

# The Defeat of Philip Morris' 'California Uniform Tobacco Control Act'

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## ABSTRACT

**Objectives.** This paper describes the strategies used by Philip Morris and other tobacco companies to promote a California initiative (Proposition 188) preempting local control of tobacco and those used by public health groups to defeat the initiative.

**Methods.** Interviews with key informants were conducted, and the written record was reviewed.

**Results.** Tobacco companies nearly succeeded in passing Proposition 188 by presenting it as a pro-health measure that would prevent children from obtaining cigarettes and provide protection against secondhand smoke. Public health groups defeated it by highlighting tobacco industry backing. A private charitable foundation also played an innovative role by financing a non-partisan public education campaign.

**Conclusions.** Public health forces must be alert to sophisticated efforts by the tobacco industry to enact preemptive state legislation by making it look like tobacco control legislation. The coalition structure that emerged in the "No on 188" campaign represents an effective model for future tobacco control activities. The new role of charitable foundations defined in the Proposition 188 campaign can be used in other public health issues. (*Am J Public Health*. 1997;87:1989-1996)

## Introduction

After several failed attempts to pass statewide tobacco control laws in the late 1970s and early 1980s, tobacco control advocates took the fight to the local level.<sup>1-3</sup> By 1994, local clean indoor air ordinances were passing at a rate of one or two a week in California.<sup>4</sup> The tobacco industry responded by creating front groups<sup>2,3,5</sup> to hide the industry's involvement in opposing local ordinances and staged (generally unsuccessful) referendum campaigns to overturn local ordinances.<sup>3,4,6-8</sup> Most important, the tobacco industry worked to pass weak state laws that preempted stronger local laws. By 1994, 14 states had passed such laws.<sup>4,9</sup> In California, where the tobacco control movement had become a national and international model of how to use community-based programs and media to reduce tobacco use and exposure to secondhand smoke and where per capita use was the third lowest of any state,<sup>10</sup> the tobacco industry was losing hundreds of millions of dollars in sales every year.<sup>11,12</sup> Philip Morris then sponsored a statewide initiative, Proposition 188, ostensibly favoring tobacco control, that would have eliminated local control of tobacco.

Despite a tobacco industry expenditure of \$18 million, health groups defeated Proposition 188 in November 1994 (71% to 29%) with a grass-roots campaign that publicized the tobacco industry's backing. The defeat of Proposition 188 demonstrates that national health organizations and private charitable foundations can play an important role in future state and local public health debates. It also provides a model that smoking and health coalitions can use in the political and policy arenas that may be more productive than past models.

## Methods

We interviewed key informants in the Proposition 188 campaign, except Lee Stitzenberger, the coordinator of the Yes on 188 campaign, who refused to participate. We also reviewed the written record, including newspaper articles, press releases, advertisements, polls, letters, memoranda, and meeting minutes.

## Legislative Background

Proposition 188 originated in a New York City meeting held in November 1990 between Philip Morris executives and the speaker of the California Assembly, Willie Brown (D-San Francisco), to discuss how to stop California's accelerating tobacco control movement.<sup>13-15</sup> Brown suggested a three-part strategy. First, the proposed legislation should preempt local tobacco control efforts. Second, since tobacco control was popular in California, "the 'perception' of a comprehensive regulatory scheme was essential for preemption of smoking restrictions to succeed."<sup>13</sup> Third, the tobacco industry should give the impression of opposing the bill.<sup>13</sup>

Two early attempts to turn this strategy into law failed. One, in 1991 (Senate Bill 37616), was killed when a memorandum from the Smokeless Tobacco Council<sup>13</sup> summarizing the New York meeting surfaced and generated a storm of criticism.<sup>16-19</sup> The other attempt, in 1993

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(Assembly Bill 996), passed the Assembly, but health advocates killed it in the Senate Health Committee.

### *The Proposal of the Philip Morris Initiative*

On January 17, 1994, Philip Morris and a number of restaurant owners submitted an initiative statute—the “California Uniform Tobacco Control Act,” which was essentially identical to Assembly Bill 996<sup>20</sup>—to the California attorney general with the intention of qualifying it for the November election (J. Diamond, letter, January 17, 1994; D. Maret-Farenholly, letter, January 17, 1994). (Of the 267 initiatives proposed since the initiative process was introduced in California in 1912, 91—34%—had passed.<sup>21,22</sup>) In its first section, the initiative stated that “current regulation of smoking in public in California is inadequate” and that “there is a clear need for uniform statewide regulation of smoking in public to ensure that those interested in avoiding secondhand smoke have the same protection wherever they go in the state and that those who do smoke have fair notice of where smoking is prohibited.”<sup>23</sup>

The smoking regulations in the initiative were simply worded as broad prohibitions; the even broader exceptions appeared later in the initiative, couched in technical terms. The language that preempted all local ordinances regulating any aspect of tobacco consumption, distribution, or promotion was buried on the last line of page 9 of the 9-1/2-page text.

