STOP. A GLOBAL TOBACCO INDUSTRY WATCHDOG

U.S.A

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Summary of Findings

1. Industry participation in policy development

In the United States, the tobacco industry directly interferes with the policy process. The tobacco industry spent US $28,156,312 on federal lobbying in 2020, and 78.7% of industry lobbyists were former government employees. The government often accepts, supports or endorses offers of assistance from the tobacco industry in developing public health policies. In 2020 President Trump (R) along with U.S. senators, including Senator Mitt Romney (R-Utah), met with the tobacco industry for input on e-cigarette flavor bans and designing T21 legislation.

The U.S. Food and Drug Administration (FDA) Tobacco Products Scientific Advisory Committee, which advises the Commissioner of Food and Drugs on the public health consequences and safety of tobacco products, includes three non-voting members, representing the tobacco manufacturing industry, tobacco growers and the small businesses tobacco manufacturing industry, respectively.

2. Industry CSR activities

During the COVID-19 pandemic, there was a dramatic increase in corporate social responsibility (CSR) activity. Not only did the tobacco industry voluntary donate to public health measures in an attempt to bolster its public image, but it took advantage of the COVID-19 pandemic to tout false promotions of public health and deflect criticisms for unethical practices.

In 2020, the tobacco industry donated US $1,546,525 to federal congressional candidates: 307 current or potential House members and 68 current or potential Senators received this funding from Big Tobacco. These donations were nonpartisan and spanned all levels of government.

Government officials used the pandemic to call upon the tobacco industry to provide charitable donations. In response, the industry donated ventilators and launched charity campaigns during the 2020 pandemic. Vape manufacturers and retailers have donated bottles of hand sanitizer to police and fire departments nationwide.

3. Benefits to the industry

Even after tobacco control policies have been passed, the industry often negotiates for extended periods that delay or postpone common-sense public health policy. In 2020, a judge in the U.S. District Court for the District of Maryland mandated that e-cigarette manufacturers submit their products to the FDA for review by May 12, 2020. However, industry representatives were able to successfully obtain a 120-day extension from the FDA for the court-mandated submission by arguing that COVID-19 impacted their evaluation process.

During the COVID-19 pandemic, the tobacco industry benefitted from special government stimulus that was intended to promote essential industries. Tobacco farmers profited from the U.S. Department of Agriculture's Coronavirus Food Assistance Program, which provided US $100,000,000 in aid to tobacco farmers.

4. Unnecessary interaction

The COVID-19 pandemic obstructed the tracking of social meetings between tobacco company representatives and government officials. However, the industry still provided voluntary enforcement programs such as "We Card" to reduce the regulation and enforcement of existing laws and improve their public image. Additionally, the U.S. government has entered into agreements with the tobacco industry, including the Master Settlement Agreement (MSA). Although the MSA created important prohibitions and funding for tobacco control efforts, it allows the industry to remain in business.

5. Transparency

The FDA is the primary body governing tobacco, and as such, it has an assortment of disclosure rules. The FDA Scientific Advisory Committee discloses meeting agendas, materials, minutes and webcast recordings of its proceedings. However, other FDA interactions with the industry are subject to inconsistent disclosure. The agency does not publish meeting minutes with the industry, and its dockets can remain confidential.

Other government agencies including the Alcohol and Tobacco Tax and Trade Bureau and the International Revenue Service in addition to legislation such as the Family Smoking Prevention and Control Act mandate industry disclosure of certain information. Under the Lobbying Disclosure Act of 1995, all lobbyists, including tobacco industry lobbyists, working at the federal level must register with the federal government. All 50 states also require some form of lobbyist registration.

6. Conflict of interest

The U.S. Federal Elections Commission does not prohibit contributions from the tobacco industry. The U.S. does prohibit corporations from donating; however, Big Tobacco uses Political Action Committees (PACs) and other eligible groups in order to bypass this prohibition.

The industry also employs former U.S. government officials. Most notably, the former lead toxicologist at the FDA's Center for Tobacco Products, Roxana Weil, and a seasoned former FDA employee who specialized in inspecting tobacco manufacturers, Gabriel Muniz, now occupy upper-level positions at JUUL Labs Inc.

