

**BALLOT MEASURES: OVERVIEW***November 2004*

Advocates new to the smokefree indoor air movement often wonder why they should bother trying to convince local elected officials to enact a strong smokefree indoor air ordinance when they could put the matter on the municipal ballot and let voters decide. The answer to this question is found in the cumulative experiences of smokefree advocates who demonstrate that ballot initiatives are *not* the preferred method to enact local smokefree policies.

Often times, people do not realize how difficult it is to pass a smokefree ballot measure compared with enacting an ordinance through a vote by a city council or county commission. People mistakenly believe that a ballot measure involves less work than a council-based policy campaign. Nothing could be further from the truth.

It is important to note that public opinion data on voter support for smokefree policies does not translate directly into a victory at the polls. So, when considering a smokefree ballot policy, evaluate the following factors: (1) who can generate the most public support? and (2) who can generate the most voter turnout on election day? Both tasks require the coalition to do the same type of work necessary to enact a council-based ordinance – public education, and community and citizen participation.

The perceived benefits of using the ballot as a public health tool come at a significant cost, as the election process provides the tobacco industry with several significant advantages:

- ***Political Experience.*** While a smokefree ballot issue may be a new activity for a coalition and its community, tobacco companies and their consultants have extensive experience with and involvement in political campaigns. During a ballot initiative campaign, the tobacco industry employs professional campaign tactics that are difficult for a novice to counter: hiring savvy political operatives, sending out direct mail pieces, conducting massive phone banking, and airing extensive paid television and radio ads, etc.
- ***Money.*** Big Tobacco has very deep pockets. Keep in mind that the tobacco industry can significantly outspend a smokefree coalition when it comes to funding expensive ballot initiative campaigns. As a taxable entity, the tobacco industry has fewer restrictions on the uses of its money, including campaign funds, than governmental or non-profit agencies.

City or county councils or local boards of health enact the vast majority of smokefree ordinances in the United States. Ballot initiatives have been used successfully in those rare instances when local elected officials refuse to take action despite significant work by a coalition on a council-based smokefree ordinance campaign. Most ballot initiatives, however, are instigated by the tobacco industry as a tactic to overturn a newly enacted smokefree ordinance.

The ANR Foundation urges advocates to work on traditional council-based ordinance campaigns. Smokefree indoor air campaigns are the most successful in educating the public to secondhand smoke's adverse health effects, raising awareness on secondhand smoke and tobacco industry tactics, and building support for smokefree indoor air policies, all contributing to a permanent change in a community's culture. It's important to note that council-based ordinances only reflect the level of public education, organizing and mobilizing of a majority of citizens in a community. In the words of smokefree advocate Dr. Stanton Glantz, "Ordinances only work to the extent that they sanctify a change in public attitudes."

## CASE STUDIES

Public opinion polls consistently demonstrate that the majority of people support smokefree indoor air ordinances. Why, then, do public health advocates prefer to take smokefree ordinances to local city councils rather than directly to the voters? The answer is simple: public opinion data does not necessarily translate into victory at the polls. Ballot campaigns provide an opportunity for Big Tobacco to flex some of its strongest muscles: substantial political savvy and enormous financial resources. The following case studies illustrate just how far the tobacco industry will go to defeat local smokefree initiatives and to overturn existing smokefree ordinances. While clean indoor air initiative campaigns can be (and have been) successful, these examples make it clear that it is never the easy way to go!

- **Dickinson, ND:** Public survey results, taken by the Southwest Alliance Against Tobacco, showed strong support for a smokefree ordinance: 80% of survey respondents said they would favor smokefree restaurants in their community; 77% stated they would be in favor of "all places accessible to the public in our community being smokefree;" and 66% said they favored smokefree bars. Despite this seemingly strong public support for a smokefree workplace law in Dickinson, on June 8, 2004, voters overwhelmingly rejected the ballot initiative by a 61.2% to 38.8% margin. If passed, the law would have been the strongest smokefree law in North Dakota, making all Dickinson businesses except those with a liquor license at the time of the vote smokefree.
- **Oshkosh, WI:** The Oshkosh City Council considered a smokefree ordinance that eventually included a hardship clause and an exemption for separately ventilated attached bars. The council defeated the ordinance, and Friends of Breathe Free Oshkosh took the weakened language to the ballot. The initiative passed by less than 1% on April 8, 2004 – 50.74% for and 49.26% against. The opposition sued and the county judge granted a temporary injunction because of a technical error in the election process, believing that the ordinance's ballot description was ambiguous. Oshkosh's smokefree ordinance has been suspended since August 2004.
- **Fayetteville, AR:** The Fayetteville City Council passed an ordinance making workplaces, restaurants, and most public places smokefree on September 2, 2003. Free Choice Fayetteville, a group that actively opposed the smokefree ordinance during its initial campaign, gathered signatures to put the smokefree ordinance on the February 10, 2004 ballot. Smokefree Fayetteville budgeted \$49,000 for a one-month referendum campaign; Free Choice Fayetteville reportedly spent \$14,000. The comprehensive ordinance was upheld, with 51.8% voting in favor of making Fayetteville workplaces, restaurants, and bars smokefree.
- **Pueblo, CO:** On December 9, 2002, the Pueblo City Council passed a comprehensive smokefree ordinance, scheduled to go into effect on January 1, 2003. Immediately following the passage of the ordinance, an opposition group, Puebloans for Common Sense in Government, mobilized and

