

Ending the Commercial Tobacco Epidemic:

A proven approach to reduce health disparities

Stacey Gagosian, Vice President, Public Policy



Truth Initiative Position Paper

“Endgame” refers to a set of policies and strategies to move toward the end of commercial tobacco and nicotine use, with the exception of Food and Drug Administration-approved medications. Policies to achieve this commercial-market tobacco-free future decrease the access, appeal, and addictiveness of products; increase cessation interventions and services; and denormalize all tobacco use, ultimately relegating it to a behavior of the past.



GAMECHANGER:

**SHIFTING FROM TOBACCO CONTROL
TO ENDING THE INDUSTRY'S
INFLUENCE FOR GOOD**

Changing Mindsets



Tobacco Use Disparities in the U.S.

Tobacco use among Americans



Race/Ethnicity

American Indian /Alaska Native **29.3%**

Whites **23.3%**



Education Level

GED **43.7%**

Graduate Degree **8.7%**



Sexual Orientation

Lesbian, Gay, or Bisexual **29.9%**

Heterosexuals **20.5%**



Income

<\$35,000 **27.0%**

≥ \$100,000 **15.1%**



Anxiety

Severe **43.5%**

Moderate **34.2%**

Mild **30.4%**

None/Minimal **18.4%**



Health Insurance Coverage

Uninsured **30.2%**

Medicaid **30.0%**

Private Insurance **18.0%**

TOBACCO USE IS NOT AN EQUAL OPPORTUNITY KILLER.

THERE ARE UP TO 10X MORE TOBACCO ADS IN BLACK NEIGHBORHOODS THAN IN OTHER NEIGHBORHOODS.

DISPARITIES IN TOBACCO USE ARE LINKED TO DISPARITIES IN TOBACCO ADVERTISING. TOBACCO ADVERTISING IS CONCENTRATED IN BLACK NEIGHBORHOODS AND IS 10 TIMES MORE COMMON IN BLACK NEIGHBORHOODS THAN IN OTHER NEIGHBORHOODS.

WISNOLAN, M. (2016). TOBACCO ADVERTISING IN BLACK NEIGHBORHOODS: A REVIEW OF THE LITERATURE. *TOBACCO USE AND ADDICTION*, 11(1), 1-10.

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INDIVIDUALS WITH MENTAL ILLNESS ACCOUNT FOR 46% OF CIGARETTES SOLD IN THE UNITED STATES.

GRANT OF MIND IS A LEADER IN PROVIDING SUPPORT AND RESOURCES FOR INDIVIDUALS WITH MENTAL ILLNESS AND PROMOTING RESILIENCE IN THE UNITED STATES. RESOURCES FROM THE NATIONAL PSYCHOLOGICAL CENTER FOR SERVICES AND HEALTH PROMOTION. www.npcshp.org

THERE ARE MORE TOBACCO RETAILERS NEAR SCHOOLS IN LOW-INCOME AREAS THAN IN OTHER AREAS.



FRANKEL, R., AMERSON, A., ZIMMERMAN, J., JAMES, L., LITTLE, L., & BIRCH, K. M. (2015). TOBACCO RETAILERS NEAR SCHOOLS IN LOW-INCOME AREAS AND FAST-FOOD RESTAURANTS. *AMERICAN JOURNAL OF PUBLIC HEALTH*, 105(1), 105-108.



LGBTQ YOUNG ADULTS, 18-24, ARE NEARLY 2X AS LIKELY TO SMOKE AS THEIR STRAIGHT PEERS.

WORLDWIDE FUND FOR CHILDREN. (2017). www.wfc.org

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (2014). *TOBACCO USE AND ADDICTION: A REPORT OF THE NATIONAL SURVEILLANCE SYSTEM*. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTER FOR DISEASE CONTROL AND PREVENTION.

Sources: <https://www.multivu.com/players/English/7966851-truth-initiative-stop-profiling/>
<https://www.theexprogram.com/resources/blog/think-quit-smoking-resources-arent-needed-heres-a-reality-check/>

FDA has Proposed Two Rules re: Menthol and Flavored Cigars



Menthol's impact on the U.S.

10.1M

Extra smokers attributed to
menthol cigarettes 1980-2018

378,000

Premature deaths from
menthol cigarettes 1980-2018

Source: Le TT, Mendez D. An estimation of the harm of menthol cigarettes in the United States from 1980 to 2018. Tob Control. 2021 Feb 25

<https://pubmed.ncbi.nlm.nih.gov/33632809/>

Reducing Disparities

1.5M

Extra African American Smokers
attributed to menthol cigarettes 1980-
2018

157,000

Pre-mature African American Deaths
from menthol cigarettes, 1980-2018

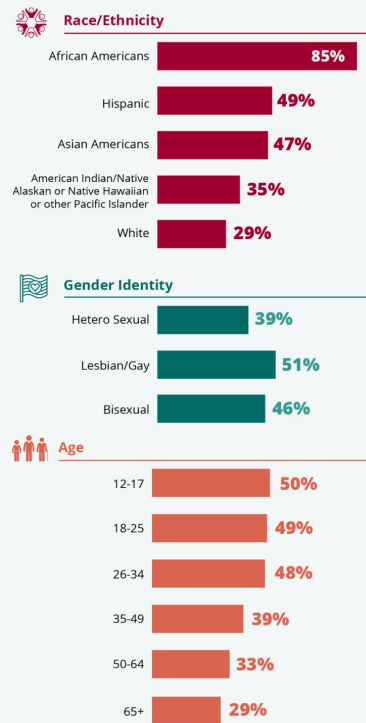
Menthol Cigarettes —A Social Justice Issue

In 2020, menthols represented
37% of 203 billion cigarettes
sold annually in the country.



