's unrestricted ability to address issues of secondhand smoke by his challenging ADHS Director Dillenberg's restrictions on the media campaign, citing TEPP's founding goals which included decreasing Arizonans' exposure to secondhand smoke.^{11,24,146} TUPAC's commission expired (according to a sunset clause) December, 31, 1999.

Advisory Council on Tobacco Prevention and Cessation

The Advisory Council on Tobacco Prevention and Cessation (ACTPC) served as an interim oversight committee for TEPP from 2000 through 2002, reporting to the Governor's office. Because TUPAC ended on December 31, 1999, Governor Jane Dee Hull on January 28, 2000, issued an executive order to create ACTPC to perform essentially the same oversight role as TUPAC.¹⁹¹ While ACTPC served as an interim ad-hoc advisory committee as it rarely met and did not fulfill the purpose it was intended to serve. Don Morris of ACAS again served on ACTPC as a member for a year before Governor Hull dismissed him following his suggestion that TEPP do more to address issues of secondhand smoke.¹⁴⁶ After Morris' departure, no tobacco control advocates remained on the oversight council.

The Health Education Account budget diversions happened under ACTPC's watch, with no active opposition by the Council.

TRUST Commission

The TRUST Commission (Tobacco Revenue, Use, Spending and Tracking Commission) replaced the interim ACTPC as TEPP's oversight board. Established in 2003 by the Legislature as a result of Proposition 303 to replace the ineffective ACTPC, its stated purpose was to "advise and consult with the Department of Health Services on the goals, objectives and activities of programs that receive monies."¹⁰⁶ It also acts as the de facto liaison between the health community concerned about state tobacco control and the government program.

TRUST Commission members were initially appointed by the Legislature, though after the initial commission, new members were appointed by the TRUST Commission Nominating Committee, in conjunction with TEPP (Table 17). The criteria was used for appointing members with expertise in:

1. Public health services.
2. Tobacco cessation or tobacco addiction programs.
3. School-based tobacco education programs.
4. Marketing or public relations.
5. Research and evaluation of public health programs.¹⁰⁶

The TRUST Commission members have taken their roles very seriously, yet several members have expressed doubt over the efficacy of the board. This concern may be due to TEPP’s general ineffectuality from 2002-2006 or it could be a sign that the TRUST Commission’s recommendations need to be more closely followed, and that more TEPP staff members need to participate in TRUST Commission meetings and interact more frequently with the Commission.

Linda Baily	President and CEO of North American Quitline Consortium
Will Counts, PhD	Gateway Community College
Benton Davis	Chief Executive Director, United Healthcare - Western States
Nancy Hook	Hook & Associates, LLC
Kelly Hsu, MD	Asian Pacific Community in Action
Scott James Leischow, PhD	Professor, Department of Family and Community Medicine; Deputy Director, Arizona Cancer Center
Matthew Madonna	Former Executive Director of the American Cancer Society Western States Division
Violet Mitchell-Enos	Salt River Pima-Maricopa Indian Community Director, Health and Human Services
Dr. Babak Nayeri	Medical Director, Native Health
Bill J. Pfeifer	President and CEO, American Lung Association of AZ/NM
Librando M. Ramirez	Executive Director, SE Arizona Community Action Program
Dana Russell	Chief Executive Officer, Native Americans for Community Action
Ronald Sparks, MD	University of Arizona, Department of Pathology

Conclusion

Tobacco control advocates commented that TEPP was experiencing the same problems in 2007 it dealt with 10 years prior.^{12, 135} The turnover rate of staff from 2005-2007 left TEPP with not a single long-standing employee in 2007. While TEPP’s new staff composition appears enthusiastic to turn over a new leaf in the book of TEPP’s history –engaging in a strategic planning process, creating new positions, increasing spending, re-contracting media with Riester, even changing TEPP’s name to BTEP (the Bureau of Tobacco Education and Prevention) – it is unclear whether all these changes will solidify into lowered tobacco use prevalence and consumption.

TEPP has been slow to keep up with Arizona’s public sentiment on tobacco control, which appears to be significantly more advanced in leading tobacco control policy than TEPP. Since 2002, when Proposition 303 successfully restored funding to TEPP after its FY2002 diversion, TEPP has neglected to make full and productive use of its funds. TEPP’s priorities have been misplaced, dedicating significant funding on school programs and youth access inspections that often failed to fine violators rather than on hard-hitting media prevention campaigns.

Arizona’s statewide smokefree law, passed in 2006 (Proposition 201), raised the bar for how TEPP must operate. TEPP will have to shift its focus away from projects encouraging individual workplaces to go smokefree, and move toward increasingly effective media campaigns to prevent future generations of children and young adults from becoming smokers. TEPP must also educate both adolescent and pre-adolescent populations if it is to continue school tobacco prevention programs. Additionally, TEPP’s partnering with county health departments to encourage adherence to Smoke-Free Arizona will also promote smokefree social norms in Arizona.

NATIVE AMERICAN TOBACCO CONTROL

Tobacco control policy and law in Arizona do not effect the 5.6% of Arizonans who are Native American (2005 Census) and live on reservations, because Arizona laws do apply on tribal lands under the

sovereignty of First Nations. Arizona has seven tribal nations and three urban Indian centers. Native Americans use commercial tobacco more than any other ethnic group in Arizona (Figure 15).⁸ Current commercial tobacco use prevalence was 52% in 2003¹⁸⁸ and 51% in 2005 for high school-aged native Americans.⁸

In contrast to having almost double the youth prevalence of any other ethnic group in Arizona, there are no reliable Native American adult prevalence statistics, but prevalence is estimated to be very high.¹³⁵ TEPP's Arizona 2005 Adult Tobacco Survey reported 23% of Native American adults smoke, up from a reported 12% prevalence for the same population in 1996.¹⁶¹ The report includes the caveat that the "American Indian samples are considered unstable due to the smaller numbers in the sample (less than 150 people), and thus may not be representative" of actual smoking prevalence.¹⁶¹

TEPP's report on Native American tobacco usage only includes smoked tobacco, omitting smokeless prevalence. According to the Southwest Navajo Tobacco Education and Prevention Project (SNTEPP), a Navajo-initiated organization funded by 5 year grants from the Robert Wood Johnson Foundation and the CDC in November 2006, 56% of Navajo 9th and 10th graders chew smokeless tobacco, 37% of Navajo men chew tobacco, and 31% of Navajo women chew tobacco.¹⁹² Reliable tobacco use prevalence numbers are difficult to achieve for First Nations populations, because commercial versus traditional tobacco use can sometimes be conflated by respondents, and many Native Arizonans living on reservations do not have telephones and so are not included in telephone surveys.¹³⁵

It could be the case that high commercial tobacco use contributes to the fact that the mean Native American life expectancy in Arizona in 2005 was nearly two decades lower than the rest of the population, 53.4 for Native Americans versus 71.5 years for Arizona's general population.¹⁹³

Nationwide, all Indian Health Services hospitals are tobacco-free campuses (no smoking even outside the buildings). Additionally, since 2005 Arizona's Hopi reservation's comprehensive clean indoor air law, all workplaces and restaurants are smokefree, disallowing smoking within 50-feet of all buildings (bars and casinos are not allowed on the Hopi reservation).

The Southwest Navajo Tobacco Education and Prevention Project aims to reduce Arizonan Navajo (Diné) tobacco use prevalence through education, cessation, and prevention programs. One of their main objectives is working towards tribal policy changes in commercial tobacco to protect the health of members.¹⁴³ SNTEPP proposed a comprehensive smokefree policy to the Navajo Tribal Council Health and Social Services Committee on November 27, 2007 to protect the tribe from commercial tobacco use while respecting traditional use.¹⁹⁴ The Health and Social Services Committee voted unanimously in favor of SNTEPP's proposal, recommending it to other committees that will vote on the proposed policy, and to the full Tribal Commission (the equivalent of committees referring a bill to the legislative floor). SNTEPP's commercial tobacco-free ordinance proposal included raising tobacco taxes on the reservation \$1.00 to the same level as the state of Arizona (\$2.00), enacting comprehensive smokefree indoor air for workplaces, restaurants, and bars, and included a separate proposal to create smokefree indoor air for Navajo casinos. (At the time, the Navajo did not have any casinos in Arizona, but intended to open their first of five planned casinos in July 2008.)

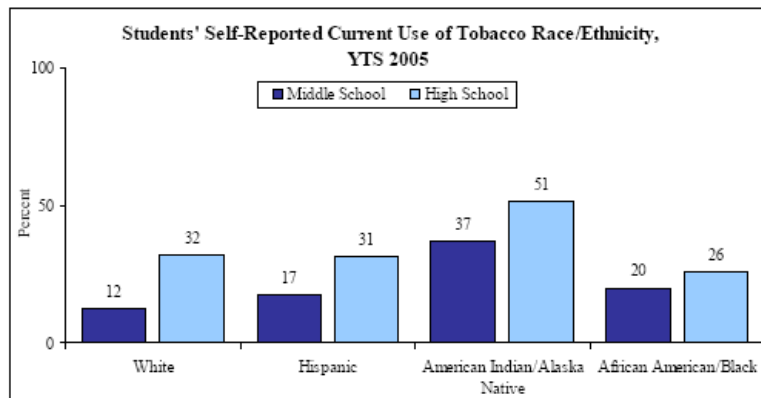


Figure 15. According to TEPP's 2005 Youth Tobacco Survey, 51% of American Indian high school students used tobacco, 19% higher than any other ethnic group.⁸

Navajo tobacco control advocates working with the tribal government to enact health policy benefitting tribal members appears a more successful route at ensuring Navajo public health than Arizona state government interventions. Marty Eckrem, TEPP employee in Coconino County (which includes the Navajo territory) commented that because of unresolved contract disagreements, “Unfortunately, the Navajo Nation is not really covered” by Arizona’s state tobacco control services.¹⁴³

While TEPP has made some effort to provide outreach to Native American communities, these efforts have not been effective. In 2007, the Tohana Oldum and Walapai Nation were the only two nations receiving TEPP mini-grants (around \$10,000) to provide support for commercial tobacco prevention and cessation services.¹³⁵ TEPP’s “Breathe Life” campaign in FY2006 marketed a tobacco prevention message to Native Americans through AlterNatives, a media agency specializing in social marketing to Native Americans. Yet TEPP only began tailoring media to the Native American community in 2001, and through 2007 had not developed a successful method of supporting a *Promotoras* styled tobacco education program for tribes.

Between 2004 and mid-2007 TEPP did employ a Native American Outreach Coordinator, Beau Cordova, to facilitate attempts at tribal/TEPP collaboration. In a 2007 interview, Cordova reported, “Before I came onboard [TEPP in 2004], there were many issues the tribes had with working with the state.”¹³⁵ His position “originally started as a liaison position between the tribes and TEPP.”¹³⁵ In 2005 Cordova was moved to TEPP’s central office when Patricia Tarango became Office Chief, removing him from the frequent face-to-face interactions with the communities he was hired to help. Cordova felt he was more effective in “the Liaison role... [because that role] really acknowledged the sovereignty of the tribes/nations.”¹³⁵ Moving the Native American Outreach Coordinator position into TEPP’s Phoenix office weakened the ties between TEPP and Arizona’s tribes as it reduced direct contact with the tribes. Cordova left TEPP in June 2007, and as of December 2007, no one had filled the Native American Outreach Coordinator position.

TEPP’s media component has not been successful in reaching the Native American demographic. The Intertribal Council of Arizona (ITCA) receives no funding directly to conduct their own media efforts. Instead, TEPP contractors direct the media campaigns and receive all of the media prevention and cessation funding. While who gets the funds to implement media campaigns and outreach is unimportant, the fact of increased Native American tobacco use prevalence indicates that TEPP must use a different strategy.

Another issue reservations encountered was the fact that cigarettes cost \$1.00 less in tax per pack in 2007 than they cost off-reservation because three out of Arizona’s five tobacco tax increases do not apply on the reservations. The other two tobacco taxes (Proposition 200 in 1994 and Proposition 303 in 2002) apply because their ballot language included reservations in the tax scheme, while the other three tobacco taxes neglected to include the necessary additional language which would include reservations. While only tribal members were supposed to be able to purchase the reduced tax cigarettes, some Arizona non-native smokers go to reservations to buy reduced-tax cigarettes. There is no concrete data substantiating claims that more than a negligible number of Arizonan smokers buy the reduced-tax cigarettes from reservations, although various billboards around the state advertised cheap cigarettes on reservations. The revenue-generating sale of tobacco for the tribes makes it more difficult for Native American tribes to pass smokefree laws and tobacco tax increases.

LOCAL TOBACCO CONTROL EFFORTS

When the 1994 initiative Proposition 200 coalition was created and the Arizona Hospital and Healthcare Association (AzHHA) backed it with significant financial support, the tobacco industry threatened to retaliate against the hospitals. The tobacco industry threatened that if the hospitals backed Proposition 200, the industry would bring to ballot a proposition to regulate the hospitals as utilities.¹² In response, AzHHA president John Rivers initiated Project Rolling Thunder, a plan to pass comprehensive clean indoor air acts locally, as a way to force the tobacco companies to fight local clean indoor air ordinances in every

Arizona city of 10,000 inhabitants or more rather than pursuing regulation of hospitals. Rivers was never forced to use this tactic because the tobacco industry threat against the hospitals turned out to be a bluff. However, tobacco control groups started working towards the very aim Rivers had devised, although their clean indoor air laws passed one-at-a-time rather than simultaneously. Despite the fact that Rivers initially kept close to the vest the threat leveled by the tobacco industry and Project Rolling Thunder's smokefree cities strategy, the tobacco industry's general challenge to Proposition 200 served to galvanize Arizona tobacco control advocates to achieve city-by-city clean indoor air ordinances in a manner Arizona never previously encountered.

The local ordinance battles were some of the toughest the tobacco control community in Arizona encountered; even after a local smokefree ordinance passed, tobacco industry front groups would often attempt to amend or repeal voter-approved measures, occasionally for years. Lawsuits and campaigns for exemptions were also frequent, alleging negative economic impact would or did ensue (according to testimonials, not actual sales tax data) following the passage of clean indoor air ordinances.

Arizonans Concerned About Smoking (ACAS), the grassroots organization founded in 1966 by Betty Carnes, and one of the first nonsmokers' rights groups in the United States,¹¹ led the charge in passing most of Arizona's local smokefree ordinances. The sustained (albeit modest) funding of \$45,000 a year ACAS receives from an endowment set up by Carnes¹⁹⁵ enabled ACAS to play a major role as an independent organization in achieving Arizona's tobacco control victories. Led by Dr. Leland Fairbanks and Dr. Donald Morris, ACAS's single-issue focus on tobacco control made ACAS more dedicated, and often (as in the case of Tempe versus the East Valley Ordinance) more effective than the national voluntary health associations. By far the most progressive tobacco control organization in Arizona, ACAS often times forged ahead in successfully furthering tobacco control efforts despite the health voluntaries rather than because of them.

The cities discussed below had noticeable effects on tobacco control in Arizona, either because they achieved strong smokefree ordinances, or because the political brouhaha surrounding the passage furthered the course of tobacco control in Arizona by providing public debate leading to denormalizing tobacco. These local ordinances also laid the foundation for the successful effort, through Proposition 201 in 2006, to pass a strong statewide clean indoor air act.

Mesa

The City of Mesa in 1996 enacted by voter initiative the first significant clean indoor air act in Arizona, approved with 55% support.^{11,24} The ballot initiative mounted by Mesa for Clean Air on March 26, 1996, covered indoor areas including all bars, restaurants, pool halls, and hotels.¹¹ The Mesa Smoking Control Ordinance took effect July 1, 1996, with a hardship exemption for bars making more than 50% of their sales from alcohol that allowed for a separately ventilated smoking area. Before the law even became effective, it was challenged.

While the Tobacco Institute funded "no" campaign was unsuccessful in preventing the Mesa Clean Air ordinance from passing, another tobacco industry challenge to the ordinance appeared in October 1996 when the National Smokers Alliance (a front group the public relations firm Burson-Marsteller created for Philip Morris¹⁹⁶) created an organization called Citizens to Repeal Proposition 200 (in this case, the Mesa for Clean Air initiative, which was also designated Proposition 200). Led by former Mesa mayoral candidate Kat Gallant, Citizens to Repeal Proposition 200 gathered signatures for the purpose of forcing a special election to recall the ordinance. Citizens to Repeal Proposition 200 claimed large losses to business and sought the tobacco industry's policy of "accommodation"³⁰ of smokers and nonsmoker rather than laws requiring smokefree environments. Even though the City of Mesa had already granted exemptions to all 13 restaurants that applied for exemptions under the hardship clause in the law, which allowed that restaurants proving more than 15% reduction in sales over four months could apply for a partial and temporary exemption, the opponents wanted to stop the impending inclusion of restaurant bars.

In response to this threat mobilized by the National Smokers Alliance to force a special election which would have cost the City of Mesa an estimated \$100,000, the Mesa City Council weakened the ordinance between July and December 1996 to exempt bars that made more than 50% of their sales from alcohol, rented hotel meeting rooms, banquet rooms, and the outdoor areas of restaurants (all previously smokefree under the ordinance).

Despite the facts that the public had passed the original ordinance and the Council weakened the ordinance, the National Smokers' Alliance still forced a public vote on the weakened version of the ordinance in March 1998. Mesa citizens voted 69% to 31% to preserve their smokefree ordinance. The Mesa ordinance as it stood in 1998 ended smoking in workplaces, restaurants, and restaurant-bars, and allowed smoking in bars that derive over 50% of their revenue from the sale of alcohol. Mesa's law, in effect since 1996, inspired many subsequent local clean indoor laws, and until Tempe passed its law in 2002, was the strongest smokefree policy in Arizona.

Tucson

In 1985, Tucson had been the first city in Arizona to make workplaces smokefree, although it exempted restaurants and bars. Nonsmokers, Inc., the Tucson group headed by Arizona tobacco control advocate Karen Zielaski (who continued to run an Arizona tobacco control listserv) that helped win Tucson's (progressive for 1985) ordinance, and a long-term tobacco control advocacy force in Tucson, dissolved in December 1997.¹⁵ A new group, Tucson Clearing the Air, formed a year later, including many former members of Nonsmokers Inc., to work in the new tobacco control environment in Arizona. Clearing the Air came together primarily through physicians from Tucson including Keith Kaback and Joel Meister, who served leadership roles. Tucson Clearing the Air guided a smokefree workplaces and restaurants ordinance through the Tucson City Council in 1999 and the Pima County (which includes Tucson) Board of Supervisors in 2001.

In 1999 Tucson Clearing the Air lead the movement to get the Tucson City Council to pass 4-3 a smokefree ordinance that made all restaurants smokefree. The ordinance, passed in April, went into effect October 1, 1999. By working with the City Council, the group avoided the expense of a ballot campaign. Tucson Clearing the Air did not encounter opposition, though after the council passed the ordinance the Arizona Restaurant and Hospitality Association (unsuccessfully) sought exemptions to extend the hardship clause by a year, instead of the three months given to businesses. Tucson's ordinance gave restaurants until January 2000 to file for hardship exemptions if they could show with tax receipts that they had sustained a two consecutive months of 15% or greater loss of business compared to the previous year. Few exemptions were granted. The six-month delay sought to give Pima County (where Tucson is located) the opportunity to pass a similar smokefree law bringing the clean indoor air ordinance region-wide. Pima County, however, would not pass an ordinance until 2001.

Pima County

Due in large part to Arizonans Clearing the Air (see below), Pima County adopted a clean air ordinance including restaurants but not bars on October 9, 2001. The ordinance had come before the Pima County Board of Supervisors twice before in the previous two years, as Tucson tobacco control advocates urged Pima County to follow Tucson's lead. Arizonans Clearing the Air lobbied the Pima County commissioners, and banking on the success of this same measure two years prior in Tucson, Pima County's largest city, the Supervisors voted 4-1 for smokefree restaurants and workplaces. This ordinance covered unincorporated areas in Pima County, including workplaces and more than 400 restaurants.

Philip Morris consultants exchanged many emails as Pima County's clean air ordinance was being considered, in which they discussed mounting a signature gathering campaign costing \$80,000 to \$100,000 to place the Pima County smokefree ordinance on the next year's ballot.¹⁹⁷ An email sent weeks before the

ordinance passed from Philip Morris lobbyist John Mangum to tobacco industry lobbyists and consultants Jack Dillard, Rip Wilson, and Trisha Hart (Philip Morris Arizona representatives and lobbyists) describes how “we have been successful in delaying the proposal for the last 6 months,” even though Mangum did not “think [they] are succeeding in defeating it, despite yeoman efforts on the ground and substantial support and \$\$\$ from PM and the other companies.”¹⁹⁸

Mangum explained the significance of the Pima County effort in a September 19, 2001 email: “Pima County has about 15% of the states [sic] population, with only 4 or 5 cities. If the ban effort is successful here I anticipate the battleground will immediately move to Maricopa County [which includes Phoenix] where 70 to 75 percent of the population resides. We already are under attack in 7 or 8 of the 19 incorporated cities in Maricopa County.”¹⁹⁸ The tobacco industry opposition to the Pima County clean indoor air ordinance largely resulted from this fear: “If we lose Pima County the pressure on local government in the Phoenix area will be enormous.”¹⁹⁸

Although the Pima County smokefree ordinance was viewed as only a moderate gain by tobacco control advocates as it exempted bars, Philip Morris Arizona representative Jack Dillard viewed Pima County as the tipping point for smokefree ordinances in Arizona prior to its passing, and suggested a statewide preemptive ballot initiative rather than attempting to gather 19,000 valid signatures in Pima County to force a vote on the ordinance.¹⁹⁹ Dillard acknowledged the tobacco industry’s defeat: “All we have to offer the public as an alternative to the new [Pima County] ordinance is a continuation of smoke filled hospitality venues.”¹⁹⁹

The success of the Pima County ordinance led the incorporated town of Oro Valley to adopt a similar ordinance later the same year, in November, 2001.

Arizona Clearing the Air

A Robert Wood Johnson Foundation (RWJF) Smokeless States Initiative grant from 2001 to 2004 helped Arizona to raise the standard for clean indoor air laws and continue denormalizing tobacco use. The more than \$900,000 grant over three years funded the creation of the Arizona Clearing the Air (ACTA) coalition managed by ACS with Andrew Ortiz as the director of the program. (Marco Albarran briefly served the position before Ortiz.) This grant required the ACS, AHA, and ALA to provide matching funds, which went to fund the campaign-related expenditures, as the RWJF grant could not be used for direct political lobbying. The voluntary health organizations, along with Andrew Ortiz, coordinated Arizona Clearing the Air, which played a similar role that the RWJF-funded Coalition for Tobacco-Free Arizona had provided in the early 1990s. ACTA participated in passing 11 of the 17 local clean indoor air ordinances in place in Arizona by the end of 2004, providing strategic support and expertise to every local campaign during this period.

Part of ACTA’s role involved developing a media campaign through the Riester advertising firm to educate communities on the value of clean indoor air ordinances. Despite ACTA’s organization and technical support on the local level, these local smokefree ordinances were, of course, dependant upon the political will of local city councils and the support of local tobacco control advocates. This meant that in a city like Phoenix, where the City Council was not receptive to considering a clean indoor air ordinance, ACTA’s hands were tied. ACTA director Andrew Ortiz commented in a 2007 interview that, until 2004 when the statewide coalition developed for the Smoke-Free Arizona initiative, “we were working piecemeal, city-by-city, sometimes working with county governments, so it was much easier for the opponents to stay collectively arrayed against us.”²⁰⁰ Without a state-level approach to enacting clean indoor air in Arizona, ACTA’s expertise and resources could only reach those communities already primed to pass an ordinance (as ACTA’s grant did not allow it to organize smokefree initiatives). Nonetheless, ACTA’s role as a catalyst and technical support resource was crucial to the success of many of the local smokefree ordinances from 2001 through 2004.

