



## Meet Our Students

As part of New England Law | Boston, the Center for Public Health and Tobacco Policy has the benefit of working with many law students interested in public health and tobacco control. Our student law clerks conduct legal and policy research projects, and they assist in responding to technical assistance requests. Over the past several months, we have had the privilege of working with five law students, who have researched an assortment of tobacco-related issues.



From left : Whitney Dodds, Leah McMorris



From left : Rebecca DeCoster, Lige Gu, Gerrit Betz

Tobacco Policy is that it's brand new. I get to be really involved in some of the foundational work of the Center, which is really rewarding."

Whitney Dodds, a second-year law student (2L), has been working on the issue of how to reduce the number of retailers licensed to sell tobacco products in New York. Whitney has been researching relevant laws at the federal, state, and local level, and she compiled some of her research into a fact sheet used at the March 10 point-of-sale training. Whitney will be utilizing her research to help construct a model local and state law to reduce the number of licensed tobacco retailers.

"I'm very interested in public health law and policy and I've really enjoyed getting hands on experience and learning about legal issues related to tobacco," said Whitney about her work over the past few months. In fact, Whitney enjoyed working with the Center so much that she will be staying on with the Center over the summer. If she keeps up the excellent work, she might even get a day or two off for her wedding this summer!

Rebecca DeCoster, a 2L, has been focused on our smokefree outdoor air research. Rebecca

examined research on the health effects of secondhand smoke exposure in outdoor areas, as well as case law related to secondhand smoke exposure. Her research, as well as the sample ordinances she has collected, will be used to create a model ordinance and toolkit on smokefree outdoor air.

"I knew very little about tobacco policies and initiatives prior to working for the Center, but my experience here has introduced me to a new area of law and a community of dedicated individuals of which I feel lucky to have been a part," says Rebecca. She loves to travel and collects patches from the places she visits.

Our other student law clerks for this semester have been Leah McMorris, a 2L, and Lige Gu, a 3L. Leah has been researching federal, state, and local laws regarding tobacco free schools, and Lige has been assisting the Center on various technical assistance requests. We are very grateful for the efforts of our students, and we look forward to welcoming and working with a new group of student law clerks over the summer!

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Gerrit Betz, a third-year law student (3L), has been examining how to regulate tobacco product displays inside non-adult-only retail establishments. Gerrit has researched point-of-sale laws in other countries, as well as display bans in the U.S. for non-tobacco products. He has also examined studies regarding the effects of advertising on youth. Gerrit's research will culminate in a model local and state law on regulating tobacco product displays.

Gerrit performed in an improv comedy troupe throughout college, and he enjoys riding and fixing bicycles in his spare time. When asked about his experience with the Center this semester, Gerrit responded, "One of the best parts of working for the Center for Public Health and

## National Healthcare Reform Law Includes Significant Prevention Measures

Lost in the headlines about the health care reform law passed in March were the significant portions of the law that focus on chronic disease prevention. The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act included multiple provisions that will help to reduce the incidence of chronic diseases and consequently reduce healthcare expenditures in both the short-term and long-term.

The healthcare law mandates insurance companies and group health plans to cover treatments that are shown to prevent diseases, without any cost-sharing or deductibles charged to patients. Although the law does not explicitly require insurers to cover nicotine replacement therapy (NRT) or cessation counseling, it is extremely likely that such treatments would be covered, based on the overwhelming evidence of their benefits in reducing chronic disease. Treatments that insurers are required to cover will be determined by the United States Preventative Services Task Force, an independent panel of experts.

The new law expands Medicaid coverage for smoking cessation treatments by prohibiting states from excluding tobacco cessation

medications from those covered by Medicaid, and completely covering smoking cessation treatment (both medications as well as counseling) for pregnant women. Medicaid coverage for smoking cessation will have a dramatic effect on improving public health. About 33 percent of those receiving Medicaid coverage are smokers, which is significantly higher than the 20.6 percent of the adult population who smoke. \$22 billion a year, or 11 percent of all Medicaid expenditures, is attributable to smoking.

Over the past several years, Massachusetts has demonstrated just how effective Medicaid coverage for tobacco cessation treatment can be. Its MassHealth program, which provides coverage for low-income residents, has provided and promoted smoking cessation services to recipients since 2006. In just two and a half years, the smoking rate among MassHealth recipients dropped 26 percent. Among those that took part in the smoking cessation services, the state saw 38 percent fewer emergency room visits for heart attacks, 17 percent fewer visits for asthma, and 17 percent fewer birth complications.

