



LOCATION, LOCATION, LOCATION: TOBACCO & E-CIG POINT OF SALE

Regulating Retailers for Public Health



Tips and Tools

The 1998 Master Settlement Agreement dramatically shifted the U.S. landscape of commercial tobacco regulation. However, it insufficiently addressed many aspects of tobacco retail-based regulation.¹ Retailers are the primary marketing venue for tobacco products, driving sales and use.² As a result, tobacco control policy has increasingly focused on retailers by, for example, limiting their number and restricting their location, as recommended by the Institute of Medicine³ and the U.S. Surgeon General.⁴ This publication outlines policy and legal considerations for regulating both tobacco and electronic cigarette retailer locations to improve public health. We encourage you to consult with local legal counsel before attempting to implement these measures.

Policy Rationale

Why does the location of tobacco and e-cigarette retailers matter for public health? Tobacco retailers have become the site of intensified



marketing in recent years. Since the Master Settlement Agreement was reached in 1998, annual tobacco company spending to market products at retail locations has increased 85 percent, from \$4.7 billion to \$8.7 billion in 2016.⁵ Now, over 90 percent of all tobacco companies' marketing budget is spent at the point-of-sale,⁶ including price discounts, which account for

two-thirds of all tobacco industry spending on cigarette advertising and promotions,⁷ and other incentive programs.⁸ As a result, three out of every four tobacco retailers in the United States displays at least one tobacco product price promotion.⁹

These point-of-sale tobacco promotions work. They increase impulse purchases among smokers and enhance the urge to purchase among recent quitters. They are also strongly associated with smoking initiation,¹⁰ particularly among youth,¹¹ who make up the vast majority of new users.¹² Moreover, point-of-sale advertising is more common in neighborhoods that are, on average, younger,¹³ more racially diverse, and lower income.¹⁴ These point-of-sale promotions are more common at tobacco retailers near schools and where teens are likely to shop.¹⁵ Convenience stores, for example, are popular among teenage shoppers¹⁶ and feature significantly more tobacco advertising and promotions compared to other stores.¹⁷

Tobacco retailers are also often concentrated in communities at higher risk for adverse health outcomes,¹⁸ including communities whose residents have lower incomes, greater racial diversity, and lower educational attainment.¹⁹ Indeed, the tobacco industry targets its retail outlet advertising to people from these communities by spending considerably more on in-store tobacco advertising in racially diverse and low-income neighborhoods.²⁰ Sales to minors, which occur 18 percent of the time,²¹ are also more common at tobacco retailers located in neighborhoods with a higher proportion of young and racial minority residents.²²

The location and density of tobacco retailers influences tobacco use among residents living in those communities.²³ More than 40 percent of U.S. teens live or attend school near a tobacco retailer.²⁴ Moreover, youth who live or attend school in neighborhoods with the highest density of tobacco outlets or retail tobacco advertising have higher smoking rates compared to youth who live or attend school in neighborhoods with fewer or no tobacco outlets.²⁵ Young adults living in neighborhoods with greater tobacco retail density initiate use of non-cigarette combustible tobacco products (e.g., cigars, cigarillos, hookah) and experiment with cigarettes more than young adults residing in neighborhoods with lower tobacco retail density.²⁶ And for current adult smokers, living less than 500 meters from a tobacco retailer significantly decreases their chances of quitting and remaining abstinent.²⁷

Similar trends are emerging with e-cigarettes.²⁸ Between 2015 and 2017, e-cigarette retail sales increased 70 percent (from \$775 million to \$1.3 billion),²⁹ and jumped again from 2017 to 2018 by 77 percent, which is largely attributed to the rapid uptake of JUUL.³⁰ Some 11 million adults use e-cigarettes daily,³¹ but use has reached epidemic levels among youth and younger adults.³² Between 2011 and 2015, e-cigarette use increased 900 percent among youth,³³ and today 20 percent of 18- to 29-year-olds use e-cigarettes regularly or occasionally.³⁴ This marked uptake

has been driven by a proliferation in flavored and menthol products,³⁵ which youth and young adults overwhelmingly prefer.³⁶