Surprise

The small city of Surprise passed a smokefree ordinance through the City Council, 5-2 on January 10, 2002. It went into effect February 10 and prevented smoking “in any enclosed place where the public gathers,” including restaurants, businesses and government buildings. It excluded freestanding bars, smoke shops, 25 percent of all motel rooms, and outdoor areas as long as smoke does not enter buildings.²⁰¹ First time violators were fined \$100. Surprise became the first city in the West Valley of the metropolitan Phoenix area to end smoking in restaurants and workplaces, and helped spark Goodyear and other cities to act similarly.

A grassroots group of Surprise citizens affiliated with ACAS first raised the issue when it filed a petition with signatures to put a smokefree city ordinance proposal on the March 2003 ballot, but the City Council, not wanting to wait a year for the election, decided to address the issue through the Council. A December 2000 poll by O’Neil Associates Inc. conducted for ACAS and ACTA had previously found 74% of Surprise voters favored smokefree enclosed public spaces.²⁰² The importance of Surprise’s ordinance lies in its timing because it happened just as the whole metropolitan Phoenix area attempted to negotiate a region-wide smokefree law, including input from the Maricopa County (which includes Phoenix and 75% of Arizona’s population) Board of Health. Surprise’s City Council’s leadership inspired tobacco control advocates to take the lead and create smokefree ordinances throughout Maricopa County.

Gilbert

In the East Valley (of Phoenix Metropolitan Area, including the cities Gilbert, Tempe, Chandler, and Scottsdale), the town of Gilbert passed a clean indoor air ordinance on May 1, 2001 based on Mesa’s weakened 1996 ordinance that included workplaces, restaurants, bowling alleys and bingo halls, but excluded bars and restaurant bars and allowed for an exemption for restaurants “anticipating” a loss in revenues. Enforcement began November 12, 2001. Adopted unanimously by the Gilbert City Council, the ordinance was a product of Mayor Cynthia Dunham’s efforts in bringing the city, health groups, and local chambers of commerce to the table.²⁰³

Gilbert became the testing grounds for the “model ordinance” drafted by Jessica Pope, Government Relations Director of the Southwest Region of the American Heart Association and Eric Emmert of the East Valley Chamber of Commerce whom were working together to develop a region-wide smokefree law designed to be a model for all cities in the East Valley, including Chandler, Tempe, and Scottsdale. As a result of political compromises with Eric Emmert of the East Valley Chamber of Commerce, however, Gilbert’s “model ordinance” contained compromises particular to the politics of passing the ordinance in Gilbert that would have been passed down to other cities, including the “opt out” provision of anticipated hardship.²⁰⁴ The voluntary health organizations supported this weak ordinance as their model. Pope explained her reticence to include smokefree bars in Gilbert and the model ordinance for the East Valley on March 30, 2001, when she told the *Southwest Valley Tribune*, “We feel we should write an ordinance that reflects what the public wants. I understand where Dr. Fairbanks is coming from [in wanting to include bars as a health rather than a political issue] and I agree with him, but Arizona is not ready for smoke-free bars. In time, I think Arizona will get there, but we’re not there yet.”²⁰⁵ While Pope and Emmert sought a region-wide smokefree ordinance excluding bars, Fairbanks, who had disagreed with this exemption, actively resisted the AHA’s exemption-laden smoking ordinance proposal.

Gilbert’s smokefree ordinance was not progressive for its time. The Gilbert ordinance allowed for hardship exemptions in restaurants showing 15% or greater loss in revenue compared to the previous year and allowed for separately sealed-off and ventilated smoking rooms for bar sections of restaurants. In addition to allowing hardship exemptions, the ordinance also allowed for *anticipated* hardship exemptions, that is, it permitted exemptions from the smokefree ordinance before evidence of economic harm occurred and prior to enforcement of the ordinance.²⁰⁵ At the time of the ordinance’s implementation in October 2001,

seven restaurants were granted exemptions. Former Americans for Nonsmokers' Rights staffer Tim Filler suggested in a 2007 interview that because the health voluntaries' push for the clean indoor air ordinances was funded by a Robert Wood Johnson Foundation grant which they hoped to renew, there may have been pressure on the health voluntaries to go for quantity rather than quality in passing smokefree ordinances.²⁰⁴

East Valley Ordinance: Much ado about nothing

Several attempts at regional tobacco control existed prior to the 2006 statewide effort. Most notably, from September to December 2001 Phoenix area chambers of commerce and voluntary health associations entertained collaboration on a Greater Phoenix Area East Valley clean indoor air ordinance which would have provided uniform standards across the region. While the proposed clean air ordinance would have been a slight improvement on existing smoking policies – at the time most cities in the area only addressed municipal buildings and non-smoking sections in restaurant – the compromise ordinance was substantially weaker than Arizona's benchmark ordinance at the time, the 1996 Mesa ordinance, which mandated smokefree restaurants and restaurant bars but exempted stand-alone bars with class-6 liquor licenses. Instead of surpassing the weakened Mesa ordinance, the East Valley regional smoking ordinance would have ended smoking in restaurants in Gilbert, Scottsdale, Chandler, and Tempe, while not addressing bars or the bar portions of restaurants. During the stalled negotiations for the regional smoking ordinance, ACAS President Lee Fairbanks realized a region-wide smokefree ordinance including bars was not likely to materialize through the current chambers of commerce-health voluntary negotiations, so he started working on a petition for the Smoke-Free Tempe initiative, which would become the most comprehensive clean air ordinance in Arizona.

Because the business-health coalition was attempting to hammer out a regional clean indoor air policy for the entire Phoenix Metropolitan region, both sides were willing to accept certain compromises. Restaurants would be smokefree, a stricter standard than the nonsmoking sections most of cities involved had on the books. But the catch to the region-wide agreement, however, was a caveat to only implement the law if Phoenix also passed the same ordinance.

The main flaw of this policy was that the “model ordinance” the voluntaries (led by the AHA) and the East Valley Chamber of Commerce initially agreed upon included a hardship exemption for anticipated hardship, not proven hardship.²⁰⁴ The health voluntaries came to the table to negotiate with the business community from an already compromised position, leaving the East Valley ordinance a model only for pro-tobacco interests.

Phoenix: Arizona's Hurdle

The major gap in Arizona's local tobacco control has perpetually been Phoenix. In response to the discussion regarding a region-wide East Valley and Phoenix no-smoking ordinance proposed by Eric Emmert of the East Valley Chamber of Commerce together with the health voluntary organizations, Phoenix Mayor Skip Rimsza shrugged off the idea of Phoenix joining the plan, responding to reporters in a 2002 interview, “I know other cities are struggling with this [smoking ordinance] issue, but it has not hit our radar screen at all.”²⁰⁶

By 2004, however, the Phoenix Environmental Quality Commission, a standing Phoenix City Council-appointed board of 15 volunteers, examined smokefree ordinance options for Phoenix, and asked the Phoenix City Council to support policy implementing a regional or statewide smokefree law covering at least workplaces and restaurants.²⁰⁷ The Commission's recommendation, along with the East Valley chambers of commerce and the health voluntaries' pressure to join in the region-wide smoking ordinance was not successful.

Realizing that their capital city leaders did not have the political will to adopt a smokefree ordinance, and Arizona's state Legislature would not pass a smokefree law, the statewide smokefree initiative campaign

organizers viewed a statewide campaign as primarily benefitting Phoenix by providing it with smokefree coverage when government leadership was reticent to act.

Despite the existence of organizations such as Smoke-free Phoenix and the AHA, ALA, ACS, and ACAS working between 2001 and 2005 to influence Phoenix city smokefree policy, Phoenix stood stubbornly with its 1988 policy that allowed smoking virtually in all public places including workplaces, as long as the establishment was accompanied by proper signage, the tobacco industry's "accommodation" solution.³⁰

Phoenix's refusal to address the smoking issue inhibited other cities in the greater Phoenix region from acting because of economic worries that smokefree ordinances would cause an exodus of smokers to cities without ordinances, which in the metropolitan area often meant merely crossing the street. Scottsdale Mayor at the time Mary Manross told *The Arizona Republic* in 2003:

I've been saying from the beginning that the most effective, equitable way to address this is from a statewide approach that would level the playing field and address the health concerns... Phoenix is the largest city in the Valley, and with 1.3 million people, it needs to be on board. I think with a citizen-initiated statewide effort, that will happen. It's better to take a little longer and do it the right way.²⁰⁸

Only by initiating smokefree ordinances locally, however, could the movement gain enough momentum to mount a statewide smokefree campaign to overcome Phoenix's inertia.

Guadalupe

On May 9, 2002, Guadalupe became the first locality in Arizona to pass a comprehensive smokefree ordinance that included bars. The vote by the all-female Guadalupe Town Council was unanimous and without opposition. Guadalupe is a small (5,228 in 2000) town, predominantly Yaqui native (80%) and Hispanic. The town is also home to a population of *Promotoras*, community health workers providing tobacco prevention, education, and cessation, so Guadalupe already was familiar with tobacco control.

ACAS and Dr. Lee Fairbanks were instrumental in encouraging Guadalupe's Town Council to consider the clean indoor air issue. After Fairbanks drafted the language for the Tempe smokefree ordinance in early 2002, he framed the issue of passing a 100% smokefree ordinances as an historic opportunity in which the city that passed the first 100% smokefree ordinance would be the model for other cities. In an interview in the *South Tempe Voice* in March before Guadalupe and Tempe went 100% smokefree, Fairbanks speculated, "Guadalupe may beat Tempe by being the first in Arizona to adopt a proposition banning smoking in all workplaces. If they do, it proves Guadalupe is bigger than its geographical boundaries."²⁰⁹ Although at the time Fairbanks and the ACAS were pouring the majority of their time and resources into passing the May Smoke-Free Tempe initiative, the adjoining town of Guadalupe quickly passed its ordinance, earning the honor of being the first locality in Arizona to pass a 100% clean indoor air ordinance. This success built additional support for Tempe's clean indoor air ballot initiative which would go to vote less than two weeks later, since Guadalupe proved to Tempeans the feasibility of achieving a 100% smokefree ordinance.

The Tempe for Healthy Smoke-Free Workplaces Initiative

While Guadalupe's comprehensive smokefree ordinance passed without incident in its Town Council, out of all of the smokefree ordinances passed in Arizona, Tempe's had both the most organized opposition and played the greatest role in setting into motion the statewide smokefree initiative that would come in 2006. Tempe's success in passing Arizona's first comprehensive smokefree city ordinance including bars by initiative (rather than Guadalupe's success via town council) on May 21, 2002 surprised the voluntary health organizations who believed Arizona was not "ready" for smokefree bars and convinced them Arizonans wanted 100% clean indoor air.^{203, 210} Dr. Leland Fairbanks and Arizonans Concerned About Smoking

(ACAS) created the momentum for Tempe's groundbreaking smokefree ordinance initiative, Tempeans for Healthy Smoke-Free Workplaces, by investing the time and money necessary to run a viable local ballot initiative campaign.

Tempe (pop. 165,796 in 2005) is home to Arizona State University and Mill Avenue, a central artery of bars, clubs and other venues which cater to the partying University population. A suburb of Phoenix, Tempe has a large student population, which led skeptics to think Tempe would be the last major city in Arizona to pass a comprehensive smokefree ordinance, not the first.²¹⁰

As discussed earlier, in 2001 the heads of the greater Phoenix area city governments met with health groups and business leaders to hammer out a region-wide "East Valley Ordinance" that would be amenable to business groups.²⁰⁴ However, as political compromises and concessions began to unravel the East Valley regional ordinance, the voluntary health organizations' acquiescence in exempting bars for the regional model ordinance led to Fairbanks and ACAS to strike out on their own in Tempe.

In Summer 2001, the Tempe City Council refused to allow Fairbanks to discuss the possibility of a smokefree ordinance at their City Council meeting or put it on the agenda. The only Council member vocally sympathetic to the smokefree ordinance was Dennis Cahill, but he could not help Fairbanks with the Council (though he would publically endorse the initiative campaign). The next day Fairbanks collected the forms necessary to place an initiative on the May, 2002 ballot, filed with the City Clerk, and began gathering over 20,000 signatures for a law that would make all indoor spaces in Tempe smokefree, including bars. He submitted the required signatures in December, 2001 for the Tempe for Healthy Smoke-Free Workplaces initiative. ACAS spearheaded the effort, contributing almost the entire \$100,000 the campaign raised.

ACAS's action threatened to disrupt the alliances the health groups had formed with business leaders and chambers of commerce to pass their weak regional smoking ordinance (which never succeeded because of Phoenix's unwillingness to participate), so the health voluntaries attempted to dissuade the ACAS from pursuing their separate (and comprehensive) smokefree ordinance in Tempe.²⁰⁴ Because ACAS included bars, the one indoor area in which the voluntary health organizations were willing to allow smoking, ACAS did not enjoy the initial support of ACS, AHA, and ALA. These groups believed 1) Arizona was not ready to include bars, and 2) the ACAS did not have the support necessary in Tempe to include bars.²¹⁰ ACAS soon proved the health voluntaries wrong.

At the same time, the health voluntaries' strategy of remaining in agreements with regional chambers of commerce was falling apart. Gilbert's weak smokefree ordinance was to serve as the voluntaries' model and Scottsdale Mayor Mary Manross had just announced that if Phoenix was not going to be part of the ordinance, then Scottsdale would not either, and Phoenix had made clear that they were not going to budge. Meanwhile, Fairbanks was demanding direct policy decisions from city councils instead of waffling on whether or not to go ahead with a smokefree ordinance.

In February 2002, as the Tempe smokefree initiative entered the crucial phase of the campaign when it encountered an opposition campaign organized by local bar owners, Fairbanks observed, "If people think something's happening on a regional level, they might say, 'We don't want to be too hasty in Tempe.'"²⁰⁶ As the Tempe campaign geared up, the conflicting efforts between the health voluntaries and ACAS grew. ACAS focused on passing the Tempe ordinance and the health voluntaries attempted to recoup the investment in time and energy spent in the long previous months, desperately trying to bring the East Valley chambers of commerce back to negotiate on a regional anti-smoking ordinance after Phoenix made clear it would not participate.²⁰⁴

The Campaign

Until late March 2002, many of the voluntary health organizations refused to publically support the Tempe campaign or contribute financially, because they did not believe that a smokefree initiative including bars could be passed in Arizona. ACAS adamantly insisted on including bars in the measure, because, according to Fairbanks, “workers in bars are the most at risk, and thus they most need the protection of a smokefree environment.”²¹⁰ The American Lung Association, the American Heart Association, and Americans for Non-smokers’ Rights actively fought ACAS and continued to propose a weaker act because they viewed a full smokefree initiative including bars as untenable and undermining these groups’ efforts to make some progress in other cities.²¹⁰

Only when Tempe’s Proposition 200 neared election day with polling indicating public support for the measure did the voluntary health organizations come to ACAS’ aid. The health voluntaries’ support, both political and financial, though delayed, proved crucial in boosting the momentum ACAS needed to propel the ordinance to success, providing 10-20% of the campaign’s total budget and publically supporting Proposition 200.

On May 21, 2002, the Tempe for Healthy Smoke-Free Workplaces (Proposition 200) passed by 52.5% to 47.5%.

Opposition

The opposition, Tempeans for Freedom to Choose, was chaired by Arizona Licensed Beverage Association (ALBA) President Bill Weigele with Roger Egan as treasurer. Egan was owner of McDuffy’s Sports Bar in Tempe and was one of the Tobacco Institute’s contacts for its 1994 Arizona plan to counter OSHA’s proposed clean air rule.⁷⁷ In an interview in 2006, Fairbanks speculated that the concerted group of bar and restaurant owners comprising Tempeans for Freedom to Choose did not take direct contributions from the tobacco industry both because they thought they could defeat the ordinance on their own, and because they feared the public backlash tied to accepting industry funds.²¹⁰

The smokefree initiative, called a “divisive issue” that had “split the city” by the media, led to the public asking candidates for City Council elections their opinions on the proposed ban shortly before the election.²¹¹ Candidate Carol McKnight remarked “I think its going to impact businesses, and I’m in favor of businesses,” an example of the vague statements expressed by the candidates.²¹¹ *The Arizona Republic* also opposed the initiative, essentially reiterating in their April 24, 2002 opposing editorial²¹² the reasons ALBA President Bill Weigele had mentioned in an opinion editorial a few weeks prior.²¹³ Tempeans for Freedom to Choose also secured the Tempe Chamber of Commerce’s opposition to Smoke-Free Tempe. Tempeans for Freedom to Choose spent \$100,000 on their “no” campaign.²¹⁰

Tempe for Healthy Smoke-free Workplaces’ win at the polls was not the end of the fight. Tempeans for Freedom to Choose reformed as Citizens for Fair Non-Smoking Laws (CFNSL) to weaken and repeal the smokefree ordinance. Citizens for Fair Non-Smoking Laws’ proposal would have allowed smoking in bars, restaurant bars, restaurants with separate smoking sections, bowling alleys and pool halls. Bankrolled by Rich Bank, CFNSL president and landlord of a local bar, the organization used litigation, city council lobbying, and gathered signatures to attempt to undo the ordinance and force a re-vote.²¹⁰

After failing to convince the Tempe City Council to repeal or weaken the smoke-free ordinance, CFNSL filed 22,316 petition signatures with the Tempe City Clerk in early December 2002 to place their weakened smoking ordinance before voters at the next election. While this attempted referendum did not prevent Tempe’s smokefree law from going into effect, CFNSL tried to use the signatures as leverage to force the City Council to immediately pass CFNSL’s proposed initiative into law and threatened legal action if the council failed to immediately reconsider the ordinance already in effect.²¹⁴ The city attorney stated that

because of the 1998 Voter Protection Act (the same law health advocates used in November 2002 to protect TEPP funds), the city council did not have the authority to comply with Citizens for Fair Non-Smoking Laws' demand. The only way to repeal a citizen enacted law would be to take it back to the voters. Despite Rich Bank threatening to sue the council if it failed to comply with his group's wishes, the issue was never brought before the Council.²¹⁴

After it became clear to Bank that the City Council had no intention of overturning the smokefree law and replacing it with the weak CFNSL ordinance, CFNSL pushed the City Council for a special election, first trying for May 2003 and then hoping for September or November 2003. While normally Tempe ballot measures would have to wait until the next election cycle to be voted on, CFNSL's media attention on the ordinance and aggressive demands for a sooner election caused the City Council to consider a special election. When the \$115,000 cost for a special election became an issue, CFNSL offered to pay for a special May election. Rich Bank already had started raising money for a privately-funded public election in May 2003 and had persuaded a majority of the city council, members Pam Goronkin, Barbara Carter, Leonard Cople and Mark Mitchell, to consider accepting the funds for the special election.²¹⁵ The special election never happened, however, because members of Tempe's government, including mayor Neil Giuliano and Councilmember Dennis Cahill refused to run a privately-financed election. Various irregularities with CFNSL's petition signatures also soon became a more pressing issue.

Slogging through the Repeal Attempts

When it became clear that Citizens for Fair Non-Smoking Laws' petitions only achieved 61% validity in the random small random sample of the signatures examined by the City Clerk, barely enough to qualify for the ballot without a full review (60% is the minimum to not warrant further investigation), Arizonans Concerned About Smoking got involved. In early January, 2003, ACAS meticulously examined the signatures gathered for the referendum and uncovered enough "irregularities" in the validity of the signatures gathered to eventually disqualify CFNSL's repeal attempt.²¹⁶

ACAS's discovered findings (with Lee Fairbanks' son Greg Fairbanks and John Irving, a local tobacco control advocate, doing most the research) included petitions illegally circulated by felons (1,800 signatures), illegally tricking people into signing the petition by telling them it would support the Proposition 200 Tempe smokefree law, illegally having circulators use others to circulate their petitions where the person who was actually gathering the signatures from citizens was different than the person whose name was printed on the reverse of the petition ("signatures gathered by"), names copied out of the telephone book in order (all D's on one page, all A's on another), repeats of up to six times of the same name with differently styled signatures, signature forgeries (three Tempe citizens whose "signatures" were on the repeal canvass signed affidavits that they had not in fact signed the petition), and illegible names and information.

After finding repeat signatures, nonexistent addresses, and other non-qualifying signatures in CFNSL's petition, ACAS filed a suit with the Maricopa County Superior Court challenging the legality of many CFNSL's signatures gathered, demanding that the invalid signatures be removed. Rich Bank admitted in testimony before a superior court judge that several of those employed to gather signatures were convicted felons and thus not legally eligible to do the gather signatures for a ballot initiative.²¹⁷ While Judge Mark W. Armstrong had the power to throw all of the 22,316 signatures out if he decided the many irregularities warranted such action, he ordered a second sampling count after invalidating 4951 signatures.

The hearings in June 2003 led Tempe Mayor Neil Giuliano to remark in the *Arizona Republic* "This whole thing is a mess" and that the petitions "should be thrown out and they should have to start all over again."²¹⁸ Tempe City Clerk Cathy Matz, who was charged with certifying the petitions, called the petitions submitted "the biggest mess I've ever seen."²¹⁶

Attorney Lisa Hauser represented CFNSL in court and attempted to defend the illegal signatures and CFNSL’s hiring of Kim Dixon, a petition gatherer for CFNSL who had five felony fraud convictions and listed five different addresses when signing her petition affidavits, by claiming Dixon may have been dyslexic.^{219, 220} Hauser would represent the RJ Reynolds Non-Smoker Protection Act, Proposition 206, in 2006,²²¹ and was Gov. Fife Symington’s Administrative Counsel, present when Gov. Symington met with 6 attorneys and lobbyists from Philip Morris, RJ Reynolds, Brown and Williamson, and the Tobacco Institute the day before Symington demanded Arizona Attorney General Grant Woods drop the state’s suits against the tobacco industry.⁵⁸

In July 2003, as CFNSL struggled to keep its qualified signatures, Click’s Billiards sued the City of Tempe over the constitutionality of the smokefree ordinance, claiming discrimination against smokers because they alleged there was no substantiated evidence that secondhand smoke is harmful if air systems are installed. U.S. District Court judge Roslyn Silver dismissed the case, which challenged the constitutionality of the smoking ban, ruling that the ordinance “easily passes constitutional muster.”²²² This type of legal challenge against clean indoor air acts is a routine tobacco industry strategy, which almost always is unsuccessful.²²³ Tobacco industry documents show that Click’s Billiard participated both in an RJ Reynolds Camel Notes Central Exchange Initiative Program 1991 and was on a Phillip Morris Field Action Team Campaign and Mobilization/Supplemental Contacts list in 1996.^{224, 225}

The second random sampling of the remaining 17, 365 signatures, conducted in September 2003, found 63.6% of these signatures to be valid, leaving enough valid signatures to get CFNSL’s initiative on the ballot. (The city did a random validation to save money; it estimated that a signature-by-signature validation would cost around \$9,000, compared to \$400 for a random sample.²²⁶) Yet, ACAS, based on the recurring pattern of invalid signatures in their own recount of the signatures, persuaded the Tempe City Clerk to hand check every signature. When the City Attorney, the City Clerk, a city- hired temp staff, and mostly, ACAS members counted the signatures one-by-one, they found barely 40% of the signatures submitted were actually valid.²²⁷ After reviewing every signature submitted by CFNSL, on December 5, 2003 the Maricopa County Recorder’s Office “determined that the petitions contained 9,816 valid signatures, which is less than the minimum number of signatures (11,358) required”²²⁸ to place the proposal on the ballot (Table 18).

