Published in final edited form as:

J Health Polit Policy Law. 2014 June ; 39(3): 537–564. doi:10.1215/03616878-2682603.

WHEN TOBACCO TARGETS DIRECT DEMOCRACY

Elizabeth Laposata, JD, MPH, Allison P. Kennedy, BA, and Stanton A. Glantz, PhD

Center for Tobacco Control Research and Education, Department of Medicine, Institute for Health Policy Studies, University of California, San Francisco, San Francisco, CA 94143-1390

Abstract

Tobacco control advocates began to use ballot initiatives to enact tobacco control policies in the late 1970s. In response, the tobacco industry worked for over two decades to change laws governing initiative and referendum processes to prevent passage of tobacco control measures. In 1981, the tobacco industry's political lobbying arm, the Tobacco Institute, created a front group that presented itself as a neutral initiative research clearinghouse to affect changes in state initiative and referendum laws. In 1990, the Tobacco Institute began creating an in-house team, and worked with third party groups to try to change state initiative laws. While the industry ultimately abandoned both efforts when neither achieved immediate success, over time, the industry's goals have penetrated legitimate discourse on the I&R process in the United States and many specific ideas it advocated have garnered mainstream support. Direct democracy advocates, as well as public health advocates and policymakers, need to understand the tobacco industry's goals (which other industries adopted) of limiting the direct democracy process in order to ensure that any changes do not inadvertently increase the power of the special interests that direct democracy was developed to counterbalance.

INTRODUCTION

In the late 1970s, recognizing that the tobacco industry had powerful influence over state legislatures (Givel and Glantz 2001; Lum, Barnes, and Glantz 2009), tobacco control advocates began to use the initiative process to pass state smoking restrictions and cigarette excise taxes with earmarked funds for tobacco control programs (Glantz and Balbach 1999; Nicholl 2000; Lum, Barnes, and Glantz 2009; Tung, Hendlin, and Glantz 2009). Tobacco control measures enacted via direct popular vote threaten the tobacco industry by moving the decision-making process out of industry-dominated state legislatures (Lum, Barnes, and Glantz 2009). In order to stop the "assault [on the industry] by direct voter involvement,"¹ the tobacco industry created front groups and manipulated publically acceptable third party groups to advocate in favor of changing the laws governing the initiative process to make it

Correspondence to: Stanton A. Glantz.

CONFLICT OF INTEREST

The authors have no conflicts of interest to disclose.

CONTRIBUTORSHIP

This project began with the work of Allison Kennedy before she left UCSF to return to graduate school, after which time she remained actively involved, including in the preparation of the manuscript, after Elizabeth Laposata took over primary responsibility for completing the research and manuscript. Stanton Glantz supervised the project and participated in preparing and editing the manuscript.

harder for the public to put initiatives on the ballot and prevent states without the process from acquiring it.

Indeed, the goal of circumventing legislatures dominated by special interests led US Progressives and Populists to advocate for direct democracy processes beginning in the 1890s (Waters 2003). M. Dane Waters, a scholar on direct democracy, refers to I&R as, “THE critical tool[s] to check the power of unresponsive and unaccountable government” and for overcoming self-interested and industry-dominated legislatures (Initiative and Referendum Institute 2002; Waters 2003). As intended by the US Progressives and Populists (Waters 2003), direct democracy has endured as a powerful tool for social change with many corollary benefits for representative democracy (Gerber 1996; Smith 2002; Cronin 1999). I&R has proven to be a vital tool for promoting public interest in public health and the environment (Ballotpedia 2011; Givel and Glantz 2000; Givel 2009; Lum, Barnes, and Glantz 2009), where voters have passed laws such as Proposition 65 in California in 1986, requiring the state to publish a list of chemicals known to cause cancer or birth defects (Office of Environmental Health Hazard Assessment 2010).

Thomas E. Cronin observed that working at its best, the initiative system allows “less well-represented interests to bring their messages before the public” and provides a “safety valve” for citizens unhappy with elected officials, but that it also can place power in the hands of the side with the most money to dominate the discussion and change in laws (Cronin 1999). The 1978 passage of California’s Proposition 13 (capping property taxes and requiring a 2/3 state legislative vote to increase taxes) marked the modern resurgence of I&R use (Initiative and Referendum Institute 2010; Waters 2003; Cronin 1999) and reinvigorated debate on the merits and shortcomings of I&R. Much of the literature on I&R focuses on several key tensions in the process, including financial costs and implications (Mathews and Paul 2010), the distribution of risks and benefits among minority and vulnerable populations (Miller 2001; Garrett 2006; Collins and Oesterle 1995; Moore and Ravishankar 2011), the role and impact of the electorate in deciding on complex policy matters (Hobolt 2007; Lupia and McCubbins 1998; Smith and Tolbert 2007), and the potential for manipulation by wealthy special interests (Strattman 2005; Lupia and Matsusaka 2004; Gerber 1999), including the tobacco industry (Tung, Hendlin, and Glantz 2009; MacDonald, Bialous, and Glantz 1997; Maplight.org 2012).

I&R scholars disagree as to the usefulness of the I&R process. For every advantage or merit of I&R some scholars argue it brings to the political process, others see them as a disadvantage or pitfall. Direct democracy provides opportunities for public interest advocates to bypass legislatures dominated by wealthy special interests, but wealthy special interests can also hijack the process by using paid signature collectors; “ballot box budgeting” can also cause debilitating budget deficits (Miller 2001; Garrett 2006; Collins and Oesterle 1995; Strattman 2005; Lupia and Matsusaka 2004; Gerber 1999; Mathews and Paul 2010). Studies show either that I&R increases voter interest, participation and turnout or that it has no impact on voter turnout and that voters are not knowledgeable enough to make the necessary informed choice, a belief many voters hold themselves (Smith 2001; Tolbert, Grummel, and Smith 2001; Childers and Binder 2010; Cronin 1999).

Despite the potential flaws of the I&R process, it is necessary that critical public interest issues have a mechanism in place to bypass industry dominated legislatures since these issues are particularly vulnerable to legislative manipulation by industry interests seeking to avoid stronger oversight and regulation. By using their legislative influence, the tobacco industry had successfully blocked tobacco tax increases, which forced health advocates to use direct democracy to pass such public health laws (Lum, Barnes, and Glantz 2009). Previously secret tobacco industry documents reveal that the tobacco industry recognized the threat direct democracy tobacco control measures posed to the industry's profits in the 1980s and launched a campaign to limit use of the process.

This paper investigates the tobacco industry's extensive history in the area of I & R reform revealing their plans, goals, and tactics, including use of front and third party groups. We detail how despite the tobacco industry's success in other policy and public opinion arenas (Ong and Glantz 2001; Mugglie, Hurt, and Repace 2004; Cook et al. 2005; Landman, Cortese, and Glantz 2008), it rarely succeeded in directly changing I&R laws and never successfully implemented its comprehensive plan to change I&R laws (Givel 2009). A previous article by Michael Givel discussed the tobacco industry's vulnerability to laws passed through initiative and referendum, identifying 34 tobacco control initiatives, of which 21 passed, in the United States, from 1988 to 2006 (Givel 2009). He briefly addressed the industry's interest in undermining the process in order to prevent such initiatives (Givel 2009). Although many scholars have examined the influence of moneyed special interests on I&R, no other studies have detailed the specific goals, methods, and plans of an industry to change the I&R process.

Notwithstanding these apparent failures in achieving direct changes to laws, many of the reforms and concepts proposed by the industry in the early 1980s through the 1990s have since become mainstream concepts in I&R reform. The industry, working to coopt the democratic political process, was highly skilled at defining its issues in a way that maximized the support from organizations with more public credibility and thus was able to take advantage of legitimate concerns about the initiative process and use its front groups and third party allies to further its political strategy goals. Tracing the history, objectives, and strategies of tobacco industry involvement in I&R reform offers critical insights into the strategies of a major, yet understudied non-state actor in I & R reform, as well as implications for policymakers and public health advocates who wish to understand and subsequently safeguard these processes from industry manipulation.

