

Sugar-Sweetened Beverage Tax Preemption and the Urgency of Unified Mobilization

Jennifer Falbe, ScD, MPH, Sabrina S. Adler, JD, and Christina A. Roberto, PhD

ABOUT THE AUTHORS

Jennifer Falbe is with the Human Development and Family Studies Program, Department of Human Ecology, University of California, Davis. Sabrina S. Adler is with ChangeLab Solutions, Oakland, CA. Christina A. Roberto is with the Department of Medical Ethics and Health Policy, Perelman School of Medicine, University of Pennsylvania, Philadelphia.

 See also Crosbie et al., p. 677.

In this issue of *AJPH*, Crosbie et al. (p. 677) analyze tactics the beverage industry has used to promote preemption of sugar-sweetened beverage (SSB) excise taxes. Preemption is a legal mechanism by which a higher level of government (e.g., a state) can prohibit a lower level of government (e.g., a city) from enacting and implementing a policy. State preemption of local laws, which the tobacco industry has employed heavily, can have a chilling effect on local laws and their attendant health and social benefits and is part of “a larger retreat from democratic values.”¹(p252) Preemption of SSB taxes is a major threat to public health because, as evaluations have shown, SSB taxes are the single most cost-effective² policy option currently available to decrease SSB purchases³ and consumption.⁴ Furthermore, SSB taxes promote equity when revenue is invested in low-income communities, communities of color, and public services (e.g., water access), which has occurred in the US jurisdictions with SSB taxes.⁵ Based on the tobacco

industry experience, SSB tax preemption attempts will likely accelerate. The fact that many tobacco preemption laws have taken more than a decade to repeal underscores the urgency of action to prevent preemption.

Crosbie et al. also answer a call to bring the commercial determinants of health out of the shadows.^{6,7} Although it is broadly recognized that food and beverage companies shape health behaviors by marketing and selling unhealthy products, the authors expose far more insidious ways that the industry shapes our choices and freedoms.

INDUSTRY TACTICS TO ADVANCE PREEMPTION

Crosbie et al. highlight beverage industry tactics to advance preemption: use of front groups and trade associations, lobbying, adding preemption language to other legislation, and issuing legal threats and challenges. As the authors indicate, preemption has long been in the toolkit of industries that have

undermined public health efforts. And it is part of a comprehensive approach the food and beverage industry has long used to maintain profits at the expense of people's health.

One particularly worrisome part of the industry's preemption campaigns is the creation and dissemination of misinformation. The use of dis- and misinformation is not a new tactic; for years, the beverage industry has influenced consumers' decision making through deceptive marketing, often targeted at communities of color and youths. In the preemption context, the authors describe misleading beverage industry-funded ballot initiatives to preempt new local SSB taxes in Washington State and Oregon. These initiatives, however, were framed as preempting grocery taxes, not SSB taxes. The campaigns for these initiatives, titled Yes! To Affordable Groceries and Yes! Keep Our Groceries Tax Free, featured produce aisles and grocers voicing opposition to food and grocery taxes (<https://bit.ly/38vCBQe>). Absent from many materials were images and mention of SSBs. However, there had been no local proposals to tax groceries, whereas there had been several active local sugary drink tax campaigns.

Ultimately, Washington's preemption initiative passed, banning new SSB taxes by prohibiting new taxes on grocery items and defining groceries to include “carbonated beverages” and “soft drinks.” The tactics of framing SSB taxes as grocery taxes and using local grocers in campaigns had been used to oppose SSB taxation in Philadelphia, Pennsylvania; Oakland, California; and other cities. And disinformation may also have played a role in eliciting grocers' support. An Oakland grocer who appeared in antitax ads later said that soda company representatives had lied to him about

the measure. In an interview (<https://bit.ly/34nP1sq>), he said, “They tried to use me, and use my business.”

In California, the SSB industry used coercion to enact SSB tax preemption by first funding a statewide ballot initiative that could have crippled local democracy and city budgets by requiring a two thirds supermajority to enact any new local tax. The beverage industry then agreed to drop the initiative in exchange for legislators passing a bill banning new local SSB taxes. A California senator described this tactic as the beverage industry “aiming . . . a nuclear weapon at . . . California and saying if you don’t do what we want, we’re going to pull the trigger” (<https://lat.ms/38grxXe>). To combat such coercive approaches, advocates must actively monitor for and mobilize against blanket antitax, antiregulatory initiatives.

It is important for the public to be aware that preemption is one of many pernicious tools industry uses to influence information and policy environments, further slowing public health progress and undermining democracy. Other strategies include publicly framing physical inactivity (not diet) as the main driver of obesity and related chronic diseases, shaping the scientific evidence base and discourse by sponsoring researchers and scientific meetings, infiltrating health organizations, criticizing science that implicates the food and beverage industry in promoting unhealthy diets, sponsoring under-resourced nonprofits to influence their support for policies, and making campaign contributions to decision makers.

FUTURE RESEARCH

Existing research on SSB tax preemption is limited mostly to publicly available records. Interviews and surveys of

advocates, legislators, labor unions, retailers, and other supportive and opposing groups are needed to uncover motivations for their position, persuasive messaging, and resources necessary to avert preemption. Such research could unearth the extent to which dis- and misinformation was used to persuade voters and local stakeholders to support preemption and, in exposing this tactic, shape public opinion.