On December 5, 2003, more than 20 months after the original Tempe Proposition 200 passed, Tempe’s City Clerk and City Attorney sent a letter to Rich Bank and CFNSL informing them that their initiative measure “failed to qualify for Tempe’s March 9, 2004 election ballot.”²²⁸ After this defeat, Rich Bank declared that CFNSL had exhausted its funds. Citizens for Fair Non-Smoking Laws spent around \$159,000 on gathering signatures for a repeal initiative and in lawyers fees in suing for discrimination both Leland Fairbanks and the City of Tempe.²¹⁰ In mid-March, 2004, almost two years after Proposition 200 passed, the CFNSL dropped its lawsuits against the city and Fairbanks. The Tempe City Attorney Marlene Pontrelli in March 2004 prohibited CFNSL from any further efforts against the Tempe clean indoor air ordinance given the waste of city time and money the group caused.²²⁹

Despite the drawn-out opposition to Tempe’s clean air ordinance defenders such as Mayor Neil Giuliano and Dennis Cahill maintained the ordinance Tempe voters approved and became advocates for other communities to

Number	Signatures
22,316	Originally submitted
17,625	Remaining after Superior Court judge threw out invalid signatures
Less ...	
432	Duplicates
278	Signer registered to vote after signing
4	Illegible
6,136	Signer was not registered to vote
157	Registered out of district
488	Missing information
176	Signature on petition did not match signature on file
138	Other reasons
9,816	Final count of valid signatures
End Result:	
11,358	Required valid Signatures
1, 542	Certified Signatures Lacking

enact similar ordinances in Prescott and Flagstaff based on the positive experience of smokefree Tempe. After October 2002, when the ordinance finally went into effect, Tempe experienced 100% clean indoor air, beginning a trend all of Arizona would soon follow.

Scottsdale

As of May 2003, Glendale, Peoria, Phoenix and Scottsdale were the only major Phoenix Metropolitan Area communities not to have enacted updated smokefree ordinances.²⁰⁸ The Scottsdale City Council never took the bold stance in addressing the smokefree health issue many of its residents desired.²³⁰ Started in 2003 after the health voluntary organizations' plan for a region-wide model ordinance disintegrated, Scottsdale for Smoke-free Workplaces founder and co-architect of the attempted Scottsdale smokefree ordinance Wilfred Potter realized, "If we can get the City Council of Phoenix to go along with it, then our City Council would go right along with them."²⁰⁸ Yet, Phoenix would not budge. Scottsdale Councilman Robert Littlefiend commented in May 2003, "I don't want to do it unless everybody's going to do it, and it's pretty clear that it's not going to happen in Phoenix."²⁰⁸ Arizona Clearing the Air director Andrew Ortiz echoed these remarks: "There was always competition between the two of them [Phoenix and Scottsdale], and neither wanted to go first."²⁰⁰ While Scottsdale Mayor Mary Manross would end up supporting Rep. Lopez's statewide smokefree bill HB 2629,²³¹ which proposed a statewide smokefree law, Manross rejected the health voluntaries' East Valley plan without Phoenix. The *Arizona Republic* reported in November 2003, "Manross wants at least a regional policy [if not a statewide one] on smoking and she is adamant in her support," of a comprehensive smokefree law, as long as it encompassed Phoenix as well as Scottsdale.²³² Manross and the Scottsdale City Council refused to go ahead with a city clean indoor air ordinance independent of Phoenix for fear that they would lose business to Phoenix due to Scottsdale's proximity. Unlike Chandler, the Scottsdale City Council was unwilling to address the smoking issue on its own.

Chandler

The Chandler City Council passed a partial clean-indoor air act April 24, 2003 that made workplaces and restaurants smokefree. The council perceived the clean indoor air issue as "dollars vs. health."²³³ In an effort to support adoption of clean indoor air in Chandler, tobacco control advocates hoped Chandler would include smokefree bars and, thus, inspire other Arizona cities to do the same. An *Arizona Republic* article reported that "Fairbanks says other cities are watching Chandler because its smoking ban would be stricter than all others except Tempe's and Guadalupe's."²³³

Chandler's Blue Ribbon Committee on smoking policy, a voluntary advisory ad hoc committee formed in 2002 by the Chandler City Council to research the possibilities for Chandler to have a smoking ordinance, voted 10 to 2 on February 11, 2002 to send three options to the mayor and council. These three options were making 1) all workplaces and public places including bars, smokefree by October 2003, 2) all workplaces smokefree by October 2003 and phase in bars October 2005, or 3) workplaces and restaurant smokefree, but exclude bars altogether.²³⁴ A group of nurses, led by Lama E. Celaya, wrote the Chandler Mayor's Smoking Committee urging the adoption of a 100% smokefree ordinance including bars.²³⁵ To the chagrin of local tobacco control advocates, the City Council adopted the weakest of the recommendations, exempting bars altogether. Starting October 1, 2003, Chandler created smokefree workplaces and restaurants, while exempting bars, bowling allies, and restaurant bars physically separated and ventilated.

Prescott

After unresponsiveness from city leadership, Prescott addressed the issue of smoking with an initiative, also called Proposition 200, which was very similar to Tempe's except for a two-year delay for bars and restaurant bars. Passed November 4, 2003 with a margin of less than one percent, the Prescott ordinance made workplaces and restaurants smokefree and phased in bars in November 2005.

In response to the health advocates' efforts, ALBA filed a competing initiative, Proposition 201, which would only have required restaurants and bars to post whether they were smoking or non-smoking establishments. At the first reporting deadline in October 2003, contributions to the health groups' Proposition 200, the Task Force to Eliminate Smoking in the Workplace totaled \$6,054, virtually all of it coming from ACAS and Fairbanks. During this same period, Proposition 201, carrying the same name as Tempe's repeal attempt, Citizens for Fair Non-Smoking Laws (the same organization as in Tempe, but with different leadership), received \$33,000 in contributions, with most of it coming from ALBA members.²³⁶

Anticipating the strategy RJ Reynolds would use in 2006 to oppose a state smokefree initiative promoted by the health groups, Prescott's bar-sponsored counter-initiative Proposition 201 was promoted as "anti-smoking." It began: "The smoking of tobacco has been shown to be a danger to public health, safety and general welfare, the dedicated purpose of this chapter is to regulate the smoking of tobacco within enclosed public places and places of employment," sounding like an actual smokefree ordinance.²³⁷ Despite this statement, Proposition 201 excluded bars and allowed easy hardship clauses for restaurants, though it did make workplaces smokefree.²³⁷ An *Arizona Republic* article noticed that "Proposition 201, is pretty much a sham of a non-smoking initiative. It's actually funny. You read the publicity pamphlet that painstakingly rants about the evils of smoking and then it doesn't do anything about it."²³²

The City of Prescott had also in 2003 appointed a Task Force to Eliminate Smoking in the Workplace as the City Council considered enacting a smokefree ordinance. The Task Force advised a smokefree ordinance similar to what Proposition 200 proposed, but the city council was opposed to taking action. As a result, a ballot initiative, aided by ACAS and ACTA, brought the Task Force to Eliminate Smoking in the Workplace's recommendations to the ballot.

The public passed both Proposition 200 (6,343 votes in favor) and Proposition 201 (6,213 votes) Because Proposition 200 garnered 130 more votes, however, its provisions went into effect, not those in Proposition 201.

Studying sales tax revenues 6 months after the initiative went into effect, the city of Prescott's Finance Department showed revenues in bars and restaurants to be up 4.9% from the previous year, indicating that far from harming the city's economy, as opponents has alleged, the clean air act may have provided economic benefits.²³⁸

After their defeat at the ballot box, Citizens for Fair Non-Smoking Laws, led by Andy Tobin, unsuccessfully attempted to gather signatures to repeal the law in a May 2004 special election. A year and a half later, in March 2005 as the date for implementing smokefree bars neared, the same group of bars that comprised Prescott's Citizens for Fair Non-Smoking Laws reappeared as the Prescott Free Business Association to repeal the smoking ordinance before the two-year exemption for bars expired in November 2005, again claiming that bars would lose money when they came under the smoking ordinance. Dr. Robert Matthies, co-chair of the smoke-free initiative in 2003, rebutted these claims in the local press.²³⁹ CFNSL attempted to gather signatures to bring the issue back on the ballot, but failed to gather sufficient signatures. Without incident, the smokefree Prescott ordinance included bars beginning November 2005.

Coconino County

Coconino County, which includes Flagstaff, passed a county-wide smokefree law on November 4, 2003, including workplaces, restaurants, and almost all bars. After local tobacco control advocates in Coconino County asked the Coconino County Supervisors to adopt a county-wide smokefree law, the Supervisors agreed, asking Coconino County TEPP employees to facilitate going smokefree and to present at the hearings.¹⁴³ Coconino County's law allowed stand-alone bars to permit smoking as long as they did not serve food or share an entryway or wall with any other establishment. This exemption was provided in part because 18 bar owners spoke against a comprehensive clean indoor air act at the Board of Supervisor's

meeting. In 2003, only one bar met this exemption. In 2005, a second bar bought this type of permit and was also granted an exemption.

Peoria

A weak ordinance was approved by the Peoria city council 6-1 on December 2, 2003 and went into effect March 1, 2004 that mirrored “accommodation” policies urged by tobacco interests.³⁰ The ordinance restricted smoking in workplaces and restaurants, but not restaurant bars or bars. Restaurants existing before March 1, 2004 were permitted to allow smoking in a separately ventilated bar or room. Although all bars licensed after March 1, 2004 had to be smokefree, existing bars before then were unaffected by the ordinance.²⁴⁰ Instead of prohibiting smoking in workplaces, it required that employers “adopt, implement and maintain a written smoking policy” which addresses “the issue of smoking” without stipulating a smokefree environment.²⁴⁰ The ordinance also allocated \$50,000 for \$5,000 one-time hardship grants to businesses negatively effected economically by the smoking ordinance to help them build their separately sealed smoking rooms to permit smoking and non-smoking sections. Hardship exemptions could be extended for up to five years. Whether or not a restaurant had a bar area, it was permitted to allow smoking in a separately sealed and ventilated room, as long as the restaurant existed prior to January 1, 2004.²⁴⁰

Arizonans Concerned About Smoking and other health organizations viewed the Peoria ordinance as a failure. Peoria Mayor Bob Barrett disclosed that the city council moved to adopt the less stringent smoking ordinance to stave off a potential Tempe-styled initiative from ACAS and Arizona Clearing the Air in Peoria.²⁴¹ Barrett believed that the smoke-free advocacy groups’ “plan was to have all the suburban cities pass the same ordinance and then they'd take on Phoenix... With Peoria being next on the list, we realized we had to try to revise the ordinance enough to keep the [smokefree] initiative [ACAS had planned] from coming onto our ballot.”²⁴¹ Enacting the weak ordinance was a defensive move by the Peoria City Council to hold more stringent tobacco control at bay. It was an effort to evade the costs to the city of Tempe beared resulting from the repeal attempts after Tempe for Healthy Smoke-free Workplaces won.²⁴¹ Barrett acknowledged Peoria Council’s reasons for instituting their anti-smoking ordinance: “It worked, the initiative folks from Tempe complained about our new ordinance but went back to Tempe without trying to force a ballot issue. That's how I help small businesses.”²⁴¹ By the time Peoria passed its weak smoking law, ACAS already was focused on a statewide smokefree law.

Flagstaff

Flagstaff’s ordinance implemented on June 18, 1993, the strongest ordinance in Arizona at the time, made workplaces, restaurants (but not separately-ventilated restaurant bars), and retail spaces smokefree. Updating this ordinance, the Flagstaff city council voted on February 1, 2005 to pass a comprehensive clean indoor air ordinance covering restaurants, bars, and workplaces (Ordinance No. 2005-04).²⁴² Though during deliberations Vice-Mayor Al White moved to amend the ordinance to introduce exemptions for stand-alone bars (and this was seconded by Councilmember Joe Haughey), this amendment was defeated 4-3 with councilmembers Art Babbott, Karen Cooper, Kara Kelty, and Mayor Joseph Donaldson against. After hearing from residents advocating for the passage of the 100% smokefree ordinance, the council voted unanimously for the stronger version. Arizonans Concerned About Smoking joined with local Flagstaff tobacco control advocates Bernice Carver and TEPP’s Coconino County Program Manager Marty Eckrem (in her capacity as a private citizen) to educate the Flagstaff City Council about the benefits a comprehensive clean indoor air ordinance.

The ordinance went in to effect May 1, 2005. The City of Flagstaff contracted with the Coconino County Health Department to enforce the ordinance. The ordinance even covered Veteran’s clubs, private clubs, and tobacco retail shops as well, all provisions remaining in effect because they are more stringent than the statewide Smoke-Free Arizona passed in 2006. After the ordinance was adopted, a city-conducted poll

showed 68% of Flagstaff citizens thought city enforcement of the smokefree ordinance was good or excellent.²⁴³

Sedona

Adopted on January 10, 2006, and in effect beginning April 10, 2006, Sedona's smokefree ordinance originated from the text of the Smoke-Free Arizona statewide initiative with the intent to bolster the state initiative. The Sedona clean indoor air ordinance was virtually identical to the statewide law passed in the following November 2006, including 100% smokefree workplaces, restaurants, and bars. The ordinance also covered work-related vehicles when occupied by more than one person, sports facilities including pavilions, boxing arenas, stadiums, and health spas.

While Sedona's ordinance was not coordinated with the statewide campaign, the Sedona City Council believed Smoke-Free Arizona's statewide initiative was likely to pass, and adopting its proposed provisions would smooth the transition for the city going from their city ordinance to instituting the statewide law.

The Sedona Chamber of Commerce did not take a stand on the smokefree ordinance in 2006, whereas the Tempe Chamber's members stood against Tempe's ordinance in 2002, reflecting increasing awareness of public support for smoking restrictions.

The 2005 Arizona Public Health Association annual conference meeting in Sedona passed a resolution to only meet in smokefree cities. The APHA sent out a press release on this issue, and they mentioned how much they liked Sedona, and would like to hold their conference there again, if Sedona went smokefree. The Sedona City Council wanted the conference back in summer 2006, and so implemented their law to bring the APHA's business back.¹⁹⁴ Inspired by Flagstaff, and the Coconino County smokefree ordinance (half of Sedona lies in Coconino County), the City Council of Sedona voted 7-0 to adopt the ordinance.

Conclusion

While Tempe's passage of a clean indoor air ordinance in 2002 was the first major victory for a comprehensive clean air ordinance in Arizona because of its size and status as part the Greater Phoenix area, the push for a statewide effort came from the fact that all Arizona's major cities (save Phoenix) and largest counties (save Maricopa, Phoenix's county) had passed clean air ordinances by 2005 (Table 19). This success demonstrated the political will to prevail despite sometimes heavily funded and/or shrill opposition. Having already stirred public debate on the issue at the local level enabled local coalitions of invested tobacco control stakeholders to grow the movement, allowing the statewide effort to enlist these interested advocates (from already smokefree localities) to extend their ordinances statewide while protecting preexisting local ordinances from preemption.

Table 19. Arizona cities and counties with notable smokefree ordinances

Locality	County	When Passed	Method	Population	Workplaces	Restaurants	Bars	Fine (\$) smoker; establishment
Chandler	Maricopa	October 2003	Council	230,000	Yes	Yes		50-400;<500
Coconino County	Coconino	Nov. 2003	County Board of Supervisors	116,000	Yes	Yes	Yes*	50;100-300
Cottonwood	Yavapai	Nov. 1993	Referendum	10,000	Yes			None Specified
Flagstaff	Coconino	January 2005	Council	57,000	Yes*	Yes	Yes	<50;100-300
Gilbert	Maricopa	May 2001	Council	170,000	Yes	Yes		100-500
Goodyear	Maricopa	May 2002	Council	20,000	Yes	Yes		100-300
Guadalupe	Maricopa	May 2002	Council	5,000	Yes	Yes	Yes	25-50;<500
Marana	Pima	March 2006	Council	26,000	Yes	Yes*		
Mesa	Maricopa	1996 (amended)	Initiative	400,000	Yes	Yes		100-2,500
Nogales	Santa Cruz	December 2002	Council	20,000	Yes			<100-300
Oro Valley	Pima	November 2001	Council	35,000	Yes	Yes*		100
Peoria	Maricopa	March 2004	Council	130,000	Yes*	Yes*		<2,500
Pima County	Pima	October 2001	County Board of Supervisors	1,000,000	Yes	Yes		>100
Prescott	Maricopa	November 2003	Initiative	40,000	Yes	Yes	Yes*	25-50;<500
Santa Cruz County	Santa Cruz	January 2003	County Board of Supervisors	38,000	Yes			<100-300
Sedona	Coconino/ Yavapai	January 2006	Council	10,000	Yes	Yes	Yes	<2,500
Surprise	Maricopa	February 2002	Council	70,000	Yes	Yes		<100-200
Tempe	Maricopa	May 2002	Initiative	160,000	Yes	Yes	Yes	<50-75;<2,500
Tucson	Pima	October 1999	Council	500,000	Yes	Yes		100-2,500
Youngtown	Maricopa	October 2002	Council	3,000	Yes	Yes		25-300

Before Arizona's statewide smokefree law, many cities and counties had already passed smokefree measures of varying strength. This table includes local ordinances covering at least 100% smokefree workplaces (not including bars and restaurants).

(Table continued on next page)

Table 19 (continued). Notes:

Chandler	Prohibits smoking in bowling allies, but allows in separately sealed bars and bowling bars
Coconino County	Bars with class 6 licenses are exempt (bars that only sell alcohol and no food). 2 bars met this requirement
Cottonwood	
Flagstaff	Includes Fraternal and Veteran's Clubs
Gilbert	Exempts bars; provides hardship exemptions. 15 Feet from patios
Goodyear	Prohibits smoking within 25 feet of non-smoking buildings
Guadalupe	Allows smoking in private use of sealed and separately ventilated conference rooms
Marana	Exempts restaurants showing 15% decline in sales & areas in restaurants separately sealed and ventilated (no greater than 25% total area)
Mesa	Smoking allowed in accessory bars if separately ventilated and sealed
Nogales	Includes Public Bingo Games; >50% indoor dining area designated as smokefree; all workplaces smokefree except bars
Oro Valley	Bans smoking in public parks; exempts bars and sealed off sections of restaurants, up to 25% of total area
Peoria	Exemptions made for separately ventilated and sealed parts of restaurants; \$50,000 fund to subsidize smoking sections for restaurants
Pima County	Hardship clause for 15% decline in sales over 2 months; exemptions for restaurants with separately sealed and ventilated smoking rooms
Prescott	Bars were granted a 2-year exemption
Santa Cruz County	Includes Public Bingo Games; >50% indoor dining area designated as smokefree; all workplaces smokefree except bars
Sedona	
Surprise	
Tempe	
Tucson	Exempts restaurants showing 15% decline in sales and areas in restaurants separately sealed and ventilated
Youngtown	Excludes bars, pool halls, hotel and motel rooms; exemptions for business proving 15% decline in sales over three months versus previous year

ATTEMPTING STATEWIDE CLEAN INDOOR AIR LEGISLATION

In 2003, Representative Linda Lopez (D–District 29, Tucson, Tobacco Policy Score: 10) took up the cause of a state smokefree policy after talking to constituents (not tobacco control advocates) who were wondering why a state clean indoor air policy was not already in place. Lopez, upon learning about the issue of tobacco control, became actively involved. In researching the issue with her staff, Lopez realized that in 1997 Senator Ken Chevront (D-District 15, Tobacco Policy Score: 9.8) had tried to introduce legislation on clean indoor air. However, Sen. Chevront did not introduce a bill, because at a stakeholder meeting he convened, his idea for smokefree legislation met a strong negative response from the ALA, AHA, and ACS because these groups feared any statewide clean indoor air bill entering the Legislature would quickly be turned into a weakened version with preemption.

When Representative Lopez held a stakeholder meeting in 2003, advocacy groups met her announcement with a similar response. ACAS championed Lopez’s bill, even though the AHA, ALA, and ACS thought that the state did not have the political momentum necessary to pass a genuine smokefree law, even though they supported the content and intent of her bill, HB 2629.²⁴⁴ Later, in March 2004, the AHA, ALA, and ACS, following ACAS, supported HB 2629 in a letter to all of the legislators stating that they supported the legislation as long as there were no weakening amendments.

From the very beginning of Rep. Lopez’s plan to introduce statewide clean indoor air legislation, the media followed the smokefree issue, and the legislation once it was introduced, because ACAS’s Leland Fairbanks had sent out press releases to the media telling them about the very first stakeholders’ meeting. In a 2006 interview, Lopez remarked that Fairbanks was “the one who called the press when we had the first stakeholders’ meeting. I have to say, I would not have done that. I would have waited until we were further along. But I think it was a brilliant move, because it immediately got the attention of the media, and we just had that much more of a head start in terms of the media attention.”²⁴⁴ In the meantime, Rep. Lopez had become a tobacco control advocate, going to Prescott, Arizona, to help Prescott pass its smokefree ordinance in Fall 2003, and had numerous interviews and talk show appearances on the subject. All of this activity occurred as Rep. Lopez prepared for the 2004 legislative session to introduce the bill.

Rep. Lopez also received support from an influential lobbyist, Eric Emmert, who had worked with the health voluntaries for the attempted East Valley smokefree ordinance.²⁴⁴ After meeting again with health voluntary organizations, community advocates, and hammering out the bill language with several sympathetic Republican House members including Rep. Colette Rosati (R-Scottsdale), Lopez had sufficient support to introduce the legislation on March 4, 2004 which became HB 2629. HB 2629 covered all workplaces, restaurants, and bars, and allowed localities to adopt stricter smokefree provisions.

Various trade associations the tobacco industry had worked with over the previous decade prepared to testify in opposition to HB 2629. These included the Tucson Chamber of Commerce, ALBA, and the Arizona Restaurant and Hospitality Association (ARHA), all of which the Tobacco Institute had been giving financial support.²¹ With approximately 40% of Arizonans covered under some sort of clean indoor air ordinance by 2004, many of these tobacco industry-allied organizations saw their opposition efforts as merely delaying the inevitable.²⁴⁵

Lopez was not able to get HB 2629 a hearing in the House. House Speaker Jake Flake (R-District 15, Tobacco Policy Score 3.5, recipient of \$442 in tobacco lobbying money) was approached jointly by Rep. Lopez, a former Republican legislator, and her ally Eric Emmert, Republican lobbyist for the East Valley Chamber of Commerce, to negotiate the introduction of the bill. Flake said he did not like the legislation because he said in “libertarian” Arizona “we don’t tell people what to do,”²⁴⁴ but did agree to give the bill a hearing. However when committee assignments came out, he had assigned the bill to four committees – Commerce, Health, Federal Mandates and Property Rights, and Rules – which effectively killed the bill.

In Arizona, bills must be heard in committees in the order the committees were assigned. Because Rep. Phil Hansen, the chair of the Commerce Committee (where it first had to appear) refused to hear the bill, Lopez could not move on to subsequent committees. Lopez went back to Speaker Flake requesting that he make good on his promise for a hearing,²⁴⁴ who claimed that he could not force committee chairs to hold hearings. Lopez then arranged for an informational hearing (which would not allow a vote) in the friendlier Health Committee on March 4, 2004, but because there was no vote, no action was taken on HB 2629.

Meanwhile, the public was supporting HB 2629 with letters to the editor and emails to legislators, and media articles proliferated during each step of the process. According to a poll conducted by Fairbank, Maulin, Mauslin, and Associates in November 2003, 75% of Arizonans favored a statewide smokefree law totally covering workplaces, restaurants, and bars.²⁴⁶ This strong polling helped focus Arizona's tobacco control advocates' attention toward the goal of a statewide law, despite their prior misgivings.