Menthol cigarettes have a tenacious foothold in
African-American communities and are also more
popular among Hispanics, Asian Americans, women,
lesbian/gay/bisexual, and teenage smokers.

Menthol use among current smokers



Reducing Nicotine in Cigarettes to Non- Addictive Levels

2020
12.5%

**Smoking Rate if
Nicotine is reduced in
cigarettes**

2100
1.4%



Nicotine Reduction in Cigarettes

13M

Quit Smoking by 2100

33M

People prevented from
starting to smoke in the
first place

European Union

- Limited to 20mg/ml
- Approximately 1.7% nicotine (as opposed to the 3%, 5% or higher levels found in the U.S.)



Canada

- National limit is 20 mg/ml

Source: <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/product-safety-regulation.html#>



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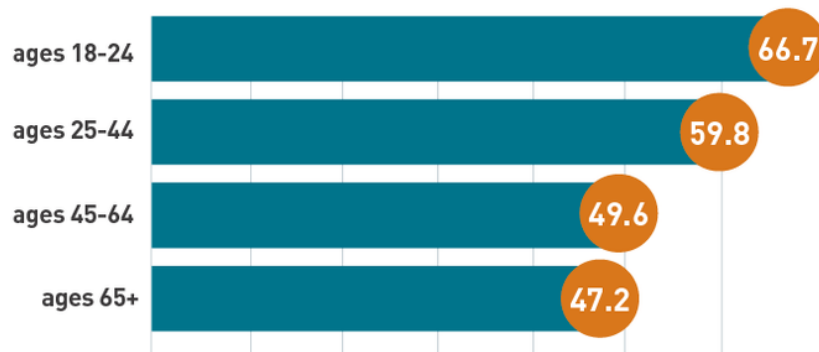
Key Considerations

Cessation Is Paramount

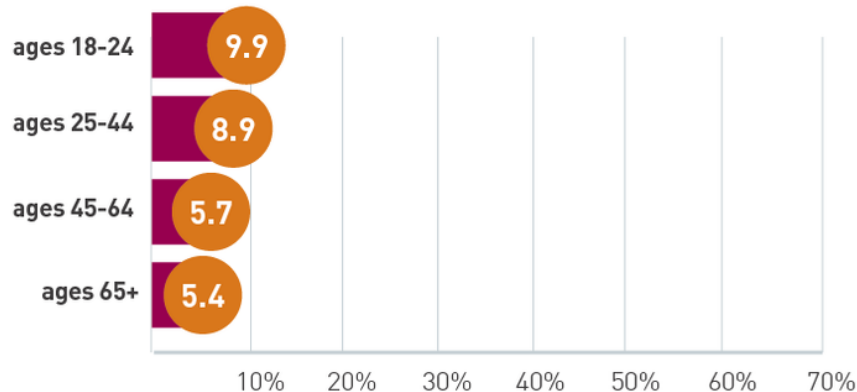
- Increase cessation access to those who need it most
 - Reduce barriers to care
 - Encourage providers to ask about tobacco use and refer patients to help
- Develop new cessation interventions

Smokers who **made quit attempts** in the past year

Smokers who made quit attempts in the past year:



Smokers who successfully quit in the past year:



Source: Centers for Disease Control and Prevention, 2017

No One Size Fits All; Need Multi-pronged Approach



Enforcement falls on Manufacturers and Retailers...



Not on Consumers



Summary

- Endgame policies have the potential to reduce not only tobacco use generally, but to reduce tobacco-use disparities and the tobacco-related health disparities
- To achieve Endgame, we must have better cessation access and interventions to help those already using tobacco
- No one policy is the panacea – it will vary from place to place – the important thing is that everyone is on the journey toward Endgame.

Questions?