For example, in terms of workplace smoking restrictions, the initiative used technical language to give the appearance of advocating strong restrictions when, in fact, there would be few practical restrictions. The “strict ventilation standard”<sup>24</sup> in the initiative was American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) standard 62-1989.<sup>25</sup> The initiative’s backers did not publicize the fact that Tobacco Institute lawyers attended the committee meetings and that one tobacco industry grantee participated as a nonvoting member in the committee that wrote the standard.<sup>26</sup> The standard does not address the health dangers of secondhand smoke<sup>27,28</sup>; rather, it simply controls odor. While public health professionals were unable to convince ASHRAE to develop a health-based standard,<sup>26</sup> they were able to convince ASHRAE to recognize this fact explicitly in the foreword to the standard: “With respect to tobacco smoke and other contaminants, this standard does not, and cannot, ensure the

avoidance of all possible health effects.”<sup>25</sup> By allowing smoking in areas that met the ASHRAE standard (which most up-to-code buildings already did), the initiative permitted unrestricted exposure to secondhand smoke for most employees.<sup>29</sup>

The initiative would also have overturned 85 local ordinances that mandated smoke-free workplaces and 96 ordinances that mandated smoke-free restaurants (as of January 1994). In addition, because strict workplace smoking restrictions encourage some smokers to quit and others to reduce the number of cigarettes smoked,<sup>30,31</sup> a trend that is reversed when restrictions are relaxed,<sup>32,33</sup> passage of the initiative would have actually increased smoking and exposure to secondhand smoke.<sup>29</sup> While Philip Morris did not emphasize the potential of the initiative to protect tobacco profits in its public statements, it explicitly presented the initiative as a way for tobacco retailers to protect their business: without the initiative, “the adverse impact on retail cigarette sales would be immediate. Your cigarette sales, along with your profits, could drop” (J. Mortensen, letter, September 19, 1994).

### *Organizing the Opposition Campaign*

Organized opposition developed slowly. The Philip Morris initiative was proposed at a crucial time in California’s tobacco control movement, which was deeply divided over two issues.

The first issue was how best to secure the continuation of the statewide tobacco control program mandated by California voters in 1988, when they passed an initiative known as Proposition 99. Proposition 99 increased the tobacco tax and mandated that 20% of the funds (representing about \$100 million per year) go to anti-tobacco education and another 5% to research.<sup>34</sup> Responsibility for implementing Proposition 99 rested with the legislature, which had consistently failed to allocate to health education programs the full 20% mandated by the voters; by 1994, a total of \$201 million of health education funds had been illegally diverted to pay for medical care.<sup>7,35-39</sup> In 1994, legislation to authorize these programs and appropriate these funds was before the legislature, and the tobacco control community was fighting to restore the anti-tobacco education campaign to the 20% mandated in Proposition 99, while the California Medical Association and its allies in the medical community were successfully lobbying to continue using education funds for medical services.<sup>36,40</sup>

The second issue was another preemptive state tobacco control measure, Assembly Bill 13.<sup>41</sup> This bill, a ban on smoking in workplaces proposed by Assemblyman Terry Friedman (D-Santa Monica), was moving through the legislature. It was the subject of a bitter debate within the tobacco control community because it contained preemption language. The California Medical Association and the state voluntary health agencies supported the bill, while others, particularly local activists and Americans for Nonsmokers’ Rights, did not. The bill was introduced as a comprehensive ban on smoking in the workplace, but the legislature added several exemptions and essentially eliminated state-level enforcement before passing it; the bill was signed into law on July 21, 1994.

When Philip Morris first proposed the initiative in January 1994, only Carolyn Martin, a volunteer for the American Lung Association of California and former chairperson of the Coalition for a Healthy California (the coalition that had passed Proposition 99<sup>42</sup>), and Tony Najera, the American Lung Association’s lobbyist, expressed strong concern. Most people viewed the Philip Morris initiative as a sure failure because the California public had been educated about the health dangers of tobacco and did not trust the tobacco industry (interviews with K. Goebel [June 1995] and J. Carol [July 1995], Americans for Nonsmokers’ Rights).