Rep. Lopez considered attaching the substance of HB 2629 onto some preexisting Senate bill that was being heard in the Assembly to get a hearing, but had trouble finding an appropriate Senate bill. Part of the reason for her reticence in working the bill from the Senate side was that Rep. Lopez had made a commitment to her stakeholders that she would maintain the integrity of the bill and kill it immediately if someone amended it with preemption. Attaching it to an existing Senate bill would have entailed relinquishing control over the possible amendments the bill would face, and there existed the real possibility that bars would be exempted in this process. Lopez instead decided that the best course of action was to let the bill die.

After the failure of HB 2629 in the Legislature in Spring 2004, AHA, ALA, and ACS joined with Lopez and other stakeholders like ACAS and other local advocates in supporting the idea that the best route to a statewide smokefree law would be a ballot initiative based on HB 2629.

2006: A TALE OF TWO SMOKING BANS AND A TAX

In the November 2006 election, Arizona had more ballot measures on its statewide ballot than any other state in the country. Out of those 19 measures, 3 dealt with tobacco. Proposition 201, the Smoke-Free Arizona initiative which emerged from HB 2629 and Arizona's local smokefree ordinances, sought to make Arizona smokefree indoors with very few exceptions. It was created and backed by the ALA, AHA, ACS, AzHHA, and Campaign for Tobacco-Free Kids (CTFK, a national organization based in Washington, DC) with support from Arizona's tobacco control advocacy groups (chiefly, ACAS) and a grassroots network of over two-thousand volunteers.²⁴⁷ Proposition 206, the Arizona Non-Smoker Protection Act, was a competing weak "indoor air" initiative placed on the ballot by RJ Reynolds Tobacco Company to counter Proposition 201 and to preempt local tobacco control ordinances. A third and completely unrelated initiative, Proposition 203, proposed to increase the state tobacco excise tax by 80 cents to create and fund a state-wide program of early childhood care including preschool, medical care, and daycare. The tobacco industry, specifically RJ Reynolds, concentrated on stopping the statewide smokefree policy (Proposition 201) rather than fighting the tax proposal (or both measures simultaneously), even though the proposed 80 cent tax increase would be the largest in Arizona's history.

Proposition 203's 80 cent tobacco tax increase promised significant effects in terms of decreased tobacco consumption.^{248,249} The committee running Proposition 203 did not consult with Arizona's tobacco control advocates who were sponsoring Proposition 201 on the allocation of the tobacco tax revenue. Because Proposition 203's committee used the tobacco tax instrumentally with all funds going to early childhood care, they neglected to even provide backfill payments to the programs using existing cigarette tax revenues to compensate for the lowered revenues resulting from the lower consumption caused by the price increase.

Proposition 201, Smoke-Free Arizona

The Climate for Change

The statewide smokefree initiative Proposition 201 that the health voluntaries mounted in 2006 was grounded in the successes in achieving local tobacco control policy. From Mesa in 1996 to Tucson in 1999 to Tempe in 2002, Prescott in 2003, and Flagstaff in 2005, the local ordinances paved the way for changing smoking norms. The Robert Wood Johnson Foundation Arizona Clearing the Air grant administered by ACS from 2001-2004 fueled the local clean indoor air ordinances by providing technical support to communities interested in clean indoor air. Proposition 303 (2002) passed by two-thirds of Arizonans, secured TEPP for the future and doubled Arizona's tobacco excise tax, strengthening tobacco control in Arizona and bringing the public health issue of smoking again into the public eye. In late 2003, when Rep. Lopez broke the ice for Arizonans to seriously discuss a genuine statewide clean indoor air act, the health voluntaries began shifting their focus away from passing local initiatives to lay the groundwork for the statewide initiative.

The advocate-driven local smokefree efforts in Arizona, as in most states, formed the bulwark of the tobacco control policy movement up until the statewide clean air initiative began gaining media attention in mid-2006, when local efforts were put on hold until the state initiative was decided. The news of the 201 and 206 statewide anti-smoking propositions both encouraged some communities, like the towns of Sedona and Marana, to pass their own smokefree ordinances, and discouraged others, such as Gilbert, from taking additional measures to reduce secondhand smoke. Gilbert delayed instituting smokefree public parks in 2006 because the local government wanted to wait and observe the result of the statewide smokefree propositions rather than waste time creating an ordinance if state law would later preempt it.²⁵⁰

Polling showed that Arizonans were supportive of smoking restrictions. A December 2002 poll by the *Arizona Republic* showed 36% of those polled wanted a statewide clean indoor air law, 7% preferred a county-level ordinance, and 22% opted for a city-level smokefree ordinance covering all indoor air locations.²⁵¹ In total, 65% wanted a clean indoor air act at some level of government.²⁵¹ The poll commissioned by the AzHHA and conducted by the national opinion research firm Fairbank, Maslin, Maullin & Associates in November 2003 showed 75% of Arizona voters supported a proposed state law that would prohibit smoking in all enclosed indoor workplaces in Arizona.²⁴⁶

The three health voluntaries (AHA, ALA, ACS) collectively held a different perspective from the larger Arizona tobacco control community regarding how and when to run a statewide clean indoor air act campaign. In a 2006 interview, Rep. Lopez reflected on the schism regarding the decision to go statewide:

A lot of the [local] advocacy groups throughout the state had been pretty frustrated because they felt all along that the state was ready [for a statewide clean indoor air law]. And the response that they kept getting [from the health voluntaries] was that they needed to see more local ordinances passed, more local communities going smokefree. But I think once [the health voluntaries] saw the outpouring of support – the editorials, the talk shows, everything – they realized that we really didn't need to wait that long, that we could go ahead and move forward.²⁴⁴

The general formula the health voluntaries were following was, “we would get to a point where we had maybe 50% of the population being covered by good comprehensive laws so at that point we could go to a statewide initiative.”¹³⁶ Rep. Lopez's 2004 bill accelerated the health voluntaries' plan. As ALA Southwest Division CEO Bill Pfeifer recollected in 2006, “I think our hand was forced a little bit because we weren't at that threshold yet.”¹³⁶ Because of the health voluntaries' financial and political power, they determined when and how the statewide clean indoor air initiative would unfold, but undoubtedly, Lopez's bill and the 100% smokefree victories ACAS achieved in Tempe, Prescott, and Flagstaff nudged the voluntary health organizations into action.

By 2006, roughly 40% of Arizonans already enjoyed some degree of significant smokefree ordinances at the local city and county level,²⁵² encouraging individuals who had won their local ordinances and the businesses that operated under them to argue for an extension of their smokefree protection statewide. As tobacco control advocates gained ground at the local level, these local victories paved the way for the statewide campaign by building local tobacco advocate networks, allowing citizens to experience first-hand the positive benefits of clean indoor air, galvanizing them to serve Smoke-Free Arizona's clarion call for statewide action.

Establishing the Coalition

In early 2003 the AHA, ACS, and ALA started to privately discuss the measure that would become Proposition 201. Although they toyed with the idea of introducing the initiative in time for the November 2004 election,²⁵² they postponed the effort until 2006 to have enough time to plan for likely tobacco industry opposition. From these discussions, the new Smoke-Free Arizona coalition evolved in early 2004, even before Rep. Lopez had given up on the possibility of passing a smokefree bill in the 2004 legislative session. On July 21, 2004, ACS, AHA and ALA announced the launch of an exploratory campaign for a statewide initiative in Arizona to prohibit smoking in all enclosed public places and workplaces for the November 2006 ballot. While ACAS had won local successes in Tempe and Prescott, and were largely responsible for the smokefree ordinances across Arizona, they were not invited to serve on the Steering Committee because they did not have the potential resources the other organizations had, and were viewed as not politically savvy enough to run a statewide campaign.^{89, 136} To avoid criticism from members of the Legislature and neutralize the argument that one should work through the Legislature rather than "legislating through the ballot box," the coalition made sure they exhausted legislative possibilities before moving to the ballot. Many of Proposition 201's engineers point to their early preparation two-and-a-half years before the 2006 election cycle began as key to their success.^{136, 252}

The core of the coalition was similar to that in the previous two tobacco tax campaigns in 1994 and 2002; because many of the leaders carried a long history together, they were able to work together with a common vision. The health voluntaries asked ALA Southwest Division CEO Bill Pfeifer to Chair the campaign, and, in turn, Pfeifer invited AzHHA CEO John Rivers to be Treasurer of the Smoke-Free Arizona campaign because of his valuable campaign experience and long-standing commitment to tobacco control. Rivers agreed, while making very clear the limits of the hospitals' support:

This was purely a public health measure. It was worthy of our support but it was not designed to generate a million dollars in contributions from the hospital community and Bill [Pfeifer] knew that early on. I said that is something we will support by virtue of being true to our public health mission but it is not like we are creating money to fund trauma programs or uncompensated care or expand access to Medicaid. That is the kind of thing, instead of contributing fifty thousand, now we are contributing maybe a couple of million or something like that. But I think the original financial estimates of Smoke-Free Arizona were wildly over-optimistic. I mean Bill was talking about raising three million dollars and I said "Bill, [there's] no way."¹²

A major difference between Smoke-Free Arizona and the previous anti-tobacco initiative campaigns was the complete lack of financial benefit for any of the supporting organizations which existed in the two preceding campaigns. The regional and national chapters of the ACS along with other voluntary health organizations, would provide the bulk of the funding for the campaign.

Campaign Chair Bill Pfeifer would head fundraising efforts and Treasurer John Rivers would corral the political, if not financial, commitment of the hospitals. ACS and AHA committed their government relations professionals to the campaign, with AHA providing their offices both in Phoenix and Tucson as campaign headquarters. The campaign also brought Beverly May from the Campaign for Tobacco-Free Kids to consult with their group, especially to aid in writing the initiative's language. These experienced health organization leaders formed the Steering Committee for Smoke-Free Arizona.

The paid campaign staff included Jack Nicholl (who had worked on many tobacco tax initiatives, dating back to California’s Proposition 99 in 1988 and Arizona’s 1994 Proposition 200 and 2002 Proposition 303 tobacco tax increase campaigns) as the general consultant, Justin Turner (who had worked as Field Director for the 2002 Florida Smoke-Free for Health initiative campaign) as Smoke-Free Arizona’s campaign manager, and Troy Corder from Critical Public Relations (who had worked in the past on TEPP’s media campaign) as their public relations director.

The campaign also had an Advisory Board to provide recommendations and demonstrate broad support by Arizonan leaders. The Advisory Board included not only the major players in Arizona’s local tobacco control movements, but also included a diverse group of leaders (Table 20).

Table 20. Governance of the Smoke-Free Arizona Coalition	
<p><u><i>Steering Committee</i></u> Bill Pfeifer, Campaign Chair, ALA Michelle Pabis, Government Relations, ACS Sharlene Bozack, Vice-President, Arizona ACS Shannon Harper, Government Relations, AHA John Rivers, Campaign Treasurer, CEO AzHHA Beverly May, Director of the Western Region, Campaign for Tobacco Free Kids</p>	<p><u><i>Advisory Board</i></u> Dennis Cahill (former Tempe councilmember) Bernice Carver (ACAS, Flagstaff TEPP staff) Lori Deutsch (TEPP Yavapai) Marty Eckrem (TEPP Coconino) Lee Fairbanks (ACAS) Dick Foreman (Republican lobbyist for Legislature) Len Gutman (Worked for a public relations firm) Cliff Harris, MD (ACAS) Keith Kaback, MD (Tucson Clearing the Air) Sue Linney (ACAS) Representative Linda Lopez (D-Tucson) Matt Madonna (former ACS Regional CEO) Robert Matthies, MD (ACAS) Don Morris (ACAS) Marguerite Munkachy (ACAS) Philip Poisson (Well-known businessman) Wilfred Potter, MD (ACAS) Gary Richardson (Former Republican legislator) Alex Romero (ACAS) David Sanderson, (Lung Physician, Mayo Clinic) Jonathan Weisbuch, MD (Retired Director of Public Health for Maricopa County)</p>

Hammering out the Proposition Details

While the committee’s original clean indoor air act plan in 2005 was to craft a law that restricted smoking in all public places and workplaces (including bars), they ended up granting a few exemptions that other states allowed, such as a limited number of hotel rooms, retail tobacco shops, private residences unless used for child care, adult care or health care facility, and theatrical performances (Table 21). The question of whether or not to include clean indoor air for private fraternal clubs was largely politically determined. Veterans and fraternal clubs were exempted (except when open to the public) from smokefree requirements because the Smoke-Free Arizona campaign was not willing to risk opposition from this politically powerful constituency.¹⁹⁴

One innovation Smoke-Free Arizona included in the initiative language was including a 2 cent tobacco excise tax increase to fund implementation and enforcement of the law. Under Smoke-Free Arizona’s scheme, the 2 cent tax provided ADHS funding for their enforcement responsibilities. This money could then be used to provide funding for local enforcement, as ADHS delegated inspection and enforcement to County Health Departments.

The origin of the tax came from a stakeholders’ meeting early on in the campaign with the ADHS regarding the statewide clean indoor air act. “Everybody from the Department of Health down to the counties all said that ‘if we’re going to be the ones doing the enforcement for the initiative, we’re going to need money,’” according to Sharlene Bozack, Steering Committee member and ACS’s Government Relations

VP.²⁵² No one wanted the police to handle smokefree enforcement, as happened in Tempe, because the ordinance had not specified who would be responsible for enforcement. Tempe’s ordinance received criticism in local newspapers that forcing the police to enforce smoking violations prevented police from addressing more serious crimes. Tempe also had weak enforcement for the first five months of its clean indoor air ordinance because police were only responding to called-in complaints rather than performing inspections.²⁵³ Learning from Tempe’s experience, while avoiding potential barriers to enforcement like having to ask the Legislature for funding for enforcement, Smoke-Free Arizona’s language used ADHS to enforce the law and created available revenue to fund inspections with the tax provision.²⁵²

The Early Campaign

Smoke-Free Arizona registered its initiative campaign organization on August 31, 2005, and began circulating its petitions shortly thereafter using a volunteer base of approximately 2,500 from local coalitions and concerned citizens, many of whom had already fought for local clean indoor air ordinances. (They needed 122,612 valid signatures.) The campaign started collecting signatures in late 2005, earlier than any other campaign of the 2006 election cycle so that they could both qualify first on the ballot, gaining whatever advantage that might provide, and reduce the use of paid petition circulators to a minimum. President of ACAS Dr. Lee Fairbanks alone gathered over 16,000 signatures. Don Morris, executive director of ACAS, collected the second-most signatures, 6,000. The campaign completed the signature gathering process and filed petitions containing 186,000 signatures on June 20, 2006, 3 weeks before the deadline.

Proposition 201's Endorsements

Proposition 201 received substantial and wide support from the public health and healthcare communities (Table 22). Competition between Proposition 201 and RJ Reynolds’ Proposition 206 for business community endorsements was fierce, since it was crucial for Proposition 201 to prove businesses supported the measure to legitimize its law against Proposition 206’s claims that Proposition 201 would hurt business.

Table 21. Comparison of Proposition 201 and Proposition 206 Provisions		
	<u>Proposition 201</u>	<u>Proposition 206</u>
Sponsor	Health Groups	Tobacco Interests
Workplaces	100% Smokefree	100% Smokefree
Restaurants	100% Smokefree	Smoking allowed in separately ventilated accessory bars
Bars	100% Smokefree	Smoking allowed
Exceptions	<ul style="list-style-type: none"> • Retail tobacco stores • Veteran and fraternal clubs when not open to the public • Designated hotel rooms • Outdoor patios 	<ul style="list-style-type: none"> • No children allowed in bars
Enforcement	ADHS	None specified
Fines	<ul style="list-style-type: none"> • For smokers: At least \$100 but less than \$500 • For establishments: Business owners can be fined up to \$500 for each violation • Willful or repeated noncompliance can result in fines up to \$5,000 per violation 	<ul style="list-style-type: none"> • For smokers: Between \$50 and \$300
Preemption	None	Preempts local city and county restrictions

TABLE 22. Proposition 201 Endorsements

Health Community	Health Community (Continued)	Community Groups
Accurate Oxygen and Medical Supplies	Las Fuentes Health Clinic	A.T. Still University - Mesa Campus
Allergy & Asthma Network Mothers of Asthmatics	March of Dimes - Arizona Chapter	AARP Arizona
American Academy of Pediatrics - Arizona Chapter	Maricopa County Asthma Coalition	Arizona SADD
American Cancer Society	Maricopa County Medical Society	Asian Pacific Community in Action
American College of Cardiology	Mayo Clinic Arizona	Campaign for Tobacco Free Kids
American College of Chest Physicians - Arizona Chapter	Medical Staff, Banner Desert Medical Center	Centro de Amistad, Incorporated
American College of Emergency Physicians - Arizona Chapter	Merlin K. DuVal, M.D.	Children's Action Alliance
American College of Physicians - Arizona Chapter	Northern Arizona Nurse Practitioner Group	Children's Environmental Health Network
American Diabetes Association	Paul Steingard, D.O.	East Valley NAACP Branch
American Heart Association	Phoenix Children's Hospital	Hopi Tribal Council
American Lung Association of Arizona	Pima County Medical Society	Midwestern University
Annual Arizona Red Ribbon Campaign	Praxair Healthcare Services	Midwestern University, Oncology Club
Arizona Academy of Family Physicians	Schaller Anderson, Inc.	Sierra Club, Grand Canyon Chapter
Arizona Addiction Treatment Programs	Scottsdale Healthcare	
Arizona Allergy and Asthma Society	Southwest Autism Research & Resource Center	
Arizona Association of Community Health Centers	Sun Health	Community Leaders
Arizona Asthma Coalition	Sun Health La Loma Senior Living Services, Inc.	Governor Janet Napolitano
Arizona Dental Association	Translational Genomics Research Institute (TGen)	Mayor Joan Shafer, Surprise
Arizona Heart Institute	West Valley Hospital	Mayor Keno Hawker, Mesa
Arizona Hospital and Healthcare Association	Yuma County Medical Association	Mayor Mary Manross, Scottsdale
Arizona Latin American Medical Association	Yuma Regional Medical Center	Mayor Steven Berman, Gilbert
Arizona Medical Association (ArMA)		Mayor Wallace Nichols, Fountain Hills
Arizona Nurses Association	Business Community	Vice Mayor Claudia Walters, Mesa
Arizona Osteopathic Medical Association	Arizona Restaurant and Hospitality Association	Vice Mayor Steve Leal, Tucson
Arizona Pharmacy Alliance	Asian American Times	Former Vice Mayor Phillip Westbrooks, Chandler
Arizona Public Health Association	Axis Sports & Apparel	Councilmember Betty S. Lynch, Avondale
Arizona Rural Health Association	Chinese Chamber of Commerce	Councilmember Brenda Holland, Goodyear
Arizona School of Dentistry & Oral Health	Colby and Company CPA's PLC	Councilmember Carol West, Tucson
Arizona Society for Respiratory Care	Colby Management, Inc.	Councilmember Donna Wallace, Chandler
Arizona Surgical Specialists Center	CPC Construction, Inc.	Councilmember Ginny Dickey, Fountain Hills
Arizona Thoracic Society	Dana Tire Company	Councilmember Greg Stanton, Phoenix
Arizona Urological Society	Doug Holloway, State Farm Insurance	Councilmember James Norris, Casa Grande
Arizonans Concerned About Smoking	Dukes Sports Bar and Grill	Councilmember Jini Simpson, Paradise Valley
Arizonans for Drug Free Youth & Communities	Half Moon Sports Grill	Councilmember Joe Severs, Apache Junction
Art Mollen, D.O.	Messinger Mortuary & Chapel, Inc.	Councilmember Kara Kely, Flagstaff
C. Everett Koop, M.D., Sc.D.	Mill Cue Club	Councilmember Kris Sippel, Apache Junction
Catholic Healthcare West	Mrs. Whites Golden Rule Café	Councilmember Richard Monzon, El Mirage
Dale Webb, M.D.	MyBizNow.com	Councilmember Steven Frate, Glendale
Dental Team Council of the Arizona Dental Association	Q Design	Councilmember Tom Simplot, Phoenix
Dr. Bruce Miller, MD	Randy's Restaurant and Ice Cream	Sheriff Joe Arpaio
Dynamic Chiropractic Acupuncture Clinic, P.C.	Riester~Robb	Carol & Bill Bombeck
Family Assistance Program Y Su Clinica	Robson Communities Inc.	Charli Turner Thorne
Gary Rostan, D.O.	Southwest Ambulance	Frank Kush
Gretchen K. Henson, DDS	Southwest Gas	Fred Unger
HealthCare Connect	Southwest Valley Chamber of Commerce	Lyndon W. Sanders
Healthy Arizona	Teakwoods Tavern & Grill	Richard Schroder
Hopi Health Advisory Council	Tempe Chamber of Commerce	
Hospice of the Valley	United Studios of Self Defense	
John C. Lincoln Health Network		
La Loma Village		

The Proposition 201 campaign encountered opposition from the Chandler, Mesa, and Prescott Chambers of Commerce, but won the support of Tempe’s Chamber of Commerce, the Southwest Valley Chamber of Commerce in Maricopa County, and the Chinese Chamber of Commerce (Table 23). In the initial 2002 City of Tempe initiative, the Tempe Chamber of Commerce opposed the smokefree ordinance initiative. For Arizona’s tobacco control advocates, this shift signaled that the Tempe smokefree model indeed had been a success. With the exception of Prescott, the chambers of commerce supporting Proposition 206 already had weak smoking ordinances in place similar to the restrictions on workplaces and restaurants (but allowing smoking in bars and separately ventilated bar portions of restaurants) Proposition 206 offered (see next section). The Tucson Chamber of Commerce which supported Proposition 206, had received yearly Tobacco Institute contributions in the 1990’s.^{21,28} The Arizona State Chamber of Commerce took no position on either of the smoking-related measures.

Governor Janet Napolitano also endorsed Proposition 201, but waited until late October, right before the election, to do so. The Governor was a member of the Board of the American Legacy Foundation, a national foundation for tobacco control efforts. Despite the political caution Napolitano displayed as she was running for reelection in November 2006, the Proposition 201 campaign staff expected Gov. Napolitano to announce her support earlier than she did, as her polling numbers were high. (She won with 62.6% of the vote.) In the press release announcing her support for Proposition 201, Gov. Napolitano also urged a “no” vote on Proposition 206, a key message in the Proposition 201 campaign, saying “As Attorney General, I witnessed firsthand the tactics of the tobacco industry.... Arizonans need to understand that Proposition 206 is funded by RJ Reynolds and is an attempt to protect its tobacco profits.”²⁵⁴

Chamber of Commerce	Position on 201	Position on 206	Position on 203
Arizona State	No Position	No Position	No Position
Chandler	Oppose	Support	
Mesa	Oppose	Support	
Phoenix	No Position		
Prescott	Oppose	No Position	No Position
Southwest Valley	Support		
Tempe	Support	Oppose	No Position
Tucson	No Position	Support	

Political Dealing with the Arizona Restaurant and Hospitality Association

The Proposition 201 campaign gained the last-minute public support of the Arizona Restaurant and Hospitality Association (ARHA). While the media coverage accompanying this shift in the ARHA’s tobacco control policy stance did not do justice to its full significance, the endorsement of Proposition 201 was printed in the ARHA’s trade newsletter on October 3, 2006, and the *Arizona Republic* did write a short article mentioning the endorsement.²⁵⁵

The Arizona Restaurant and Hospitality Association (ARHA), previous recipient of Tobacco Institute contributions,^{21,28} opposed Rep. Lopez’s HB 2629 in 2004. ARHA President and CEO Steve Chucuri testified against the bill at the Health Committee hearing.²³¹ Nevertheless, Pfeifer reported that a “cultivated” “personal relationship” between Smoke-Free Arizona and the ARHA was subsequently developed resulting from Chucuri’s former employment by Kevin DeMenna (ALA and ACS’s lobbyist), enabling Michelle Pabis (ACS) and Chucuri to develop rapport around smokefree issues.¹³⁶ Smoke-Free Arizona engaged in dialogue with ARHA and listened to their concerns while drafting the language for the Smoke-Free Arizona Act. According

to a 2006 interview with Pfeifer, “Early on when we were directing the language they [the ARHA] said, ‘is there anyway you can pass the law in November but maybe delay implementation in restaurants or bars, give them two years to get ready?’ And we didn’t. But what we did agree was to give them three more months as we were initially to write the law to go into effect on February 1. So we changed it to May 1.”¹³⁶ While Pfeifer did not mention Chucuri’s involvement in Smoke-Free Arizona’s decision to exempt outdoor patios in their smokefree law, Chucuri has said he supports permitting smoking on patios.²⁵⁶ Like their talks with the ARHA, coalition-building with organizations that had previously not allied with smokefree policy would later give Smoke-Free Arizona political credibility.