gathered signatures to repeal the ordinance on the ballot. Fifteen days after the smokefree law went into effect, it was suspended. For the May 20, 2003 referendum, Puebloans for Common Sense spent \$40,320 on opposition advertising, canvassing, and getting out the vote efforts, compared to Citizens for a Healthier Pueblo's \$22,860. The ordinance was upheld by a 59.4% to 40.6% vote. However, opposition efforts did not end. The smokefree ordinance was challenged a second time in a November 4, 2003 election. For this ballot initiative, Puebloans for Common Sense in Government spent another \$12,887, for a total of \$53,206 in an eleven-month period. Citizens for a Healthier Pueblo spent \$12,088.97 on the second ballot initiative, for a sum of \$34,949 in total election spending. Again, the Pueblo citizens defeated the challenge and upheld the smokefree ordinance with a 56.3% to 43.7% vote.

- **Duluth, MN:** The Duluth City Council passed a smokefree restaurant law in May 2001. In November of that year, opposition groups forced the ordinance onto the ballot. The People's Voice Committee led the campaign against the ordinance, claiming to be a grassroots organization comprised of concerned citizens. Of the \$11,428 that the People's Voice Committee received in donations, 96% came directly from tobacco companies and tobacco lobbyists (\$5,000 from R.J. Reynolds, \$2,500 from Brown & Williamson, \$1,800 from Lorillard, and \$1,627 from Thomas Briant, a lobbyist representing tobacco interests). Voters nonetheless approved the existing ordinance and also voted in favor of amendments to strengthen the ban.
- **Casper, WY:** A clean indoor air ordinance was scheduled to go into effect in Casper, Wyoming, in July 2000. Opponents of the ordinance put the issue on a citywide referendum on May 16 of the year. A total of \$102,933 was spent in an attempt to overturn the ordinance, 76% of which came directly from tobacco companies. (Philip Morris contributed \$31,944, Brown and Williamson contributed \$22,771, R.J. Reynolds contributed \$12,500, Lorillard contributed \$10,782, and U.S. Tobacco contributed \$500.) Although 66% of Casper residents initially supported the ordinance, after the tobacco industry had finished doing its dirty work, 52% voted to repeal the ordinance in the May election.
- **Corvallis, OR:** In November 1998, the tobacco industry sponsored one of the most lavishly funded campaigns ever seen in Corvallis, Oregon. A group called Citizens for Fair Representation mounted a campaign to overturn Oregon's first smokefree bar ordinance with \$33,592 in contributions from tobacco companies, including Philip Morris, Brown and Williamson, and R.J. Reynolds. An additional \$16,502 was donated by the National Smokers Alliance (a tobacco industry front group) and the Oregon Restaurant Association (a long-time industry ally). In contrast, the local tobacco-control coalition raised \$13,134 in contributions. Despite the opposition's disproportionate funding, voters decided to uphold the ordinance.
- **Portland, ME:** While vigorously denying that Big Tobacco was calling the shots, the Quiet Man Coalition accepted an enormous amount of money from the tobacco industry to mount a campaign against Portland's smokefree restaurant ordinance. Between October 16 and November 1, 1998, the group received \$34,490 from R.J. Reynolds, \$1,702 from Philip Morris, \$2,000 from various other tobacco companies, and \$10,000 from the Maine Restaurant Association. Citizens for a Healthy Portland, a local tobacco-control advocacy group, successfully defended the ordinance, which went into effect in January 1999.
- **Mesa, AZ:** Public health advocates in Mesa put a clean indoor air initiative on the March 26, 1996 ballot. An opposition group quickly formed to fight the initiative, calling itself the Mesa Freedom Committee. The Mesa Freedom Committee received a total of \$182,440 in contributions to mount

an opposition campaign, \$181,650 of which was donated by the Tobacco Industry. This figure was divided among Philip Morris (48%), R.J. Reynolds (26%), Brown & Williamson (18%), and Lorillard (8%). In contrast, the local public health coalition, Mesa for Clean Air, raised \$45,240 in contributions. The smokefree initiative was approved by 55% of the voters.