METHODS

This paper examines the tobacco industry's attempts to modify I&R laws throughout the United States by highlighting cases of industry action in specific states. Research was conducted through the Legacy Tobacco Documents Library (<http://legacy.library.ucsf.edu/>) database of over 80 million pages of previously secret tobacco industry documents. Beginning with an iterative search and using standard snowball search techniques (Malone and Balbach 2000; Carter 2005), between August 2010 and November 2012, we started our search with terms including "initiatives and referenda," "ballot initiative," and "ballot initiative project," then expanded searches with names of specific projects and people. We

reviewed over 4,000 documents. This information was triangulated with research conducted via the Initiative and Referendum Institute, www.sciencecorruption.com, the academic literature, state legislative archives, and news articles in order to confirm and compare tobacco industry documentary analysis with actual policy and reform outcomes.

Original source documents are indicated with superscripts and are listed in the Source Bibliography, which is available at in the Supplementary Material..

RESULTS

Recognizing the Threat: The Tobacco Industry Begins to Monitor I&R

After passage of California's Proposition 13 in 1978, tobacco control advocates recognized the opportunity I&R offered to bypass the legislature and capitalize on poor public opinion of the tobacco industry and ran four ballot initiatives (two in California and two in Florida) to restrict indoor smoking between 1978 and 1980; the tobacco industry defeated all four by mounting expensive advertising campaigns (Glantz and Balbach 1999; Givel and Glantz 1999; Givel and Glantz 2000). In 1980, the Tobacco Institute (TI), the tobacco industry's political arm, began closely monitoring changes in states' I&R authority, including legislation to grant I&R authority or significantly change I&R procedural processes ².

In 1980 the Minnesota legislature proposed Amendment 4 to authorize I&R. TI's political consultants at the Martin Haley Companies saw opposition to the amendment as an opportunity to turn the tide of growing I&R authority, and wrote to lawyers from several tobacco companies that, "in terms of the tobacco industry, while we have many grave political challenges, [it would be difficult] to cite one which is more important than I&R over the longer term."³ Amendment 4 failed to pass (Waters 2003). Also in 1980, Colorado considered reforming its initiative procedure to require that petition signers be registered voters and that proposed measures be submitted to the General Assembly for review and comment before affixing a title.⁴ TI believed that the changes would have made it harder to place initiatives on the ballot ⁵⁻⁷ and Brown and Williamson encouraged its Colorado employees to vote yes on the measure.^{8, 9} The Amendment passed with 60.1% of the vote (Ballotpedia 2012).

The Tobacco Institute Establishes the National Center for Initiative Review

In 1981, TI formalized its effort against I&R by creating the National Center for Initiative Review (NCIR) (Science Corruption 2011).¹⁰ The concept for a national organization centralizing knowledge and coordinating efforts among different "ballot-prone industries" to "seriously impact the expansion of the [I&R] process as well as to suggest and support changes in existing laws" originated with R.J. Reynolds' Director of Public Affairs, Gene Ainsworth.¹¹ Ainsworth recruited political affairs consultant, Walt Klein, and influential Republican political campaign consultant, Stuart Spencer to organize NCIR.¹⁰⁻¹⁴ Publicly, NCIR presented itself as a nonprofit corporation that "provide[d] information & assistance to those working to reform the initiative process," funded by "voluntary contributions from a wide range of supporters."¹⁵ Klein served as president of NCIR and plans for NCIR's first year proposed that NCIR be run out of Walt Klein Associates' headquarters.¹² Stu Spencer

sat on its board with Klein's secretary, Sue Thomas, who also served as Research Director and later, Executive Director. Two law firms with extensive history with the tobacco industry, Dobbs & Nelson and Halaby & Bahr, provided legal counsel.^{12, 14, 16–20} TI spent \$150,000 creating NCIR in 1981²¹ making up three fourths of NCIR's \$200,000 budget for 1981.²²

NCIR recruited other industries and, by 1982, had financial contributions from the Glass Packaging Institute, American Medical Association (both which contributed \$10,000 in 1981²³), National Soft Drink Association, Can Manufacturers Institute, Standard Oil of Indiana, American Dental Association, Atomic Industrial Forum, and Edison Electric Institute.²⁴ Members received quarterly newsletters from NCIR tracking I&R related legislation and initiatives on state ballots.²⁵ TI contributions to NCIR dropped to \$5,000 - \$10,000 annually from 1983 to 1986 (Science Corruption 2011).^{26–29} As their contributions dropped off, TI encouraged its member companies and their subsidiaries to become members of NCIR, and solicited other companies for membership.¹⁶

In 1981, New Jersey's legislature considered authorizing I&R which NCIR feared could lead to similar laws in other eastern states, particularly Pennsylvania and New York.³⁰ By 1981, NCIR had achieved enough credibility for the New Jersey School Board Association to request information and analysis of I&R from NCIR about citizen participation in the I&R process, the process' affect on legislatures, the quality of laws passed through the process, and an opinion on New Jersey's bill to help the Association make a recommendation to the legislature.³¹ NCIR sent the Association an analysis of the New Jersey bill by NCIR consultant David Magleby indicating problems with each section of the bill.³² After the Democratic leadership blocked the I&R authorizing legislation (Waters 2003), TI attributed the defeat to NCIR.^{16, 30} When the state again considered I&R in 1986, NCIR Executive Director, Sue Thomas, testified against the bill, and the School Board Association, along with the state hospital association, Chamber of Commerce, and the pop-up coalition, Citizens for Representative Democracy, argued that the I&R proposal would take power away from minorities and is heavily used by single issue zealots, effectively blocking the bill (Tollerson 1986).³⁰

NCIR closed in 1986,^{20, 25, 33–37} following a decrease in TI and NCIR communications starting in 1982, and apparent TI frustration with NCIR's lack of progress in 1984.³⁸

Tobacco Taxes by Initiative: Renewing Tobacco Industry Interest in I&R Change

In 1988, California voters passed Proposition 99, a 25 cent tobacco tax with 5 cents earmarked for tobacco control, which created the largest state tobacco control program for its time (Glantz and Balbach 1999).³⁹ This earmarked tax and the tobacco control program it created not only reduced smoking (and industry sales) in California, but served as a model for other states (Lum, Barnes, and Glantz 2009) including Massachusetts (Heiser and Begay 1997), Arizona (Hendlin, Barnes, and Glantz 2008), and Oregon (Goldman and Glantz). As a result of Proposition 99, TI began directly monitoring (as NCIR had) all legislation related to I&R authority and reform in all 50 states.^{40–46}

Creating Institutional Memory with the National Advisory Team—In late 1989 and early 1990, TI consulted with “legislative counsel and other key contacts in several states” to pursue “improving laws governing the development of ballot issues.”⁴⁷ TI recognized that tobacco tax ballot issues were a constant threat and that the industry was “particularly vulnerable to challenges at the ballot box,”⁴⁸ so a long range plan was necessary.⁴⁷ The industry believed that it could not directly attempt to change I&R laws, rather, any “attempt to revise states laws respecting the initiative process must be driven by a broad-based coalition having all the trappings of a progressive, public-minded organization,” focusing on “developing relationships with organizations commonly viewed as more altruistic,” because any “high-profile exposure of the tobacco industry... would make failure certain.”⁴⁷

The Tobacco Institute recognized that it had been largely reactive to ballot issues up until this point, and “lack[ed] proper organization...reinvent[ed] the wheel each time an initiative or referendum arises” by recruiting new campaign teams, educating them and devising strategies from scratch.⁴⁸ In 1990 and 1991, TI created a permanent team to handle planning, strategy, and execution of initiative and referendum campaigns.⁴⁸ This National Initiative Advisory Team would create an institutional memory for opposing initiatives, changing the process, and developing campaign approaches for elections.^{48–50} Bob McAdam, Vice President of Special Projects for the Tobacco Institute, chaired the team, recruited members, and consulted with other TI committees.^{48, 49}

At the 1990 annual TI government relations seminar attended by TI lobbyists, staff and member tobacco company personnel, McAdam led an “Initiative Game” workshop to generate ideas on how to change the I&R process.^{51–53} The workshop presented groups of individuals with a hypothetical situation describing an imaginary state’s initiative laws and a hypothetical introduction of a tobacco tax initiative. Groups participating in the “game” then devised changes to the I&R laws which would benefit the tobacco industry in the hypothetical situation.^{54, 55} The goal of the game was to help TI formulate a detailed plan for I&R change and for the lobbyists to learn to “increase the difficulty of revenue seekers, anti-smoking activists, and health related organizations to use the initiative process to increase tobacco taxes or enact other anti-tobacco legislation through direct voter involvement.”⁵⁴ Results from the “Initiative Game” helped inform TI’s future work in I&R change (Table 1, second column).