ALBA had lobbied the ARHA to endorse Proposition 206.²¹⁰ ARHA polled its members and found that they favored Proposition 201 over Proposition 206; in part, this was due to fear of some restaurant owners that Proposition 206 would drive restaurants’ smoking customers to bars. (Proposition 206 exempted bars.) Restaurateurs (erroneously) believed the smokefree ordinance in Tempe had caused smokers to migrate to Phoenix and Scottsdale. According to a *Scottsdale Tribune* article, the ARHA “expressed concerns that Proposition 206 would favor restaurateurs who could afford to build expensive bar additions,” costing restaurants more to compete with other restaurants trying to skirt the no-smoking restaurants provision by offering sealed-off restaurant-bar smoking sections.^{256, 257} The ARHA members, which only two years before had opposed a similar measure in the Legislature, when faced with the restaurants-only ban Proposition 206 proposed, supported Proposition 201 because it did not give a smoking “advantage” to bars. Campaign Chair Bill Pfeifer called the endorsement “significant”¹³⁶ because ARHA’s support gave the Proposition 201 campaign the political proof they needed to refute Proposition 206’s campaign claim that Proposition 206 had a monopoly on political support from small businesses.

Gov. Napolitano and the ARHA’s politically powerful endorsements gave the Smoke-Free Arizona campaign enough political traction to counter Proposition 206’s claim that Proposition 201 was anti-business.

Initial Opposition

As of late 2005, only a coalition of cigar owners (running their own fake statewide smokefree initiative) and ALBA had emerged to challenge Smoke -Free Arizona. Until RJ Reynolds’ entry into the race in April 2006,²⁴⁵ Smoke-Free Arizona had hoped their biggest threat was going to be local bar owners and tobacconists.²⁵² ALBA registered its “Committee to Oppose Smoke-Free Arizona” with the Arizona Secretary of State on January 20, 2006. Megan Fahey Reid chaired the committee and Fred Malliare took the part of Treasurer (a role he also played for ALBA, and would play for Proposition 206).²⁵⁸ Bill Weigele, President of ALBA retrospectively explained in 2007 ALBA’s initial plans:

Not winning [HB 2629 in the Legislature] caused the backbone of anti-smoking activists (the major heart, lung and cancer associations) to begin gathering signatures to put an initiative on the ballot in 2006. This was to cost them \$3 million. ALBA had nowhere near that kind of backing, and was resigned to buying a few media ads and member involvement to battle the anti-smoking effort.²⁴⁵

ALBA began to gather money for its campaign, but soon realized fighting the health groups’ initiative would require more money than it could raise on its own.

About the same time that the Committee to Oppose Smoke-Free Arizona was created, a separate grassroots pro-tobacco group filed an initiative with the Secretary of State on December 20, 2005 and registered as a political committee. Mostly orchestrated by cigar shops and tobacconists, this second opposition group called itself the “Keep Arizona Free Initiative.” Keep Arizona Free accrued \$6,500 in contributions, which it had spent by June 5, 2006, on the Arizona Cigar Lobby, an organization run by Eric Ullis, cigar store owner and chair of the Keep Arizona Free Initiative.²⁵⁹ This committee’s proposed initiative did not oppose Smoke-Free Arizona, but instead posited its own weak smoking law – much weaker than RJ Reynolds’ eventual counter-initiative – that would have rolled back smokefree areas to only elevators, sections of health

facilities, libraries, indoor theaters, halls, and buses.²⁶⁰ All other places would merely require signage indicating whether smoking was allowed or not, and would have required that all employers that allow smoking inform their employees “upon their application for employment, that smoking is permitted within the establishment.”²⁶⁰ The Keep Arizona Free Initiative never made it off the ground, and there is no evidence of coordination between Keep Arizona Free and ALBA’s Committee to Oppose Smoke-Free Arizona.

ALBA President Bill Weigele later reported that, “in April 2006, ALBA [and its Committee to Oppose Smoke-Free Arizona] was asked by the RJ Reynolds Tobacco Company if we were interested in attempting to place a competing initiative on the ballot.”²⁴⁵ RJ Reynolds told ALBA that its polling showed that, unlike the past, when tobacco company involvement would have been detrimental to a campaign, voters had become so jaded that they expected corporations to be major political players, so that the involvement of a tobacco company did not have the same negative consequences it once did.^{210, 261} Furthermore, as disclosed during a July RJ Reynolds Shareholders Teleconference, RJ Reynolds informed the Arizona pro-smoking groups that RJ Reynolds was prepared to spend around \$8 million in Arizona to combat the Smoke-Free Arizona initiative.²⁶²

ALBA was set to just run an opposition campaign against Proposition 201 with its limited finances and without direct tobacco industry involvement.²⁴⁵ Various members of ALBA, who had worked previously (and unsuccessfully) to shut down Tempe and Prescott’s smokefree initiatives on their own, had felt that the taint of tobacco money was not worth the trade-off of the moral high ground.^{210, 263} Dr. Lee Fairbanks, who had wrestled with ALBA previously, had been told by ALBA representatives that they would never accept tobacco company contributions.²¹⁰

Fairbanks received a call in May 2006 from Bill Weigele, president of ALBA, informing Fairbanks that ALBA board members had voted to work with RJ Reynolds – and their money – to launch the Non-Smokers’ Protection Act.¹⁹⁴ In the Tempe and Prescott opposition campaigns, ALBA and associates purportedly did not take tobacco funds, and actually attempted to sue Tempe for Smoke-Free Workplaces for insinuating they had done so.²¹⁰ The earlier pro-smoking campaigns against these local ordinances did, however, employ the tobacco industry’s lawyer for Proposition 206, Lisa Hauser,²²⁰ who had been Gov. Symington’s lawyer present at the September 9, 1996 meeting with the tobacco industry to win Symington’s opposition to the state’s lawsuit against the tobacco industry.

The “Non-Smoker’s Protection Act,” (Proposition 206) was registered with the Arizona Secretary of State on May 24, 2006, nine months after Proposition 201 had filed, after ALBA agreed to abandon their campaign and join RJ Reynolds as a co-sponsor of what would become Proposition 206.²² ALBA’s Weigele later explained in the *ALBA Reporter*, the organization’s quarterly newsletter, that RJ Reynolds “would opt out bars and the bar area in restaurants from their smoking ban” if ALBA agreed to provide their organization’s name and spokespeople for the initiative.²⁴⁵ Rather than a committee opposing Proposition 201, ALBA now was part of an anti-smoking law prohibiting smoking in most workplaces and the non-bar sections of restaurants (Table 21).

Mark Anthony DeSimone, member of ALBA Board of Directors, Chaired the Proposition 206 campaign committee, with Fred Malliare (who also sold air filters to “clean” bars of smoke) as Treasurer. ALBA terminated its Committee to Oppose Smoke-Free Arizona on July 14, 2006.

Proposition 206

The tobacco industry had been exploring a statewide preemptive initiative in Arizona since at least 2000 to combat local smokefree ordinances where the tobacco industry had less success.^{198, 199} However, internal Philip Morris emails regarding Arizona indicate that “the [tobacco] companies elected not to go forward with an initiative [at that time] based on a follow up poll that did not achieve the 60% baseline support said to be necessary for a statewide initiative.”¹⁹⁸ In response to the industry’s failure to stop the continuing

passage of local ordinances,¹⁹⁹ in 2001 the industry seriously considered a statewide preemptive smoking regulation initiative. They were prepared to make concessions to public health to gain votes, proposing similar specifications to what RJ Reynolds would include in 2006's Proposition 206. Dillard wrote to Philip Morris Government Affairs managers Pam Inmann and Ted Lattanzio that as part of the initiative voters would "be asked to choose between the status quo and our (read that as the hospitality associations) [*sic*] wonderful proposal which would totally protect non-smokers from ETS [environmental tobacco smoke, what the tobacco industry calls secondhand smoke] but - at the same time - permit hospitality establishment owners to exercise their property rights by offering separately ventilated accommodations to smokers as well."¹⁹⁹

RJ Reynolds filed its petition signatures for the "Non-Smoker Protection Act" on July 6, 2006, 15 days after Smoke-Free Arizona filed its signatures for Proposition 201, with more than enough signatures to qualify for the ballot. The Yes on 206 Campaign gathered over 200,000 signatures in the shortest time of any initiative in Arizona's history to put Proposition 206 on the ballot,²⁴⁵ paying signature gatherers sometimes \$4-\$8 per signature, unheard of amounts for Arizona.²⁴⁷

The Non-Smoker Protection Act included many provisions similar to the Smoke-Free Arizona Act (Table 21 and Figures 16 and 17), and portrayed itself as even more protective than Smoke-Free Arizona in preventing children's exposure to smoke.

Proposition 206 would have ended smoking in restaurants and workplaces, but not bars. Bar sections of larger establishments, such as restaurants, hotels, pool halls, and race tracks, could allow smoking if completely sealed off and separately ventilated from the restaurant portion. Proposition 206 would also have prohibited children from entering bars (under Arizona law parents can bring their kids into bars, i.e., to watch football games) and would prohibit children from entering veterans and fraternal clubs when smoking was present. RJ Reynolds' answer to the universally accepted injunction against exposing children to tobacco smoke was not to outlaw the smoke, but outlaw the kids. Municipal and county ordinances restricting smoking in bars, the bar portions of restaurants, and tobacco shops would be preempted, and any local clean indoor air ordinance stricter in any aspect than Proposition 206 would be nullified.

In short, the main effect of Proposition 206 would have been to protect smoking in bars, rolling back any preexisting ordinances prohibiting smoking in bars, and preventing any additional local smoking restrictions from occurring at the local level. Bars are one of the prime locations where the tobacco industry, especially RJ Reynolds, still markets its products under the MSA, and tobacco company-sponsored promotional events and advertising in bars is extremely important for the tobacco industry to sustain tobacco normalization.^{264, 265} Furthermore, liquor associations and trade groups often represented tobacco industry interests in Arizona politics, and remaining tied with those industries shielded the tobacco industry. While RJ Reynolds spent almost \$8.8 million to prohibit smoking in workplaces and restaurants, their long-term priority to entrench smoking in bars warranted the trade-off.

Proposition 206's Signature Collection Effort

Even in their signature gathering campaign, Proposition 206 often falsely represented itself as being the stronger smokefree law. On August 24, 2006, an undercover correspondent for NBC national coverage, recorded the following televised scene:

Petition gatherer #1: Do you smoke?

NBC: No, I don't.

Petition gatherer #1: Oh, yeah. Well, this is The Non-Smoker Protection Act.

NBC: So, if I am a non-smoker that's the one to do?

Petition gatherer #3: Yeah.

NBC: So this is a good one if you're a non-smoker?

Petition gatherer #3: Yeah, this is a good one because I have asthma, that's why I believe in this one.

NBC: This basically is a ban then on smoking?
Petition gatherer #3: Yeah.²⁶⁶

When questioned about the petition allowing smoking rather than restricting it, a petition gatherer told NBC, “They have to write it that way to get non-smokers to sign it. It’s a political ploy.”²⁶⁶

This behavior followed same the pattern observed in Tempe and Prescott by pro-smoking forces to gather voter signatures in attempt to put initiatives on the city ballots repealing the previously passed smokefree measures which were then thrown out in court or the City Clerk’s office (see sections on Tempe and Prescott above). Another example from a 1996 *Arizona Daily Star* editorial entitled “Spurn the tobacco hustlers” illustrates similar deceptive tactics years earlier in Arizona:

The tobacco industry is trying a new strategy to drum up support for its preemptive bill, SB 1384, in the Arizona Legislature. A telephone bank contacts elderly women in certain legislative districts and tells them that the bill will keep young people from smoking. Then the operator offers to automatically transfer the person to her state representative so that she can issue a statement of support for SB 1384. The [*Arizona Daily Star*] editorial decries this practice and urges the state Legislature to take steps to find out who is behind the phone bank and to investigate the legality of this type of lobbying.²⁶⁷

At the same time as the Arizona effort, RJ Reynolds and the Licensed Beverage Association in Ohio were following the same tactics in a similar campaign for another “look alike” initiative.^{266, 268}

Funding the Battle with RJ Reynolds

In 2002, when the same tobacco control team passed Proposition 303 to increase the tobacco tax by 60 cents and voter-protect TEPP’s funds, they received no opposition from the tobacco industry and easily won without a costly advertising war with the tobacco industry. Matt Madonna (Chair of the TRUST Commission and former Southwest ACS CEO) related that based on their previous success, “the [201] campaign struggled to raise money until the opposition came [in July 2006]. This [Proposition 201] was a no-brainer to people, ‘why do we need to put money into this?’ So it is kind of hard to create that kind of urgency when people don’t see it until it happened, and by the time it happened it was too late” to galvanize donors to significantly contribute to the Smoke-Free campaign.¹³ At the point it became clear that running an effective major statewide media campaign against a well-financed tobacco industry campaign involved significant funding, the majority of political fundraising in the state had already occurred and most potential contributors had already donated their 2006 political contributions to other campaigns.

In an interview with the *Arizona Republic* in September 2005, Bill Pfeifer, President and CEO of the ALA Southwest Division and Chair of the Smoke-Free Arizona campaign, stated that his political committee could raise “about \$2 million to \$3 million” and commented, “The one thing we’ve learned is what it takes to be a winning campaign. We know what it takes. We know we need resources, which means cash. I’m not worried about raising the money.”²⁶⁹ In an October 2006 interview, Pfeifer noted that while the Smoke-Free Arizona committee did not structure their budget based on the expectation of raising \$3 million (instead planning on around \$2 million) they did have “hopes the business community would come out and really rally behind [their] proposition and financially support” them.¹³⁶ This support never materialized. Pfeifer pointed to a key mistake in

not recruiting and securing a good campaign fund raising chair who was connected in the business community. We had some attempts but we were just turned down by them because they saw this as a hot potato issue. So we lost, I think, an opportunity there to maybe raise some more dollars. I will point to the other proposition, Prop. 203 which did have [a well-connected professional campaign fundraiser], an 80 cent tax increase, and they raised around 3 million dollars.¹³⁶

In the end, the ACS regional and national divisions provided over half the campaign budget (Table 24). Arizonans Concerned About Smoking contributed over \$100,000 to the campaign, as well as mobilizing their extensive volunteer network. Despite Pfeifer’s expressed public confidence in the organization’s ability to fundraise, in the end the campaign would only raise \$1.8 million by the election and many people involved in the campaign worried that \$1.8 million would not be enough money to combat RJ Reynolds’ \$8.8 million.

Neither measure contained a “poison pill” provision that invalidated it if the competing measure received a greater number of votes. If both measures received a majority of votes, as was a fear because many confused voters were saying “I’ll probably vote for both of them,”²⁷¹ a legal battle likely would have ensued. Thus, the Proposition 201 proponents’ task was not only to pass Smoke-Free Arizona, but also to defeat the tobacco industry’s competing Non-Smoker Protection Act. Once it became clear that Proposition 206’s “Non-Smoker Protection Act” had qualified for the ballot, Smoke-Free Arizona changed their campaign name from “Smoke-Free Arizona” to “Smoke-Free Arizona, Yes on 201 - No on 206.” Including “No on 206” as part of their name sought to bring clarity to voters muddled by the confusing claims of the competing RJ Reynolds-backed Proposition 206 (Figure 16).

Additionally, a Yes on 206 press release dated October 25, 2006, accused the ACS, AHA, and ALA of funneling tax-exempt charitable donations into the Smoke-Free Arizona political campaign. The Proposition 206 campaign sought to raise questions of violation of the tax-free status of these non-profits. The press release read, “In a letter dated October 6, 2006 to State Elections Director Joseph Kanefield, the Smoke-Free Arizona Committee admits to violating campaign finance disclosure requirements under Arizona law.”²⁷² The Proposition 206 campaign attacked the finance filing for not designating the ACS, AHA, and ALA contributions as coming from “out of state contributors.”²⁷² Smoke-Free Arizona argued that these organizations were not out-of-state because they had local offices. According to the Office of the Secretary of State, if the money originated out of state, even if there existed in-state entities of that organization, the money itself must be designated as an out-of-state contribution because it passed from out of state to the in-state institution. The majority of Smoke-Free Arizona’s campaign funds came from the health voluntary organizations’ national offices (Table 24).

Contributor	Amount
Individual Contributions	\$106,012
Under \$25 Contributions	\$1,367
Arizonans Concerned About Smoking	In-Kind \$19,272
	Contribution \$88,200
Campaign for Tobacco Free Kids	In-Kind \$87,622
	Contribution \$75,000
American Cancer Society	In-Kind \$45,999
	Contribution \$563,333
ACS Action Network	In-Kind \$300,000
	Contribution \$66,667
American Heart Association	In-Kind \$10,120
	Contribution \$135,000
American Lung Association	In-Kind \$51,698
	Contribution \$79,137
AzHHA	In-Kind \$1,973
	Contribution \$48,860
Riester	\$13,000
Banner Health	\$25,000
Pfizer PAC	\$10,000
Scottsdale Health Center	\$10,000
Other Health Care (combined)	\$200,138
Total	\$1,810,401
Total Spent on Proposition 201 Campaign	\$1,800,581

Proposition 206 Financial Sources

An interesting characteristic of the Non-Smoker Protection Act’s campaign contributions is the large number of campaign contributions by bar owners of \$5 and \$10 (Table 25). As in other tobacco-industry initiatives, these token contributions were meant to illustrate a grassroots show of support to back up Proposition 206’s claim that it is supported by “hundreds of small business owners” (Figure 17). However

	Yes on 201	No on 206
Sponsoring Organizations		-R.J. Reynolds Tobacco Company -Arizona Licensed Beverage Association
100% Smoke-free Restaurants	YES	NO (Prop 206 allows smoking in bar areas)
100% Smoke-free Bars	YES	NO (Prop 206 allows smoking in all bars)
100% Smoke-free Bowling Alleys and Pool Halls	YES	NO (Prop 206 allows smoking in bar areas)
Enforcement	YES Arizona Department of Health Services	NO
Penalties for illegally allowing smoking	YES Civil penalty of \$100-500 for a violation by a business	NO Prop 206 has no penalties for a business that allows smoking where it is prohibited.
Protects existing local laws that ban smoking in restaurants and bars	YES	NO (Prop 206 Preempted all city & county laws relating to smoking)
Supports the rights of local communities to address smoking issues in the future	YES	NO (Prop 206 Preempted all city & county laws relating to smoking)

Figure 16. Smoke-Free Arizona’s comparison chart focused on the organizational backing of each of the competing clean indoor air initiatives, the provisions not covered by Proposition 206, and Proposition 206’s preemptive aspects. In this way, Smoke-Free Arizona could position themselves as the “real ban” opposed to R.J. Reynolds’ “fake” smokefree proposition.



	Prop 206	Prop 201
Reasonable Smoking Law	✓ Yes	✗ No (too extreme – hurts small business)
Allows smoking in bars	✓ Yes	✗ No (puts bars at a disadvantage to casinos)
Protects Small Business	✓ Yes (supported by hundreds of small business owners)	✗ No (an extreme ban hurts small business)
Allows for Choice	✓ Yes (adults will be able to choose where they want to go)	✗ No (eliminates adult choice)
Creates an even playing field	✓ Yes (creates a uniform statewide ban)	✗ No (continues patchwork of local laws that put businesses at a disadvantage)
Allows for local enforcement	✓ Yes	✗ No (creates a statewide “smoke police” that costs \$4.7 million a year)
Uses existing resources	✓ Yes (doesn’t raise taxes)	✗ No (raises taxes by \$4.7 million to fund “smoke police”)

Figure 17. Proposition 206’s comparison chart identified very different categories of comparison than Smoke-Free Arizona’s chart in order to portray Proposition 206 as a moderate smokefree effort while position Proposition 201 as an extreme measure creating “smoking police.” Such subjective categories as “Reasonable Smoking Law,” “Protects Small Business,” and “Allows for Choice,” while rhetorically useful, were transparent as arguments promoted by the tobacco industry.

in the context of the contributions originating from ALBA members not amounting to any significant sum, the support appears much less bottom-up than top-down.

Smoke-Free Arizona’s Messaging

The Smoke-Free Arizona website (www.smokefreearizona.com) provided the bulk of the advertising campaign for Proposition 201 until the last month before the election. The Proposition 201 campaign also distributed a head-to-head comparison of the two initiatives (Figure 16), distributed from its website and via leaflets and signs, showing the real differences between the two proposals. Newspapers frequently used the comparison chart to draw differences between the two “bans.”

During the summer of 2006 Smoke-Free Arizona’s only paid advertising was large 1-foot-by-8-foot signs shaped like cigarettes bearing only their www.realvsfakeban.com website address, a website comparing Proposition 201 and 206’s financial backers and provisions. Several campaigners and Advisory Board members believed this strategy overestimated how many voters would see the signs and actually go to the site and compare the two competing initiatives. Because only in the last month before the election did the Proposition 201 campaign initiate its television ads, after public polls had showed the two propositions neck-and-neck, advocates like former TEPP senior researcher Jesse Nodora agreed that “I think they made some strategic mistakes. I don’t know why they waited so long to get their PR and all the billboards.”¹⁹ Nonetheless, the campaign garnered more earned media than any other issue in Arizona during the November 2006 elections. The two commercials that eventually aired in mid and late October also centered around this same

motif of fake vs. real bans as the original signs. Even if the campaign was not effective in drawing people to the fakevsrealban.com website,²⁴⁷ the signs' visibility on Arizona's streets had already planted the fake vs. real meme in the minds of voters.^{19, 247} Their goal was to clearly indicate that Arizonans were not faced with two "smoking bans" that were more or less the same, but choice between a real one (201) and a fake one (206).