In 2020, the tobacco industry spent US $28,156,312 on lobbying and about four out of five (78.7%) tobacco industry lobbyists were former government employees. Notably, three of former Senate majority leader Mitch McConnell's (R-Kentucky) former high-ranking staff were tobacco industry lobbyists this year. On the state level, many current and former government officials had ties to the tobacco industry.

Former President Trump exposed his conflict of interest with the tobacco industry when he circumvented his own 2017 ethics executive order, "Ethics Commitments by Executive Branch Appointees." President Trump appointed Brian Ballard, a current lobbyist for British American Tobacco (BAT), to the Board of Trustees of the John F. Kennedy Center for the Performing Arts: giving the lobbyist direct access to Mr. Trump and subsequently, President Biden as a multi-year federal appointee.

7. Preventive measures

Records of the interaction between the government and the tobacco industry are not always publicly available. All interactions with the FDA are not subject to public disclosure.

When government officials interact with the tobacco industry, there is no broadly prescribed code of conduct. Furthermore, like other lobbyists, tobacco industry representatives can have informal interactions with lawmakers without disclosing the interactions to the public.

Under the Family Smoking Prevention and Tobacco Control Act (TCA), the FDA has the authority to regulate the manufacturing, marketing and distribution of tobacco products. The Alcohol and Tobacco Tax and Trade Bureau (TTB) requires permits to authorize tobacco product manufacturers, importers, warehouse proprietors and other tobacco industry businesses for operations in the US.

Recommendations

1. **Raise awareness of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) and its provisions regarding tobacco industry interference along with its applicability to all 50 states.** The United States participated in the negotiations and signed the WHO FCTC in 2004. However, it remains a non-party to the treaty. Thus, state and federal tobacco-control advocates should raise awareness of the importance of Article 5.3 of the WHO FCTC, as it forbids tobacco industry interference in policymaking. While constitutional protections of the freedom of speech prevent the U.S. from fully implementing Article 5.3, by signing the treaty, the country intends not to undermine its goals. Furthermore, the Department of Health and Human Services has indicated that the U.S. is compliant with the WHO FCTC. Therefore, raising awareness of Article 5.3 of the WHO FCTC on the state and federal level can serve as a powerful advocacy tool to combat tobacco industry interference.

2. **Strengthen and standardize revolving door prohibitions.** Lobbying is constitutionally protected, and a total ban is impossible. However, implementing a longer timeframe between when a public official or employee leaves public service and begins lobbying would prevent or lessen interference from regulated industries.

3. **Close loopholes in executive branch ethics guidelines.** Former executive branch appointees are prohibited from working as lobbyists for five years after their service. However, an "appointee" is narrowly defined as full-time, non-career individuals. Also, there is no restriction on current and former industry representatives serving as federal appointees. Closing these loopholes would serve to prevent commonly-occurring conflicts of interest related to past employment.

4. Prevent conflicts of interest in the U.S. Food and Drug Agency drug approval process. When approving new drugs, such as tobacco products that contain nicotine, the FDA often relies on industry-conducted research. The tobacco industry has historically manipulated the scientific process to distort findings and their studies cannot be trusted. Only independent studies can reliably inform public health policies.

5. **Adopt an official code of conduct for public officials.** Public office is a public trust. The principal objective of each public official is the welfare of the people. Hence, an official code of conduct should be adopted to prevent or lessen interference via gifts and contributions from regulated industries. Strict rules against conflict of interest and complete transparency in all government-tobacco industry interactions, both formal and informal, should be implemented.

6. **Educate lawmakers on industry interference.** Advocates can inform lawmakers of tobacco industry interference through fact sheets and state-specific industry quotes. They can share key findings with public officials from the federal racketeering case and garner the political will to correct all industry-supported laws by leveraging earned media.

7. **Mandate philanthropic donation disclosure.** The U.S. government does not mandate reporting of philanthropic activities by companies. This exemption allows the tobacco industry to donate to social welfare organizations that contribute industry funding to political action funds, effectively hiding these Big Tobacco monies from the public.