Research can also quantify the costs to the state, taxpayers, and communities when preemption blocks the enactment of local policies (e.g., health care costs, lives lost, loss of revenue to support equity-promoting programs, loss of local experimentation, increased cost to advocates). Such research would answer calls to better understand the commercial determinants of health, which requires “go[ing] well beyond what happens in public . . . to understand the hidden and invisible influences on . . . policy.”^{7(p1168)} Lastly, it is essential to explicitly include commercial determinants in models and frameworks that guide research, advocacy, and policymaking.⁶

CALL TO ACTION

We agree with the call to action made by Crosbie et al., and we make additional recommendations. They champion media campaigns that educate the public and policymakers about how industry undermines public health. Campaign effectiveness could be enhanced by highlighting industry’s misinformation tactics, such as branding SSB taxes as grocery taxes and deceiving small business owners into being the face of their campaigns. Campaigns can expose how large multinational corporations use preemption to silence community voices in support of SSB taxes—specifically the

voices of youths, communities of color, parents, and educators. When industry purports that public health policies restrict freedom, advocates can emphasize the ways the industry already constrains consumer freedoms. Although funding for public health campaigns often pales in comparison with industry funding, social media may offer opportunities for cost-effective campaigns.

The authors call for a national strategy to educate policymakers about industry efforts to usurp local control. They propose a national, unified preemption effort of public health and advocacy groups and the expansion and centralization of legal networks. National efforts are under way to connect players across siloed areas threatened by preemption (e.g., health, environmental, employment, and housing policy), and such efforts should be bolstered. Litigation can also be used to push back against preemption efforts that are legally vulnerable, because of either the mechanisms of enactment or underlying legal defects in the policy. The California SSB tax preemption law, for example, is being challenged as a violation of the state constitution. Longer term, the power of local governments can be strengthened in ways that guard against preemption (<https://bit.ly/3pjpnNw>). As Crosbie et al. indicate, adequate funding is critical for averting preemption. To counter industry’s deep pockets, advocates may need to attract a broader swath of funders interested in democracy, good governance, corporate accountability, community empowerment, or other causes threatened by preemption.

One way to address the threat preemption poses to SSB taxes is to pass state- or national-level SSB excise taxes. In the wake of COVID-19, SSB tax revenues can shore up our chronically

strained public health system and support Black and Brown communities facing disproportionately devastating consequences from the virus. However, efforts to enact state or national SSB taxation should simultaneously preserve local authority to enact SSB taxes. Not only do communities have unique needs requiring tailored solutions, but localities serve as laboratories of democracy. Local experimentation (e.g., with different tax structures, revenue distributions) also enables researchers to study what works best. Industry preemption efforts are a pernicious threat to such local innovation and to democracy more broadly. A unified, rather than piecemeal,⁷ approach is needed to address preemption and the commercial determinants of health. **AJPH**

CORRESPONDENCE

Correspondence should be sent to Jennifer Falbe, Assistant Professor of Nutrition and Human Development, Department of Human Ecology, UC Davis, One Shields Ave, Davis, CA 95616 (e-mail: jfalbe@ucdavis.edu). Reprints can be ordered at <http://www.ajph.org> by clicking the "Reprints" link.

PUBLICATION INFORMATION

Full Citation: Falbe J, Adler SS, Roberto CA. Sugar-sweetened beverage tax preemption and the urgency of unified mobilization. *Am J Public Health*. 2021;111(4):546–548.

DOI: <https://doi.org/10.2105/AJPH.2021.306163>

CONTRIBUTORS

The authors contributed equally to this editorial.

ACKNOWLEDGMENTS

J. Falbe is supported by the National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health (award K01DK113068) and the US Department of Agriculture National Institute of Food and Agriculture (Hatch project 1016627). C. A. Roberto has received funding from Bloomberg Philanthropies.

CONFLICTS OF INTEREST

The authors have no conflicts of interest to disclose.

REFERENCES

1. Pomeranz JL, Zellers L, Bare M, Sullivan PA, Pertschuk M. State preemption: threat to democracy, essential regulation, and public health. *Am J Public Health*. 2019;109(2):251–252. <https://doi.org/10.2105/AJPH.2018.304861>
2. Wilde P, Huang Y, Sy S, et al. Cost-effectiveness of a US national sugar-sweetened beverage tax with a multistakeholder approach: who pays and who benefits. *Am J Public Health*. 2019;109(2):276–284. <https://doi.org/10.2105/AJPH.2018.304803>
3. Roberto CA, Lawman HG, LeVasseur MT, et al. Association of a beverage tax on sugar-sweetened and artificially sweetened beverages with changes in beverage prices and sales at chain retailers in a large urban setting. *JAMA*. 2019;321(18):1799–1810. [erratum: *JAMA*. 2019;322(10):983.]. <https://doi.org/10.1001/jama.2019.7450>. <https://doi.org/10.1001/jama.2019.4249>
4. Falbe J, Thompson HR, Becker CM, Rojas N, McCulloch CE, Madsen KA. Impact of the Berkeley excise tax on sugar-sweetened beverage consumption. *Am J Public Health*. 2016;106(10):1865–1871. <https://doi.org/10.2105/AJPH.2016.303362>
5. Falbe J. The ethics of excise taxes on sugar-sweetened beverages. *Physiol Behav*. 2020;225:113105. <https://doi.org/10.1016/j.physbeh.2020.113105>
6. Maani N, Collin J, Friel S, et al. Bringing the commercial determinants of health out of the shadows: a review of how the commercial determinants are represented in conceptual frameworks. *Eur J Public Health*. 2020;30(4):660–664. <https://doi.org/10.1093/eurpub/ckz197>
7. McKee M, Stuckler D. Revisiting the corporate and commercial determinants of health. *Am J Public Health*. 2018;108(9):1167–1170. <https://doi.org/10.2105/AJPH.2018.304510>