The law provides further incentives for em-

ployers to reward employees who take part in company wellness programs. Employers can provide premium discounts or rewards up to 30 percent of coverage costs to employees that take part in such programs. The previous limit prior to the new law had been 20 percent of the cost of coverage.

The law also established a National Prevention, Health Promotion and Public Health Council which will create a national prevention and health promotion agenda. Additionally, a 5-year public health fund has been established that will provide grants to state and local governments to create programs aimed at reducing chronic disease.

An analysis by the Trust for America's Health of existing preventions programs found that if \$10 per person were invested every year in proven programs addressed at reducing smoking, physical activity, and nutrition, over \$16 billion could be saved in healthcare expenditures within 5 years. This potential savings would be more than a 500% return on investment. The Congressional Budget Office stated that "certain types of preventative services have been found to yield substantial net savings, largely because the initial costs are low and the long-term benefits are large."

## San Francisco Adds "Litter Fee" to Cigarette Price

Most of the focus of the tobacco control community is on the detrimental effects on health from both using tobacco and from secondhand smoke, and rightfully so. However, one of the incidental costs of cigarette smoking is the significant amount of litter from smokers who don't properly discard their cigarette butts.

On July 21, 2009, San Francisco Mayor Gavin Newsom approved an ordinance passed by the San Francisco Board of Supervisors that created a \$0.20 regulatory fee on every pack of cigarettes sold. The purpose of the fee is to raise revenue to cover the expenses in cleaning up and disposing of cigarette butt litter, as well to run an educational campaign to instruct smokers on properly disposing of cigarette butts.

The law went into effect October 1, 2009, and requires tobacco retailers to collect the tax, keep records of the revenue, and periodically remit payment of the taxes collected to the city.

Phillip Morris Inc. and a handful of San Francisco tobacco retailers have filed suit against the City and County of San Francisco to invalidate the fee and prevent its collection. Attorneys for Phillip Morris argue that the fee is in actuality a tax, which would conflict with California law. Phillip Morris points out that the California Constitution prohibits any local tax increases without a vote of two-thirds of electors, and the California Tax Code prohibits any local tax increases on cigarettes.

On January 21, 2010, The City and County of San Francisco filed an answer to the complaint, but as of this writing a trial date has yet to be set.



## New York Attempts to Collect Taxes on Native American Tobacco Sales

On March 25, 2010 the New York State Court of Appeals heard oral arguments regarding the issue of untaxed cigarette sales by the Cayuga Indian Nation of New York to non-Indian customers. Tax Law § 471-e requires tobacco retailers on Native American reservations to collect taxes on cigarettes sold to non-Indians. Authorities in Cayuga and Seneca counties hope to pursue federal tax evasion charges against the Cayugas for the tax revenue lost by the State as a result of the untaxed cigarette sales taking place on reservations.

At issue is whether or not the tribal retailers are excused from collecting the excise tax on cigarette sales to non-Indian customers. During a raid of two Cayuga tobacco shops, law enforcement officials seized more than 1.5 million unstamped cigarettes. In response, the Cayuga Nation filed suit, arguing that it had not violated any tax laws and seeking the return of the seized cigarettes.

The dispute between the parties focuses on whether the Cayuga retail stores are located on “qualified reservations” where the state law has no effect. A decision by the Court of Appeals is not expected for at least a month.

In addition to the lawsuit, New York Governor David Patterson is taking steps to address the issue of cigarettes tax evasion. In February, the Patterson administration rescinded a state policy of not enforcing tax collections on Native American cigarette sales. Governor Patterson has since proposed a new set of rules, which would require tobacco manufacturers to sell only to wholesalers who certify that they do not supply retailers who sell untaxed cigarettes. Manufacturers would be required to collect the certifications from the wholesalers, and wholesalers could be prosecuted for perjury if they violate their certification by selling to Native American retail stores

that do not collect taxes.

The Patterson administration’s proposal would, however, permit a set number of tax-free cigarettes sales to the nine tribes for personal consumption by tribe members. The set amount of tax-free cigarettes supplied to the state’s nine tribes, totaling 31,000 members, would be 648,000 packs of cigarettes per quarter. Wholesalers would be in violation of state law if they were to supply more than the approved amount. Representatives of the Seneca Nation say they are opposed to the proposed regulations and will challenge them in court, if necessary.

