

Tobacco Control and Great Expectations

A *New Yorker* cartoon from the late eighties shows an elderly tycoon in a country club looking up from his newspaper and remarking to a fellow tycoon, “The poor are getting poorer, but with the rich getting richer, it all averages out in the long run.”

Twenty years later, this punch line falls flat. As the U.S. spirals into its worst economic crisis since 1929, all of us—the richer, the poorer, and in-between—eye the future with apprehension. We may not be in the same boat, but we face the same economic tides and headwinds. And based on the view from the crow’s nest, this is fixing to be one rough voyage. At least, that’s the expectation.

It’s hard these days to avoid talk about expectations. High expectations for the new administration, coupled with grim expectations for the U.S. economy, at least in the immediate future. Expectations that health care and medical costs will rise, contributing to the nation’s \$1.2 trillion budget deficit, and that the staggering health and economic toll from preventable causes of disease and death will remain unchecked.

Tobacco continues to play its fifty-year-old starring role in this health care scenario. According to the latest studies from the Centers for Disease Control and Prevention, approximately 19.8 percent of all U.S. adults still smoke. The number of people in the U.S. who die annually from cigarette smoking has been depressingly consistent for more than a decade—approximately 400,000. Another 8.6 million people in the U.S. currently suffer from smoking-caused illness. The total annual U.S. public and private health care expenditures caused by smoking are \$96 billion. And the annual U.S. health care expenditures resulting solely from secondhand smoke exposure are \$4.98 billion.

These costs don’t even address the productivity losses in the workplace caused by smoking each year (approximately \$97 billion) or, for example, the annual costs for health and developmental problems of infants and children caused by smoking parents (a projected \$1.4 to \$4.0 billion). Unless the prevalence of smoking in the U.S. declines, these figures will continue to rise. This, despite a brickyard of medical evidence that tobacco use and secondhand smoke cause illness and death, and that tobacco-related health care costs have a remarkable impact on our economy.

What about legal measures to advance U.S. tobacco control and prevention policies in the coming year? As public health lawyers, we naturally base our expectations on legal precedent.

Legislation. As of January 2009, thirty states, the District of Columbia, Puerto Rico and hundreds of municipalities have enacted strong smoke-free laws, representing approximately 70 percent of the U.S. population. Local governing authorities and boards of health continue to adopt restrictive smoke-free policies for a variety of venues, including outdoor settings such as hospital and college campuses, parks, and beaches. A growing number of housing authorities are adopting smoke-free policies in multi-unit residences, and several states and local communities have passed, and more are about to pass, laws prohibiting smoking in private vehicles when children are passengers. The age of smoke-free living is upon us, and there’s no turning back.

Litigation. With more smoke-free laws and policies will come more legal challenges, many of which will be based on familiar preemption or constitutional grounds. If experience is any guide, few of these challenges to smoke-free laws will prevail. In other tobacco-related litigation, the U.S. Supreme Court in *Altria Group v. Good* recently upheld the ability of “light” cigarette smokers to sue tobacco manufacturers for deceptive marketing. This ruling allows current “light” cigarette lawsuits to continue. Whether future “light” cigarette cases will be allowed to proceed may depend on the outcome of proposed legislation that would give the U.S. Food and Drug Administration authority to regulate tobacco products.

Regulation. In the meantime, and in the absence of federal regulation, the tobacco industry will continue to market smokeless tobacco and novel nicotine delivery products, such as electronic nicotine inhalers and battery-powered e-cigarettes, and to promote kid-friendly products such as candy- and fruit-flavored cigarettes. Some states will do what is in their power to regulate tobacco products on their own (twenty-two states, for example, have passed laws requiring in-state sale of reduced ignition propensity, or “fire-safe,” cigarettes); and some states and local communities are likely to follow Boston and San Francisco’s examples and pass laws banning cigarette sales in drug stores. For the overall regulation of tobacco products, though, the heavy lifting is likely to be left to the feds. Whether the pending FDA legislation passes or not, increased regulatory oversight of tobacco products is long overdue.

The urgent need to improve our nation’s economy and overburdened health care system only highlights the importance of innovative laws and policies that will reduce smoking-related disease, disability and death. All talk of crossroads, crucibles, dawns, and dark ages aside, this is an historic moment in the U.S. economy. When it comes to tobacco and the law, cold hard science has made our case for us. To preserve, protect and promote public health, and boost our faltering economy, we can do no greater good than work to eliminate the use of the single most dangerous legal product in U.S. consumer society.

Unachievable? Well then, this is a time of great expectations. And perhaps a bit of the vision thing. Besides, as that innovator/visionary Thomas Edison once famously remarked, “If we did the things we are capable of, we would astound ourselves.”

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For more information about tobacco-related legal decisions and legislation, visit the Tobacco Control Legal Consortium’s website at www.tclconline.org.

