

# USA

Overall score:

66

## Summary of Findings

### 1. Industry participation in policy development

In terms of tobacco control and regulation, domestic policymaking in the United States is not concentrated in one central authority. Rather, it occurs at various levels, from the federal and state to the local governments.

At the federal level, regulation is lodged mainly with the Food and Drug Administration (FDA). For tobacco regulation in particular, the FDA Tobacco Products Scientific Advisory Committee reports and recommends to the FDA Commission on the safety and health issues relating to tobacco products. The Committee comprises 12 members, nine of which are voting members and come from the medical or scientific fields. The three non-voting members, however, are identified with industry interests. Of these three non-voting members, one representative must come from the tobacco manufacturing industry, one from tobacco growers, and one from small business tobacco manufacturing industry.<sup>1</sup>

In 2019, the tobacco industry spent US \$28,085,063 on lobbying,<sup>2</sup> up from the US \$23,426,000 in 2018.<sup>3</sup> Lobbying efforts included initiatives to raise the minimum age of purchase to 21. Health advocates, however, warned that this is an old strategy employed by tobacco companies to appear good while pushing for weaker legislation that provides for exemptions, pre-empts stricter local measures, and guarantees ineffectual enforcement.<sup>4</sup> It also relieves pressure off tobacco and e-cigarette companies from other regulatory concerns, such as flavored pods and targeted advertisement.

In September 2019, new e-cigarette giant, JUUL Labs, provided investments made investments

to the New Democrat Coalition Action Fund (US \$5,000), Clay Jr. for Congress (US \$1,000).<sup>5</sup>

In December 2019, President Trump signed into law a federal legislation raising the minimum age of purchase to 21.<sup>6</sup> The law came from a bill endorsed by Majority Leader Republican Senator Mitch McConnell and Virginia Democratic Senator Tim Kaine, who are both recipients of campaign donations from the tobacco industry.<sup>7</sup>

### 2. Industry CSR activities

Companies often employ CSR activities to build goodwill and boost their reputation with the community. The same is true with the tobacco industry, which funds cessation programs, provides research grants to schools, among others, as CSR tactics.<sup>8</sup> These activities, however, are veiled attempts to present a socially responsible image to deflect criticisms from unethical practices.

In 2019, Juul donated US \$75 million to Meharry Medical College, a historically Black college, to fund a public health center.<sup>9</sup>

### 3. Benefits to the industry

In May 2019, a federal judge ordered the FDA to start the review of e-cigarettes and finish the same by May 2020. The judge ruled that the FDA failed to enforce its mandate when it allowed the sale of e-cigarettes, including flavored ones that appeal to the youth, without reviewing their health effects. Recently, however, the FDA asked for a 120-day extension due to the COVID-19 pandemic. The request for extension has been granted.<sup>10</sup>

In September 2019, the Trump administration also announced its plan to stop the sale of flavored e-cigarettes unless the manufacturers can present public health benefit.<sup>11</sup> By November 2019, the administration indicated that it may reverse itself and has not moved forward with its original plan.<sup>12</sup>

#### 4. Unnecessary interaction

Corporate lobbyist that represent the tobacco industry mingled with Senate Majority Leader Mitch McConnell at a fundraiser for the National Republican Senate Committee hosted by two former McConnell staffers.<sup>13</sup>

The same month McConnell announced the bill to increase the purchase age of tobacco, members of the vaping industry trade group Vapor Technology Association met with McConnell's staff.<sup>14</sup>

#### 5. Transparency

At the federal level, the FDA has no policies regarding disclosure of public comments on cases in its dockets. It also does not have disclosure policies on communications between FDA officials and representatives from the tobacco industry.

At the state level, most states do not require lawmakers to disclose the full extent of their engagements with lobbyists. However, all states do have laws on registration of lobbyists and entities who engage their services. This information is available to the public.<sup>15</sup>

For the tobacco industry in particular, several laws mandate disclosure of certain information. The Family Smoking Prevention and Control Act requires annual registration of tobacco companies. The Federal Lobbying Disclosure Act requires registration of in-house lobbying for firms that meet a certain income/expense minimum. Tobacco firms are also required to secure permits from the Alcohol and Tobacco Tax and Trade Bureau and the Internal Revenue Service.

#### 6. Conflict of interest

The United States have a long history of tobacco interference through active political, lobbying. For the 2020 election cycle, a total of US \$2,759,084 of political campaign contributions is from the tobacco industry.<sup>16</sup>

In 2019, of the 280 tobacco lobbyists reported by the Center for Responsive Politics, 217 are "revolvers" or former government regulators, congressional staff, or members of Congress who are now employed by lobbying firms or the private sector.<sup>17</sup>

Tobacco industry influence can be found at the highest level of government. For example, Altria Client Services is run by U.S. Senate Majority Leader Mitch McConnell's former chief of staff, Steven Law, two former McConnell staffers, Hunter Bates and Brendan Dunn are partners at lobbying firm Akin Gump Strauss Hauer & Feld and the firm lobbied Congress for Altria on tobacco 21 legislation.<sup>18</sup> Hazen Marshall, Mitch McConnell's former policy director, registered to lobby for Altria on "issues related to the regulation of tobacco products, tobacco excise taxes, corporate taxes, and Tobacco 21 legislation" in April and Texas Senator John Cornyn's recent chief of staff left Congress in January to open a lobbying firm called Marshall & Popp.<sup>19</sup>

The United States rule promulgation system is extremely complex involving multiple agencies and oversight and guidance by both the executive and legislative branches. Navigating the system is difficult, and individual officials who understand it need not be in powerful positions to strongly influence results. The tobacco industry has long been successful in placing its former employees in key positions throughout the bureaucracy.

