

TSET Better Health Podcast Transcript

Episode 11: Preemption: Big Tobacco's Political Play

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Summary: What is Big Tobacco's influence in our government? Public health policy experts Sarah Rivin with the American Heart Association and Doug Matheny with the TSET Health Promotion Research Center join hosts James and Cate to discuss preemption, Big Tobacco lobbying, and vaping regulation.

(Music: "Hoist", "Space", "Scramby Eggs", "Sheffield Hall", and "A Perceptible Shift" by [Andy G. Cohen](#), released under a Creative Commons Attribution (CC BY) license)

[Theme music]

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James Tyree: Hello and welcome to the TSET Better Health Podcast. This is James Tyree, health communication consultant at TSET.

Cate Howell: And I am Cate Howell, co-host and producer of our show. Today, we're shedding some light on a major obstacle to public health in Oklahoma: preemption, or in other words, how Big Tobacco lobbyists interfere in government.

J. Tyree: That's right. You're going to hear from two experts in the field of policy and public health. Our first guest, Doug Matheny from the TSET Health Promotion Research Center, takes us on a deep dive into the tobacco industry's insidious tactics to shape governmental policies in their favor by stripping local control away from Oklahomans like you and me.

C. Howell: Yes, and our second guest, Sarah Rivin with the American Heart Association, shares what kinds public health efforts are under way to combat the popularity and detrimental effects of vaping and tobacco use. But first, let's cover the basics. What exactly is preemption, James?

J. Tyree: Well, preemption is when a larger body of government forbids a smaller body from creating certain laws or ordinances. In this case, it's when the state government prohibits municipalities from passing local tobacco-free ordinances that go beyond what state laws allow. The tobacco industry has a long history of interfering with public policy to shape our laws and regulations, as Doug Matheny explains.

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Doug Matheny: So in recent years, there have been up to 14 registered lobbyists who represent tobacco companies or tobacco industry trade associations in Oklahoma.

J. Tyree: Doug Matheny is the Programs and Initiatives Manager for State and Local Policy with the TSET Health Promotion Research Center.

D. Matheny: Most of these lobbyists are actually representing major US tobacco companies that a federal court found to have violated civil racketeering laws. Just to remind you, racketeering is defined in federal law as an ongoing, organized conspiracy to commit fraud.

J. Tyree: That is a very serious charge, but, sadly, one that's backed up by a wealth of evidence.

D. Matheny: It's also important to note that as a result of state and federal court orders, the public now has access to millions of previously secret internal tobacco industry documents. The documents show very clearly in the words of the tobacco industry lobbyists and executives that they have been directly responsible for decades of fraudulent behavior that targeted lawmakers. They've used a wide range of strategies that interfere in the lawmaking process. Often, especially in Oklahoma, unfortunately, their strategies to interfere have paid off.

J. Tyree: And preemption is perhaps the most effective strategy of tobacco industry interference there is. While Oklahoma has tobacco control laws at the state level that do help to a certain degree, the laws are structured in a way that not only allows smoking at certain workplaces like bars and restaurants, they also prohibit cities and towns from expanding or modifying those regulations. As Doug points out, this is not the norm across our country.

D. Matheny: Most states are smoke-free, but even in those states where they are not yet smoke-free as an entire state, you have the major cities and towns and many of the smaller towns, passing smoke-free laws at the local level, like almost happened in Oklahoma back in the 1980s, but those cities and towns got shut down. So, for instance, in Texas, every major city in Texas is now 100% smoke-free in all bars and restaurants. Oklahoma is one of I think only three states—Oklahoma, Tennessee and Virginia—where there is no statewide smoke-free law for all workplaces, *and* where major cities are not even allowed to go smoke-free on their own.

The tobacco industry documents point out why this is still the way things are in Oklahoma. We can see in the internal documents that every time a state legislator has tried to remove tobacco preemption from Oklahoma state law, tobacco lobbyists at the state capitol have made it their top priority to keep it place and maintain the status quo.

J. Tyree: Status quo indeed. Ever since the Surgeon General's landmark report on the dangers of tobacco use that was released in 1964, the tobacco industry has fought to control the legislature and, by extension, the health of the people with various tactics preventing regulation.

D. Matheny: Going back to at least 1967, the tobacco industry has successfully killed literally hundreds of bills at the Oklahoma State Capitol. When they have not been able to kill a bill they don't like, they instead have tried to weaken it by changing the wording of the legislation.

J. Tyree: But they've done much more than just kill and weaken bills. In fact, they've even had a hand in writing them.

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D. Matheny: This is an example of where the tobacco industry has actually written our state law. In November 1986, the city council in Edmond was concerned about growing scientific evidence on the health effects of secondhand smoke and was considering passing an ordinance to limit smoking inside restaurants. So one of the tobacco industry lobbyists at the Oklahoma State Capitol had to go up to Edmond and try to at least weaken the ordinance, but he was unsuccessful. The Edmond City Council did pass that smoking ordinance. And at the time, that was really unusual. Losing a policy battle was a new experience for tobacco lobbyists in Oklahoma. They didn't like it. So, again, the documents are really very clear on what the dynamic was there. They were used to controlling things at the state capitol.