- **Los Angeles, CA:** Of the \$216,000 spent by the Los Angeles Hospitality Coalition to overturn a Los Angeles restaurant smoking ban in 1993, \$212,395 came directly from the tobacco companies. The hospitality coalition maintained that the vast majority of their contributors were Southern California businessmen. Campaign disclosure statements revealed, however, that the real source of their money was East Coast tobacco companies. R.J. Reynolds and its subsidiaries contributed a total of \$100,939 to the group; Philip Morris contributed \$77,662; Lorillard Tobacco Company contributed \$16,716; American Tobacco Company contributed \$15,578; and United States Tobacco Company contributed \$1,500. Despite the enormous amount of funding behind the petition drive, the group failed to collect enough signatures to bring the issue to the ballot.
- **San Francisco, CA:** The campaign to defend San Francisco's 1983 workplace smoking ordinance was one of the earliest and most publicized battles for local smokefree legislation. Recognizing the threat that such an ordinance presented, the tobacco industry spent \$1,250,000 to repeal the measure by means of a referendum campaign (Proposition P) – a new national record for money spent in a local ballot contest. San Franciscans for Local Control, in contrast, ran a campaign in support of the proposition for approximately \$125,000. The successful passage of Proposition P marked the first time that the tobacco industry had been defeated in this type of election contest.
- **Dade County, FL:** In the late 1970's, Florida took a leading role in attempting to protect nonsmokers' rights. Activists in Dade County gathered more than 10,000 signatures to place a clean indoor air initiative on the May 1979 ballot. The industry's response was unprecedented. A committee, Dade Votes for Free Choice Inc., was created to oppose the initiative and spent approximately \$900,000 to do so. The costs of the campaign were divided among the major tobacco companies (40% from RJ Reynolds, 30% from Philip Morris, 20% from Brown & Williamson, and 10% from Lorillard). The Florida chapter of the Group Against Smoking Pollution (GASP) attempted to support the initiative with less than \$10,000. On May 8, 1979, the pioneering initiative was narrowly defeated – 50.2% against and 49.8% for.

Typically, the tobacco industry loses at the ballot when challenging a council or locally enacted law due to increased public engagement, wide-spread understanding of the science of secondhand smoke, and increased support for smokefree indoor environments that develops during the ordinance passage process. Ordinances that go straight to the ballot can be successful but certainly are more challenging because they are played out in an arena typically more controlled or greatly influenced by Big Tobacco. If you are faced with defending a smokefree ordinance at the ballot box, or are considering a smokefree initiative, please contact ANR.

## IN THE WORDS OF BIG TOBACCO

- A Tobacco Institute memorandum describes the industry's strategy for combating local initiatives: "It is important to have two individuals who will be full time consultants for the duration of this project. Second, one individual must be in charge of this campaign, and it needs to be someone with sufficient stature to talk with the various company people on a peer basis... Thirdly, we will need to continue to retain a local grassroots consultant who will

concentrate on businesses other than restaurants... The personnel cost for this part of the operation would be roughly \$150,000. We should also budget an additional \$60,000 for travel to the various localities throughout the states. These consultants will be housed outside the TI [Tobacco Institute] structure and facilities, we will need to budget an additional amount of \$60,000 for staff and office expenses.”<sup>1</sup>

- “The most expensive of these [referendum elections] will be the battle in Sacramento County. An initial estimate for that campaign is \$1.5 million. Each of the remaining communities, Paradise, El Dorado County, Oroville, and Visalia, should not require more than \$40,000 to wage an effective campaign. Thus, the total is \$1.66 million. These are clearly preliminary estimates, survey research will provide additional information to refine these budgets.”<sup>2</sup>
- “If existing association or coalition does not exist to sponsor grassroots campaign, new organization needs to be created... Budget estimates for weeks 1 through 24... Grassroots expenses -- \$150,000 (depend on number of states, extent or programs, etc.).”<sup>3</sup>

## REFERENCES

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<sup>1</sup> McAdam, R. “[Internal Memo re: Long Beach Referendum.]” *Tobacco Institute*, August 1, 1991, Bates No. TIFL0506040/6046. Accessed on August 25, 2004. Download at <http://legacy.library.ucsf.edu/tid/mwv02f00>.

<sup>2</sup> McAdam, R. “[Internal Memo re: Long Beach Referendum.]” *Tobacco Institute*, August 1, 1991, Bates No. TIFL0506040/6046. Accessed on August 25, 2004. Download at <http://legacy.library.ucsf.edu/tid/mwv02f00>.

<sup>3</sup> Merlo, E. “Memo re: ballot initiative,” Philip Morris, February 19, 1993, Bates No. 2021252097. Accessed on August 25, 2004. Download at <http://legacy.library.ucsf.edu/tid/hw1146e00>.