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truthinitiative.org



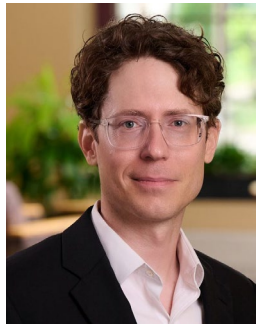


FINISHING THE FIGHT: ENDING THE TOBACCO EPIDEMIC

THE PUBLIC HEALTH LAW CENTER



COMMERCIAL TOBACCO CONTROL TEAM





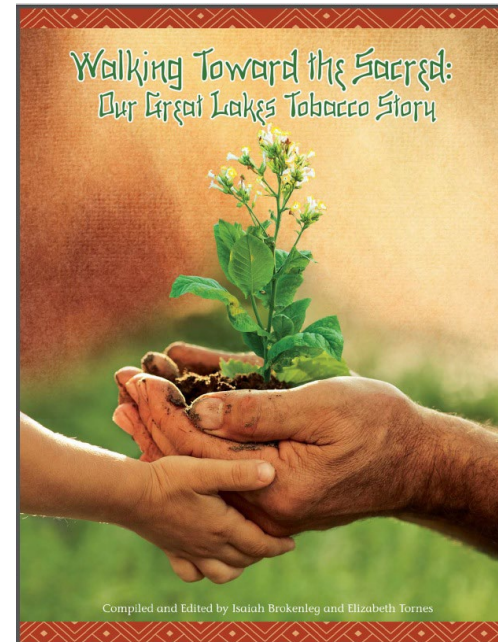
based on work for First Nations Health Authority at Gathering Wisdom VI

Drawing
change

Photo credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>



COMMERCIAL VS. TRADITIONAL

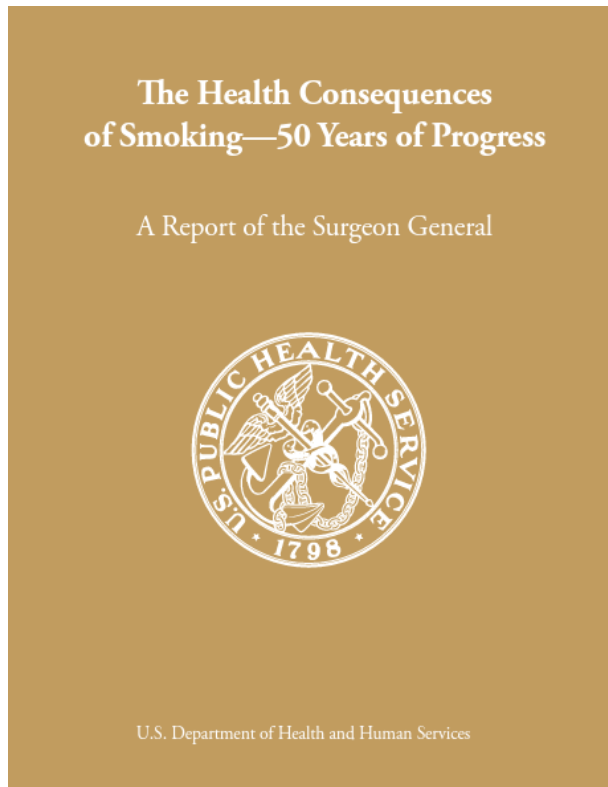


Source:

[http://www.glitc.org/
forms/Tabacco/
tabacco-booklet-web-.pdf](http://www.glitc.org/forms/Tabacco/tabacco-booklet-web-.pdf)



ENDING THE TOBACCO EPIDEMIC



“[T]he annual burden of smoking-attributable mortality in the United States has remained above 400,000 for more than a decade and currently is estimated to be about 480,000, with millions more living with smoking-related diseases.”

2014 Surgeon General’s Report, *The Health Consequences of Smoking – 50 Years of Progress*

ENDING THE TOBACCO EPIDEMIC



In the United States, the tobacco industry spends \$21.3 million **every day** on marketing.

This adds up to almost \$8 billion on marketing each year.

U.S. Federal Trade Commission,
Federal Trade Commission Cigarette Report for 2020.



ENDING THE COMMERCIAL TOBACCO EPIDEMIC A SOCIAL JUSTICE ISSUE

TOBACCO USE IS NOT AN EQUAL OPPORTUNITY KILLER. SMOKING DISPROPORTIONATELY AFFECTS THOSE MOST IN NEED SUCH AS THE POOR, THE HOMELESS, RACIAL MINORITIES, LGBTQ PERSONS AND THOSE SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE USE DISORDERS.

truth

THERE ARE UP TO 10X MORE TOBACCO ADS IN BLACK NEIGHBORHOODS THAN IN OTHER NEIGHBORHOODS.



SEIDENBURG AB, CAUGHEY RW, RESS VM, CONOLLY GN. STOREFRONT CIGARETTE ADVERTISING DIFFERS BY COMMUNITY DEMOGRAPHIC PROFILE. AM J HEALTH PROMOT. 2010; 24(6): E28-E31. (7-8X INCREASE)

MORELAND-RUSSELL S, HARRIS J, SNIDER D, WALSH M, CYR J, BARNOTA J. DISPARITIES AND MENTHOL MARKETING: ADDITIONAL EVIDENCE IN SUPPORT OF POINT OF SALE POLICIES. INT J ENVIRON. RES PUBLIC HEALTH. 2013; 10:4571-4583. (10X INCREASE)

J. CANTRELL ET AL. MARKETING LITTLE CIGARS AND CIGARILLOS: ADVERTISING, PRICE, AND ASSOCIATIONS WITH NEIGHBORHOOD DEMOGRAPHICS. AMERICAN JOURNAL OF PUBLIC HEALTH. OCTOBER 2013, VOL. 103, NO. 10, PP. 1902-1909.