Advertising exposure is also a key factor, reducing concerns among teens about the harms and addictiveness of e-cigarettes and influencing use patterns.³⁷ In particular, retail-based advertising exposure is increasing among youth, even compared to other advertising channels, such as the Internet, television, and print media. Between 2014 and 2016, the percentage of middle and high school students exposed to retail advertising of e-cigarettes increased from 55 percent to 68 percent.³⁸ This advertising exposure predicts e-cigarette use among youth,³⁹ which often leads to subsequent and established cigarette smoking⁴⁰ and other substance abuse behaviors.⁴¹

Retail locations, including tobacco retailers, represent one important segment of the e-cigarette market, with the vast majority of tobacco retailers — over 90 percent in some states⁴² — now selling e-cigarettes.⁴³ However, an estimated 3,500 vape shops, or dedicated e-cigarette retailers, now operate in the U.S.,⁴⁴ driving a significant, and increasing, proportion of e-cigarette sales, in part because of their appeal as social lounges rather than traditional retailers.⁴⁵ E-cigarette retail locations also cluster near schools⁴⁶ and universities,⁴⁷ which results in easy access to e-cigarette among youth.⁴⁸ Vape shops also tend to be located in areas with tobacco retailer density⁴⁹ and to adopt marketing practices designed to appeal to youth and young adults, such as discounts, sampling and loyalty programs.⁵⁰ However, vape shops and other e-cigarette retailers have largely fallen outside state⁵¹ and federal regulation until only recently, when the U.S. Food and Drug Administration's deeming regulations took effect for e-cigarette retailers⁵² and the agency intensified its enforcement of minimum age laws for e-cigarette purchases.⁵³

Communities interested in regulating the quantity, location, or density of tobacco retailer locations have several options, including regulating the types of retailers that can sell tobacco products and where they can be located.

Policy Options and Efficacy

The following approaches could be used singly or in combination to limit the number of tobacco and e-cigarette retail outlets, control where they are located, and reduce retailer density within neighborhoods. Licensing and zoning laws are two approaches that allow jurisdictions to regulate how tobacco and e-cigarette retailers do business and where they can do business by conditioning the grant or renewal of a license or permit on the performance or non-performance of specific activities. One condition, used by some jurisdictions, is a cap on the number of licenses issued, which limits the number of tobacco and e-cigarette retailers



in a jurisdiction. For more information about stand-alone and multi-pronged policy options to regulate tobacco and e-cigarette retailers through licensing and zoning authority, please see the Consortium’s publication *Using Licensing and Zoning to Regulate Tobacco Retailers*.⁵⁴

- **Restrict the types of businesses that can sell tobacco, e-cigarettes, and related products:** Licensing laws are commonly applied to restrict tobacco and e-cigarette retail locations. In recent years, more jurisdictions have opted to set policy in this area,⁵⁵ and currently, 39 states and the District of Columbia have some type of tobacco retailer licensing law.⁵⁶ At this point, only 16 states and the District of Columbia require a retail license to sell e-cigarettes.⁵⁷ Stand-alone ordinances can also be used. One option is to replicate the approach some jurisdictions take with alcohol retailers and restrict tobacco and e-cigarette sales to specialty shops, which prohibit entrance by underage people.⁵⁸ Jurisdictions can also prohibit businesses or organizations with a principally social mission from operating as tobacco and e-cigarette retailers. For example, dozens of communities now prohibit pharmacies and other healthcare institutions from also operating as tobacco retailers.⁵⁹ Some have also extended this prohibition to educational institutions.⁶⁰ California and Massachusetts, two states with many municipalities with tobacco-free pharmacy laws,



experienced reductions in tobacco retailer density after the laws were enacted.⁶¹ Some national retail chains, including CVS and Target, voluntarily stopped selling tobacco products, which had a noticeable impact on overall cigarette sales in the U.S.⁶² However, many other retail chains continue to sell tobacco products while also operating pharmacies and/or on-site clinics.⁶³