Martin and Najera hired Jack Nicholl, who had been campaign manager for the Yes on Proposition 99 campaign. The three contacted former Coalition for a Healthy California members to alert them to Philip Morris’ actions and to mobilize local groups to publicly denounce the initiative as an attack on their local tobacco control ordinances, local autonomy, and public health and to contact editorial boards and secure their opposition (C. Martin, letter, February 8, 1994). Martin also asked for contributions for a 3-month campaign to defeat the petition drive (Table 1) and convened former members of the Coalition for a Healthy California on February 17, 1994 (C. Martin, letters, February 8 and 18, 1994).

Meanwhile, the American Cancer Society funded a poll of California voters asking how they would vote if they knew Philip Morris was behind an initiative that would decrease smoking restrictions in California, overturn local laws, and prohibit cities and counties from making their own smoking laws.<sup>43</sup> The results revealed that 70% would vote against such a law and that 24% would vote for it, with 6% undecided.

TABLE 1—"No on 188" Contributions

Month	Donor, \$								Cumulative
	ACS	ALA <sup>a</sup>	AHA <sup>b</sup>	AMA/CMA <sup>c</sup>	Kaiser Permanente	California Dental Association	ANR	Other	
March	8 171	7500						100	15 771
April	2 000		5 000			5 000		3 500	31 271
May	3 000	1 500							35 771
June	6 770	3 822		1 000		1 000		2 500	50 863
July		25 000	2 500					200	78 563
August	26 349			20 000		10 000		11 393	146 305
September	40 706	7 459	25 000			15 000	11 676	15 882	262 028
October	417 678	101 220	125 500	30 000	70 000		6 977	70 323	1 083 727
November	93 000	26 506			3 750		4 215	13 323	1 224 520
Total	577 734	173 007	153 000	51 000	73 750	25 000	22 868	117 221	1 192 580

Note. Included are all donors that contributed at least \$20 000. ACS = American Cancer Society; ALA = American Lung Association; AHA = American Heart Association; AMA/CMA = American Medical Association/California Medical Association; ANR = Americans for Nonsmokers' Rights.

<sup>a</sup>ALA includes \$100 690 from California division plus \$63 317 from various local and state affiliates outside California.

<sup>b</sup>AHA includes \$100 000 from national AHA.

<sup>c</sup>AMA/CMA includes \$25 000 from AMA.

The Coalition for a Healthy California hired an attorney to suggest a title and summary of the initiative to appear on the petitions and the ballot. The title and summary were proposed to combat the ones written by Philip Morris, which emphasized that the initiative "bans smoking," "restricts . . . vending machines and billboards," and "increases penalties for tobacco sale to and purchase by minors" (P. H. Dobson, Nielsen Merksamer, Parrinello, Mueller, & Naylor, letter, January 28, 1994) and played down the exceptions. The coalition's title and summary emphasized the preemption of local ordinances, the relaxation of current restrictions on smoking, and the increase in smoking the initiative would cause (J. Nicholl, memorandum, February 25, 1994; G. Waters, letter, March 1, 1994). The final title and summary prepared by the attorney general on March 9, 1994, reflected the coalition's concerns.<sup>44</sup> This early and aggressive intervention by the coalition proved to be crucial as the battle over the initiative unfolded.

### The Petition Drive

To qualify the initiative for the ballot, Philip Morris contracted with Lee Stitzenberger of the Dolphin Group, a Los Angeles political consulting firm, to circulate a petition. (The Dolphin Group had created front groups for the tobacco industry to fight local ordinances.<sup>3</sup>) Operating as Californians for Statewide Smoking Restrictions, this group began calling voters and asking them whether they would support a uniform state law restricting smoking. Respondents

who answered yes received a packet that contained advertising materials and a copy of the petition to be signed and returned. This attractive packet made the initiative appear as a pro-health measure. It detailed "strict regulations" that would be implemented by the initiative. For example, it emphasized that the initiative (1) completely prohibits smoking in restaurants and workplaces unless strict ventilation standards are met; (2) replaces the crazy patchwork quilt of 270 local ordinances with a single, tough, uniform statewide law; and (3) is stricter than 90% of the local ordinances currently on the books.<sup>24</sup>

Preemption of local ordinances was mentioned only in the attorney general's summary. Nowhere in the materials, and only in small type on the back of the envelope, did Philip Morris reveal its sponsorship of the initiative.<sup>24</sup>

The Coalition for a Healthy California used two approaches to try to keep Philip Morris from collecting enough signatures to qualify the initiative for the ballot. Initially, using staff resources donated by the American Lung Association, the coalition tried to create controversy and thus attract early press coverage, although it considered this approach a long shot.