<u>Contributor</u>	<u>Amount of Contribution</u>	<u>Number of Contributors</u>	<u>Total Amount</u>	<u>Percent</u>
Individual/Bar Contributions				
\$25 or less	\$1	1	\$1	
	\$5	16	\$80	Total Individual/ Bar/ ALBA combined contributions totalled less than 0.2% of total contributions
	\$10	6	\$60	
	\$15	2	\$30	
	\$20	4	\$80	
	\$25	35	\$875	
Total number, amount, \$25 or less:		64	\$1,126	
Total Amount, over \$25			\$4,730	
TOTAL amount bars/individuals:			\$5,856	
ALBA			\$11,975	
(In-Kind)			\$1,084	
Proposition 206 Reimbursement for Expenses (mailing, printing, postage)			-3,280	
TOTAL ALBA (contribution + in kind - reimbursement)			\$9,779	
TOTAL RJ Reynolds			\$8,781,063	99.8%
TOTAL Contributions/Expenditures			\$8,796,699	

During the last few weeks leading up to the election, the Smoke-Free Arizona campaign appeared matched in the polls by RJ Reynolds' Non-Smoker Protection Act (Table 26). Proposition 206 had gained ground by saturating television and radio airwaves with ads (beginning in early September) promoting Proposition 206 as the measure that would protect children and families from secondhand smoke. Proponents of Proposition 201 said in interviews this tactic only confused voters and that their themes were being appropriated by the tobacco industry.²⁴⁷

<u>Date</u>	<u>Polling Agency</u>	<u>Proposition 201 Support</u>	<u>Proposition 206 Support</u>
05.21.2002	Cronkite-Eight ²⁸²	56% (local 100% smokefree)	
01.26.2003	Arizona Republic ²⁵¹	65% (local, county or state)	
11.23.2004	Cronkite-Eight ²⁸³	62%	
01.25.2005	Cronkite-Eight ²⁸⁴	72%	
01.05.2006	Arizona Republic ²⁸⁵	57%	
03.15.2006	Grand Canyon ²⁸⁶	70%	
09.28.2006	Cronkite-Eight ²⁸⁷	57%	55% (34% against)
10.17.2006	Grand Canyon ²⁸⁰	56%	55% (39% against)
10.24.2006	Cronkite-Eight ²⁸¹	55%	44% (45% against)
11.07.2006	Election results	55%	43%

Figures 16 and 17 illustrate the confusing ways the Proposition 206 campaign appropriated the Proposition 201 health messages and imaging. The Proposition 206 campaign consistently copied Proposition 201's presentation style and messaging, further exacerbating public confusion between the two initiatives.

Smoke-Free Arizona's steering committee decided they would deviate from tobacco control norms and use the word 'ban' for clarity's sake instead of 'clean indoor air act.' When asked about the campaign's embrace of the word "ban" to describe their statewide clean indoor air initiative, Proposition 201 campaign manager Justin Turner replied:

Everybody wants to let us know [about the ramifications of using the word smoking "ban"]. Anybody who is on a national level, the Cancer Society, Heart Association, Lung Association, Campaign for Tobacco Free Kids, Americans for Nonsmokers' Rights, any of the email list advocates, they all want to run away from the word "ban." There is good research to show you lose between 1 and 3 percent support with using it.

The general population knows what the words "smoking ban" means. The general population has no clue what "clean air law" means. They do not. If our side hasn't cracked that yet, we're in serious trouble... Smoking ban is what it's been called. It's what the media uses, it's what voters have used, it's what everybody understands. In the context of this campaign, there are two different competing smokefree laws. One works; one doesn't. We could say real versus fake smokefree law or we could say real versus fake ban.

...instead of trying to educate [voters] both on the difference between our measure and their measure, and that "smokefree" means "smoke ban," we concede the point. We say, "We're a real ban; they're a fake ban." If it was just us on the ballot and we were trying to get people to vote for us who might not otherwise want the smoking law, yeah, we do smokefree. But we're trying to get people who are already with us to be with us and be against the industry.²⁴⁷

The contributing factors of the competing initiative, strong public support for the law, and public acceptance of the word "ban" all contributed to Smoke-Free Arizona's success in polarizing the campaign. The Proposition 201 campaign also did focus group testing and found that using the word ban did not have the same negative effect it did in past years or campaigns.²⁴⁷

Proposition 206's Media Campaign

In contrast to the health groups, which only could afford to run television advertisements for two weeks, one week during absentee ballot voting and one week before the election, RJ Reynolds' campaign was on the air for over two months, beginning in September. The Proposition 206 commercial that got the most television air time was the commercial "Ridiculous" (Figure 18), which tried to erode support for Proposition 201 by calling the 2-cent tobacco excise tax to pay for enforcement "ridiculous," alleging it was "more than Arizona pays to track sex offenders," and claiming this waste of taxpayer dollars to ban smoking in bars could "buy classroom supplies for more than 120,000 Arizona schoolchildren."²⁷³

The Higher Ground media firm Proposition 206 used to run their campaign was headed by Symington's former Deputy Chief of Staff Chuck Coughlin.⁸⁹ High Ground during the campaign was making over \$40,000 a month on the media campaign.^{22, 89}

The first Proposition 206 campaign commercial, "A Better Law," aired in late September. The word "ban" was used twice with special emphasis and inflection to indicate that the proposition definitely restricted some smoking. The commercial also called Proposition 206 a "statewide solution," but did not mention that this meant rolling back preexisting smokefree ordinances. In fact, the Proposition 206 campaign argued that by not allowing for any local variation it was better than Proposition 201 because it uniformly "keeps non-smokers and children away from smoke."²⁷⁴ Proposition 206 advertising did not emphasize that smoking would be permitted in bars nor that existing stronger local ordinances would be overturned.

How ridiculous is Prop 201?

PROP 201 Prop 201 spends more money to ban smoking in bars than the **State of Arizona spends to track sex offenders.**



Source: JLBC Report - 2007 budget "Sex Offender Compliance"

PROP 201 Prop 201 wastes enough money to buy **classroom supplies for more than 120,000 Arizona school children.**



Source: classroomwishlist.org

www.201wastetaxes.com

Prop 201 takes an extreme approach to banning smoking by prohibiting smoking in all bars and raising taxes nearly \$5 million a year. These new taxes would create government enforcement officers to ban smoking in bars.* Statewide, there have been **less than 5 citations** for illegal smoking in the past 4 years. Prop 201 is an extreme law and an extreme waste of taxpayer money. It's ridiculous!

Paid for by Arizona Non-Smoker Protection Committee – For I-22-2006. Major funding provided by Arizona Licensed Beverage Association and R.J. Reynolds Tobacco Company (an out-of-state contributor), with additional support from Arizona small businessmen and businesswomen.

NO on 201
RIDICULOUS
WASTE OF TAXES

Figure 18. This advertisement from the Proposition 206 campaign attacking Proposition 201 occurred late in Proposition 206's campaign, when it switched its strategy from promoting its initiative and began running an opposition campaign against Proposition 201. This media campaign sought to discredit Proposition 201 for raising tobacco excise taxes 2 cents to fund enforcement of the statewide smokefree law. Attempting to paint Proposition 201 as an "extreme law and an extreme waste of taxpayer money," the Proposition 206 campaign's "Ridiculous" campaign gave up on promoting Proposition 206's weak clean indoor air act when it became clear Proposition 201 led in the polls.

protects private property rights?" (206).²⁷⁴ This quiz provides an insight into how RJ Reynolds twisted the framing of the competing propositions. For restaurants, or at least the non-bar portions therein, Proposition 206 conceded their smokefree status. For the health risk, only children are addressed by their exclusion from bars. The Proposition 206 campaign focused on Proposition 201's tax increase and the idea that by exempting bars (but not restaurants) private property rights are somehow protected, while omitting the health of workers or the research on the adverse health effects of secondhand smoke. The Proposition 206 initiative was merely a Trojan horse for preemption.

Another interesting move in the Proposition 206 campaign was a letter sent to voters in late October by Tommy J. Payne, Executive Vice-President of RJ Reynolds Tobacco. Rather than the usual tobacco industry strategy of trying to remain out of public view,³¹ this letter was apparently intended to win over voters by its frankness and candor. He wrote, "One of the many benefits of living in a democracy is our ability to participate in the political process and freely make our views known in a way that impacts public policy. As executive vice president of RJ Reynolds Tobacco Company, one public policy issue I am increasingly concerned about is the proliferation of smoking bans that make no exceptions for adult-only venues like bars.... We are not trying to hide our participation in this election."⁴⁰

Proposition 206 had two separate websites. www.yeson206.org, the campaign's prime website, included a comparison quiz between Proposition 201 and 206 including questions like "which proposition bans smoking in restaurants," giving options 201, 206, both, neither (answer given: both); "which proposition is a uniform statewide ban" (206); "which proposition is a tax increase?" (201); "which proposition allows smoking in bars" (206), "which proposition bans children from bars that allow smoking" (206), "which proposition allows smoking in veteran and fraternal clubs?" (Both); and "which proposition

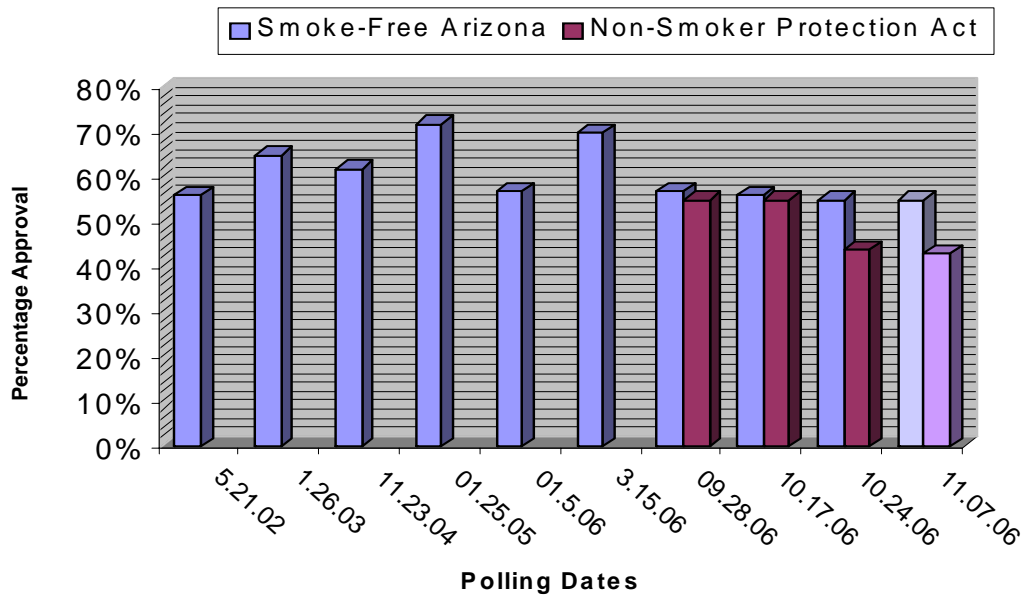


Figure 19. While Proposition 201 (Smoke-Free Arizona) and Proposition 206 (Non-Smoker Protection Act) were very close in early polling, in the final two weeks before the election, support for Proposition 206 fell. Final election results were nearly identical to the October 24, 2006 poll, with Proposition 201 winning with 55% approval, and Proposition 206 failing with only 43% of the vote.

Despite its heavy media presence, the Proposition 206 campaign did not see much movement in the polls (Figure 19), which probably explains why the campaign kept trying to reinvent their message. In a 2006 interview, Smoke-Free Arizona campaign manager Justin Turner commented,

They're on their fourth or fifth different message since the end of May. They keep trying to throw out different things from 'protect kids,' 'protect property rights,' 'we're just like them only different.' 'There's something about the tax measures.' They're going to switch that again here in the next couple of days, partly because none of it's working. ...their attack ad has had exactly the opposite effect that they wanted.²⁴⁷

The more money RJ Reynolds spent, the more apparent it became that the Non-Smoker Protection Act was really only the "RJ Reynolds Protection Act."²⁷⁵

The Ridiculous Ad

The "Ridiculous" campaign was also matched by online graphic ads which read "How ridiculous is Prop 201?" displayed on popular state websites (like news sources); clicking on the ad opened the www.yeson206.com website.²⁷⁶ Another Proposition 206 campaign website tied to Ridiculous was www.201wastestaxes.com, which ridiculed the 2 cent per pack cigarette excise tax levied for enforcement of the smoking law, ambiguously portraying the 2 cent tobacco tax as merely a (sales) tax without specifying that only smokers would pay it.

Former Maricopa County Attorney Rick Romley received much press attention when he unexpectedly began attacking Smoke-Free Arizona, parroting Proposition 206's claim that Proposition 201's tax increase was "ridiculous." In his press release on Proposition 206's website, he wrote, "Would you rather have 47 enforcement officers patrolling bars or patrolling our border? Take it from me, Prop 201 is a ridiculous waste of taxes."²⁷⁷ Romley, a public figure and decorated war veteran, carried a high degree of respect in Arizona. When the Proposition 206 campaign issued a press release lauding Romley's statement that used phrases similar to those employed by Proposition 206, many tobacco control advocates were abhorred at Romley's sudden and strong opposition to Smoke-Free Arizona.¹⁴⁶

Some on the Proposition 201 Advisory Board felt that the campaign had to respond to the Ridiculous ads because, as Board member Matt Madonna expressed in late October, “they’re killing us with these ‘Ridiculous’ ads.”¹³ In contrast, Justin Turner, the campaign manager for Smoke-Free Arizona, explained the opposite view in an interview two weeks before the election:

... the more we talk about taxes, we'll have net loss of vote... [Health] is the silver bullet and that's why the industry has taken this new tactic. They're trying to keep us off the health message. As long as campaigns keep talking about health and the desire to have smokefree workplaces, we will win this. When we get off of that, we'll lose. It's that simple... I think from a grassroots standpoint, there's where a lot of advocates make mistakes. They first want to respond to everything. They see a laundry list of problems with the industry measure or with the opponent's reasoning and they want to respond to everything. They want to respond to ventilation or economics or age restrictions or waivers, whatever. Political campaigns are not laundry lists of issues; they are one message that unifies everything. If what you're talking about doesn't fit in with the unified message, you don't talk about it.²⁴⁷

Turner prevailed and the Proposition 201 campaign did not address the Ridiculous ads.

The outrageousness of Proposition 206's anti-tax claims of wasted taxes elicited public criticism. An *Arizona Daily Star* column called AdWatch reported, “[B]oth comparisons imply money for such needs as sex-offender tracking and school supplies is being diverted to chase down smokers. That is misleading, since no such funds exist unless Proposition 201 passes.”²⁷⁸

The attack Smoke-Free Arizona received from the Proposition 206 campaign for the 2-cent tax may have actually benefitted the Proposition 201 campaign. Some newspaper articles turned the criticism for the enforcement-funding tax around by observing that the RJ Reynolds initiative lacked any sort of enforcement mechanism at all, leaving enforcement (as one journalist put it) to “local police, who probably wouldn’t enforce the law evenly” over different jurisdictions.²⁷⁹ Thus, while non-specific tax increases (as implied by Proposition 206's advertisements) generally meet Arizonans’ disapproval, the tobacco-specific tax for ADHS’s enforcement responsibility helped deflect challenges that the smokefree law would be putting an additional burden on police.

Proposition 206 spokespeople avoided the question of worker protection from secondhand smoke. The Proposition 206 campaign repeated traditional tobacco industry rhetoric: “It’s clearly an adult choice to go and apply for a job in a smoking environment,” and “If Prop. 201 folks let the market decide, there’s going to be plenty of bars that don’t allow smoking.”²⁵⁶

RJ Reynolds vs. Philip Morris

No other tobacco company contributed to the campaign. As also occurred in Ohio in 2006,²⁶⁸ the counter-initiative was entirely funded by RJ Reynolds, with less than 0.2% from other sources (Table 25). A pattern of good cop, bad cop developed among the tobacco companies. After the national NBC coverage on the unscrupulous signature gatherers, NBC added the following column to their website version of the report entitled “Philip Morris responds to this story” to the on-line article:

Aug. 24: Since this story aired, we have heard from Philip Morris. A company official there wanted us and you to know Philip Morris is not part of the efforts by other tobacco companies to get initiatives on the ballot this fall in Ohio and Arizona that would allow smoking in many public places. The Statement, in part:

“Philip Morris USA believes the public should be guided by the conclusions of public health officials regarding the health effects of secondhand smoke in deciding whether to be places where secondhand smoke is present, or if they are smokers, when and where to smoke around others. We also believe that the

*conclusions of public health officials concerning environmental tobacco smoke are sufficient to warrant measures that regulate smoking in public places.*²⁶⁶

The Battle for Public Opinion

On October 17, 2006, a poll released by Northern Arizona University Social Research Laboratory showed Proposition 201 at 56% support and Proposition 206 at 55% and concluded that “Both anti-smoking measures are likely to win.”²⁸⁰ However, on October 24 another poll released by Cronkite-Eight (Arizona State University’s polling center) showed Proposition 201 maintaining its support at 55% while those in favor of Proposition 206 fell to 44% (Table 26).²⁸¹ At first, staff at the Proposition 201 campaign was skeptical of the Cronkite-Eight poll’s optimistic numbers for Proposition 201 versus Proposition 206, especially because due to lack of funds Proposition 201’s commercial had been off the air for two weeks, while Proposition 206’s Ridiculous attack ads were everywhere. Yet, when the election results came out for the two competing smoking initiatives, they reflected very closely the last poll taken.

The night before the election, Monday, November 6, Proposition 206 representatives leaked an internal poll which indicated that Proposition 201 had 53% of the vote and Proposition 206 had 51%, which put the Proposition 201 campaign into panic mode.²⁴⁷ Although Proposition 201 had always been in the lead in the polls, up until an October 24, 2006 poll (Table 26), it seemed as if both propositions would pass. Because Proposition 206 had billboards all around Phoenix and lining the major travel corridors in the state, while Proposition 201 only had scant paid media coverage, Proposition 201 supporters did not feel secure about their ability to pierce through the haze of confusion as to what smoking ban accomplished what.

Had Proposition 206 passed, the Smoke-Free Arizona campaign had considered two angles. First, the enacting clause which states “Be it enacted by the People of the State of Arizona” was missing from Proposition 206.²⁴⁷ Technically, without this clause, the initiative could not go into effect. Second, according to the Arizona constitution, any initiative which requires a funding source must under law provide its own source of funding.²⁸⁸ Proposition 206 would have been an unenforceable law because it did not provide for the funds required to enforce it. Yet if both had passed, the legal battle would have been long and expensive.

Success Despite Great Obstacles

The Proposition 201 campaign took a risk when it mounted the effort to enact a statewide clean indoor air law by initiative. By agreeing to take the tobacco issue to the statewide level, an arena where the tobacco industry historically had been able to overwhelm all but the most well-directed campaigns, they opened up the possibility of preemption, which Proposition 206 included. While the tobacco industry had not taken the opportunity to appropriate Rep. Lopez’s HB 2629 in 2004 as a vehicle to enact a weak statewide law with preemption, the tobacco control movement on many levels was unprepared for the intensity of the tobacco industry’s response, particularly the filing of a competing initiative.

Jesse Nodora (a former TEPP senior staffer) related in a 2006 interview that the Proposition 201 campaign, up until the July 19, 2006, RJ Reynolds investors conference call, had expected industry spending in opposing Proposition 201 to “top out at \$3 million.”¹⁹ However, RJ Reynolds announced on July 19, 2006, it had budgeted \$8 million in Arizona alone and \$40 million for fighting tobacco control around the nation for the 2006 election cycle.²⁶²

The difference in funds available for television spots and other paid media was of particular concern to Smoke-Free Arizona. RJ Reynolds (and its allies) spent \$6.8 million on media-related costs, while Smoke-Free Arizona spent only \$1.1 million on media, less than one-sixth RJ Reynolds’ expenditure.²² As Turner commented in late October, 2006:

Unfortunately, this is one of the most expensive states in the country right now [for television]. A lot of that has to do with the tobacco industry dumping in so much money.... We only had enough money, really, for, I would say, a week and a half [of television]. ...we had one week of TV [for absentee voters], five weeks out, dark for three weeks, and then one week of TV in the very end. That type of [advertising] doughnut is scary as heck.²⁴⁷

The influx of money RJ Reynolds spent in the state in media, signature gathering, billboards, and other campaign resources unexpectedly drove up the price for all political services during the campaign, exacerbating the monetary differential between the Proposition 201 and 206 campaigns.

Furthermore, Smoke-Free Arizona anticipated raising more funds for a more extensive media campaign than they were able to actually raise by between \$200,000 and \$1.2 million. In Ohio, where the 2006 smokefree initiative also confronted an RJ Reynolds look-alike initiative, the health voluntaries raised \$2.7 million compared to RJ Reynolds' \$6.7 million,²⁶⁸ prompting the question why the tobacco industry would spend more money in Arizona (\$8.8 million) than in Ohio, a state with eight times the population of Arizona. While Arizona's election (54.7% for 201 and 42.6% for 206) was closer than Ohio's (58% for the health groups' initiative, 36% for RJ Reynolds'), the Arizona counter-initiatives were more competitive until the final two weeks of the election.

The overwhelming rejection of RJ Reynolds' Proposition 206 Non-Smoker Protection Act and the solid win for the Proposition 201 Smoke-Free Arizona initiative indicated that despite being outspent by almost 5 to 1 (RJ Reynolds' \$8.8 million vs. the health groups' \$1.8 million), the public was ready for a strong smokefree Arizona law. Fortunately for Arizona tobacco control advocates, Proposition 201 earned 54.8% of the vote and Proposition 206 garnered only 42.7% of the vote.*

Aftermath

On November 2, 2006, Lisa Hauser, Proposition 206's attorney and long-time attorney for the tobacco industry and their front groups, threatened to sue Arizonans Concerned About Smoking to revoke their non-profit status for allegedly using non-profit monies for publishing a comparison chart of Propositions 201 and 206 printed in the *Arizona Tribune* on October 29, 2006 and the *Arizona Republic* on November 1, 2006 (Figure 20).¹⁹⁴ Hauser wrote to the Arizona Secretary of State in attempts to penalize ACAS. After consulting with their attorneys, ACAS used the exact same comparison chart (Figure 21) as the Coconino County Health Department displayed in their ADHS TEPP and County-funded *Coconino Tobacco Education News* in their Fall Newsletter (compare Figures 20 and 21).²⁹⁰ This chart had already been approved for public use by Coconino County's Deputy County Attorney Jean Wilcox on September 25, 2006.²⁹¹ Hauser's complaint was ultimately dismissed, and Proposition 206's attempt to intimidate ACAS failed.

* Mark Anthony DeSimone, chairman of the Proposition 206 campaign, also concurrently ran for the Arizona State House of Representatives in District 11 as a Democrat against two Republicans in a highly Republican-dominated district. Two seats were open in this district, and the two candidates with the most votes won the seats. As a real estate agent and, since 1990, owner of the Hidden House bar, DeSimone opted to receive public campaign finance for the election and dealt with the Proposition 206 campaign at the same time as his first foray into politics. Despite losing Proposition 206, the election was not a complete loss for DeSimone, because he won one of the two open seats. As the chairman of the highest-spending campaign in the state in 2006, DeSimone received millions of dollars of free name recognition advertising despite not having the ad content related to his legislative campaign, because every Proposition 206 commercial began, "Hi, I'm Mark Anthony DeSimone...." Because of this overlap, one of his Republican opponents (Don Hesselbrock) complained to the Citizens Clean Election Commission that DeSimone had taken public funding for his campaign, but had an unfair advantage because the advertisements of the Proposition 206 campaign plastered DeSimone's name and face ubiquitously across Arizona.²⁸⁹ While the Citizens Clean Election Commission ruled that Hesselbrock could not get additional matching funds to make up for DeSimone's additional Proposition 206 exposure, *The Arizona Republic* reported that undoubtedly "the publicity helps get DeSimone some name recognition, something important in a three-way race for two House seats where there are no incumbents."²⁸⁹

Comparison of Nonsmoking Propositions: Proposition 201 vs. Proposition 206		
<p>This coming Nov. 7th you will be able to vote on two initiatives that will determine Arizona communities' indoor smoking policies. There are many differences between the two choices, so you will want to study the initiatives carefully. If both initiatives receive over 50% of the votes, the initiative that receives the most votes will prevail.</p>		
	Proposition 201: Smoke-Free Arizona	Proposition 206: Arizona Non-Smoker Protection Act
Sponsoring Organizations	<ul style="list-style-type: none"> • American Cancer Society • American Heart Association • American Lung Association • Arizona Hospital & Healthcare Association 	<ul style="list-style-type: none"> • R.J. Reynolds Tobacco Company • Arizona Licensed Beverage Association
100% Smoke-free Restaurants	YES	NO Smoking allowed in parts of restaurants that sell alcoholic beverages and are separated by partitions/ventilation
100% Smoke-free Bars and lounges	YES	NO Smoking allowed in estab- lishments where the primary purpose is the sale, service and consumption of alcohol
100% Smoke-free Bowling Alleys and Pool Halls, Hotel Lobbies, And other Businesses	YES	NO Smoking allowed in parts of establishments that sell alcoholic beverages and are separated by partitions/ventilation
Designated Enforcement Agency	YES Arizona Department of Health Services	NO
Business Penalties for Illegally Allowing Smoking	YES Civil penalty of \$100-500 for a violation by a business	NO No penalties for a business that allows smoking where it is prohibited
Funding for Enforcement	YES Tax of 2 cent/pack of cigarettes funds enforcement	NO No funding designated for enforcement
Allows for future smoke-free ordi- nances in cities and counties.	YES	NO Takes precedence over all city/ county laws relating to smoking

The above paid for by Arizonans Concerned About Smoking, Inc. as a public health education service.