So, about the same time, the next month, December 1986, the City of Tulsa begins to consider an ordinance restricting smoking inside most public places and workplaces. The tobacco industry actually hired a lobbyist for the single purpose—the only assignment that he had was to begin to try to kill the proposed smoking ordinance in Tulsa. So over the next several months, he did manage to slow it down, but he was having a hard time killing it completely.

And then, in February of 1987, just a few months later, the City of Claremore passed an ordinance restricting smoking, so this was really starting to get out of hand, and the tobacco lobbyists decided that instead of opposing a bill that had been introduced at the state level that they had planned on killing, instead they would use that bill, weaken it where it really didn't do anything, and furthermore put into that bill a special clause that would—and I'm going to quote directly from the documents now—this is in their words. It says, would "preempt local ordinances so this battle doesn't take place in all 952 cities and towns in Oklahoma." Again, they were really concerned about this proliferation of local activity on tobacco issues as was taking place across this country. But in Oklahoma, the tobacco lobbyists succeeded in putting in some language that absolutely shut this local action down.

J. Tyree: So this interference by the tobacco industry actually goes back several decades in our state and it persists today. These efforts not only cause devastating suffering and death, they also cost Oklahomans billions of dollars.

D. Matheny: Oklahoma and Tennessee—those two states actually have the strongest prohibitions on local action on tobacco issues in the entire country. Most states now have banned

smoking inside all workplaces, including all bars and restaurants. These are actually very popular laws, and they don't hurt business. There's been a lot of research on the economic effects and, despite tobacco industry misinformation, it's actually good for business because it improves the health of the overall workforce. People who don't smoke don't like being exposed to smoke in public places, and so they actually tend to go out more when these laws are in place. So it's actually good for business to be smoke-free, but tobacco industry misinformation has created a myth that somehow it's bad for business.

It's tragic that they have actually helped write most of the current tobacco-related laws still on the books in Oklahoma, so thousands of Oklahomans have become addicted, suffered and died early as a direct result. Smoking is still our top cause of preventable disease and death, as you know. It kills more Oklahomans than alcohol, car accidents, murders, AIDS, and illegal drugs combined.

So moving forward, the tobacco industry can only continue to be successful in this interference if lawmakers allow it to happen. To the extent that lawmakers refuse to allow the tobacco industry any influence in that lawmaking process and begin to correct decades of mistakes made by past legislatures, Oklahoma will be able to finally adopt and implement best practices to effectively reduce the toll of tobacco, as has been done in other states. We're just really far behind and falling farther behind all the time, so. It looks like we've started to do a little better in recent years, but there's still a long way to go.

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[Music: "[Scramby Eggs](#)" by [Andy G. Cohen](#), released under a Creative Commons Attribution (CC By) license]

- C. Howell: So now we know a little bit about Oklahoma's history of tobacco industry interference in our laws. Public health advocates have been fighting this battle for a long time, and some strides have been made. Youth smoking has been cut in half in recent years, adult smoking is at an all-time low, the Oklahoma Tobacco Helpline has a high success rate, and some laws have been passed, like 100% smoke-free schools and college campuses. But a new trend is reversing some of the progress these efforts have made: vaping. For more information on this, I spoke with someone who works extensively with advocates and lawmakers alike for the benefit of public health.
- Sarah Rivin: I am Sarah Rivin, and I am the State Government Relations Director for the American Heart Association here in Oklahoma.
- C. Howell: Sarah and her colleagues are closely monitoring the vaping boom and have concerns about its effects on public health.
- S. Rivin: Vaping is a newer way of consuming nicotine where there's no actual tobacco leaf consumed, but an e-liquid is vaporized through tons of different styles and then ingested into the body, and, you know, the American Heart Association and our partners

are pretty concerned about the increase of use of vapes across Oklahoma. So we've seen just the number of people vaping spike, especially young people. Just a few years ago, it was just 5% of high school students using vapes, and now, you know, it's closer to 30% of high school students in Oklahoma who are vaping at a time.

In Oklahoma, we've been working extensively to increase tobacco control including for vaping. In recent years, some of those regulations we've worked to advance have included increasing the age of sale from 18 to 21 as well as limiting public consumption of vaping. The American Heart Association has also worked closely with school districts across the country to limit vaping in schools and, you know, help schools figure out how to kind of tackle the prevalent use of vapes among students. So there have been kind of a wide range of policies we work to advance in order to address this increased use.

C. Howell: So different kind of, like, multi-pronged approach there.

S. Rivin: Definitely, definitely.

C. Howell: But, again, despite all this hard work, preemption forces everything to a dead stop.

S. Rivin: When we look at policies that broadly affect public health, but in particular that are related to tobacco control and vaping consumption, we have a number of statutes in Oklahoma where the state has said that local governments cannot take their own actions to address those issues. In particular, you know, we have a statewide law around smoking and smoking in public places in particular, and the law explicitly says that local governments cannot take additional action to increase regulations around smoking in our state.