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truth



LGBTQ YOUNG ADULTS, 18-24, ARE NEARLY 2X AS LIKELY TO SMOKE AS THEIR STRAIGHT PEERS.

HTTP://WWW.FDA.GOV/TOBACCO/PRODUCTS/PUBLICHEALTHEDUCATION/PUBLICHEALTHEDUCATION/CAMPAINS/TWOSPICES.FEDCAMPAIN/DEFALTY/04

LEE JBL, GRIFFIN GK, AND MELBY CL. (2009). TOBACCO USE AMONG SEXUAL MINORITIES. USA, 1997-2007 (MAY). A SYSTEMATIC REVIEW. TOB CONTROL. ONLINE FIRST.

EVIDENCE BASE

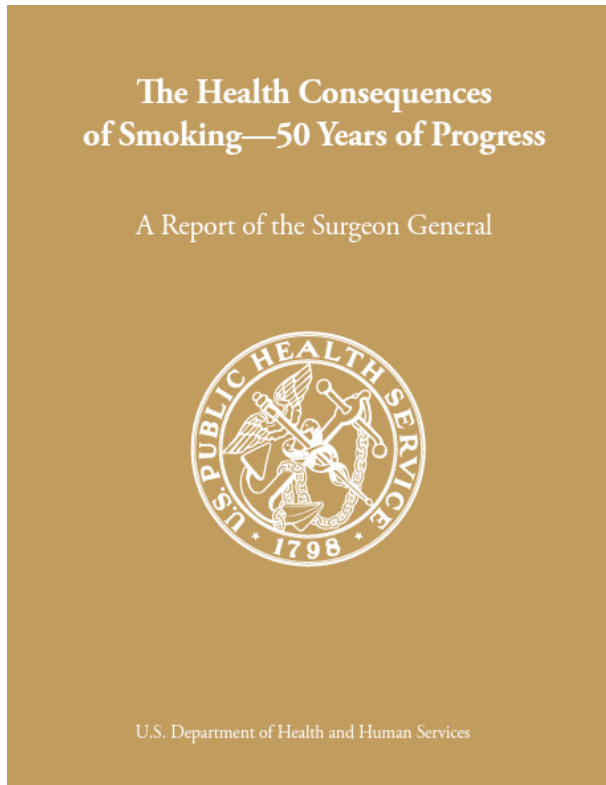
“We do not require a *single* additional study to know with absolute certainty that the continued sale and use of cigarettes will reliably deliver more disease, death and suffering than any other product.”

“The Race to a Tobacco Endgame,” Ruth Malone, *Tobacco Control*, 2016





ENDING THE TOBACCO EPIDEMIC



“New ‘endgame’ strategies have been proposed with the goal of eliminating tobacco smoking. Some of these strategies may prove useful for the United States, particularly . . . greater restrictions on sales (including bans on entire categories of tobacco products).”

2014 Surgeon General’s Report, *The Health Consequences of Smoking – 50 Years of Progress*

THE ROAD TO THE END/THE END OF THE ROAD?

Initiatives designed to change the structural, political, and social dynamics that sustain the commercial tobacco epidemic in order to permanently end it.

— Adapted from: Malone, R. E., McDaniel, P. A., Smith, E. A. (2014). Tobacco Control Endgames: Global Initiatives and Implications for the UK. Cancer Research UK



TOBACCO CONTROL ACT OF 2009

STATE AND LOCAL AUTHORITY



Preservation of State/Local Authority

Nothing in the Act limits state/local authority to enact a law “prohibiting the sale . . . of tobacco products.”

Preemption of State/Local Laws

No state/locality may establish “any requirement which is different from . . . any requirement under [the Act] relating to tobacco product standards.”

Saving Clause

The preemption restriction above “does not apply to [state or local] requirements relating to the sale” of tobacco products.

Federal v. State/Local Authority

The FDA

YES: Product standards

- Nicotine yields
- Ingredients, constituents
- How constructed
- Internet sales

NO:

- Smoke-free
- Tax
- Ban a class of products (e.g., all cigars)



States/Locals

NO: Product standards

YES:

- Smoke-free
- Youth access
- Taxes and pricing
- Sales & distribution
- Internet sales

FDA ROLE IN THE TOBACCO ENDGAME

- Reduce nicotine to minimally-addictive or sub-addictive levels.
- Prohibit additives that enhance palatability.
- Implement track and trace program.
- Prohibit internet sales.