The coalition also advised voters who had signed the petition thinking it would promote health to complain to acting Secretary of State Tony Miller.<sup>45</sup> On April 8, 1994, Miller sent a letter to the restaurant owners who had filed the petition, warning them that deceptive petitioning practices would not be tolerated (T. Miller, letter, April 8, 1994). Later, Miller launched an investigation into Californians for

Statewide Smoking Restrictions' possibly fraudulent petitioning practices, stating that he would "not certify any measure for any ballot that met the signature requirement only by breaking the law."<sup>46</sup> The coalition capitalized on the secretary of state's actions, arranging media attention around the state to publicize his warnings and simultaneously instructing voters how to request removal of their signatures from the petition (which turned out to be impossible).<sup>47</sup>

On May 9, 1994, Californians for Statewide Smoking Restrictions submitted 607 000 signatures (385 000 valid signatures were required) to the secretary of state's office. As part of his continuing investigation, Miller asked for court permission to randomly sample the signatures to survey for fraud.<sup>48</sup> The court denied permission on the grounds that it would constitute invasion of privacy.<sup>49</sup> The initiative qualified on June 30, 1994, and was named Proposition 188.

### Tobacco Industry Strategies to Pass Proposition 188

Once the initiative qualified, Philip Morris, joined by other tobacco companies (Table 2), promoted Proposition 188 as a tobacco control law (Figure 1) and as a tough but reasonable alternative to Assembly Bill 13, the smoking restriction law passed in Sacramento. As in earlier tobacco industry campaigns,<sup>2,3,5,29,42,50</sup> Californians for Statewide Smoking Restrictions downplayed the tobacco industry's role in the campaign and presented itself as a coalition

TABLE 2—"Yes on 188" Contributions

Month	Donor, \$							Cumulative
	Philip Morris <sup>a</sup>	RJ Reynolds	Brown & Williamson	Lorillard	American Tobacco	Tobacco Institute	Other	
March	491 213						480	491 693
April	1 246 955						1 852	1 740 500
May	100 000							1 840 500
June	150 000							1 990 500
July	2 513 000							4 503 500
August		1 617 150	628 500	130 000	364 260			7 243 410
September	432 188			130 000			5 657	7 811 255
October	7 499 152	1 773 506	676 695	574 110	392 220		1 822	18 728 760
November	144 708			10 594		30 000	5	18 914 068
Total	12 577 217	3 390 656	1 305 195	844 704	756 480	30 000	9 816	18 914 068

Note. Included are all donors that contributed at least \$20 000.

<sup>a</sup>Includes \$786 from Miller Beer and \$1740 from Kraft General Foods.

of small business owners, restaurants, and concerned California citizens.

Californians for Statewide Smoking Restrictions avoided the media and public debates on the initiative and instead began an expensive direct mail advertising campaign to reach voters. The campaign appealed to anti-tobacco sentiments with three main points: limiting youth access to tobacco,<sup>51,52</sup> protection of nonsmokers,<sup>52</sup> and accommodation of smokers.<sup>53,54</sup> These anti-tobacco messages departed from the industry's usual strategies of attacking the scientific evidence that passive smoking causes disease and arguing that restrictions on tobacco constitute unwarranted government intrusion.<sup>54</sup> In fact, Philip Morris resorted to this type of rhetoric only in targeted mailings to its National Smoker's Alliance and other smokers' rights lists<sup>2</sup> as a chance to "preserve your right to smoke" (G. Vander Jagt, National Smoker's Alliance, letter, 1994).

### Coalition Strategies to Defeat Proposition 188

Carolyn Martin sought to reassemble the same organizations that had passed Proposition 99 in 1988,<sup>42</sup> but other issues on the November 1994 ballot, particularly an initiative for a single-payer health care system (Proposition 186) and another to deny health and educational services to illegal immigrants (Proposition 187), were viewed as higher priorities for several health and education groups. As of July 27, 1994, the American Lung Association, the American Cancer Society, the California Dental Association, and the California Medical Association had donated at least \$25 000 to the coalition, and Americans for