Two years later, in 1992, TI distributed a white paper summarizing the goals and strategies of their approach to I&R change (Table 1, columns 1 and 2) to protect the industry “from assault by direct voter involvement” by changing state constitutions and statutes regarding I&R to make adoption of initiatives harder and reduce the industry’s vulnerability to new taxes and laws created through initiative.¹ Goals and solutions in the white paper matched specific solutions created through the “Initiative Game” (Table 1). The industry planned to evaluate each state and develop specific strategies for I&R change, based on their developed goals, before the next year’s 1993 legislative session.¹ As a first step, TI sought to block I&R authorizing legislation in New Jersey and Mississippi in 1992.¹

Tobacco Industry Succeeds in New Jersey—In early February 1992, New Jersey Assemblyman Robert Franks (R) proposed Assembly Concurrent Resolution 1 (ACR-1) to amend New Jersey's Constitution to authorize citizen initiative authority for statutory and constitutional amendments (Assembly Concurrent Resolution No. 1 State of New Jersey: Introduced 1992). Originally, because there was wide bipartisan support for the amendment, TI believed that killing ACR-1 would not be possible and focused instead on weakening the bill via amendments or creating a new substantially different bill.^{56–58} McAdam drafted amendments to ACR-1 including a single subject limitation and a geographic requirement that signatures equally represent northern and southern counties), and a prohibition on earmarking state general revenue.⁵⁹

In April 1992, TI enlisted the New Jersey Citizen Action Network (NJCA), a non-profit citizen group that had previously fought for universal health care and lower auto insurance rates, to help with industry efforts to block I&R. Tobacco's alliance with NJCA dates from 1988 and in the early 1990s, TI contributed at least \$50,000 to New Jersey Citizen Action to oppose cigarette excise taxes (Campbell and Balbach 2009). NJCA had not yet taken a stance on I&R. To "get [NJCA] more involved in the fight against I&R,"⁶⁰ Pete Giangreco, a consultant from the TI public relations firm The Strategy Group, met with NJCA leaders, and convinced NJCA to oppose I&R, "along with labor and teacher's groups," successfully keeping "Democrats from signing on to the bill."⁶⁰ NJCA published a report in July 1992, "Initiative and Referendum: It's Not the Answer," opposing I&R stating, ironically, "that big money interests dominate the [I&R] process, resulting in less, not more, citizen control of the political process."^{60, 61} In July 1992, the New Jersey legislature defeated two proposed bills authorizing I&R.⁶² TI saw the NJCA report as a success; NJCA held a news conference which triggered many news organizations to do follow-up pieces on the defeat of the bill.⁶³ The NJCA report was well received by the media and NJCA mailed the study to over forty newspaper editorial boards, continuing their efforts even after the bill was defeated.⁶³ Additionally, in 1992, TI helped resurrect Citizens for Representative Democracy, as a 501(c)(3) group, to develop focus groups, conduct polling, supply witnesses to testify and contact legislators in order to sway public and legislative opinion against I&R.^{58, 64, 65} In August, TI executives remarked that the defeat of the I&R legislation was "pursuant to our goals and objectives" and was "the result of the efforts in New Jersey."⁶²

Tobacco Industry Fails to Realize Same Success Outside of New Jersey—Over the next three years many states and localities considered adopting or amending I&R legislation. In November 1992, Mississippi became the first state since 1972 to authorize I&R.¹ The governing statutes were restrictive, with the second highest petition signature threshold in the country and a very strict geographic requirement for petition signatures (Waters 2003),⁶⁶ but nevertheless, McAdam recommended that TI oppose the law.⁶⁷ (We could not locate evidence that the TI organized any formal opposition to Mississippi.)

In January 1993, a few months after Mississippi adopted I&R, TI outlined goals for I&R statutory changes in other states, such as prohibiting paid signature gatherers and requiring geographic distribution of signatures, including Arizona, Arkansas, Colorado, Idaho, Michigan, Missouri, Montana, Nebraska, Nevada, Ohio, Oregon, Utah, Washington, and

Wyoming.⁶⁸ In preparation for their 1993 I&R work, McAdam held meetings in Arizona, Colorado, Michigan, Nebraska, and Oregon with TI personnel, lobbyists, and other industries to develop strategies to keep tobacco issues, particularly tobacco taxes and clean air initiatives, off of state ballots and prepare a defense should they end up there during the 1994 election cycle.⁶⁹ The TI's National Initiative Advisory Team refined these strategies and established a \$798,000 initial budget for ballot issues in these states.⁶⁹⁻⁷⁴ In Washington state, state counsel for TI recruited labor, environmental, "anti-gay forces" and "good government" groups to help attempt to pass changes to the state I&R laws;^{75, 76} however they only succeeded in making knowingly signing an initiative petition as a non-registered voter a class C felony. (Wash. Rev. Code Ann. § 29A.84.230 (West 2012))

Despite their ambitious plans for 1993, by the end of March, the Tobacco Institute concluded that "hopes for significant reform of state initiative processes have dimmed."⁷⁷ TI felt that opportunities to change the process remained, including limiting paid petition signature gatherers in Colorado, Montana, Nebraska, Oregon and Washington,⁷⁷ but that most of the energy they dedicated to the issue was going to fight efforts to liberalize state I&R processes.⁷⁸

If at First You Don't Succeed: The Industry Reassesses Its I&R Change Plans

By late 1994 and early 1995, TI member companies recognized that although they had been working in I&R change for more than 5 years, only "[s]ome small attempts had been made, [and] relatively little progress can be claimed in the area."⁷⁹ They were still spending too much money and time fighting individual ballot measures across the states when they wanted to "avoid having to engage in a full-fledged campaign to win voter support for [their] position on election day".⁷⁹ Instead of fighting a state-by-state initiative-by-initiative war, the industry felt that they needed a more wholesale approach, by confusing the opposition's priorities, looking for legislative solutions to potential ballot issues which would not put the industry at a disadvantage, limiting oppositions' funding sources, and overburdening the opposition with legal challenges.⁷⁹

The major tobacco companies comprising the TI recognized the institute's lack of success in of these areas. Showing their lack of confidence in the Strategy Team, in December 1994, Philip Morris (PM) created an Elections Task Force (ETF) to work internally on initiatives.^{80, 81} Likely in response to PM's efforts, RJR complained that some individual companies had started to act on their own without other company participation or management, that there were no clear company representatives for initiative matters, that initiative decision makers often did not attend meetings, and that there was too much micromanagement of campaign tactics by PM.⁸²

In January 1995, executives Jim Cherry, Vice President and Deputy General Counsel at Lorillard, John Hager, Vice President of Leaf Department at American Tobacco Company, Tim Hyde, National Field Director at RJR,⁸³ Gene Russell, Director, Government Affairs Department at Brown and Williamson, and Tina Walls, Vice President of Government Affairs at PM, met to reexamine the industry's approach to ballot issues and recommend changes.⁸⁴ They decided to reconfigure the National Initiative Advisory Team as a new ballot issues committee, renaming it the TI Ballot Issue National Strategy Team.^{79, 85} Still

headed by McAdam, the Strategy Team would provide advice to a TI Management Committee on strategy and budget issues for initiative prevention campaigns.^{79, 85} This reconfiguration was an attempt to reinvigorate the companies' joint efforts in defeating initiatives and changing I&R laws. The companies seemed to commit to the concept; Philip Morris' Elections Task Force met only three times, concluding their meetings in April 1995.⁸¹