COMPREHENSIVE RESPONSE IS NECESSARY TO ELIMINATE HEALTH DISPARITIES

- Incremental policy approaches have allowed industry to evade and adapt.
- Community engagement.
- Exemptions in policies:
 - Increase health disparities
 - Diminish intended public health benefits of policies
 - Raise new litigation risks





STATE AND LOCAL POLICIES MOVING TOWARD THE END

Key policies include:

- Sales restrictions.
 - No sales, flavored tobacco restrictions, adult-only stores, nicotine-free generation.
 - Location/Density restrictions.
 - Tobacco-free policies.
 - Environmental policies.
 - Pricing policies.
- Accessible cessation support.



LEGAL ARGUMENTS

- Federal Preemption
- Local Authority
- First Amendment
- Regulatory Taking
- Equal Protection
- Commerce Clause

NOT FOR SALE: STATE AUTHORITY TO END CIGARETTE SALES

Joelle Lester[†] & Mark Meaney^{††}

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I. INTRODUCTION

Cigarette smoking continues to be a public health problem of staggering dimensions, killing more than 480,000 Americans each year and leaving millions more to suffer from chronic disease.¹ Through multiple biochemical mechanisms, tobacco smoke damages every organ in the body and causes a wide array of devastating illnesses, including cardiovascular disease, multiple

[†] Joelle M. Lester is the Director of Tobacco Control Legal Consortium, a program of the Public Health Law Center.

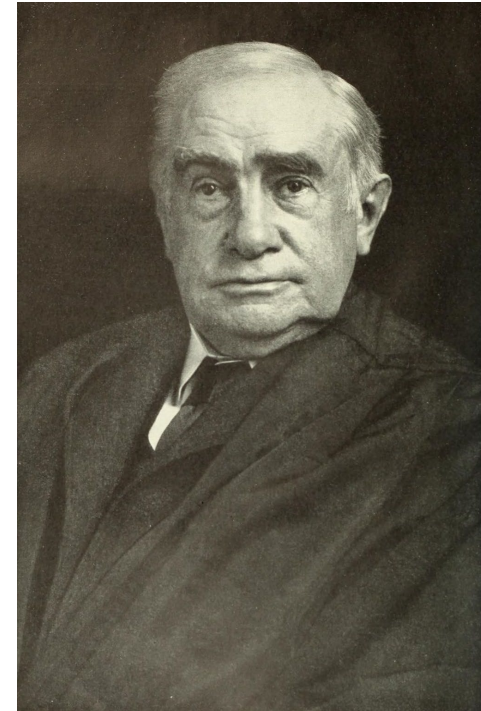
^{††} Mark Meaney is the Lead Senior Staff Attorney for Technical Assistance at the Tobacco Control Legal Consortium, a program of the Public Health Law Center. The authors wish to thank Leslie Zellers and Maggie Mahoney for their

LEGAL ISSUES

AUTHORITY TO BAN TOBACCO SALES

“It is within the province of the legislature to *declare how far cigarettes may be sold, or to prohibit their sale entirely*, . . . and there be no reason to doubt that the act in question is designed for the *protection of the public health.*”

Austin v. Tennessee, 179 U.S. 343 (1900)



Henry Billings Brown
Supreme Court of the United States
(1890-1906)

WHO CAN SELL TOBACCO PRODUCTS? WHO CAN THEY SELL THEM TO?

Tobacco Retail License

- Overall structure for point-of-sale policies
- Can include a suite of policies.
- Sets the rules and enforcement provisions



TAX AND PRICING POLICIES

- 10% increase in cigarette tax results in a 3-5% decrease in use.
- Youth are 2-3 times more sensitive to price increases.
- Increased quit attempts – especially among lower income users.

Sources: Truth Initiative and
Tobacconomics.org



“Young people are very price sensitive.”

R. J. Reynolds Marketing Report, 1982

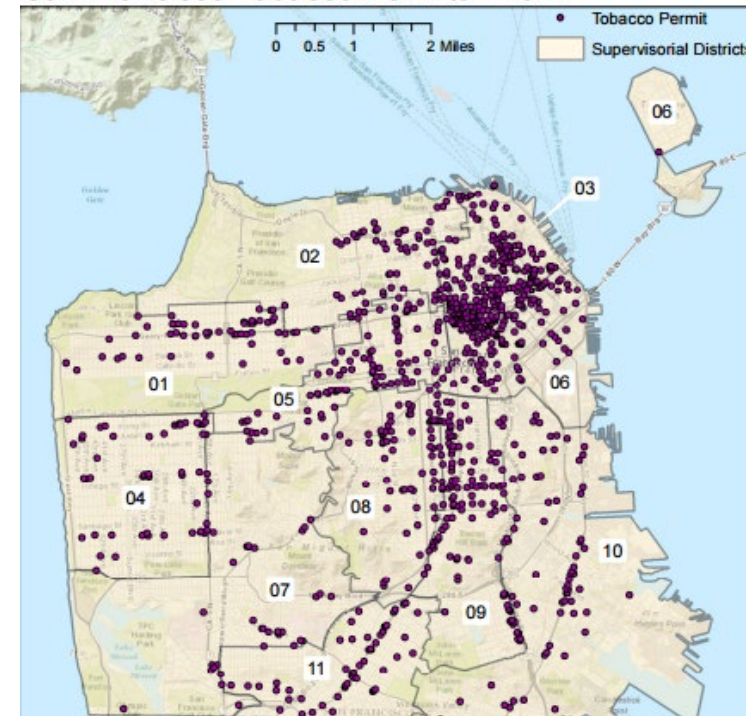


WHERE TOBACCO PRODUCTS CAN BE SOLD

PROXIMITY AND DENSITY

- Proximity to residential areas, schools, and retailers.
- Internet sales restrictions.
- Pharmacies bans.
- Cap and reduce the number of licenses.