- **Regulate where tobacco and e-cigarette retail outlets can be located:** Communities can restrict how close tobacco and e-cigarette retailers can be to each other, or to schools, or other areas frequented by children and adolescents.⁶⁴ Proximity restrictions to schools are not only supported by residents,⁶⁵ but effective strategies to limit youth access to tobacco and e-cigarette retailers. A 2015 study that examined proximity restrictions in North Carolina found that a statewide 500-foot minimum distance requirement between tobacco retailers would remove 1,640 outlets and reduce density by 22 percent, and a state-level 1000-foot near-school ban would remove 1,323 tobacco retailers and reduce density by 18 percent.⁶⁶ The study found similar reductions if the same policies were enacted at the county level, and even greater reductions — roughly 30 percent — when a near-school ban was combined with a pharmacy ban. Similarly, recent policy simulation research found politically-feasible combined policies can reduce tobacco retailer density more so than any single (even ambitious) policy.⁶⁷ Further, school proximity sales bans have shown particularly strong potential for reducing socioeconomic and racial disparities by reducing retailer density by 72 percent in the lowest income neighborhoods.⁶⁸ However, an important externality to consider is whether such spacing restrictions cause retailers to concentrate in certain areas outside of the prohibited areas.
- **Cap the number of tobacco and e-cigarette retailers in a defined area:** Communities can also limit the number of licenses issued for tobacco and e-cigarette retailers, which may also help address concerns about retailers concentrating in particular neighborhoods.⁶⁹ One option is to set a cap on the total number of licenses or permits that can be held within a jurisdiction, and require any prospective tobacco or e-cigarette retailer in excess of the cap to join a waiting list until an existing license becomes available. The second alternative also sets a total cap, but when a license is not renewed (for example, if a retailer closes or chooses to stop selling tobacco products), it is permanently retired, effectively reducing the overall number of licenses over time. Caps can be applied based on a geographic boundary, such as the City of Saint Paul's total cap of 242 retailers⁷⁰ or San Francisco's cap of 45 tobacco retailer permits for each of its 11 city districts.⁷¹ Another cap option is to use population density, which Philadelphia did for its 2017 law that established a cap of one tobacco retailer per 1,000 residents for each of its 18 districts.⁷²



Policy Elements

Well-crafted tobacco retailer location policies are explicit. They detail the specific restrictions used, implementation steps, and enforcement mechanisms. As a result, these policies are more likely to withstand legal challenges. Here are a few elements found in such policies:

- **Timely, community-specific findings and a clear statement of purpose:** Findings are brief statements of fact or statistics that outline the issue being addressed, support the need for the policy, and help clarify the policy goals. If data are available or can be collected about the density, location, and number of tobacco retailers within specific areas of a community, this information should be included to make the findings as relevant and strong as possible.
- **Statement of authority:** It may be useful to include either in the findings or in a separate provision of the law a clear, concise, and well-researched statement explaining the local government unit's authority to enact the law—whether the unit is a city council, board of health, or other local government entity. This statement could help avoid arguments that the local government lacks the authority to pass the law because of preemption, lack of home rule authority, or some other reason (see below).
- **Clear definitions and concise language:** Clearly define critical terms such as “tobacco product,” “health care institution,” or “educational institution.” Draft the definition of “tobacco product” to include a broad range of products such as flavored cigars, little cigars, spit/chewing tobacco, e-cigarettes, dissolvable tobacco products, flavored tobacco lozenges, and other emerging smokeless products.
- **Clear statement of how the law will be enforced:** The law should clearly describe the restrictions on tobacco and e-cigarette retail locations. The enforcement provision should state who or what department is responsible for enforcing the law. The penalties section of the policy should clearly identify when persons can be found in violation of the policy, and the penalties or fines imposed for first, second, and subsequent violations, as appropriate.
- **Well-planned implementation process:** Because any of these options are likely to affect existing retail outlets, a practical and well-thought out plan for implementation will be important. When setting a date for the policy to take effect, consider how much time the responsible authorities will need to establish the necessary procedures for implementation and enforcement, to notify affected businesses of their obligations under the policy, and for businesses to take the steps necessary to comply. Establish a process for publicizing the policy and educating the community about why it is needed and how it will be implemented, and include procedures for receiving, tracking, and following up on complaints.