Figure 20. Arizonans Concerned About Smoking used their 501(c)3 account monies to pay for a public service announcement chart educating Arizonans as to the differences of the two competing nonsmoking propositions. Arizonans Concerned About Smoking used the exact same comparison chart as a Coconino County Health Department newsletter did (Figure 21). Yet, construing the comparison chart as campaigning, the Proposition 206 campaign filed with the Secretary of State alleging ACAS used their 501(c)3 lobbying-restricted funds illegally for lobbying. While this required effort on ACAS' part to defend, the Secretary of State did not find ACAS in violation of any campaign finance laws, and the case was dropped.

Comparison of Nonsmoking Propositions: Proposition 201 vs. Proposition 206

This coming November 7, you will be able to vote on two initiatives that will determine indoor smoking policies for Arizona communities. There are many differences between the two propositions, so you will want to study them very carefully. If both initiatives receive over 50% of the vote, the initiative that receives the most votes will prevail.

	Proposition 201: Smoke-Free Arizona	Proposition 206: Arizona Non-Smoker Protection Act
Sponsoring Organizations	<ul style="list-style-type: none"> • American Cancer Society • American Heart Association • American Lung Association • Arizona Hospital & Healthcare Association 	<ul style="list-style-type: none"> • R.J. Reynolds Tobacco Co. • Arizona License Beverage Association
100% Smoke-free Restaurants	YES	NO Smoking allowed in parts of restaurants that sell alcoholic beverages and are separated by partitions/ventilation
100% Smoke-free Bars and Lounges	YES	NO Smoking allowed in establishments where the primary purpose is the sale, service, and consumption of alcohol
100% Smoke-free Bowling Alleys, Pool Halls, and Other Businesses	YES	NO Smoking allowed in parts of establishments that sell alcoholic beverages and are separated by partitions/ventilation
Designated Enforcement Agency	YES Arizona Department of Health Services	NO
Business Penalties for Illegally Allowing Smoking	YES Civil penalty of \$100-500 for a violation by a business	NO No penalties for a business that allows smoking where it is prohibited
Funding for Enforcement	YES Tax of 2 cents per pack of cigarettes funds enforcement	NO No funding designated for enforcement
Allows for future Smoke-free ordinances in cities and counties	YES	NO Takes precedence over all city/county laws relating to smoking

Page 2

Figure 21. The Coconino County proposition comparison chart; the same format as ACAS's advertisements attacked by the Proposition 206 committee.

Proposition 203: Raising the Tobacco Tax to Fund Early Childhood Education

In addition to the two competing smoking initiatives on the ballot for November 2006, a third tobacco-related initiative sought to raise the state tax on cigarette packs by 80 cents (with a corresponding increase on other tobacco products) with all the revenues going to create a new early childhood care program in Arizona. The effort, Proposition 203, known as First Things First for Arizona, framed itself as a public goods measure “to fund voluntary early health screenings and education programs for children zero to five years old throughout our state.”²⁹²

With no connection to Arizona’s tobacco control advocates and no revenue going to tobacco control, the First Things First for Arizona committee decided to raise Arizona’s tobacco tax because they thought it would be the easiest source of money to obtain. According to Rhian Evans Allvin, the measure’s campaign consultant:

Our target when we started looking at revenue opportunities was at least \$150 million a year. Well, when you do that, there are only really a handful of taxes that will raise that in a sustained way. There’s income tax, sales tax, property tax, tobacco tax, a combination with an alcohol tax, there’s a real estate transfer tax. We basically created a laundry list of all of those different revenue streams and then did a comprehensive evaluation of which one - based on public policy, what would work in terms of ease and ability to be collected, what other constituencies were using that tax, whether or not the public would support a tax of that nature - and based on all of those facets, we landed on the tobacco tax.... Obviously the first priority in our mind was funding the system of early care and education. Having it be a benefit that it incentivizes people to stop smoking, and more importantly, from what I have seen, really effects the ability of teens to purchase cigarettes, is definitely an added benefit.²⁹³

With studies showing that for every 10% increase in cigarette price there is a 4% decrease in tobacco usage among adults, and even a more pronounced drop in tobacco usage among youth, increasing tobacco taxes are an important tobacco control component.^{248, 249}

In their advertisements, the First Things First campaign downplayed the source of funding for their program. Mention of the proposed revenue source appeared only incidentally in their campaign materials and advertisements, and their website did not highlight the fact. Nonetheless, the proposed 80 cent tobacco tax increase was the greatest tobacco tax increase thus far in Arizona.

A March 15, 2006, Social Research Laboratory poll²⁸⁶ on Proposition 203 showed 70% respondents in favor, while a September 24, 2006 Arizona State University poll²⁸⁷ showed 62% Arizonans in favor.

Addressing the issue of decreased sales due to the increase in tax, First Things First spokeswoman Rhian Evans Allvin assured that the group had run a statistical analysis and was not concerned about the tax increase negatively effecting their own funding for at least 10 years.²⁹³ While the Proposition 203 campaign team was aware of the normal decrease in the smoking when price increases, they viewed this fact as a benefit for healthier Arizonans and also argued that this decrease in individual usage would not negatively effect the money for their programs because the expanding population in Arizona would add new smokers.²⁹³

The Proposition 203 campaign did not actively seek the endorsements of the ACS, the AHA, or the ALA. Spokespersons for First Things First maintained that Proposition 201 and 203 were very different measures. Conspicuous by its absence was any organized opposition campaign to this initiative.

Token Opposition

The criticism of Proposition 203 concentrated on the fact that it was a tax increase. Other claims included that cigarette taxes are regressive,²⁹⁴ no logical link exists between taxing smokers and paying for

early childhood education (with smokers to unfairly shoulder a disproportionate share of childcare costs), funding early childhood education with a tobacco tax is fiscally irresponsible, and the Legislature should be providing general funding sufficient for early childhood care and education.²⁹⁵ Finally, a criticism leveled at Proposition 203 stated that if tobacco consumption goes down, then funding for the First Things First program and other programs funded by preexisting tobacco excise taxes will also decrease, causing First Things First to ask the Legislature to appropriate more funds for the new program.²⁹⁵

The brother of the president of the Arizona Tax Research Association (an organization which has a history of receiving consistent tobacco industry funding)²⁸ wrote a letter to the editor stating that Proposition 203 was “just another ‘feel good’ proposition that furtively increases taxes and further burdens the poorer sections of our society.”²⁹⁴

The pattern for the 2006 election cycle in Arizona, as in Nevada, Ohio, Missouri, and California, was that Phillip Morris focused primarily on fighting tobacco taxes and RJ Reynolds focused primarily on fighting clean indoor air acts. Phillip Morris registered a committee to oppose Proposition 203 on October 12, 2006 a little over three weeks before the election, but did not provide major funding.²⁹⁶ Unlike RJ Reynolds’ Proposition 206 campaign that had ALBA run the campaign and spent millions, Philip Morris’ No on 203 campaign had its Chair (Jack K. Dillard) and Treasurer (Timothy R. Cambell) from out of state (Texas and Virginia, respectively), and only spent a little over \$66,000 on the campaign (Table 27). This money never translated into any sort of campaign. Despite the fact that a cigarette tax increase would reduce smoking, the tobacco companies did not mount a campaign against Proposition 203, instead concentrating on fighting the clean indoor air law, Proposition 201.

Table 27. No on Proposition 203, (1-16-2006) Philip Morris USA (2006-02833) Campaign

Contribution Amount	(All In-Kind)	Date	Expenditure	Amount	Date
Altria	\$200	Oct.12	Democracy Data and Communications, LLC	\$638	Oct. 31
Philip Morris USA	\$428	Oct.12	Demo. Data and Comm. LLC (Virginia)	\$21,322	Nov. 13
Altria	\$50	Oct.13	Demo. Data and Comm. LLC	\$1,223	Nov. 13
PM USA	\$427	Oct.13	Issue & Image Advocacy Advert. (Virginia)	\$2,707	Oct. 24
PM USA	\$427	Oct. 16	Madden Communications Inc. (Illinois)	\$138	Oct. 24
PM USA	\$1,201	Oct. 17	Madden Communications Inc.	\$7,524	Oct. 25
PM USA	\$428	Oct. 18	Madden Communications Inc.	\$7,362	Oct. 26
PM USA	\$6,289	Nov. 27*	Madden Communications Inc.	\$16,545	Oct. 30
*Services rendered by corporate employees between Oct. 19 and Nov. 27					
Total In-Kind Contributions as of Nov. 27, 2006:	\$9,451		Total Contracts Expenditures (Debts):	\$57,458.66	
Total Philip Morris expenditures/debts as of December 18, 2006:				\$66,909.48	

A Cause Célèbre

The political and elite support for Proposition 203 was tremendous. Not only did five previous governors endorse the proposition (including pro-tobacco Symington), but the Bashas (grocery store chain owners) and the Fultons (real estate moguls) managed to make Proposition 203 and the issue of early childhood development and health a cause célèbre, in a way that Proposition 201 noticeably did not achieve. In part perhaps because philanthropic circles traditionally focus on children and their issues, but also because of Proposition 203's political consulting firm Hamilton Goethe Davidson Roman and Eddie Basha's personal connections, the campaign's collection of money and endorsements were facilitated (Table 28).²⁹³

Table 28. Proposition 203 First Things First Campaign Contributions		
Contributor		Amount
Bashas' Grocery	In Kind	\$20,904
	Contribution	\$135,781
Fulton Homes	In Kind	\$60,000
	Contribution	\$251,000
Arizonans for a Fair Beginning		\$220,100
Grace Investment Company		\$150,000
Vanderbilt Farms, LLC		\$100,000
Jerry Moyes		\$100,000
Ross Farnsworth		\$105,000
Gerald Bisgrove		\$100,000
Leo Beus		\$100,000
El Dorado Partners		\$100,000
Kitchell		\$100,000
Salt River Pima Maricopa Indian Community		\$20,000
Sum of Major Contributions:		\$1,562,785
Contributions under \$100,000: (including contributions from Basha family members)		\$1,676,279
Total Raised		\$ 3,239,064

The First Things First campaign started over 4 years before the election, conducting private research and polls ensuring the political viability of the campaign, fundraising in Fall 2005 and gathering powerful endorsements, making the rounds in Arizona's elite social circles, and making political allies to the point where the who's who of Arizona had all either donated to or endorsed Proposition 203.²⁹³ Arizona's three Roman Catholic bishops supported First Things First.²⁹⁷

At a time when neighboring California was unsuccessfully pursuing a \$2.60 per pack tobacco tax increase by initiative (California Proposition 86) largely to fund hospitals,²⁹⁸ Arizona's Proposition 203 tax increase for early childhood education seemed modest and uncontroversial.

Putting First Things First ... and Tobacco Control Last

There was no coordination or collaboration between Propositions 203 and 201, in part because they were different measures with different purposes, and in part because the Proposition 203 campaign was playing down the fact that it was a tobacco tax and did not want Proposition 203 to be associated with tobacco control in fear that this would alienate voters. While an association with Proposition 203's powerful endorsers might have benefitted Proposition 201, it posed a risk to Proposition 203 because of the tremendous RJ Reynolds media opposition to Proposition 201. Especially given that RJ Reynolds in the last month of campaigning honed in on the 2 cent tax aspect of Proposition 201, First Things First did not want to get caught in the cross-fire. Lee Fairbanks commented that "ordinarily [Proposition 203] would have been a target" on the tobacco industry's radar, but because of Proposition 201, fighting the 80 cent excise tax increase was eclipsed by the industry's need to fight Smoke-Free Arizona.²¹⁰ In a way, Proposition 201 acted as a "shield" for Proposition 203, as \$8.8 million was spent fighting Proposition 201, while only a pittance was spent against Proposition 203, and that only at the end of the election.

One significant problem that Proposition 203 created for tobacco control in Arizona was that there was no revenue backfill for TEPP and other programs to compensate for the fact that the tax increase would reduce cigarette (and other tobacco) consumption. This omission meant that when tobacco consumption decreased as a result of the tax increase, funding for Arizona's tobacco control program from existing tobacco taxes would decline. Long-time TEPP employee Jean-Robert Jeoffroy commented in a 2006 interview that the First Things First "initiative is also very troubling because, Heart, Cancer, and Lung went to them asking for backfill and they refused to put it in."¹³⁷ Sharlene Bozack of ACS explained, "We went to them and said that 'if they were going to do the 80 cent tax that they needed to do backfill' and we explained the whole thing and Mrs. Basha said 'not interested,' that was her message to us."²⁵² Bozack revealed in a 2007 interview that ACS, ALA, and AHA did not support Proposition 203 because it would hurt TEPP. Yet Rhian Evans Allvin,

consultant to the Proposition 203 campaign stated in a 2006 interview, “To be totally honest with you, there was not a conversation about backfill.”²⁹³ Proposition 203 would gain millions of dollars previously designated for TEPP.

First Things First passed November 7, 2006, with 53.2% of the vote. This low victory margin was surprising to tobacco control advocates and the Proposition 203 campaign alike, given previous polling in late September showed Proposition 203 at 62% support.²⁸⁷

Missing the (Decimal) Point

The fate of Proposition 203 was placed in doubt when the language regarding the denomination of the tax was misprinted on the voting ballots. While the actual initiative language was not in error (a fact overlooked in the press), the ballot information for Proposition 203 issued by the Secretary of State erroneously stated: “A ‘yes’ vote shall have the effect of [1] establishing an early childhood development health care board and fund, [2] increasing the state tax on cigarettes (.80 cents/pack) ...” This error was discovered during “early voting” in which Arizonans are permitted and encouraged to go into county courthouses and vote in the month before the actual election. (This is different from absentee ballots.) Voters noticed that the ballot said “.80 cents” instead of “80 cents” or “\$.80” as was originally submitted to the Secretary of State. While voters actually vote on the full ballot language of the ballot proposals rather than the summaries printed on voting materials, the mistype drew untoward media attention.

Because of this flaw, first reported by *Arizona Republic* columnist E.J. Montini on October 25, several editorials in the media called for invalidation of the ballot measure. Proposition 203 campaign chair Nadine Basha rebutted this opinion with a Letter to the Editor entitled “Don’t let dot deplete Prop. 203.”²⁹⁹ This turn of events forced the First Things First campaign to talk about the 80 cent tobacco tax as their funding source to save their proposition. Yet, when confronted with a potential court challenge and losing at the ballot box versus airing the specifics of the additional 80 cent tax per package of cigarettes, the First Things First campaign defended the typo by discussing the particulars of their funding scheme. However, because the Proposition 203 campaign remained adamant in its belief that it was the actual language of the initiative that mattered and not what was printed on the voter’s ballot, they managed to stave off what could have avalanched into strong public opposition. While the newspapers were against dismissing the added decimal point on the voting ballot as inconsequential, few members of the public or government saw this typo as a serious issue.

Following this problem, Philip Morris did not spend any additional money challenging Proposition 203, instead investing in lawyers to investigate how they could use this Secretary of State’s error to undermine the campaign and disqualify Proposition 203. John Rivers remarked after the media drew its attention to the erroneous decimal point, “Phillip Morris is now sitting back and saying, ‘let’s save our money for a court challenge here, let’s not spend it on this campaign.’”¹² Despite this misadventure, Proposition 203 passed with 53.2% of the vote and Arizona Attorney General Terry Goddard issued a formal legal opinion on December 1, 2006, ruling that the tax was valid. Neither Philip Morris nor RJ Reynolds challenged in court the enactment of Proposition 203 or the legality of the vote.³⁰⁰ After Goddard issued his opinion, RJ Reynolds began “scouting around for attorneys to challenge the state’s new 80-cent tobacco tax,” though they did not end up filing a lawsuit.³⁰¹

The Arizona Revenue Department, upon receiving Goddard’s affirmative ruling they had requested, began collecting the 80-cent per-pack tax. However, in a separate ruling, Goddard said the tax would not apply to Indian Reservations and therefore did not have to be collected there.

IMPLEMENTATION OF THE STATE CLEAN INDOOR AIR LAW

When the final election results came out, the Proposition 201 committee was pleasantly surprised that the favorable poll results the campaign staff initially regarded with skepticism were representative of the actual outcome. Speaking the day after the election, Justin Turner commented, “essentially, on Nov. 7 we won two campaigns: We got clean indoor air in Arizona, and also fought off preemption.”²⁴⁷

Proposition 201 beat Proposition 206 by a larger margin than any of the polls predicted. In the final tally, Proposition 201 garnered 54.8% of the vote (621,627 votes) while Proposition 206 only received 42.7% of the vote (486,426 votes).³⁰² The public’s clear preference for a genuine smokefree law made further challenges by the tobacco industry unviable, despite the long history of such challenges in Arizona and elsewhere.^{31, 223, 303}

The Smoke-Free Arizona coalition exempted patios from the required minimum distance of 20-feet from the building established for all other outdoor smoking areas. Future tobacco control efforts in Arizona must remove this exemption. Making patios smokefree prevents patios from becoming the new smoking section for restaurants and bars. Another important protection will be to insure that veterans and fraternal clubs are covered in the future, as Arizona has already accomplished locally in Flagstaff. While the national VFW already has been thinking about making VFW posts smokefree to attract younger clientele,^{304, 305} protecting veterans through smokefree ordinances or laws in Arizona will help encourage the VFW’s action.

ADHS and Implementing Smoke-Free Arizona Act

Proposition 201 made the Environmental Health Services (EHS) Division of ADHS responsible for enforcing the Smoke-Free Arizona Act.

At the time Proposition 201 passed, Arizona was \$4.7 million short of meeting the then-minimum CDC requirements¹⁴ for adequate spending for tobacco control programs and education. (The Campaign for Tobacco-Free Kids estimated Arizona needed to add an additional 7 cent tax on tobacco products going entirely to tobacco control efforts to adequately fund their tobacco control program.³⁰⁶) While any revenue leftover from the 2 cent tobacco tax added by Proposition 201 would go to TEPP, this gain (estimated at roughly \$3 million per year after the initial year of implementation) will likely be somewhat counteracted by the decrease in tobacco sales (and hence revenues) due to the 80 cent additional tobacco tax instituted by Proposition 203.

Part of ADHS’ implementation scheme for the clean indoor air law included mandatory signs inside buildings including a number to call to report clean indoor air violations. ADHS would initially receive an estimated \$4.7 million a year for enforcement. ADHS implementation plans included \$100,000 for free no-smoking signs for bars and restaurants.³⁰⁷ These no-smoking signs include a toll-free telephone number and email address to lodge complaints. Because the policy ADHS adopted makes the majority of the enforcement of the Smoke-Free Arizona Act complaint driven, easy access to the system of redress both gives smokers a visual reminder that indoor smoking is illegal and can result in fines, and empowers the non-smoker to assert his or her right to clean indoor air.

These placards were effective in giving citizens a convenient method of addressing illegal secondhand smoke. Over 1,000 calls were made in the first month the law was enforced. However, EHS did not always respond to the calls, and often, by the time EHS came to the location to confirm the violation, the smoke had dissipated and the offender had left.

In addition to responding to complaints, EHS also integrated enforcement of Proposition 201 into its routine enforcement of food safety by checking for signs of smoking, including ashtrays, the smell of smoke,

or other tell-tale signs of smoking in their routine random inspections of restaurants and bars to ensure sanitary conditions.

With their positive advertising campaign creating the expectation of self-enforcement and committed enforcement early on in dealing with challenges, the ADHS created an effective enforcement precedent. During implementation, TEPP did not take a proactive role in educating Arizonans about the dangers of secondhand smoke or promoting the smokefree law. Instead, TEPP rode on the coattails of Smoke-Free Arizona's success to focus on cessation services, airing commercials "Nick" and "Hector" with characters describing their process of quitting smoking.

"The Smoking War is Over"

For almost 20 years ALBA had sided with the tobacco industry, and indeed was the industry's number one ally in the state. ALBA President Bill Weigele was proud that "ALBA became the most formidable enemy that the anti-smoking activists faced."²⁴⁵ But after the triumph of Smoke-Free Arizona and the failure of RJ Reynolds' Non-Smoker Protection Act, ALBA conceded the point on smoking, realizing that there was more involved in running taverns than accommodating for smoking patrons and fronting for the tobacco industry. Regarding the imminent Smoke-Free Arizona law, Weigele told ALBA members in April 2007, "People might disagree, but people won't go out of business"³⁰⁸ – a very different reaction than ALBA had previously adopted to smokefree ordinances.

In the Spring issue of the *ALBA Reporter*, Weigele wrote that it was "Time to End the Smoking War":

ALBA stayed in the fight to the very end. But now, we must accept the fact that the smoking war is over. It's time to go about the business of figuring out how to get past this issue and use our entrepreneurial skills to create new reasons beyond smoking for our patrons to stay with us. We have too much invested not to move positively toward keeping our customers satisfied and our establishments profitable.²⁴⁵

ALBA would follow up on this statement. Before implementation even began, a group of bar owners based in Tucson calling itself the Arizona Alcohol Service Providers Association (AASPA) began holding meetings inviting the press to report on their plans to challenge Smoke-Free Arizona, claiming it cost Arizona 28,000 lost jobs.³⁰⁹ Bar owners Alfonso Larriva and Alfonzo Ruiz flaunted the Smoke-Free Arizona law during the first two weeks of enforcement in the four bars they owned by removing the panes of the small windows in their bar and replacing them with vents, claiming that transformed their bar into a patio.³⁰⁹ Following a strategy pursued (unsuccessfully) by the tobacco industry and its allies elsewhere,^{32, 223} the bar owners worked with AASPA to challenge the Smoke-Free Arizona law so they could bring the case to court in hopes of finding it unconstitutional. ADHS, in charge of enforcing the smokefree law, filed an injunction against the owners after inspectors had found the bars in noncompliance after three visits.³¹⁰ The Attorney General's Office and ADHS sought preliminary and permanent injunctions against the defendants to stop violating the smokefree law and correct their violations, imposing a total of \$102,400 in fines on the various responsible parties.³¹⁰ The four noncompliant bars quickly became completely smokefree.

ALBA was not supportive of AASPA or the violating bar owners' cause. Instead, on the ALBA website, they provided information on how to comply with the law and issued a letter of caution to their members against signing AASPA's petition to overturn the smokefree initiative.³¹¹ ALBA wrote: "we have a number of difficulties supporting what AASPA is doing," citing that not only does Supreme Court not take cases because the public asks it to, but the likelihood of overturning the initiative was very slim, and, in short, futile.³¹¹ ALBA also wrote: "AASPA fundamentally misunderstands what happened in November" 2006, and because AASPA was not registered with the Secretary of State as a non-profit entity, "there is now way of knowing how these funds [that AASPA solicited] will be controlled."³¹¹ ALBA has disassociated itself from representing tobacco interests and is more interested in benefitting from the smokefree law than fighting it.