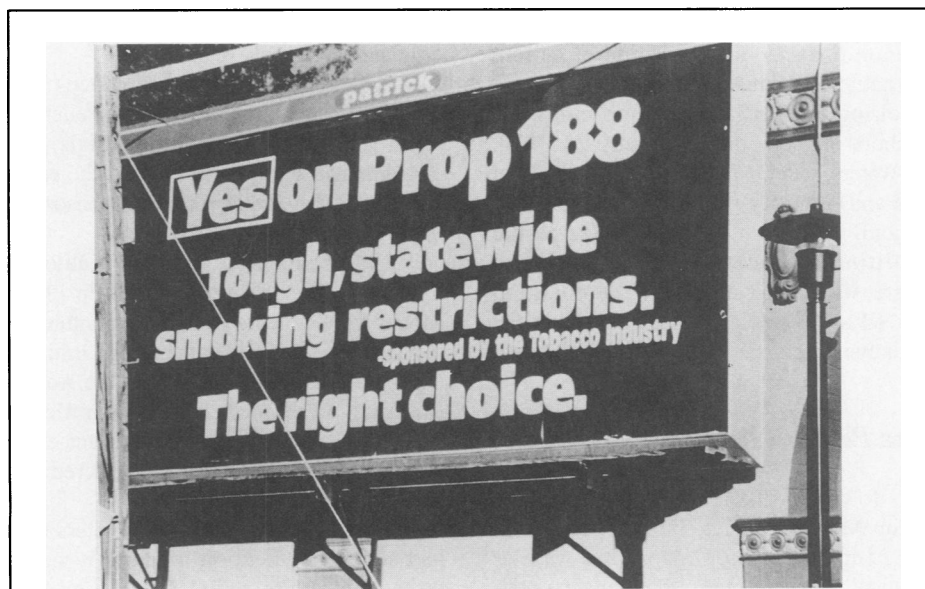
Nonsmokers' Rights had donated \$10 000. These groups formed the coalition's executive committee.

The coalition chose "Stop Philip Morris" as its campaign theme (interview with C. Martin, Coalition for a Healthy California, November 29, 1994). Polls conducted since 1978 had consistently shown that the tobacco industry had very low credibility among voters.<sup>43,55-58</sup> Indeed, a 1982 poll prepared for the Tobacco Institute as part of its effort to defeat a tobacco control initiative in Bakersfield, Calif, revealed that "knowledge of tobacco company [opposi-

tion of a measure] does move a significant number of respondents into the 'yes' column."<sup>56</sup> The coalition concluded that simply educating voters about the tobacco industry's involvement with Proposition 188 would convince them to vote no.

### The Voter Pamphlet

The next battleground was the "voter pamphlet" received by every California voter. This pamphlet included arguments by proponents and opponents of each initia-



Note. The statement "Sponsored by the Tobacco Industry" was added by a graffiti artist. The billboard, as originally displayed, gave no indication of who was backing Proposition 188. (Photo courtesy of Julia Carol of Americans for Nonsmokers' Rights.)

FIGURE 1—Billboard urging a yes vote on Proposition 188.

tive, the title and summary (prepared by the attorney general), and an analysis of meaning and anticipated fiscal impact (prepared by the state legislative analyst).

The proponents' arguments for the initiative,<sup>59</sup> signed by a member of the San Diego Tavern and Restaurant Association (a tobacco industry front group<sup>3</sup>), the executive director of the San Francisco Hotel Association, and the president of the International Hispanic Chamber of Commerce, stated that the initiative was a "tough and restrictive" measure that would "discourage smoking in public places" and "clearly discourage minors from buying tobacco." The opponents' arguments,<sup>60</sup> signed by former Surgeon General C. Everett Koop, the chairs of the California American Heart Association and American Lung Association, and the presidents of the American Cancer Society, the Parent-Teacher Association, and the California Nurses Association, stated that "Proposition 188 is hazardous to your health," that "more children will smoke," and that "smoke free environments will disappear."

After the legislative analyst, a nonpartisan official of the state legislature with a reputation for objectivity, met with representatives of the coalition and Californians for Statewide Smoking Restrictions (M. Taylor, letter, June 29, 1994; K. Goebel, interview, June 5, 1995), she stated that Proposition 188 was weaker than the protection most Californians enjoyed. Californians for Statewide Smoking Restrictions then sued the legislative analyst, the attorney general, the signers of the ballot arguments against Proposition 188, and the coalition, claiming that the initiative's ballot label, title, summary, and ballot arguments, along with the legislative analyst's statement, did not present the public with nonprejudicial information on the initiative's content and potential effects. On August 12, 1994, the Superior Court ruled in favor of the defendants and required that only minor changes be made to the voter pamphlet. This legal victory for the coalition proved crucial to innovative advertising by the Public Media Center during the campaign that followed.

### ***The No on 188 Campaign***

Despite strong grass-roots support for its position, the Coalition for a Healthy California was having difficulty raising money to counter the tobacco industry's direct mail campaign. Knowledgeable observers who knew that Philip Morris was behind the campaign could not believe that the voters would support Proposition 188 after sev-

eral years of anti-tobacco public education funded by Proposition 99.<sup>54</sup> In addition, in contrast to Proposition 99, which generated money for programs of interest to groups in the medical and hospital industry, there were no financial gains involved in contributing to the No on 188 campaign (interview with J. Nicholl, Coalition for a Healthy California, February 2, 1995).

Philip Morris' strategy was working. An independent Field Institute poll<sup>61,62</sup> in mid-July showed the initiative ahead 52% to 38%. In mid-September, polls conducted by the Field Institute<sup>62,63</sup> and the *Los Angeles Times*<sup>64</sup> still showed voters evenly divided between yes and no, suggesting that Proposition 188 had a good chance of passing.

