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Tobacco Industry's T.O.T.A.L. Interference

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Swedish Match and the National Association of Tobacco Outlets launched a website in 2016 that encourages retailers and policy makers to oppose regulating the tobacco retail environment.^{1,2} T.O.T.A.L., an acronym for Tobacco Ordinances - Take Another Look, features talking points for defeating U.S. state and local efforts to restrict the sale of flavored tobacco, regulate tobacco product displays in stores, restrict price discounting by eliminating coupon redemption and other discounts, increase the minimum package size of small cigars, and increase the minimum legal purchase age to 21. The industry website highlights U.S. cities where such restrictions are proposed and uses video testimonials to engage retailers in opposition.

T.O.T.A.L. employs many of the same arguments that the tobacco industry uses to influence marketing restrictions in other countries. Using a taxonomy of argument frames identified by Savell and her colleagues³, Table 1 lists talking points from the website that illustrate industry claims about insufficient evidence (policy is not evidence-based), legal objections (policy is illegal), regulatory redundancy (policy is unnecessary) and negative unintended consequences (policy will incur unanticipated economic, health or other costs).

Predictably, T.O.T.A.L. denies the existence of evidence about how retail marketing promotes youth smoking, even though such research forms the basis for tobacco display bans in at least 58 countries.⁴ T.O.T.A.L. also suggests that regulating the retail environment impedes the industry's ability to communicate with consumers and, thus, violates the First Amendment (see Table 1). In fact, U.S. courts have routinely upheld the constitutionality of regulating commercial transactions and other conduct in the face of such arguments.⁵ However, in an environment where regulating marketing is legally complex, lawyers, practitioners and researchers need to work together to identify policy priorities so that any restrictions on speech are effective public health measures appropriately tailored to withstand judicial review.

T.O.T.A.L. claims that retail policies are unnecessary because youth cannot access tobacco products at any price (see Table 1). Unfortunately, youth access laws are not uniformly enforced, and sales to minors are more prevalent in economically disadvantaged communities.⁶ The industry also claims that further restricting the retail environment would be ineffective to reduce youth tobacco use because most youth obtain tobacco from social sources (see Table 1). However, regardless of how tobacco is obtained, decreasing its availability and increasing its price directly impact youth, who are among the most price-sensitive consumers.⁷ Such policies would also benefit adult tobacco users by reducing environmental cues, reducing impulse purchases and providing incentives to quit.⁸

Industry statements about negative unintended consequences of retail policies warrant closer scrutiny (see Table 1). For example, T.O.T.A.L. claims that regulating the retail environment would increase “unnecessary altercations between police and civilians.” Police violence is an important and growing concern in the U.S., particularly with respect to persons of color. However, tobacco-related disease kills 45,000 African Americans per year and other priority populations also suffer disproportionately.^{9,10} It is disingenuous for the industry to suggest that passing local laws that would reduce disparities in retail availability and promotion in disadvantaged neighborhoods could make them more perilous. Adopting effective, non-discriminatory, and safe implementation and enforcement practices are essential to reduce the racial and socioeconomic burdens of tobacco-related disease and death.

Opposition to regulating flavored tobacco is prevalent on the T.O.T.A.L. website. For example, a flyer that could be downloaded for posting in stores advertises that “flavor bans do more harm good” and that “banning flavors from nicotine products may worsen public health.”¹¹ To rationalize the sale of candy, fruit, alcohol and menthol flavored tobacco products with demonstrated appeal to youth,¹² the flyer cites research about infants' food preferences to make the preposterous claim that “there are no flavorings that children will inherently prefer.”¹³

The existence of T.O.T.A.L. confirms that regulating the retail environment poses a threat to the industry. Currently, at least three jurisdictions prohibit price discounts and coupon redemption,¹⁴ dozens have set a minimum price and pack size for little cigars/cigarillos,^{15,16} more than 200 localities and 2 states increased the minimum purchase age to 21,¹⁷ and more than 50 cities or counties restrict sales of flavored tobacco products (including menthol, in some cases).¹⁸ In the U.S., retail policy activity has increased dramatically at the state and local levels,^{19,20} making these arenas ripe for industry interference.

Advocates have developed messages to support their retail policy work and the Campaign for Tobacco-Free Kids recently released talking points that refute specific claims on the T.O.T.A.L. website.²¹ However, the goal of minimizing the impact of industry interference with retail regulation suggests additional priorities for tobacco control research. It is essential to investigate which strategies are most effective to make tobacco products more costly and less available. Message framing research can help the public health community better understand what factors drive public and policy makers' opinions about regulation. Independent estimates of retail profits derived from tobacco sales and the potential loss of additional purchases by smokers could inform the extent to which industry exaggerates

claims about negative unintended consequences of regulation. Focusing on the growing number of retailers that voluntarily abandon tobacco sales, more research is needed to evaluate the relative costs and benefits for their revenue and reputation.²² Because retail is the primary channel that the industry uses to connect with consumers, addressing these research gaps is essential to minimize industry interference with state and local retail tobacco policy activity.

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Table 1
Tobacco Industry Arguments to Oppose Regulating the Retail Environment

Argument Frames*	T.O.T.A.L. Website Talking Points**
Insufficient Evidence	“There is no credible evidence that displaying tobacco products in a retail store causes underage youth to use tobacco products or that banning displays will reduce underage tobacco use.”
Legal Objections	“A ban on the sale of flavored tobacco products violates the First Amendment because manufacturers and retailers cannot exercise their right to describe the taste or aroma of tobacco products through product packaging...”
	“Since a local or state ban on the sale of other flavored tobacco products goes beyond the scope of the 2009 federal law, a local or state government is not allowed to adopt such a law.”
	“Prohibiting tobacco product displays prevents the communication of product information through product packaging, making display bans unlawful and unconstitutional.”
	“Banning the sale of certain categories of cigars with package size restrictions and minimum pricing is both discriminating and arbitrary.”
Regulatory Redundancy	“A ban on promotionally priced tobacco products has nothing to do with reducing underage tobacco use because state and federal laws already prohibit the sale of tobacco products to underage individual at any price.”
	“Raising the legal age is unnecessary because according to tobacco retailer compliance inspection statistics from the US Food and Drug Administration, retailers have achieved significantly high passing rates...”
Negative Unintended Consequences	
Economy	“A promotion ban would result in lost sales by retailers since consumers would seek out other sources of promotionally priced tobacco products, including traveling to nearby towns and cities where no such ban exists.”
	“Retailers in the restricted communities will not only lose tobacco sales but will also lose the opportunity to sell other items such as fuel, snacks and groceries.”
	“Lost sales can lead to lost jobs and jeopardize the future of family-owned businesses.”
Public Revenue	“Local elected officials need to be reminded that a low business tax structure is the key to business development and that local taxes on products stifle business expansion and development.”
Public Health	“Banning flavors from nicotine products may worsen public health.”
	Minimum pack size requirements “may encourage greater use because consumers are less concerned about running out of the product... Larger quantity and multi-pack packaging of tobacco at retail may very well be accelerating and encouraging increased consumption of tobacco products.”
Illicit Trade	Side effects of local tobacco ordinances include a “rise in black market activity related to prohibited or highly taxed tobacco products.”
Other	Regulation will “increase unnecessary altercations between police and civilians.”

* Source for argument frames³

** Source for talking points²