#### 7. Preventive measures

The FDA Tobacco Scientific Advisory Committee provides links to agendas, rosters, webcasts, presentations, public submissions, minutes and questions for their meetings. Federal oversight is also conducted by several government agencies (for example FDA, Internal Revenue Service [IRS], the Centers for Disease Control [CDC] and ATB).

However, there is no code of conduct for government officials when dealing with the private sector. In fact, there are no policies that disallow acceptance of gifts or contributions from the industry to government agencies and officials. There are also no awareness programs regarding WHO Framework Convention on Tobacco Control (FCTC) Article 5.3 to help guide public officials in dealing with the tobacco industry.

<sup>1</sup> <https://www.fda.gov/advisory-committees/committees-and-meeting-materials/tobacco-products-scientific-advisory-committee>.

<sup>2</sup> <https://www.opensecrets.org/federal-lobbying/industries/summary?cycle=2019&id=A02>.

<sup>3</sup> <https://www.opensecrets.org/federal-lobbying/industries/summary?cycle=2018&id=A02>.

<sup>4</sup> <https://publicintegrity.org/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/>.

<sup>5</sup> <https://blogs.bmj.com/tc/2020/03/22/world-tobacco-industry-hydras-many-political-investment-heads/>.

<sup>6</sup> <https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21>.

<sup>7</sup> <https://publicintegrity.org/state-politics/copy-paste-legislate/big-tobaccos-surprising-new-campaign-to-raise-the-smoking-age/>.

<sup>8</sup> [https://tobaccotactics.org/index.php/CSR\\_Strategy](https://tobaccotactics.org/index.php/CSR_Strategy).

<sup>9</sup> Hartmann-Boyce J, Begh R, Aveyard PJB. Electronic cigarettes for smoking cessation. 2018;360:j5543.

<sup>10</sup> <https://www.cspdailynews.com/tobacco/pmta-deadline-delay-granted>.

<sup>11</sup> <https://truthinitiative.org/research-resources/emerging-tobacco-products/action-needed-e-cigarettes>.

<sup>12</sup> <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>.

<sup>13</sup> <https://www.politico.com/newsletters/politico-influence/2019/05/14/republican-lobbyists-to-mingle-with-mccconnell-at-nrsc-fundraiser-436358>.

<sup>14</sup> <https://www.npr.org/2019/06/17/730496066/tobaccos-special-friend-what-internal-documents-say-about-mitch-mccconnell>.

<sup>15</sup> Matheny JD, Stevens EM, Chen S, Christiansen BA, Kowitt SD, Osman A, Vidrine DJ. The RICO Verdict and Corrective Statements: Catalysts for Policy Change? *Tob Regul Sci*. 2019;5(3):206-228.

<sup>16</sup> <https://www.opensecrets.org/industries/totals.php?cycle=2020&ind=a02>.

<sup>17</sup> <https://www.opensecrets.org/federal-lobbying/industries/lobbyists?cycle=2019&id=A02>.

<sup>18</sup> <https://readsludge.com/2019/05/28/mccconnells-tobacco-21-bill-exposes-states-to-big-tobaccos-wishlist/>.

<sup>19</sup> <https://readsludge.com/2019/05/28/mccconnells-tobacco-21-bill-exposes-states-to-big-tobaccos-wishlist/>.

## Recommendations

- 1. Ratify the WHO FCTC.** The United States participated in the negotiations and signed the WHO FCTC. However, it remains to be a non-party to the treaty. Thus, it should ratify the WHO FCTC and enact a federal law that will implement it.
- 2. Restrict lobbying.** Lobbying is constitutionally protected, and a total ban is impossible. However, lobbying may be restricted by requiring full disclosure of expenditures related to tobacco control legislation. Since the tobacco industry operates as furtively as it can, full disclosure requirements will deter it in interfering with public policy.
- 3. Adopt an official code of conduct.** 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 from industries sought to be regulated. Strict rules against conflict of interest should be implemented.
- 4. Require disclosures of interaction with the tobacco industry.** Government officials should disclose interactions with tobacco industry representatives, including transcripts of meetings.
- 5. Divest from tobacco.** Several states and localities have already complied with Article 5.3 requirements to divest from tobacco; others should follow.
- 6. Educate lawmakers to leverage support.** Advocates can share fact sheets to inform lawmakers of key findings from the federal racketeering case. They can also identify and distribute state-specific quotes from internal tobacco industry documents illustrating examples of historical interference in each state. Advocates can also leverage strong public support for lawmakers to correct all current laws influenced by tobacco companies (including preemption). Advocates can also leverage earned media strategies to raise awareness of tobacco industry interference and the need to enact effective policies.