The full text of the proposed regulations can be found [here](#).

## FDA Issues Rules Limiting Tobacco Advertising

In accordance with the Family Smoking Prevention and Tobacco Control Act enacted last year, the FDA recently issued a set of rules addressing tobacco advertising and youth access to tobacco products. The rule will become effective on June 22, 2010.

The rule was first promulgated by the FDA in 1996, but the Supreme Court later ruled that the FDA had not been granted the au-

thority by Congress to regulate tobacco products. The Family Smoking Prevention and Tobacco Control Act explicitly granted the FDA authority to regulate tobacco products, and a provision of the law instructed the FDA to reissue the 1996 rule.

According to the FDA: “Among other things, the rule prohibits the sale of cigarettes or smokeless tobacco to people younger than

18, prohibits the sale of cigarette packages with less than 20 cigarettes, prohibits distribution of free samples of cigarettes, restricts distribution of free samples of smokeless tobacco, and prohibits tobacco brand name sponsorship of any athletic, musical or other social or cultural events. The entire rule can be found at [www.fda.gov/protectingkidsfromtobacco](http://www.fda.gov/protectingkidsfromtobacco).”

## Court Upholds New York City’s Ban on Flavored Tobacco

Last month, we reported that New York City’s law banning the sale of flavored tobacco products had been challenged in a lawsuit brought by U.S. Smokeless Tobacco Manufacturing Company LLC and U.S. Smokeless Tobacco Brands Inc. (both subsidiaries of Altria). The tobacco companies asked the court for an injunction to block implementation of law, arguing that the law

was preempted by the Family Smoking Prevention and Tobacco Control Act.

On March 23, Judge Colleen McMahon denied the tobacco companies’ request for a preliminary injunction. Although the tobacco companies may still insist on a full

trial, the judge wrote that “the Court finds it highly unlikely that plaintiffs will ultimately prevail on the merits.”

[For more on the court’s ruling, click here.](#)

## California Close to Prohibiting Smoking at All State Parks and Beaches

The California Senate recently voted 21-15 in favor of a bill prohibiting smoking in 278 state parks and beaches, after the California State Assembly passed the measure by a 42-27 vote. The bill has been sent to Governor Schwarzenegger, who has yet to indicate whether he will sign it.

Hundreds of communities around the country have prohibited smoking at parks and beaches, including numerous cities and counties along California's coastline. Los Angeles prohibited smoking at all beaches in 2004, as well as all parks in 2008. However, California would be the first state to take such an action. If enacted, the law would take effect on Jan 1, 2011.

Senator Jenny Oropenza, D-Long Beach, authored the bill in the hopes of protecting visitors from secondhand smoke exposure,

eliminating litter from cigarette butts, and preventing wildfires. Violators will be subject to a \$100 fine, but the law would exempt parking lots and state campgrounds.

[CA Proposed Bill](#)

[Legislative History for CA Proposed Bill \(SB4\)](#)



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### ***CENTER FOR PUBLIC HEALTH AND TOBACCO POLICY***

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New England Law | Boston  
154 Stuart St.  
Boston, MA 02116

Phone: 617-368-1465

Fax: 617-368-1386

E-mail: [tobacco@nesl.edu](mailto:tobacco@nesl.edu)

Web: <http://www.tobaccopolicycenter.org>

The Center for Public Health and Tobacco Policy (Center) is a new resource for the New York tobacco control community. The Center is funded by the New York State Department of Health and will be working with the New York State Tobacco Control Program and its contractors to develop and support policy initiatives that will reduce tobacco-related morbidity and mortality in New York.

The Center is located at New England Law | Boston and is project of the Center for Law and Social Responsibility. The Center is also affiliated with the Tobacco Control Legal Consortium.

The Center will work with tobacco control advocates in New York to support the adoption of evidence-based policies that reduce the availability of tobacco products, protect non-smokers from secondhand smoke, and minimize tobacco advertising and promotion.

**Please Note: The Center is funded to provide assistance to the New York State Tobacco Control Program and its contractors. At this time, the Center is unable to provide assistance to individuals or groups who are not funded by the New York State Tobacco Control Program.**