Try Try Again: Attempts at Supermajority in 1995—By late March 1995, the Ballot Issues National Strategy Team was already working on a proactive I&R change project to attempt to amend California's Constitution through a ballot initiative to require that all initiatives concerning tax increases be passed with a supermajority (2/3) vote rather than a simple majority (1/2+1) vote. (Proposition 13 had required a 2/3 vote in both houses of the legislature for new taxes but taxes passed through initiative still only needed a simple majority.⁸⁶) McAdam's team drafted the initiative, but hid tobacco industry involvement since public opinion polls showed that if tobacco sponsorship was known some people would vote against the initiative regardless of its content.⁸⁶ Therefore, TI selected Lew Uhler from the National Tax Limitation Committee (NTLC) in Roseville, CA to be the official primary sponsor; NTLC filed the initiative with the Attorney General on April 5, 1995.^{87–90} TI budgeted \$70,000 for the initiative, the "Taxpayers Control Act of 1996,"⁹¹ which also received money from TI's sister organization the Smokeless Tobacco Council and others.^{87, 92, 93} The act ultimately failed to collect enough signatures to qualify for California's 1996 ballot (University of California Hastings 2010).

In 1994, despite a major campaign financed by the tobacco industry, Arizona passed a cigarette tax via initiative which earmarked 23% of the generated revenue for tobacco control (Bialous and Glantz 1997). As in California, in 1995 TI wanted to require a 2/3 supermajority to pass taxes by initiative in Arizona, expanding on a 1992 Arizona initiative ("It's Time") that required a 2/3 vote for the legislature to pass new taxes.^{70, 94} TI and Arizona's liquor wholesalers and mining association provided \$50,000 each to the Lincoln Caucus to organize an initiative campaign, with the proposed names of "It's Time to Protect the Taxpayers" or "It's Time Two," and conduct polling, again, hiding the tobacco industry's involvement in proposing seemingly non-tobacco related initiatives.^{94, 95} This proposal, like the one in California, never made it to the ballot.

In 1996, Florida voters did pass an amendment requiring 2/3 supermajority for initiative tax measures (Florida Department of State Division of Elections 2011). Although TI was interested in the campaign and budgeted \$90,000 in contributions, it did not want to be the first or largest contributor.⁹⁶ Instead, Florida's sugar industry took the lead on the initiative, creating a front group, the Tax Cap Committee, to sponsor the initiative.⁹⁶

The Tobacco Companies Strike Out Separately

After further failures to limit I&R, in 1997, PM expanded upon plans created by their Elections Task Force (ETF) in 1994 to "[i]dentify I&R opportunities and I&R procedure changes that have a positive impact on Philip Morris operating companies."⁸⁰ Philip Morris' two-year strategy to reach this objective mirrored the 1992 White Paper plans (Table 1),

including identifying “proactive uses of initiatives...includ[ing] privacy, labeling, tax reforms, etc.,” analyzing reform options by designing the ideal initiative process and assessing the process’ viability, and evaluating each state’s I&R qualification procedures.⁸⁰ The ETF’s final primary policy recommendations were to enlist taxpayer groups to create a negative impression of I&R with taxpayers (as they called it, “exploiting the abuses of the initiative process”⁸⁰), and to enact or support initiative change focusing on five goals; 1) necessitating more signatures in less time, 2) a greater geographic distribution of signatures, 3) prohibiting campaign involvement by non-profits, 4) imposing additional legal requirements for ballot titles and summaries, and 5) imposing additional requirements on the signature validation process.⁸¹

The Tobacco Institute was dissolved the following year, 1998, as a result of state litigation against the tobacco industry.

After 1997, the tobacco companies remained actively involved in combating tobacco tax initiatives (Lum, Barnes, and Glantz 2009), and clean air initiatives (Tung, Hendlin, and Glantz 2009). In 2010, Philip Morris provided \$2.3 million out of a total of \$18.3 million (Maplight.org 2010) to the California Chamber of Commerce’s Proposition 26, which expanded California’s definition of “taxes” so that regulatory fees imposed on businesses would also require a 2/3 vote of the legislature, or of local voters for municipal regulatory fees.(Rogers 2010; Ballotpedia 2010; Times 2010) These restrictions on the enactment of fees severely limits state and local efforts to mitigate costs through the collection of fees, such as fees to help recover costs of picking up cigarette butts through fees imposed on cigarettes.(Counter Tobacco 2011)

The Long Game

In addition to targeting specific states for I&R change, the Tobacco Institute tracked all bills related to I&R reform in all fifty states, identifying 1267 bills to establish or amend the initiative and referendum processes between 1991 and 1997. While TI achieved few direct successes from their Advisory Team, over the long term, some of its goals to change I&R, publicized through groups like NCIR and NJCA, became mainstream and were accepted by target states in the decades following their origin. For example, in 1981 outside counsel for TI wrote Walt Klein, detailing Nebraska I&R laws and making recommendations for changes the industry would like to see there.^{97, 98} By 2012, the Legislature had adopted four of these changes and considered, but did not adopt two others (Table 2).

Other states have adopted industry suggested restrictions (Table 3) on paid signature gatherers (like Alaska, Colorado, Oregon and many others) and requirements on signature gatherers such as training programs and badge requirements (Ballotpedia 2012; Or. Rev. State. Ann. § 250.048 (West 2012)).

DISCUSSION

Beginning in 1980, the tobacco industry attempted to change the I&R process to prevent passage of tobacco control initiatives. Working through the TI, the tobacco companies began the effort to limit citizen access to I&R by forming the National Center for Initiative Review

(NCIR) to monitor and limit the expansion of direct democracy. Passage of California's Proposition 99 in 1988, which increased the tobacco tax and funded a large anti-smoking campaign, gave new urgency to the Tobacco Institute's interests in I&R change, sparking TI to create the National Initiative Advisory Team to fight against tobacco control initiatives and work to change I&R laws. By 1997, frustrated with a lack of identifiable success through their collective efforts, the major tobacco companies started to pursue I&R changes independently. Despite dedication of significant resources, the creation and manipulation of many groups, and substantial efforts over seven years, the tobacco industry failed to win any short-term successes. However, although much of the reform that the industry advocated existed within I&R debates before the industry showed an interest, over the long run many of the specific changes and concepts the tobacco industry sought – legislative review, a variety of increased signature requirements, and many different restrictions on paid signature gathering – attracted mainstream support. The tobacco industry's goals in promoting these changes are diametrically opposed to the goals of populist reformers, indeed to democracy itself, seeking to improve the initiative process while preserving its function as a way for the people to bypass special interest-dominated legislatures.

TI's creation of NCIR in 1981 followed the common tobacco industry tactic of creating front groups or manipulating often cash-strapped third party groups to advocate for its policy positions (Dearlove, Bialous, and Glantz 2002; Apollonio and Malone 2010; Mandel, Bialous, and Glantz 2006). To discredit science on the health risks of secondhand smoke, Philip Morris created The Advancement for Sound Science Coalition in 1993 (Ong and Glantz 2001). To mask their interests in preventing businesses and restaurants from going smokefree, the tobacco industry has used the hospitality industry to misinform the public that clean indoor air laws hurt local businesses (Dearlove, Bialous, and Glantz 2002). The industry used progressive groups, including not only NJCA, but also the Coalition of Labor Union Women in the late 1980's to oppose worksite smoking rules and cigarette excise taxes by highlighting the economic impact of such laws on working women (Balbach, Herzberg, and Barbeau 2006). Starting as early as 1969, the industry financed African American and Hispanic leadership groups such as the National Urban League, the NAACP, and the California Hispanic Chamber of Commerce, to keep these organizations from opposing tobacco industry efforts to target members of these communities for increased cigarette sales and to keep them neutral or in opposition to tobacco control issues (Yerger and Malone 2002; Portugal et al. 2004).