San Francisco Tobacco Permits - 2014



©CH The New York Times

BUSINESS DAY

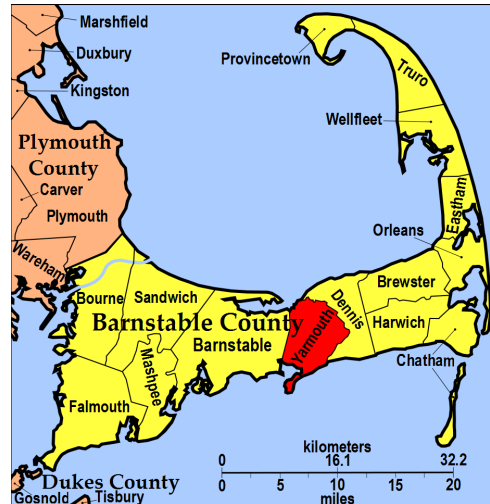
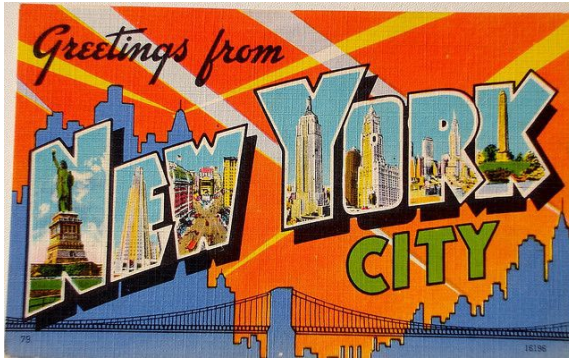
CVS Stores Stop Selling All Tobacco Products

By RACHEL ABRAMS SEPT. 3, 2014

Antismoking signs are posted where cigarettes once were displayed at a CVS in Manhattan that no longer sells tobacco products. Andrew Remeisen/The New York Times

FLAVORED TOBACCO LITIGATION CHALLENGES

WHAT WE HAVE LEARNED TO DATE



COMMUNITIES TAKE THE PLUNGE SALES PROHIBITIONS



- Beverly Hills, CA passed ordinance prohibiting the sale of all tobacco products except in cigar lounges and by hotel concierges to registered hotel guests.



- Manhattan Beach, CA passed ordinance prohibiting the sale of all tobacco products everywhere in the jurisdiction.

GRADUAL MOVE TO THE END NICOTINE-FREE GENERATION



Brookline, MA Tobacco-Free Generation policy.

Phases out the sale of tobacco products by prohibiting the sale of tobacco to anyone born after January 1, 2000 and is currently being litigated.

California, Hawaii, and Nevada bills.



DIFFERENT WAYS TO GET TO THE END ENDING TOBACCO RETAIL LICENSES



Bloomington, MN ordinance eliminated flavored tobacco sales and will eliminate retailers through attrition of retail licenses.

STATE PREEMPTION – THE DANGER WITHIN A FUNDAMENTAL HEALTH EQUITY ISSUE

- Repealing local preemption is integral for endgame policies.
- Locally tailored policies are the best policies for addressing health disparities.
 - 8 of 10 states with largest percentage of African Americans have point-of-sale preemption.

• *Source: CDC*



ESSENTIAL ENDGAME POLICY ELEMENTS

FOCUS ON THE PROBLEM

- Enforcement efforts focused on the tobacco industry and retailers rather than the consumers they target and addict.
- Community involvement at all stages of the policymaking, implementation, and enforcement process.
- Robust, barrier-free, culturally appropriate cessation support.