With smooth enforcement of the Smoke-Free Arizona law, a \$2.00 excise taxes on tobacco products, and new personnel at TEPP, Arizona has the opportunity to devote time and energy toward bolstering its tobacco control program and ensure that all Arizonans can enjoy a healthy lifestyle breathing clean, smokefree air.

CONCLUSIONS

Arizona tobacco control flourished with the help of unflagging effort on the part of ACAS, ACS, AHA, and ALA working with grassroots local advocates and health-minded citizens and politicians, benefitting from the Robert Wood Johnson Foundation funding the Coalition for Tobacco-Free Arizona, and from the preexisting tobacco control movement in the late 1980s and early 1990s. The work Arizona invested in achieving TEPP in 1994 through Proposition 200 put Arizona tobacco control on the public agenda in a way that elevated the public's knowledge about tobacco, affecting a slow but steady shift in public norms against smoking. Through TEPP's well-funded and prominent programming from FY1997-2001 and the hard work of Arizona's tobacco control advocates, Tempe became Arizona's first 100% clean indoor air city. Success in Tempe led many tobacco control advocates to call for and win passage of a statewide smokefree law despite a hostile Legislature.

The tobacco industry has been continuously involved in Arizona, with varying levels of involvement. It was highly active from the early 1990s until the MSA in 1999, closely watching Arizona politics but rarely intervening between 1999 and 2003, and again involved itself with Arizona politics from 2003 through 2007. The tobacco industry did not fight the 2002 nor the 2006 tobacco tax increase, instead focusing attention and resources on opposing clean indoor air. The tobacco industry consistently failed at the ballot box, both locally and statewide; but in some city councils and in the Legislature the tobacco industry's influence through lobbyists and front groups prevented meaningful tobacco control measures.

With the defeat of RJ Reynolds' counter-initiative Proposition 206 in 2006 the tobacco industry lost one of its prime Arizonan allies: ALBA appears to have disassociated itself from a long-standing relationship with the tobacco industry.²⁴⁵

In many ways, Proposition 206 illustrated just how far the idea of protecting nonsmokers from secondhand smoke had come in Arizona. In 2006 RJ Reynolds spent \$8.8 million trying to pass a law that would have made workplaces and restaurants and workplaces smokefree, just to protect smoking in bars. Until Tempe's success in 2002, RJ Reynolds' Non-Smoker Protection Act would have been equivalent to applying Arizona's toughest no-smoking city ordinance (Mesa's, enacted in 1996) statewide.

While Arizonans have done a remarkable job with their success both locally and statewide at the ballot box, unfortunately this power has not fully translated into a robust tobacco control program. After years of unsteady smoking prevalence rates, TEPP can capitalize on Smoke-Free Arizona's success to attain permanently lowered smoking prevalence if they follow through with their plans to focus more on secondhand tobacco smoke, expose the tobacco industry, address addiction, and target prevention messages at the young adult population.

The language of TEPP's weak enacting law, HB 2775, prevented it from influencing tobacco control policy and created an adversarial rather than cooperative relationship with Arizona's voluntary health organizations. TEPP's artificial injunction against lobbying prevented it from engaging in meaningful tobacco control advocacy and discouraged many TEPP employees from taking active roles in supporting clean indoor air. Due to ADHS bureaucratic pressures against TEPP involvement in public health policy making¹⁴⁵ (a traditional area of activity for a public health department),¹⁴⁵ TEPP employees and county contractors widely practiced unnecessarily severe self-censorship against participating in tobacco control advocacy, even on their own time outside work hours.

TEPP's funding was constantly at risk of raids by the Legislature until Proposition 303 in 2002 secured it, removing a major source of uncertainty in its future. TEPP has, however, not made the best use of its tobacco control opportunities. Despite consistently high per capita funding relative to other states, TEPP lacked a focused vision and did not achieve the same tobacco control gains in terms of sustained lowered prevalence as have states with similar resources. Repairing the contentious relationships between TEPP, ADHS, and the non-profit tobacco control community (as a solution seemed emerging in 2007) is paramount for TEPP to regain the "edge" it had between FY1998 and FY2001. The reestablishment of TEPP's relationship with Riester advertising firm is a positive sign, although no integrated media prevention campaign existed as of this report's publication. Constant tobacco counter-marketing is necessary to continue decreased smoking prevalence. The improved relationships between TRUST Commission members and TEPP indicates that TEPP officials are ready to listen to the Commission's recommendations, and can thus reap the experience of veteran tobacco control advocates.

Lack of a strong ADHS director and high turnover of the TEPP Office Chief put increased strain on TEPP staff, local projects, and media contracts, preventing long-term strategies and innovative prevention. In 2007, TEPP added the new position of Bureau Chief (filled by Wayne Tormala) to focus on these issues. Yet, with virtually all TEPP employees new to tobacco control in 2007, TEPP's ability to strengthen tobacco control programming remained uncertain.

TEPP's main shortfall at the time of this report's publication is in its effectiveness and ability to translate ideas and planning into action. The vision TEPP publicized is exemplified in the "journal entries" on their website describing the "TEPP Walk the Walk Tour," an effort to hold 32 community forums around the state in hopes of including contractors, employees, and interested community members in the future development of TEPP, demonstrating a commitment to strategic planning.³¹² Yet, while strategic planning occurred, no programmatic changes or improvements have so far taken place. What remains to be seen is what outcomes in terms of media messaging quality, financial commitment, and reliably measured lowered smoking incidence will come from this planning. Scrutiny on the TEPP program will definitely increase as the National Conference on Tobacco or Health in June 2009 will be in Phoenix, and Arizona's promise to deliver a "national model of effective tobacco control"³¹² will be on the line.

TEPP in 2007 faced more favorable conditions to renew its effectiveness than it had in many years. John Rivers, CEO of the AzHHA commented on the need to take advantage of this opportunity:

We have a very good director of DHS in Sue Gerard. She is a tough, smart woman who is also a health care champion. She is somebody we can work with and unlike some DHS directors who had very little interest in promoting tobacco control, Sue I think really does. She is a first rate ass kicker [advocate], so there is a golden opportunity right there and we have a very fine governor [Napolitano] in Arizona now who is supporting our statewide smokefree measure. She is solid as a rock on anti-tobacco issues. So we got the supportive governor, we have a supportive DHS director and we have 20 million dollars, why the hell can't we do something with that?¹²

The Health Research Account that originally funded tobacco-related disease and addiction research was completely appropriated for general biomedical research from 2001-2007, and is unlikely to be reinstated for its original purpose. Tobacco control advocates have largely ignored the Health Research Account, and legislators are unlikely to reapportion a significant portion of ABRC's funding back to tobacco-restricted research. Especially since a portion of these funds have been allocated to biotechnological research (TGen), tobacco disease-related research has little chance of being reinstated unless new funds are appropriated for this purpose.

Arizona has succeeded overall in its tobacco control gains over the last 10 years. A 2006 report by the Center for Tobacco-Free Kids ranked Arizona fourth in the country in terms of overall tobacco control, based in part on smokefree policies, tobacco tax rates, and the level of funding TEPP receives.⁴ Arizona's relatively

high per capita spending on tobacco control is a result of the voluntary health associations' vigilance in protecting TEPP. However, 2006's 80 cent tobacco tax increase (Proposition 203) decreases tobacco tax revenue for TEPP because it neglected to provide backfill for TEPP. This will continue to be a problem, especially given the CDC's 2007 updated *Best Practices* report recommends that Arizona's state tobacco control program invest \$68.1 million a year.⁹² Once TEPP proves it can resourcefully employ its current revenues, TEPP needs to seek out new additional funding.

While higher cigarette taxes reduce cigarette consumption and cut into industry profits, the denormalization of tobacco use resulting from changed social perceptions of smoking can have an even greater impact on prevalence and cigarette consumption.^{313,314} While it is too early to tell the degree of impact raising the cigarette tax 82 cents to \$2.00 while simultaneously creating a comprehensive smokefree statewide law, evidence of decreased cigarette sales in Arizona suggests a significant decrease in tobacco consumption.³¹⁵

In a matter of 13 years since 1994, Arizona went from being without a tobacco control program to having one of the highest funded per capita programs in the nation. In 13 years, cigarette taxes went from 18 cents per pack to \$2.00, more than an eleven-times increase. Thirteen years earlier, no city in Arizona had meaningful clean indoor air ordinances. As of December 2007, not only did the state enforce a 100% smokefree law, but counties and cities retained their stricter standards where applicable. Arizona steadily progressed with its tobacco control policy, enjoying consistent public support of dedicated citizen-initiated tobacco control campaigns. Its advocates have proven political prowess, resourcefulness, coalition building, and grassroots support in effective tobacco control development.

GLOSSARY

- ACAS - Arizonans Concerned About Smoking
- ACS - American Cancer Society
- AHA - American Heart Association
- AzHHA - Arizona Hospital and Healthcare Association
- ALA - American Lung Association
- ADHS - Arizona Department of Health Services
- AHCCCS - Arizona Health Care Cost Containment System
- ALBA - Arizona Licensed Beverage Association; the state association of bars
- ANR - Americans for Non-smokers' Rights
- TEPP - Tobacco Education and Prevention Program
- TUPAC - Tobacco Use Prevention Advisory Committee, first TEPP oversight board
- ACTPC - Governor's Advisory Committee on Tobacco Prevention and Cessation, second TEPP oversight board
- TRUST Commission - Tobacco Revenue Use, Spending, and Tracking Commission: third TEPP oversight board
- Proposition 200 (1994) - 40-cent tobacco-tax increase, backed by health groups and hospitals which created TEPP by providing 23% of the 40-cent tax to tobacco control education and prevention
- Proposition 200 (2000) - Healthy Arizona MSA allocation initiative giving all MSA funds to healthcare. Would have reenacted Proposition 200 (1994) for voter protection
- Proposition 204 (2000) - Healthy Families MSA allocation initiative giving all MSA funds to AHCCCS.
- Proposition 200 (2002) - Tempe clean indoor air initiative
- Proposition 200 (2003) - Prescott clean indoor ordinance of the Task Force to Eliminate Smoking in the Workplace. Fought off a preemptive counter-measure by the tobacco industry
- Proposition 201 (2006) - Health groups' and local tobacco control advocates' comprehensive smokefree law
- Proposition 203 (2006) - The 'First Things First' campaign increasing the tobacco-tax by 80 cents
- Proposition 206 (2006) - RJ Reynolds' 'Non-Smoker Protection Act' preemptive 'smoking ban' excluding bars and restaurant-bars
- Proposition 303 (2002) - a referendum reenacting 1994's Proposition 200 to voter protect it (to prevent against future raids of its allocated funds) and a 60-cent tobacco-tax increase
- Mark Anthony DeSimone - ALBA board member; lead spokesman, contact person, and Chairman of the 206 campaign; and, as of November 2006, elected member of the Arizona House of Representatives
- Dr. Leland Fairbanks - Former member of Surgeon General Koop's cabinet on smoking or health, President of Arizonans Concerned About Smoking, member of Smoke-Free Arizona advisory committee, and leader of the smokefree Tempe initiative
- Matt Madonna - Chair of the TRUST Commission and former CEO of Arizona ACS
- Bill Pfeifer - President and CEO of the Southwest Division of the ALA, Chair of Proposition 201
- John Rivers - President & CEO of the AzHHA, Treasurer of Proposition 201
- Governor Jane Dee Hull - Replaced Gov. Symington when he resigned and elected Governor from 1998-2002. Former Legislator. Major TEPP funding cuts happened under her watch
- Governor Janet Napolitano - Two-term governor (2002-2010), former Arizona Attorney General, member of the Legacy Board from 2003-

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APPENDIX:

**Tobacco Policy Scores for the 2005-2006 Arizona State Legislature
and Campaign Contributions**

**Appendix __ Tobacco Industry Political Contributions In Arizona - 1989-2007
(Policy Scores for the 47th Legislature 2005-2006)**

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco- Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989- 1996:	Grand Total: 1989-2006
Democratic Committies				2690	500	1125	4315		\$ 4,315
Republican Committies				5690	0	1125	6815		\$ 6,815
Executive Officers									
Brewer, Jan (Sec of State)	R					120	120	200	\$ 320
Hull, Jane Dee (Gov)	R					394	394		\$ 394
Napolitano, Janet (Gov)	D					310	310		\$ 310
Symington, J. Fife III (Gov)	R							8,000	\$ 8,000
Woods, Grant (Atty Gen)	R							1,640	\$ 1,640
West, Tony (Treas)	R							1,000	\$ 1,000
Senate (2005-2006)									
									\$0.00
Edward Ableser	D	17	9.8				0		\$ 0
Paula Aboud	D	28	9.5				0		\$ 0
Linda Aguirre	D	16	8.3		155.33	100	255.33		\$ 255
Minority Leader									
Carolyn S. Allen	R	8	8.2		51.96	1270	1321.96	100	\$ 1,422
Marsha Arzberger	D	25	8.7			716	716	150	\$ 866
Timothy S. Bee	R	30	5.3			100	100		\$ 100
Majority Leader									
Ken Bennett	R	1	5.2				0		\$ 0
President									
Robert Blendu	R	12	1.6	0		1000	1000		\$ 1,000
Bill Brotherton	D	14	9.4			320	320		\$ 320
Robert "Bob" Burns	R	9	1.5		742.65	300	1042.65	200	\$ 1,243
Robert Cannell	D	24	8.7			556	556		\$ 556
Ken Chevront	D	15	9.8			350	350		\$ 350

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco-Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989-1996:	Grand Total: 1989-2006
Jake Flake Pres Pro Tempore	R	5	3.5		441.53	700	1141.53		\$ 1,142
Jorge Luis Garcia Minority Whip	D	27	8.3			200	200		\$ 200
Ron Gould	R	3	1.7			205	205		\$ 205
Chuck Gray	R	19	3.8			850	850		\$ 850
Linda Gray	R	10	3.3			600	600		\$ 600
Albert Hale	D	2	9.5				0		\$ 0
Jack W. Harper	R	4	0.7			464	464		\$ 464
Toni Hellon	R	26	8.0			500	500		\$ 500
John Huppenthal	R	20	4.8		125	100	225		\$ 225
Karen Johnson	R	18	5.0		596.94	966	1562.94		\$ 1,563
Barbara Leff	R	11	5.8		312.3	700	1012.3		\$ 1,012
Dean Martin	R	6	2.8			1056	1056		\$ 1,056
Richard Miranda Asst Minority Leader	D	13	7.6		347.2	200	547.2	0	\$ 547
Rebecca Rios	D	23	9.7		59.83		59.83		\$ 60
Victor Soltero	D	29	9.3			431	431		\$ 431
Jay Tibshraeny Majority Whip	R	21	6.8			400	400		\$ 400
Thayer Verschoor	R	22	1.8			350	350		\$ 350
Jim Waring	R	7	5.8			736	736		\$ 736
House (2005-2006)									
Kirk Adams	R	19	4.5			100	100		\$ 100
Amanda Aguirre	D	24	8.8				0		\$ 0
John M. Allen	R	11	3.7			200	200		\$ 200
Manuel V. Alvarez	D	25	9.0				0		\$ 0
Mark Anderson	R	18	6.5		114.18	525	639.18		\$ 639
Ray Barnes	R	7	4.3			250	250		\$ 250

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco-Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989-1996:	Grand Total: 1989-2006
Nancy K. Barto	R	7	5.7				0	\$	0
Andy Biggs	R	22	3.0				0	\$	0
Tom Boone	R	4	3.3			160	160	\$	160
David T. Bradley	D	28	9.7				0	\$	0
Jack A. Brown	D	5	8.3			280	280	\$	280
Judy Burges	R	4	3.0			115	115	\$	115
Jennifer J. Burns	R	25	7.5				0	\$	0
Meg Burton Cahill	D	17	10.0				0	\$	0
Olivia Cajero Bedford	D	27	6.5			165	165	\$	165
Ted Carpenter	R	6	0.0		117.51	100	217.51	\$	218
Cheryl Chase	R	23	6.5			300	300	\$	300
Ted Downing	D	28	9.3			100	100	\$	100
Eddie Farnsworth	R	22	3.0			600	600	\$	600
Steve Gallardo	D	13	8.5			350	350	\$	350
Martha Garcia	D	13	10.0			200	200	\$	200
Pamela Gorman	R	6	2.0	396		200	596	\$	596
Trish Groe	R	3	4.7				0	\$	0
Pete Hershberger	R	26	8.6			994	994	\$	994
Steve Huffman	R	26	7.3			400	400	\$	400
Russell L. Jones	R	24	1.0				0	\$	0
Ann Kirkpatrick	D	2	8.0				0	\$	0
Laura Knaperek	R	17	3.0			420	420	\$	420
Bill Konopnicki	R	5	5.8			350	350	\$	350
Leah Landrum Taylor	D	16	9.3			100	100	\$	100
Phil Lopes	D	27	9.3				0	\$	0
Minority Leader									
Linda Lopez	D	29	10.0	0		100	100	\$	100
Asst Minority Leader									
David M. Lujan	R	15	8.8				0	\$	0
Lucy Mason	R	1	6.7			255	255	\$	255
Marian A. McClure	R	30	4.7			550	550	\$	550

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco-Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989-1996:	Grand Total: 1989-2006
John McComish	D	20	6.0			315	315	\$	315
Debbie McCune Davis	R	14	9.2				0	\$	0
Nancy G. McLain	D	3	3.5				0	\$	0
Robert Meza	D	14	9.0			200	200	\$	200
Ben R. Miranda	R	16	9.0				0	\$	0
Rick Murphy	R	9	2.7				0	\$	0
John B. Nelson	R	12	4.0			400	400	\$	400
Warde Nichols	R	21	1.7			300	300	\$	300
Tom O'Halleran	R	1	7.8			400	400	\$	400
Jonathan Paton	R	30	3.0			300	300	\$	300
Russell K. Pearce	R	18	2.3			500	500	\$	500
Gary L. Pierce	R	19	3.5			500	500	\$	500
Majority Whip								\$	0
Tom Prezelski	D	29	9.3			200	200	\$	200
Doug Quelland	R	10	7.2			110	110	\$	110
Michele Reagan	R	8	6.0			1070	1070	\$	1,070
Pete Rios	D	23	8.3			360	360	100 \$	460
Minority Whip									
Bob Robson	R	20	2.5			960	960	\$	960
Speaker Pro Tempore									
Colette Rosati	R	8	6.2			165	165	\$	165
Kyrsten Sinema	D	15	9.0				0	\$	0
Bob Stump	R	9	3.0			350	350	\$	350
Albert Tom	D	2	8.3				0	\$	0
Stephen Tully	R	11	3.3			100	100	\$	100
Majority Leader									
James P. Weiers	R	10	1.8	200	192.42	2729	3121.42	\$	3,121
Speaker									
Jerry P. Weiers	R	12	1.6			60	60	\$	60
Steven B. Yarbrough	R	21	1.3			100	100	\$	100

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco-Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989-1996:	Grand Total: 1989-2006
Prior Years Candidates and Legislators Receiving Tobacco Money									
Armstead, Dave	D				222.11		222.11	250 \$	472
Barry Wong	R				20.12		20.12	\$	20
Bayless, Betsey	R					700	700	\$	700
Binder, Linda	R					300	300	\$	300
Blewster, Barbara	R					200	200	\$	200
Brimhall, Debra	R			300	500.15		800.15	\$	800
Bundgaard, Scott	R			0	301.87	925	1226.87	\$	1,227
Burns, Brenda	R					456	456	100 \$	556
Cirillo, Edward	R					556	556	\$	556
Clark, Harry	D				59.1		59.1	\$	59
Conner, Pat	R				298.94		298.94	\$	299
Cooley, Dean	R				193.38	100	293.38	\$	293
Cummiskey, Chris	D					225	225	\$	225
Daniels, Lori	R				60.87	918	978.87	\$	979
Dunbar, Kathleen	R					450	450	\$	450
Faulkner, James	R				52.12		52.12	\$	52
Foster, Kathi	D				54.99	200	254.99	\$	255
Furman, Stan	D					200	200	100 \$	300
Gardn, Mike	R				50.65		50.65	\$	51
Gardner, Wayne	R				57.68	100	157.68	\$	158
Gerard, Susan	R					706	706	100 \$	806
Gleason, Mike	R				40.24	100	140.24	\$	140
Gnant, Randall	R				206.4	726	932.4	\$	932
Greene, John	R			4000	121.04	200	4321.04	100 \$	4,421
Groscost, Jeff	R				355.02	250	605.02	250 \$	855
Guenther, Herb	D					150	150	\$	150

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco-Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989-1996:	Grand Total: 1989-2006
Hart, Joe	R				138.75	593	731.75		\$ 732
Hartly, Mary	D				237.81	300	537.81		\$ 538
Hamilton, Darden	R					562	562		\$ 562
Hershberger, Freddy	R				174.04		174.04		\$ 174
Hickman, Gertie	R					100	100		\$ 100
Horne, Tom	R					840	840		\$ 840
Huffman, Steve	R				237.54		237.54		\$ 238
Jackson, Jack	D			270	195.44		465.44		\$ 465
Jarret, Marilyn	R				242.21	2170	2412.21		\$ 2,412
McGrath, Jean	R				423.59	100	523.59	150	\$ 674
Kaites, John	R				60.87		60.87	100	\$ 161
Kennedy, Sandra	D				104.05		104.05	200	\$ 304
Kyle, Richard	R				709.13	300	1009.13		\$ 1,009
Laughter, Sylvia	D				64.87	256	320.87		\$ 321
Maioriana, Mark	D			270	242.33	350	862.33		\$ 862
Hatch Miller, Jeff	R					450	450		\$ 450
Marsh, Wes	R				83.61	400	483.61		\$ 484
May, Steve	R					670	670		\$ 670
McGibbon, Bill	R					200	200		\$ 200
McGovern, Tom (Gov)	R			500			500		\$ 500
Mclendon, Bob	D				110.98		110.98		\$ 111
Mitchell, Harry	D				84.26	520	604.26		\$ 604
Newman, Paul	D				117.5		117.5		\$ 118
Norris, Debora	D				59.1		59.1		\$ 59
Overton, Jerry	R				677.71	256	933.71		\$ 934
Petersen, David	R				376.3	110	486.3		\$ 486
Preble, Lou-ann	R				53.76		53.76		\$ 54
Graf, Randy	R				20.12		20.12		\$ 20
Richarson, Elaine	D				367.2		367.2		\$ 367
Salmon, Matt (Gov)	R			125		1400	1525		\$ 1,525
Schottel, Dan	R				118.64	200	318.64		\$ 319
Spitzer, Marc	R					740	740		\$ 740

Candidate	Party	District	Tobacco Policy Scores	Direct Tobacco Industry Contributions	Direct Tobacco Lobbying Expenditures	Indirect Tobacco Lobbyists and Affiliates Campaign Contributions	Total Tobacco- Related Contributions Received 1997-2006	Direct Tobacco Company Contributions Received 1989- 1996:	Grand Total: 1989-2006
Springer, Carol (Treas)	R			500		125	625	250	\$ 875
Steffey, Lela	D				58.27		58.27		\$ 58
Patterson, Tom	R				125		125		\$ 125
Valdez, Ramon	D				186.12	950	1136.12		\$ 1,136
Verkamp, John	R				150.81		150.81	100	\$ 251
Voss, Roberta	R				687.36	400	1087.36		\$ 1,087
Weason, Christine	D				181.67	410	591.67		\$ 592
Wettaw, John	R					150	150	100	\$ 250

*Note: A zero in any column except for the Total indicates a contribution was returned.