In mid-September, the formal No on 188 campaign was launched. The Coalition for a Healthy California divided the state into regions and hired paid regional coordinators. It held press conferences around the state<sup>65</sup> and press events aimed at educating the public that Philip Morris was behind the initiative.

As indicated by the polls, however, this free media strategy was not working well. News attention is generally attracted by controversy, and reporters usually seek to represent both sides of an issue. The tobacco industry was so committed to staying out of the public eye that Californians for Statewide Smoking Restrictions had an unlisted telephone number and actively avoided answering questions from the media and entering into public debates (interviews with S. Russell [*San Francisco Chronicle*; May 31, 1995], D. Morain [*Los Angeles Times*; June 1, 1995], and S. Chen [American Lung Association of Alameda County; November 18, 1994]).<sup>66</sup> For example, when the League of Women Voters scheduled a debate to be broadcast in the San Francisco Bay Area (the second largest media market of California), Californians for Statewide Smoking Restrictions refused to send a representative, and the league canceled the debate (interview with P. Knepprath, American Lung Association of California, November 29, 1994). The league was unable to take a formal opposition stance because its bylaws required hearing from both sides before taking a position on an initiative. When the California State Senate Health Committee and Assembly Governmental Organizations Committee held the public hearing required by law to present issues raised by Proposition 188, Californians for State Smoking Restrictions refused to participate (J. Miller, letter, September 15, 1994; interview with J. Miller, Senate Health Committee, June 15, 1995). By shunning the spotlight,

Californians for Statewide Smoking Restrictions successfully minimized controversy over Proposition 188. This low-profile strategy allowed Philip Morris to control the message through direct mail advertising without providing the No on 188 campaign the free forum that would have accompanied media coverage (interview with P. Knepprath, American Lung Association of California, November 29, 1994).

Anticipating a major paid media blitz by Californians for Statewide Smoking Restrictions, the coalition laid out a strategy using paid advertising to deliver its message. Nicholl produced television and radio advertisements, featuring former Surgeon General Koop (one of the signers of the ballot argument against Proposition 188), highlighting the deceptive nature of the group's advertising (interview with J. Nicholl, Coalition for a Healthy California, February 2, 1995; L. McElroy, memorandum, October 6, 1994); however, there was no money to broadcast the ads. The California affiliates of the American Cancer Society and the American Heart Association used discouraging September poll results that showed Proposition 188 winning to convince their national organizations to make substantial donations in late October to broadcast the Koop ads (interviews with C. Martin and J. Nicholl, Coalition for a Healthy California, November 29, 1994 and February 2, 1995; interview with M. Adams, American Heart Association, February 9, 1995) (Table 1). These donations represented a major policy shift for these organizations, which had considered measures such as Proposition 188 matters to be handled by their state affiliates. National American Heart Association and American Cancer Society leaders recognized that a victory for the tobacco industry in California, a pioneer in tobacco control efforts nationwide, would have national repercussions as well as help the industry pass preemptive statewide smoking regulations elsewhere (interviews with S. Ballin [American Heart Association] and A. Mills [American Cancer Society], December 16 and 14, 1994). In contrast, the national American Lung Association continued not to provide financial assistance to individual state campaigns (interview with S. Watson, American Lung Association, July 17, 1995); however, four of the association's state affiliates (Oregon, Maine, Nebraska, and Wisconsin) and several local California affiliates saw Proposition 188 as a national issue and sent a total of \$32 800. The American Medical Association donated \$25 000. These last-minute injections of cash allowed the coalition to purchase air

time and run the Koop advertisements for the last week of the campaign (J. Nicholl, memorandum, October 25, 1994).

One Californians for Statewide Smoking Restrictions advertisement, featuring middle school vice principal Nancy Frick claiming that Proposition 188 would benefit children, backfired in the last week of October. (Frick's husband had appeared in one of the group's mailings.<sup>52</sup>) The coalition sharply criticized the advertisement, emphasizing the industry's deceptive practices.<sup>67</sup> Two days later, the coalition got Frick to retract her comments and widely distributed the retraction, in which she stated that she was unaware that Proposition 188 would overturn 300 local laws (interview with P. Knepprath, American Lung Association, November 29, 1994; interview with J. Tyler, Coalition for a Healthy California, January 31, 1995).<sup>68,69</sup> She also demanded that the advertisements be pulled off the air.