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ASH

ACTION
ON SMOKING & HEALTH

*Dedicated to **ZERO** Tobacco Deaths*



Ending the Commercial Tobacco Epidemic: Global Landscape

Chris Bostic

October 26, 2023

Public Health Law Conference

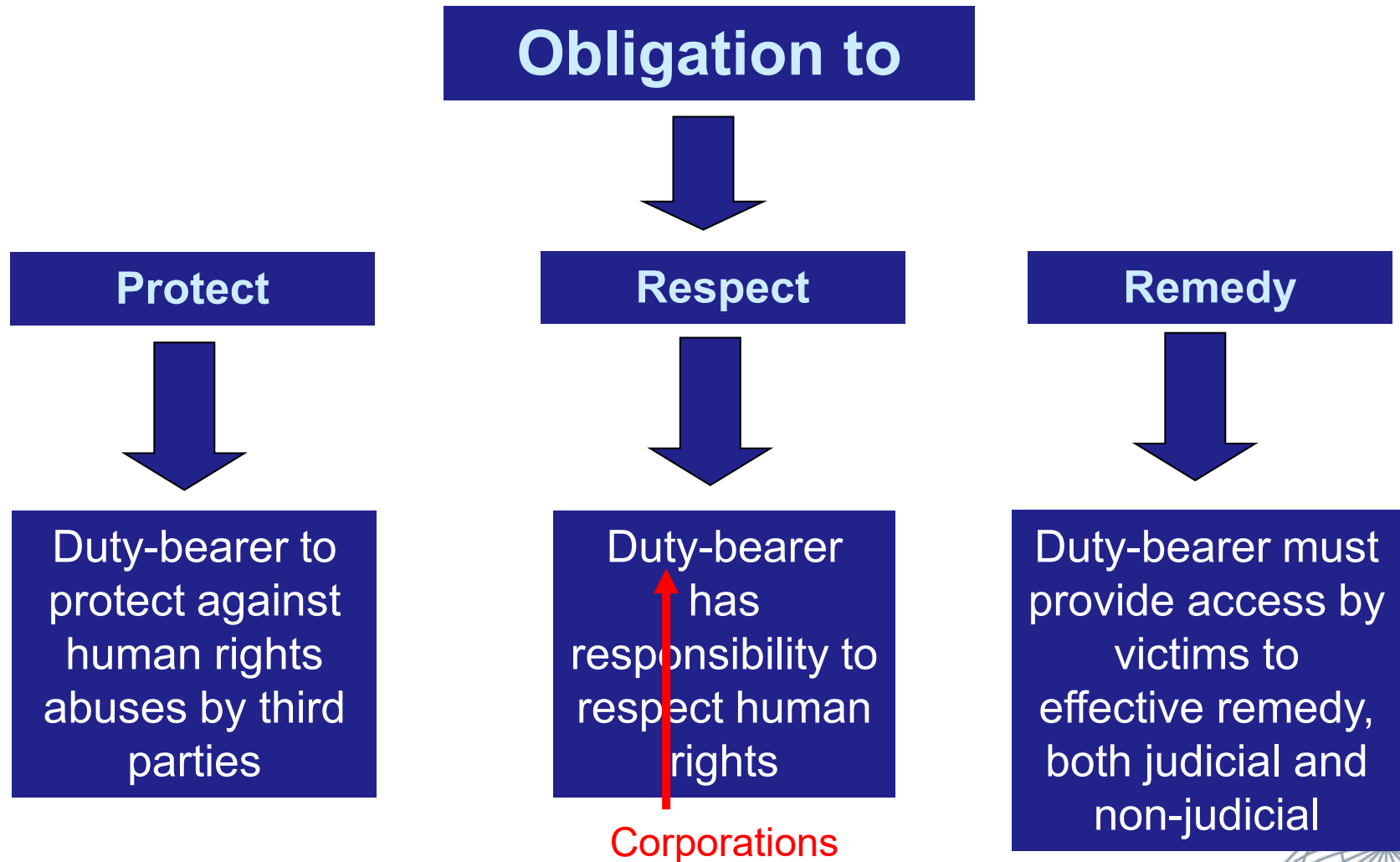
Project Sunset



Phase out the sale of
commercial tobacco
products



Ruggie Principles on Business and HR



Danish Institute for Human Rights

“Tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is **irreconcilable with the human right to health.**”

For the tobacco industry, the UNGPs [Guiding Principles] therefore require the cessation of the production and marketing of tobacco.”