Although the tobacco industry may have been able to take advantage of and cater their messages to some superficially similar goals (e.g., using arguments against excise taxes to engender themselves to redistributive tax policy groups), often their support stayed hidden and unknown even to many members (Campbell and Balbach 2009). In fact, the industry addressed this very topic in 1995 in their internal "Tobacco Industry Ballot Issues Goals and Procedures" when they discussed alternative strategies:

On occasion ballot issues will emerge that are not central to the interests of the industry, but have value in limiting the ability of our opponents to attack us. These issues have often surfaced by credible third parties who pursue them as part of their normal course of business...For fear of tainting the group sponsoring these

initiatives ... we have shied away from participating in this kind of ballot fight. ... It is now time to get actively involved with those interest groups..."(Tobacco Industry Ballot Issues Goals and Procedures" 1995)

Even so, the Tobacco Institute's National Initiative Advisory Team failed to achieve direct and immediate change in I&R laws in the 1990's. The team failed to devise a concise salient core concept around which public debate could be shaped and allies rallied. For comparison, in the 1990's and 2000's, the industry sold the notion of "accommodation" of smoking and nonsmoking patrons in restaurants and bars to the hospitality industry, voters, and legislatures as an alternative that delayed many 100% smokefree policies (Dearlove, Bialous, and Glantz 2002) and successfully opposed tobacco excise taxes by capitalizing on and promoting general anti-tax sentiment (Lum, Barnes, and Glantz 2009). Similarly concise framing around I&R reform was more difficult as the core purpose of the industry's goals to change I&R was solely to restrict public access to I&R while still reserving the process for moneyed interests (Table 3). Such limits on the initiative process are often viewed as "poisonous" (Mathews and Paul 2010) by the public, and legislators fear voter reproach at election time. The industry's core concept of restricting I&R use was unappealing, and therefore, the industry was unable to mobilize a large network for I&R reform or gain significant traction with the public.

The industry sought I&R reforms that would shift the I&R process and decisions from arenas unfavorable to the industry (popular vote) to ones that were more favorable (legislative and legal venues). Shifting venues to make proper use of a network of allies and appeal to the more responsive participants is an effective tactic for politically savvy groups (Baumgartner and Jones 1991; Baumgartner 2001; Schattschneider 1960). The tobacco companies, using such venue shifting, successfully blocked local tobacco control measures by working at the state legislative level to preempt such laws (Siegel et al. 1997). Taking more of the I&R process out of the hands of the people and putting more power over the process with the state would allow the tobacco companies to have more of an influence over which initiatives reach the ballot.

Evidence from several states shows that the tobacco industry has successfully used venue shifting within the I&R process, using legislatures to defund voter approved initiatives, because legislatures are willing to use their power to subvert tobacco control. In 1992, citizens of Massachusetts passed Question 1, a 25 cent cigarette tax with revenues earmarked for tobacco control (Begay and Glantz 1997), but the tobacco industry successfully lobbied the state legislature to divert three-quarters of Question 1 funds away from tobacco control despite the voter mandate (Begay and Glantz 1997). In California, Arizona, and Florida, voters have passed tobacco control initiatives with funds earmarked for tobacco control but state legislatures, dominated by the tobacco industry diverted the funds undermining effective programming. (Glantz and Balbach 1999; Hendlin, Barnes, and Glantz 2008; Hong, Barnes, and Glantz 2007; Kennedy et al. 2011)

The changes sought by the tobacco industry (Table 3) threaten the fundamental intent of direct democracy. While many of these changes could have been used to fix the perceived ails of direct democracy, the industry sought such changes, including increased signature

requirements, to make barriers for petition qualification so high and complex that they were insurmountable for citizens and public groups with low funds who were reliant on volunteers. Though restricting public access, it would preserve the tobacco industry's (and other moneyed interests') ability to use the initiative process because the industry, with its essentially limitless financial resources, could use paid signature gatherers to reach any increased requirement.

Legislatures have adopted a variety of laws to restrict or to liberalize the I&R process. Although the tobacco industry was largely unsuccessful at changing I&R laws in the short term, by 2012 many of TI's specific ideas permeated the longstanding public discourse on I&R, including legislative and executive involvement in the I&R process, requiring a supermajority vote for the passage of initiatives, strict geographic requirements for petition signatures, and single subject requirements, and have become mainstream (Table 2) (Mathews and Paul 2010). For example, in Nebraska, TI's recommendations for reforming the initiative process were not adopted in 1981 when TI suggested them, but some of them – a single subject limitation, legislative review, restricting permissible subject matter (single subject) and restrictions on paid circulators – had been adopted by 2008 (Neb. Const. art. III). Some of these changes were even promoted by anti-tobacco legislators, suggesting that they were unaware that such laws had an intended purpose of benefitting the tobacco industry. Although a legislator must support laws which she believes are beneficial for her constituents, it is necessary to understand how such laws may be used and manipulated against the legislator's intent. Knowing who is behind a major push advocating for the adoption of a law may give legislators the added insight necessary to know what is truly beneficial. Many of the concepts pushed by the tobacco industry were well-disguised as valid concerns coming from a legitimate source and some legislators, if aware that they were advocating for tobacco industry-backed ideas, may have acted differently.

Some of TI's now publically accepted recommended changes to I&R laws may objectively benefit the I&R system. Single subject limitations, for example, can provide beneficial outcomes for the I&R process such as preventing logrolling. However, the tobacco industry supports single subject limitations because they can provide grounds for challenging an initiative thus delaying its approval for the ballot and can prevent multiple tobacco control laws from being placed on the same ballot (Table 3). Prohibiting paid signature gathering while reducing the number of and restrictions on signatures needed to qualify for a ballot so that volunteers have a reasonable possibility of gathering enough signatures could help equalize the ballot qualification process. However, this recommendation is not possible because of a 1988 United States Supreme Court decision prohibiting states from banning paid signature gathering (*Meyer v. Grant*). But the industry combines that with restrictions on gatherers and signatures, which would be nearly insurmountable for volunteers to overcome. For many reforms to I&R laws, it may not be what the reform is, but its intended use which will determine how beneficial or detrimental it may be.

Policymakers and advocates in the policy process might view some proposals differently if they realized who was pushing them. The fact that the Tobacco Institute and individual companies went to such lengths to hide their role in promoting specific I&R reforms strongly suggests that the tobacco companies were concerned that policymakers' openness

to the policies the industry was promoting might have been different if they had been aware of the industry's role. It is important for policymakers and advocates to recognize that the tobacco industry has a substantial interest in restricting the use of I&R in the United States. Their interest is entirely at odds with that of the populist I&R reform community. In addition, other industries are learning from the tobacco industry's playbooks. The beverage industry has employed front groups against soda taxes (California Watch 2012) and the food industry has used many of the tobacco industry's tactics to rally public support (Brownell and Warner 2009). Therefore, it is not only the tobacco industry of which I&R and public health advocates need to be wary in manipulating the I&R process.

Many proponents of I&R reform are seeking a system that preserves the power held by the people but that does not stymie the government and cripple state and local budgets. Populist I&R reformers need to have specific reform goals planned and construct them so that they will not inadvertently strengthen the very moneyed interests that the I&R process was designed to counterbalance. Public health advocates need to understand that the I&R process is an important tool in improving population health which advocates need to work to protect the I&R process from industry manipulation and corruption, and that even seemingly populist groups may advocate for reform which would result in a negative effect.

Limitations

The Legacy Tobacco Documents Library, the primary source for this research, is a depository of internal tobacco industry documents produced in lawsuits against the tobacco industry in smoking and health legislation. These documents provide the clearest record of activity until 1998, after which time the tobacco companies were aware that many of their internal documents would have to be made public under a series of court orders and so became more circumspect about what they wrote down (LeGresley, Muggli, and Hurt 2005). The lack of documents on I&R after 1998 limited our research of industry activities thereafter.