Challenges

The tobacco industry and its allies have a history of challenging tobacco control measures in court, particularly with novel regulatory approaches. Although challenges to tobacco and e-cigarette retailer restrictions have not been very successful, tobacco companies have long sought to influence the retail industry and garner retailer support to oppose policy and regulation.⁷³ For example, the National Association of Tobacco Outlets, a trade association of tobacco retailers that launched in 2001 with funding from the tobacco industry, has increasingly focused on influencing local government policy.⁷⁴

Past cases indicate that limitations on the kinds of institutions or businesses that can operate as tobacco and e-cigarette retail outlets will be on solid legal footing so long as three conditions apply: (1) the jurisdiction has the authority to pass the law; (2) there is a rational basis for the restriction; and (3) the law applies uniformly to similar types of businesses (i.e., all stores with pharmacies, regardless of their size or type of inventory). In a series of lawsuits on First Amendment, Equal Protection, Due Process, and state law preemption grounds, the tobacco industry challenged a set of San Francisco laws that prohibited retailers with pharmacies from also serving as tobacco retail outlets.⁷⁵ These challenges were largely unsuccessful: the only successful case was an Equal Protection challenge brought by a drug store chain on the grounds that an exemption in the law for “big box” and grocery stores was unfair.⁷⁶ After the exemption was removed, however, the law was upheld.⁷⁷

Generally, jurisdictions considering options for restricting tobacco and e-cigarette retailer locations should consider the following legal issues:

- **Authority:** The governmental unit needs to have the power to enact the law. While states often have the power to pass these kinds of retailer restrictions, a local government’s authority to do so depends largely upon what authority a state has preserved for itself and what it has delegated to local governments through special legislation, home rule charters, or similar laws. Additionally, for local governments, it is important to assess whether local authority has been preempted by state law. Preemption occurs when a higher level of government (e.g., federal or state) eliminates or limits the authority of a lower level of government (e.g., state or local) to regulate a certain issue. Preemption is a frequent tobacco industry strategy. For example, the industry has pushed to include language in state youth access laws that could preempt local government authority to pass any tobacco control laws.⁷⁸ As noted above, the San Francisco law prohibiting stores with pharmacies from selling tobacco products was challenged as being preempted by state pharmacy



regulations.⁷⁹ Although this argument did not win in California, preemption arguments are jurisdiction-specific so there could be different outcomes in other states.

- **Existing businesses:** Regardless of the policy option chosen, part of the process should include an analysis of how the proposed restrictions would affect existing businesses whose location would be out of compliance. Drafters should fully understand the legal ramifications of placing restrictions on such businesses, and be prepared to address arguments that retailers have a vested property interest or rights in selling tobacco products at that location. Generally, a license to sell products is considered a privilege, not a right, but how courts treat licenses can vary across jurisdictions. Drafters may also wish to consider ways to implement the law that would mitigate the impact on existing businesses, such as by allowing staggered implementation dates.

In addition, communities should consider the limitations of tobacco retailer location restrictions and how such policies may fit within broader tobacco control strategies.⁸⁰



Select Legislation and Policies

The following examples of enacted policies illustrate how various jurisdictions have regulated tobacco and e-cigarette retailer location and density. The Tobacco Control Legal Consortium does not endorse or recommend any of these policies. We have included these examples simply to show how various jurisdictions have regulated tobacco retailer locations. A state or local government should ensure that any language adapted from the policies below is appropriate, practical, and legal for its jurisdiction.

Common Providers

| Law | Excerpts from Law |
|--|---|
| <p>Jurisdiction: West Hollywood, CA</p> <p>Ordinance/Statute: <u>West Hollywood Municipal Code, Chapter 7.32, Tobacco Sales Near Schools</u></p> | <p>7.32.010 Purpose. It is the policy of the state of California to reduce smoking by young people.... The sale of tobacco in close proximity to schools frustrates the successful implementation of state policy by facilitating sales to young people who regularly congregate in the vicinity of and pass by these retailers on their way to and from their schools.... Although it is unlawful to sell tobacco products to minors, studies show that eight and six-tenths percent of California retailers surveyed do sell to minors.... The purpose of the ordinance codified in this chapter is to protect the health and welfare of the community by curtailing the grave public health consequences of early addiction to nicotine.</p> <p>...</p> <p>7.32.030 Tobacco Sales Near Schools Prohibited. It is unlawful to sell or dispense cigarettes or tobacco products within six hundred feet of any public or private school, measured from the nearest point of the property line of the school to the nearest of the property line of the tobacco retailer.</p> <p>...</p> |
| <p>Jurisdiction: Groton, CT</p> <p>Ordinance/Statute: <u>Groton Code of Ordinances, Chapter 8.5, Article III</u></p> | <p>Sec. 8.5-81. Findings. The Town of Groton finds:</p> <p>(1) G.S. §§ 53-344 and 53-344a make it unlawful for any person engaged in the manufacture of sale of cigarettes to sell, barter, give or deliver cigarettes to any individual under the age of 18 years; and</p> <p>(2) Cigarettes are the most heavily advertised consumer product in the United States and the tobacco industry spends more than \$8.24 billion on advertising and promotion of cigarettes; and</p> |