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

Cape Town Declaration on Human Rights and a Tobacco-free World

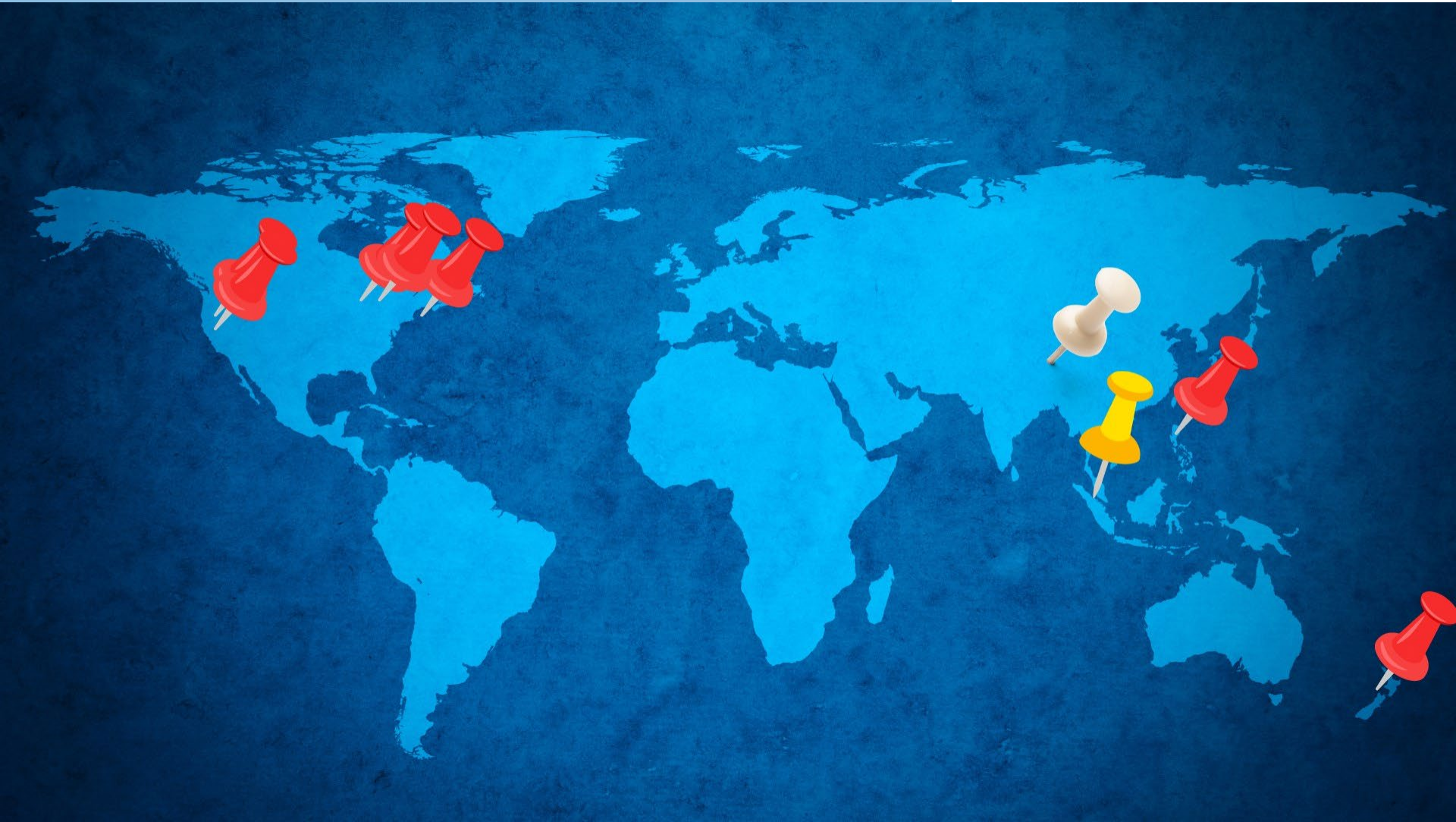
A.1. We agree that the manufacture, marketing and sale of tobacco are incompatible with the human right to health.



Hot Spots



Legislation



ASPIRE Countries



Global Tobacco Treaty



FCTC Article 2.1

In order to better protect human health, **Parties are encouraged to implement measures beyond those required by this Convention** and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.



Tobacco Product Waste



Endgame Resources

Advancing Momentum for a Tobacco-Free California

Endgame Talking Points

Why do we need to phase out the commercial sale of all tobacco products?

- 1 Tobacco kills when used as intended. Cigarettes specifically cause more deaths than gun violence, AIDS, suicides, traffic accidents, alcoholism, and opioid and other drug addictions combined.
- 2 Consumer products containing chemicals proven to cause a severe threat to human health have been banned in the U.S. and are no longer marketable. Examples include lead, chlorofluorocarbons (CFCs), and polychlorinated biphenyls (PCBs), some of which are found in tobacco.
- 3 There is little consumer "choice" involved in cigarette smoking—cigarettes have been insidiously engineered to be as addictive as possible. Inhaled nicotine is as or more addictive than heroin and cocaine.
- 4 The vast majority of people who smoke want to quit, wish they had never started, and do not want their kids to start.
- 5 Banning the commercial sale of all tobacco products is not the same as prohibition. Possession and use will not be made illegal. Endgame's intent is to abolish the tobacco industry, not criminalize consumption of the product.
- 6 The results of cigarette smoking are devastating to the economy. The annual costs amount to roughly \$1,000 for every person in the U.S.
- 7 Cigarette manufacturing and use are greatly detrimental to society. Cigarette butts are the number one form of litter, both by number and weight, and leach toxic chemicals into the environment. E-cigarette packaging and disposables are a growing refuse problem too.
- 8 The tobacco industry intentionally markets to youth in an effort to recruit replacement smokers to maintain their business model and ensure profits.
- 9 The tobacco industry's assertions of planning to "phase out" cigarettes are cynical marketing ploys that deceive the public into thinking that they will put an end to the harm they cause. The reality is that they will continue to sell cigarettes while they are profitable and we cannot wait for the tobacco industry to address this issue.

Visit us at endtobaccoca.ash.org for more information

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<https://endtobaccoca.ash.org/fact-sheets/>

<https://ash.org/sunset>

**PUBLIC HEALTH
LAW CENTER**
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