Conclusion

The tobacco industry spent two decades attempting to change the I&R process to protect its interests at the ballot box. They tried to make the process less accessible to the public, and give the legislature more power over I&R. Frustrated with a lack of immediate short term success, the tobacco industry gave up on two tactics to affect I&R laws, NCIR and the National Initiative Advisory Team. However, using publically appealing third party or front groups to advocate for the industry's goals, over the long term, many of the ideas that the tobacco industry pushed in the early eighties to reform I&R have now become mainstream, and many states have adopted them. Now that other industries, including beverage and food, have started to adopt tobacco industry's strategies, policymakers and I&R and public health advocates need to be wary of any industry involvement in I&R in order to protect direct democracy from these moneyed and heavily biased groups. The I&R process is an important tool for public health and other public interest advocates that needs to be protected against manipulation from tobacco and other corporate interests.

Supplementary Material

Refer to Web version on PubMed Central for supplementary material.

Acknowledgments

We thank Richard Barnes for his help and Sherri Brown for her help with political science theory.

Funding

This research was funded by National Cancer Institute Grants CA-061021 and CA-087472. The funding agency played no role in the conduct of the research or preparation of the manuscript.

REFERENCES

Note: Numbered citations refer to tobacco industry and other primary sources that are listed in the Supplementary Online Reference List available at Supplementary Material..

- Apollonio, Dorie; Malone, Ruth E. The “We Card” Program: Tobacco Industry “Youth Smoking Prevention” as Industry Self-Preservation. *American Journal of Public Health*. 2010; 100(7):1188–1201. [PubMed: 20466965]
- New Jersey Assembly. Assembly Concurrent Resolution No. 1 State of New Jersey: Introduced. 1992 ACR-1.
- Balbach, Edith D.; Herzberg, Abby; Barbeau, Elizbaeth M. Political coalitions and working women: how the tobacco industry built a relationship with the Coalition of Labor Union Women. *J Epidemiol Community Health*. 2006. http://jech.bmj.com/content/60/suppl_2/ii27.full.pdf
- Ballotpedia. Nebraska 2/3 Legislative Majority to Modify Initiatives Amendment, Measure 418 (2004). 2012. April 20, 2012 2004 [cited May 17, 2012 2012] Available from http://ballotpedia.org/wiki/index.php/Nebraska_2/3_Legislative_Majority_to_Modify_Initiatives_Amendment,_Measure_418_%282004%29
- Ballotpedia. California Proposition 26, Supermajority Vote to Pass New Taxes and Fees (2010). 2012. Ballotpedia, August 7, 2011 2010 [cited May, 23, 2012 2012]. Available from http://ballotpedia.org/wiki/index.php/California_Proposition_26,_Supermajority_Vote_to_Pass_New_Taxes_and_Fees_%282010%29
- Ballotpedia. Environment on the Ballot. 2012. December 31, 2011 2011 [cited July 31, 2012 2012]. Available from http://ballotpedia.org/wiki/index.php/Environment_on_the_ballot
- Ballotpedia. History of Nebraska's Initiative Laws. 2012. July 12, 2011 2011 [cited May 17, 2012 2012]. Available from http://ballotpedia.org/wiki/index.php/History_of_Nebraska_%27s_initiative_laws
- Ballotpedia. Colorado Amendment 1 (1980). 2012. April 20, 2012 2012 [cited May 5, 2012 2012]. Available from http://ballotpedia.org/wiki/index.php/Colorado_Amendment_1_%281980%29
- Ballotpedia. Pay-per-signature 20122012]. 2012. Available from <http://ballotpedia.org/wiki/index.php/Pay-per-signature>
- Baumgartner, Frank R. Political Agendas”. In: Smelser, NJ.; Baltes, PB., editors. *International Encyclopedia of Social and Behavioral Sciences: Political Science*. New York: Elsevier Science and Oxford:Pergamon; 2001.
- Baumgartner, Frank R.; Jones, Bryan D. Agenda dynamics and policy subsystems. *Journal of Politics*. 1991; 53(4):1044–1074.
- Begay, Michael Evans; Glantz, SA. Question 1 tobacco education expenditures in Massachusetts, USA. *Tobacco Control*. 1997; 6:213–218. [PubMed: 9396106]
- Bialous, Stella Aguinaga; Glantz, Stanton A. *Tobacco Control Policy Making: States*. San Francisco: Center for Tobacco Control Research and Education UC San Francisco; 1997. Tobacco Control in Arizona, 1973–1997.

- Brownell, Kelly D.; Warner, Kenneth E. The perils of ignoring history: Big Tobacco played dirty and millions died. How similar is Big Food? *Milbank Quarterly*. 2009; 87(1):259–294. [PubMed: 19298423]
- California Watch. Beverage Lobbyist Funds “Community” Campaign Against Soda Tax. 2012. June 13, 2012 [cited June 14, 2012]. Available from <http://californiawatch.org/dailyreport/beverage-lobbyist-funds-community-campaign-against-soda-tax-16585>
- Campbell, Richard B.; Balbach, Edith D. Building Alliances in Unlikely Places: Progressive Allies and the Tobacco Institute's Coalition Strategy on Cigarette Excise Taxes. *American Journal of Public Health*. 2009; 99(7):1188–1196. [PubMed: 19443832]
- Carter, Stacey M. Tobacco Document Research Reporting. *Tobacco Control*. 2005; 14(6):368–376. [PubMed: 16319359]
- Childers, Matt; Binder, Mike. Engaged by the Initiative? How the Use of Citizen Initiatives Increases Voter Turnout. *Political Research Quarterly*. 2010. <http://prq.sagepub.com/content/early/2010/12/08/1065912910388191>
- Citizens United v Federal Election Commission. 2010 558 U.S. 50.
- Collins, Richard B.; Oesterle, Dale. Governing By Initiative: Structuring the Ballot Initiative: Procedures that Do and Don't Work. *University of Colorado Law Review*. 1995; 66(47)
- Cook, Daniel M.; Tong, Elisa K.; Glantz, Stanton A.; Bero, Lisa A. The Power of Paperwork: How Philip Morris Neutralized the Medical Code for Secondhand Smoke. *Tobacco Control*. 2005; 24(4):994–1004.
- Counter Tobacco. Raising Tobacco Prices Through Non-Tax Approaches; Approach #4: Mitigation Fees. 2012. 2011 2011 [cited May 16, 2012]. Available from <http://countertobacco.org/raising-tobacco-prices-through-non-tax-approaches?page=5>
- Cronin, Thomas E. Direct Democracy: The Politics of Initiative, Referendum, and Recall. New York: toExcel by arrangement with Harvard University Press; 1999.
- Dearlove, Joanna V.; Bialous, Stella Aguinaga; Glantz, Stanton A. Tobacco industry manipulation of the hospitality industry to maintain smoking in public places. *Tobacco Control*. 2002; 11(2):94. [PubMed: 12034999]
- Diaz, John. Initiative Reform: Brace Yourselves, Voters. *San Francisco Chronicle*. 2012 April 29;2012 E-3.
- Florida Department of State Division of Elections. Tax Limitation: Should Two-Thirds Vote be Required for New Constitutionally-Imposed Taxes/Fees. 2011. 2011 [cited June 21 2011]. Available from <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=14537&seqnum=15>
- Garrett, Elizabeth. Fifth Annual Henry Lecture: The Promise and Perils of Hybrid Democracy. *Oklahoma Law Review*. 2006; 59(227)
- Gerber, Elisabeth R. Legislative Response to the Threat of Popular Initiatives. *American Journal of Political Science*. 1996; 40(1):99–128.
- Gerber, Elisabeth R. Princeton. New Jersey: Princeton University Press; 1999. The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation.
- Givel, Michael. Derailing corporate tobacco interests: State initiative policymaking from 1988 to 2006. *Social Theory & Health*. 2009; 7(4):339–353.
- Givel, Michael; Glantz, Stanton A. Tobacco lobby political influence on US state legislatures in the 1990s. *Tobacco Control*. 2001; 10(124–134)
- Givel, Michael; Glantz, Stanton. Tobacco Industry Political Power and Influence in Florida From 1979 to 1999. *Tobacco Control Policy Making: United States*. 1999. <http://escholarship.org/uc/item/9pk4k32m>
- Givel, Michael; Glantz, Stanton A. Tobacco control and direct democracy in Dade County, Florida: future implications for health advocates. *Journal of Public Health Policy*. 2000; 21(3):268–95. [PubMed: 11021043]
- Glantz, Stanton A.; Balbach, Edith D. Tobacco War: Inside the California Battles. Berkeley. 1999 CA: University of California Press.
- Goldman, Lisa K.; Glantz, Stanton A. Tobacco Industry Political Expenditures and Tobacco Policy Making in Oregon: 1985–1997. *Tobacco Control Policy Making: United States*. 1998. <http://escholarship.org/uc/item/7r2969ks>