### *A New Player*

Prompted by tobacco company control of the public perception of Proposition 188 as an anti-tobacco measure, a new player, the California Wellness Foundation, initiated a nonpartisan educational campaign to provide voters with accurate information about Proposition 188 (interview with G. Yates, California Wellness Foundation, January 31, 1995). The California Wellness Foundation granted \$4 million to the Public Media Center, a nonprofit advertising agency in San Francisco, which launched a \$4 million nonpartisan campaign to educate the public about Proposition 188 on October 17.<sup>70</sup> The Public Media Center print, radio, and television advertisements described the ballot arguments, signatories, and major donors to both sides of Proposition 188 and gave a toll-free number to call for more information. To ensure neutrality, the Public Media Center did not confer with either side of Proposition 188 in designing the campaign; it relied entirely on publicly available official information.

Despite the fact that the Public Media Center campaign did not support or oppose Proposition 188, the center's attorney received an inquiry from a deputy attorney general investigating a complaint lodged against the California Wellness Foundation for supporting the educational campaign.<sup>71</sup> The deputy refused to specify who had lodged the complaint, but the Public Media Center interpreted it as a "clumsy attempt to intimidate us" by tobacco industry lawyers.<sup>72</sup>

By presenting the facts in a clear way,

this educational advertising campaign focused media and public attention on the role of the tobacco industry in the Proposition 188 campaign, which forced Californians for Statewide Smoking Restrictions to abandon its low-profile campaign strategy. Californians for Statewide Smoking Restrictions supplemented its direct mail with broadcast advertising.<sup>67,72</sup> The group produced pro-188 advertisements using a format almost identical to that of the Public Media Center advertisements (i.e., the same visual presentation and voice-over) but presenting only arguments in favor of Proposition 188 and urging a yes vote. The Public Media Center sued in federal court, requesting that the copycat ads be taken off the air.<sup>73</sup> The judge granted the Public Media Center's request,<sup>74</sup> but, later that same evening, an appellate court stayed the restraining order, citing infringement on free political speech.<sup>49</sup> Despite the loss in appellate court, the legal challenge to the copycat ad was well documented in the media, bringing attention to Californians for Statewide Smoking Restrictions and the tobacco industry's role in Proposition 188.

### *The Federal Communications Commission*

Americans for Nonsmokers' Rights decided to use the truth-in-advertising provisions of the Federal Communications Act to force the tobacco industry to clearly disclose its sponsorship of Proposition 188 in the radio and television advertisements. Americans for Nonsmokers' Rights reasoned that requiring disclosure of tobacco industry funding would reduce the effectiveness of the Yes on 188 advertisements. (A similar tactic had been used successfully during previous campaigns.<sup>6</sup>) On October 20, Americans for Nonsmokers' Rights contacted the Media Access Project, a nonprofit telecommunications law firm in Washington, DC, for help (interview with G. Sohn, Media Access Project, December 15, 1994). Since Californians for Statewide Smoking Restrictions had filed with the California secretary of state as "Californians for Statewide Smoking Restrictions—Yes on 188, a committee of Hotels, Restaurants, Philip Morris, Inc. and other tobacco companies," as required by California law, the Media Access Project believed it was likely that the Federal Communications Commission (FCC) would agree that all of the group's advertisements should reveal the entire committee name (interview with G. Sohn, December 15, 1994).

On October 21, Americans for

Nonsmokers' Rights informed all radio broadcasters running the Californians for Statewide Smoking Restrictions ads that their failure to reveal the group's complete and legal name at the end of all commercials was in violation of FCC regulations and that unless the advertisements were corrected by October 24, it would file a complaint against the station with the FCC (J. Carol, letter, October 21, 1994). Many stations immediately changed the commercials.<sup>75</sup> On October 25, Americans for Nonsmokers' Rights filed a complaint with the FCC against several stations that had refused to comply.<sup>76</sup> In addition to forcing many stations to change the Yes on 188 advertisements, the controversy surrounding the FCC complaints attracted the attention of the news media to Proposition 188.

The actions of Americans for Nonsmokers' Rights took place the day the Coalition for a Healthy California held a press conference unveiling its Koop advertisements, with the hope of generating free media attention. (At that point the coalition still did not have enough money to purchase air time to run the advertisements.) Ten days later, the coalition joined Americans for Nonsmokers' Rights in a new complaint with the FCC against television broadcasters who refused to modify the Californians for Statewide Smoking Restrictions advertisements to include the tobacco companies' involvement (J. Carol, letter, October 27, 1994). On November 1, the FCC made an informal determination that proper disclosure should include the information about tobacco industry sponsorship.<sup>77</sup>

On November 8, Proposition 188 was defeated by a margin of 71% to 29%. This spread was the widest of any measure on the ballot. Of the people who voted against Proposition 188, 38% stated that they did so to protect smoke-free public places, and another 22% voted against it because it was sponsored by the tobacco industry.<sup>78</sup> Of the people who voted for the initiative, 17% did so because they still felt it was an anti-smoking measure. Proposition 188 was defeated in every county in California: liberal and conservative, urban and rural. Philip Morris' overwhelming defeat at the polls demonstrated that tobacco control is a popular issue that cuts across all demographic, geographic, and party lines.