C. Howell: That seems to kind of fly in the face of local control and small government, right?

S. Rivin: Definitely, and what we know is, over the years, special interests have used this preemption as a tool to advance their own agendas and really take the power away from people, away from local communities, and disable their ability to make decisions about their health outcomes themselves.

C. Howell: So there are a couple of different approaches to tobacco and e-cigarette regulation: policy and taxation.

S. Rivin: We work on both. Regarding policy, we know that we have to change our policies in Oklahoma in order to improve public health outcomes. We know, for instance, that the more we allow for smoking in bars and restaurants, the more that tobacco use is just so widely seen in public and consumed in public, that that really inhibits our ability to curb those rates of consumption.

We are working on taxation as well. The reason for that is we know that new users are especially influenced by the price of tobacco products. And, needless to say, when we're talking about new users, for the most part we're talking about young people. A recent study just came out that shows that teens under the age of 18 who consume e-

cigarettes are three times more likely to become daily traditional cigarette smokers in adulthood, and we want to discourage the consumption of e-cigarette use among young people, and, again, a key way to do that is to change the price.

In Oklahoma, the cigarette tax was increased in 2018. It's now over \$2.00, but there is no tax on e-cigarettes, and what that means is a young person could easily make a choice about the products they're consuming because of that price differential, and therefore we want to ensure that there is a tax that we would consider equal to a tax on cigarettes on an e-cigarette for that very reason.

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C. Howell: But taxing vapes is not as simple as it sounds—and the tobacco industry has techniques to thwart this effort, too.

S. Rivin: When we tax cigarettes, we can do a price-per-pack because nearly every pack of cigarettes is the same. When we look at e-cigarettes, there are different systems for what an e-cigarette actually looks like—there are pod systems, there are cartridge-based systems, there are tanks—so it's really difficult to tax the products the same way, and in fact, you know, something that seems like a straightforward way to tax e-cigarettes is often actually being proposed by our opposition because we know it's ineffective. And so what we know is the most effective way to tax e-cigarettes, again, at a rate that get us as close to parity with a pack of cigarettes as possible is to put a percentage on either the wholesale or the resale price that matches what the current tax on cigarettes is. We're trying to pass a tax on e-cigarettes that would be 44% of the wholesale price, and that's what that \$2.03 tax on a pack of cigarettes actually works out to be: 44% of the wholesale price when all is said and done.

Some other states have passed e-cigarette taxes that might look like a tax per milliliter of nicotine, and what we have found is, you know, if you go into a store, and you're going to be taxed based on the per milliliter of nicotine, they will actually take out the liquid component and just sell a teeny little vial of the product that contains the nicotine, so you would get taxed on that, it would work out to only a couple of cents because it's so small, and then kind of go behind the counter and mix it all together for you and sell it to you. So you know, there are kind of a lot of ways around that per milliliter tax. It's not very effective at the end of the day. So research has shown that the most successful way to implement an e-cigarette tax that, again, achieves all of these goals including public health, including deterring youth consumption, including, you know, just limiting consumption, the best way to do that is to implement this percentage that is equal to the current rate of tax on a pack of cigarettes.

We just know that we can improve public health in Oklahoma by imposing this tax and, of course, there's a revenue benefit to the state as well.

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C. Howell: The tobacco industry interference and current legal infrastructure in Oklahoma doesn't make it easy for these efforts to come to fruition, but public health advocates will never stop trying.

S. Rivin: When it comes to preemption, you know, which is really our priority this year, Oklahoma is one of only two states in the entire country where we do not have a comprehensive smoke-free law statewide *and* we have preemption on the books, so what that means is we have a really, really low bar when it comes to regulating smoking across the state. So that is our top priority is to get in line with nearly every other state in the country and really start to curb those rates of consumption.

[18:45]

J. Tyree: That is a lot of good information, Cate. We invite you to learn more about tobacco and public policy at stopswithme.com. It is so very important for citizens to be educated on issues that directly affect the health and well-being of ourselves, our loved ones, and really, for all of us. Every Oklahoman should have the right to breathe clean air, and they definitely have the right to tell their state and local lawmakers what they think on the topic. Meanwhile, Cate and I will be sure to keep our listeners like you up to speed on health and tobacco-related trends right here on the podcast.

C. Howell: Absolutely. And hey, if you like what you heard today and want even more Better Health content, follow TSET on [Facebook](https://www.facebook.com/TSETOK) and [Twitter @OklahomaTSET](https://twitter.com/OklahomaTSET), and you can find all of our previous episodes at tset.ok.gov or anywhere you listen to podcasts.

J. Tyree: So until next time, this is James Tyree—

C. Howell: And Cate Howell—

J. Tyree: Wishing you peace—

C. Howell: —and Better Health.

[Theme music]

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