- Heiser PF, Begay ME. The campaign to raise the tobacco tax in Massachusetts. *American journal of public health*. 1997; 87(6):968–973. [PubMed: 9224178]
- Hendlin, Yogi H.; Barnes, Richard L.; Glantz, Stanton A. Tobacco Control in Transition: Public Support and Governmental Disarray in Arizona 1997–2007. Tobacco Control Policy Making: United States. 2008. <http://escholarship.org/uc/item/1gh7g5p1>
- Hobolt, Sara Binzer. Taking Cues on Europe? Voter competence and party endorsements in referendums on European integration. *European Journal of Political Research*. 2007; 46(2):151–182.
- Hong, Mi-Kyung; Barnes, Richard L.; Glantz, Stanton A. Tobacco Control in California 2003–2007: Missed Opportunities. Tobacco Control Policy Making: United States. 2007. <http://escholarship.org/uc/item/7ck056qf>
- Waters, MD., editor. Initiative and Referendum Institute. Initiative and Referendum in the United States: A Primer: An Overview of What it is and How it Works Around the Country Citizen Lawmakers. Washington, D.C: Citizen Lawmaker Press; 2002.
- Initiative and Referendum Institute. Initiative Use. 2010. <http://www.iandrinstitute.org/IRI%20Initiative%20Use%2020282010-1%29.pdf>
- International Institute for Democracy and Electoral Assistance. Direct Democracy: The International IDEA Handbook. The International IDEA Handbook Series. 2008
- IRI-Asia. IRI-Asia Home. 2012. July 15, 2011 2006 [cited May 20, 2012 2012]. Available from <http://www.iri-asia.net/?mod=Home>
- Kaufmann, Bruno; Buchi, Rolf; Braun, Nadja. The IRI Guidebook to Direct Democracy In Switzerland and Beyond. Initiative and Referendum Institute. 2010
- Kennedy, Allison; Sullivan, Sarah; Hendlin, Yogi H.; Barnes, Richard L.; Glantz, Stanton A. Tobacco Control in the Florida 1999–2011: The Good, The Bad, and The Ugly. Tobacco Control Policy Making: United States. 2011. <http://escholarship.org/uc/item/9rq720x1>
- Landman, Anne; Cortese, Daniel K.; Glantz, Stanton A. Tobacco industry sociological programs to influence public beliefs about smoking. *Social Science & Medicine*. 2008; 66(4):970–981. [PubMed: 18164524]
- Lee, Chung-Yol; Glantz, Stanton A. Tobacco Control Policy Making: International. UC San Francisco: Center for Tobacco Control Research and Education; 2001. The Tobacco Industry's Successful Efforts to Control Tobacco Policy Making in Switzerland.
- LeGresley, Eric M.; Muggli, Monique E.; Hurt, Richard D. Playing hide-and-seek with the tobacco industry. *Nicotine & tobacco research*. 2005; 7(1):27–40. [PubMed: 15804675]
- Lum, Kristen L.; Barnes, Richard L.; Glantz, Stanton A. Enacting tobacco taxes by direct popular vote in the United States: lessons from 20 years of experience. *Tobacco Control*. 2009; 18:377–86. [PubMed: 19556615]
- Lupia, Arthur; Matsusaka, John G. Direct Democracy: New Approaches to Old Questions. *Annu. Rev. Polit. Sci.* 2004; 7:463–482.
- Lupia, Arthur; McCubbins, Matthew D. The Democratic Dilemma: Can Citizens Learn What They Need to Know?. Cambridge: Cambridge University Press; 1998.
- MacDonald, Heather; Bialous, Stella Aguinaga; Glantz, Stanton A. The Defeat of Philip Morris' 'California Uniform Tobacco Control Act'. *American Journal of Public Health*. 1997; 87(12): 1989–1996. [PubMed: 9431289]
- Malone, Ruth E.; Balbach, Edith D. Tobacco industry documents: treasure trove or quagmire? *Tobacco Control*. 2000; 9(3):334–338. [PubMed: 10982579]
- Mandel, Lev L.; Bialous, Stella Aguinaga; Glantz, Stanton A. Avoiding “Truth”: Tobacco Industry Promotion of Life Skills Training. *Journal of Adolescent Health*. 2006; 39(6):868–879. [PubMed: 17116518]
- Maplight.org. California Prop. 26 - Campaign Contributions - Nov. 2010. 2010. November 2, 2010 2010 [cited November 3, 2010 2010]. Available from <http://maplight.oeg/content/california-prop-26-nov-2010>
- Maplight.org. Prop 29: Cigarette Tax Summary. 2012. 2012 [cited June 1, 2012 2012]. Available from <http://maplight.org/california/proposition/2012/june/prop-29>

- Mathews, Joe; Paul, Mark. *California Crack Up: How Reform Broke the Golden State and How We Can Fix It*. Berkeley CA: University of California Press; 2010.
- Meyer v. Grant. 1988 486 U.S 414.
- Miller, Kenneth P. Constraining Populism: The Real Challenge of Initiative Reform. *Santa Clara Law Review*. 2001; 41(1037)
- Moore, Ryan T.; Nirmala, Ravishankar. Who loses in direct democracy? *Social Science Research*. 2011; 41(3):646–656. [PubMed: 23017799]
- Mugglie, Monique E.; Hurt, Richard D.; Repace, James. The Tobacco Industry's Political Efforts to Derail the EPA Report on ETS. *American journal of preventive medicine*. 2004; 26(2):167–177. [PubMed: 14751332]
- Neb. Const. art. III, § 2 (amended 1997)
- Nicholl, Jack. Tobacco Tax Initiatives to Prevent Tobacco use: A Study of Eight Statewide Campaigns. *Cancer*. 2000; 83(S12A):2666–2679. [PubMed: 9874375]
- Office of Environmental Health Hazard Assessment. Proposition 65. 2012. 2010 [cited August 2, 2012]. Available from <http://oehha.ca.gov/prop65/background/p65plain.html>
- Ong, Elisa K.; Glantz, Stanton A. Constructing "sound science" and "good epidemiology": tobacco, lawyers, and public relations firms. *American Journal of Public Health*. 2001; 91(11):1749–1757. [PubMed: 11684593]
- Oot, Tory Van. Steinberg to push for California Initiative Changes. *Sacramento Bee*. 2012 April 20;2012
- Or. Rev. State. Ann. § 250.048 (West 2012)
- Portugal, Cecilia; Cruz, Tess B.; Espinoza, Lilia; Romero, Marisol; Baezconde-Garbanati, Lourdes. Countering tobacco industry sponsorship of Hispanic/Latino organizations through policy adoption: A case study. *Health Promotion Practice*. 2004; 5(3 suppl):143S–156S. [PubMed: 15231108]
- Rogers, Paul. Prop 26 Opponents Say the Measure Would Let Oil, Tobacco and Alcohol Companies Off the Hook. *San Jose Mercury News*. 2010 October 20;2010
- Schattschneider, Elmer E. *The Semi-Sovereign People*. New York: Holt Rinehart and Winston; 1960.
- Science Corruption. National Center for Initiative Review (NCIR). 2011. Available from <http://www.sciencecorruption.com/library/tutorialT.html>
- Siegel, Michael; Carol, Julia; Jordan, Jerie; Hobart, Robin; Schoenmarklin, Susan; DuMelle, Fran; Fisher, Peter. Preemption in Tobacco Control: Review of an Emerging Public Health Problem. *JAMA*. 1997; 278(10):858–863. [PubMed: 9293996]
- Smith, Daniel A.; Tolbert, Caroline. The Instrumental and Educative Effects of Ballot Measures: Research on Direct Democracy in the American States. *State Politics & Policy Quarterly*. 2007; 7(4):416–445.
- Smith, Mark A. Ballot Initiatives and the Democratic Citizen. *J Polit*. 2002; 64(3):892–903.
- Smith, Mark A. The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout. *American Journal of Political Science*. 2001; 45(3):700–706.
- Strattman, Thomas. The Effectiveness of Money in Ballot Measure Campaigns. *Southern California Law Review*. 2005; 78:101–124.
- The Center for Deliberative Democracy at Stanford University. What's Next California?: A California Statewide Deliberative Poll for California's Future. 2011. <http://cdd.stanford.edu/polls/california/2011/final/nextca-final-report.pdf>
- Times, Los Angeles. Editorial: Yes, and No. *Los Angeles Times*. 2010 September 30;2010
- Tobacco Industry Ballot Issues Goals and Procedures. *RJ Reynolds*. 1995
- Tolbert, Caroline A.; Grummel, John A.; Smith, Daniel A. The Effects of Ballot Initiatives on Voter Turnout in the American States. *American Politics Research*. 2001; 29(6):625–648.
- Tollerson, Ernest. Interest Groups Fighting Bills on Citizen Initiatives. *Philadelphia Inquirer*. 1986 Apr 3.:B1.
- Tung, Gregory J.; Hendlin, Yogi H.; Glantz, Stanton A. Competing Initiatives: A New Tobacco Industry Strategy to Oppose Statewide Clean Indoor Air Ballot Measures. *Am J Public Health*. 2009; Vol. 99(No. 3):430–439. [PubMed: 19150904]