### *Discussion*

The tobacco industry was nearly successful in tricking California voters into repealing their own tobacco control laws. If Californians for Statewide Smoking

Restrictions had been able to maintain its original strategy of a stealth campaign, its effort probably would have worked. By limiting itself to direct mail, the group would have stayed within a medium in which it could control the message and deprive the health community of a platform. However, once it was forced out into the more public realm of electronic advertising, it lost control over the public discourse about Proposition 188.

The tobacco industry's nominal embracing of preventing children from smoking was a major departure from its previous strategies of attacking the evidence that secondhand smoke causes disease and claiming that controlling tobacco constitutes government intrusion into private lives.<sup>2,5,6,42,54</sup> As with provisions related to clean indoor air, however, the language of the initiative was designed to protect the tobacco industry's ability to promote its products with no meaningful restrictions. For example, the initiative outlawed cigarette vending machines unless they were fitted with locking devices; these locking devices do not limit youth access to tobacco.<sup>79,80</sup> It also would have overturned a law (Senate Bill 1927) addressing youth access to tobacco and would have preempted and forbade any restrictions on point-of-sale or street-level advertising.<sup>29</sup>

Several key factors stand out as important lessons for the public health community. First, anti-tobacco advocates successfully laid aside personal and organizational conflicts to unite against the tobacco industry. When Philip Morris announced its intention of qualifying an initiative, California's tobacco control community was divided over other tobacco control issues, particularly Assembly Bill 13 and the allocation of Proposition 99 funds. Disagreements over these issues continued throughout the Proposition 188 campaign, but California's tobacco control community was able to unify against Philip Morris.

Second, the power structure of the coalition developed into a moving locus of activity that allowed each organization to play a role appropriate for its strengths and to make important contributions. Rather than there being a demand for consensus among all participating organizations before acting, as has been common in coalitions on smoking and health, individual players were able to act without first achieving complete consensus among all players. For example, the initial campaign against the Philip Morris initiative, spurred by Martin and Najera of the American Lung Association, laid an important foundation to support efforts later in the

campaign, even though the American Cancer Society and Americans for Nonsmokers' Rights did not express a similar level of concern about the initiative at the time. These early efforts affected the title and summary, the legislative analyst's analysis, and the ballot arguments and became the basis for the influential education campaign conducted later by the Public Media Center. Likewise, the American Cancer Society moved ahead with its poll, which convincingly demonstrated that making Philip Morris the issue was the key to winning the election, even though the Coalition for a Healthy California did not see polling as a priority expenditure at the time. Finally, Americans for Nonsmokers' Rights filed a complaint with the FCC to force the tobacco industry to disclose its role in advertisements, even though the coalition did not recognize the value of this strategy. Once the complaint proved useful, the coalition cooperated. This model of shifting power provides a more flexible—and perhaps more successful—model for public health coalitions than those of many existing coalitions on smoking and health.

Third, while the Coalition for a Healthy California relied on a broad network of volunteers, it used paid professionals to run the campaign on a day-to-day basis. A professional campaign manager and media director were hired early in the effort, and paid regional coordinators were added as the campaign developed. Equally important, the coalition hired legal counsel to fight the battles over the ballot title and summary and the voter pamphlet rather than relying on volunteer legal assistance.

Fourth, the national American Heart Association, the American Cancer Society, and the American Medical Association recognized that they had an important role to play in state campaigns. While the tobacco industry has always treated local tobacco battles from a national perspective, Proposition 188 marked a growing recognition by health organizations that strategic state and local issues warrant their involvement.

Finally, by funding a nonpartisan education campaign, the California Wellness Foundation demonstrated a new way in which charitable foundations can participate in important public debates. The Public Media Center campaign provided information from a neutral source that voters could trust. To comply with laws that bar a charitable foundation like the California Wellness Foundation from entering into political campaigns, the foundation supported the Public Media Center's effort to create a public education campaign that took no position on Proposition 188 but highlighted important

public information already printed in the official voter handbook (interview with G. Yates, California Wellness Foundation, January 31, 1995). The strategy of publicizing major donors to campaigns for and against the measure, so that voters could assess for themselves the motives of these donors, is also applicable to other public health issues, including campaign finance reform,<sup>15,81,82</sup> insurance reform, gun control, alcohol, and environmental issues. □

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