- University of California Hastings. California Ballot Measures Databases. San Francisco. 2010
- Wash. Rev. Code Ann. § 29A.84.230 (West 2012)
- Waters, M Dane. Initiative and Referendum Almanac. Durham, NC: Carolina Academic Press; 2003.
- What's Next California Next CA.org. Initiative Process. 2011. Available from <http://www.nextca.org/topics/entry/initiative-process>
- Yerger, Valerie B.; Malone, Ruth E. African American leadership groups: smoking with the enemy. Tobacco Control. 2002; 11(4):336–345. [PubMed: 12432159]

Table 1Solutions to I&R Issues from the 1992 White Paper and 1990 Initiative Game^{1, 55}

I&R White Paper Goals	Initiative Game Solutions	I&R White Paper Solutions
Revise statutory initiative laws	Increase percentage of signatures needed to qualify for ballot to a range from 5% to 20%.	Increase signature requirements.
	Require “proportional representation” (e.g. signatures must be obtained from 10% of the voters in each county/district).	Increase geographic distribution requirements.
	Petition language must be filed with and certified by Secretary of State and Attorney General before circulation of the petition.	Increase executive branch review of initiative proposals.
	Initiatives must go to legislature first for approval, if it fails, it goes to ballot.	Increase role of legislature in initiative process.
	All signatures must be verified, no random sampling.	Require greater scrutiny of petition signatures.
	After filing intent, circulators have three months to obtain signatures.	Narrow signature gathering time frame.
Revise constitutional initiative laws	All initiatives must be limited to a single subject.	Limit scope of initiative authority on appropriations or earmarked taxation.
Propose laws that limit industry vulnerability	All tax increase initiatives must be passed by at least a 2/3 majority.	Require a supermajority for all tax increases or for all excise tax increases.
	Initiatives cannot earmark tax increases to a spending program.	Place an absolute limitation on excise taxes.
Propose laws that directly attack industry adversaries	None.	None.
Preserve and increase referendum authority in all states	None.	None.
Prevent additional states from acquiring initiative authority	None.	None.

Table 2Changes over Thirty Years to Nebraska's I&R Laws^{97, 98}(Ballotpedia 2004, 2011)

Law in 1981	Recommended Change in 1981	Law in 2012 or Attempted Change
Number of signatures needed for qualification of initiative based on number of voters in previous gubernatorial race	Base requisite number of signatures on state's registered voters	Law: Number of signatures needed for qualification of initiative based on number of registered voters (nearly doubling the number needed)
Only initiatives interfering with legislative prerogative prohibited	Further restrict permissible subject matter	Law: Initiatives may only address one subject
Legislature prohibited from amending or repealing voter approved initiative measures	Grant legislature the power to amend or repeal measures approved by voters, with appropriate limitations on power	Law: Legislature can amend initiatives with a 2/3 vote (voted in through initiative)
No legislative review of initiatives prior to election	Require prior legislative review of initiative proposals	Attempted Change: Allow legislature to endorse petition language prior to placement on the ballot (1989) & allow legislature prerogative of placing on the ballot alternatives to citizen initiated proposals (1991)
Paid circulators allowed	Prohibit paid circulators	Attempted Change: Outlaw use of paid petition circulators (1994) Law: Misdemeanor (punishable by 3 months in jail) to compensate circulators on per-signature basis (2008)

Table 3Tobacco Industry Goals and Proposals for Changing I&R Laws^{97, 102–104}

Goal	Tobacco Industry Strategies
Make signature gathering more time intensive and costly	Increase percentage of signature requirements
	Number of required signatures based on registered voters instead of last election voters
	Reduce number of places open to public signature signing
	Circulators restricted to signature collecting in own registered county
	Prohibit paid signature gathering*
	Circulators must wear a badge
	Petition sponsors must pay fee at time of submission to verifying office
	Full text of the proposed law and an explanation appear on each signature sheet and a separate circulation sheet for each signature
	Reduce time frame for signature collection
Obscure political boundaries to complicate signature collection process	Create or strengthen geographic signature requirements, i.e. signature requirements per political jurisdiction
Increase difficulty in hiring circulators; restrict the number of available circulators	Circulator must provide social security number
	Circulator must register with official government agency and pay taxes on his earnings; if taxes are not paid, signatures cannot be processed for qualification
	Minimum residency requirement and voter registration for circulators
Increase initiative proponents visibility and openness to attack by opponents	Signature collection-paying person(s)/ organization(s) must be identified on the petition
Force proponents to restart signature gathering process	Signatures must be dated and with a validity time limit on the signature
Create complexity by allowing opponents to argue against signatures and keep the initiative off the ballot and delay acceptance of the ballot	Notarization of each signature at time of collection
	Verify signatures against voter registration cards
	County clerk verifies each signature
Create complexity, opening the process to opponent interference	Specific per-circulation review process examines petition appropriateness
Expand statewide successes restricting I&R process to local level	Apply statewide measure petition laws to local initiatives
Give a pivotal role to the courts; prevent sweeping tobacco control legislation	Single subject initiatives required
Prevent taxes through initiatives, allow for argument over permissible subject matter	Restrict permissible subject matter (e.g statutes can only relate to health)
Give pivotal role to the courts; delay qualification	After collection of 10% of signatures, state supreme court reviews all initiatives for legal compliance
Allow government to issue negative descriptions of initiative	Legislature can review initiative proposals and has opportunity to enact into law
	Mayor and Council may enact ordinance into law without submitting to voters
Allow legislature, where industry has influence, to defeat an initiative	Legislature may amend or repeal measures approved by the voters
Make passing tobacco tax initiatives more difficult	Supermajority vote required for constitutional, tax and fiscal issues
Reduce eligibility to sponsor an initiative	Petition sponsors must form a legally governed political action committee
Allow contributions from undisclosed donors	Eliminate/prevent requirements for itemized statements of contributions and expenditures for campaign reports

Goal	Tobacco Industry Strategies
Delay qualification; giving opponents opportunity to create negative public impressions	Passage of fixed time period required before allowing qualification of Same or nearly identical initiatives (i.e. 3 years must pass between similar or identical initiatives)

* Supreme court ruling prevents prohibiting paid signature gathering.