Common Providers

| Law | Excerpts from Law |
|--|--|
| <p>Jurisdiction: Groton, CT</p> <p><i>(continued)</i></p> | <p>(3) Connecticut medical costs related to treating smoking related diseases exceeds \$1 billion every year; and</p> <p>...</p> <p>(6) In Connecticut nearly one of every three high school students and 13 percent of middle school children used tobacco within the last 30 days; and</p> <p>(7) Every year, 12,000 Connecticut children become daily smokers; and</p> <p>(8) The average start smoking age in Connecticut is 11 years old; and</p> <p>(9) Current laws and regulations have proved ineffective and inadequate in preventing the illegal purchase of cigarettes by children under the age of 18 years, particularly from cigarette vending machines; and</p> <p>(10) G.S. § 12-289a(h) authorizes a town or municipality to ban or significantly restrict the placement of vending machines for cigarettes, tobacco or smokeless tobacco products.</p> <p>Sec. 8.5-82. Prohibited.</p> <p>No person shall dispense, or cause to be dispensed, cigarettes, tobacco or smokeless tobacco products from vending machines at any location within the town. A vending machine means a machine used for the purpose of automatically merchandising packaged cigarettes, tobacco or smokeless tobacco products after the proper amount of payment by the purchaser....</p> <p>...</p> |

| | |
|---|--|
| <p>Jurisdiction: Boston, MA</p> <p>Ordinance/Statute: <u>Boston Public Health Commission Regulation</u></p> | <p>Section I: Definitions</p> <p>...</p> <p>Health care institution: an individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.</p> <p>...</p> <p>Educational institution: any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.</p> |
|---|--|

Common Providers

| Law | Excerpts from Law |
|--|--|
| <p>Jurisdiction: Boston, MA</p> <p><i>(continued)</i></p> | <p>Retail establishment: any store that sells goods or articles of personal services to the public.</p> <p>Tobacco products: any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe, tobacco, snuff, chewing tobacco and dipping tobacco.</p> <p>Section II: Prohibition Against the Sale of Tobacco Products by Health Care Institutions</p> <p>No health care institution located in the City of Boston shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.</p> <p>Section III: Prohibition Against the Sale of Tobacco Products by Educational Institutions</p> <p>No educational institution located in the City of Boston shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.</p> <p>...</p> |
| <p>Jurisdiction: San Francisco, CA</p> <p>Ordinance/Statute: <u>Ordinance 259-14,</u> <u>Section 19H.4</u></p> | <p>SEC.19H.4. APPLICATION PROCEDURE: INSPECTION OF PREMISES; ISSUANCE AND DISPLAY OF PERMIT</p> <p>...</p> <p>(f) Grounds for Denial.</p> <p>...</p> <p>(3) No new permit shall be issued if the Applicant will be within 500 feet of the nearest point of the property line of a School as measured by a straight line from the nearest point of the property line on which a School is located to the nearest point of the property line on which the Applicant's Establishment will be located.</p> <p>(4) No new permit shall be issued if the Applicant will be located within 500 feet of the nearest point of the property line of an existing Establishment as measured by a straight line from the nearest point of the property line on which the Applicant's Establishment will be located to the nearest point of the property line of the existing Establishment.</p> <p>(5) No new permit shall be issued in any supervisorial district that has 45 or more Establishments with Tobacco Sales permits.</p> |

Common Providers

| Law | Excerpts from Law |
|--|--|
| Jurisdiction: San Francisco, CA (continued) | (6) No new permit shall be issued to any Applicant whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises, including Bars and Restaurants. (7) No new permit shall be issued to any Applicant for operation of a Tobacco Shop. (8) No new permit shall be issued for a location not previously occupied by a permitted Establishment. |

Other Helpful Resources

The [Public Health Law Center](#) has a [webpage](#) detailed to the tobacco retail environment and licensure, including publications that discuss tobacco point-of-sale policy options, including resources relating to [licensing](#) and [zoning laws](#), [retail sales restrictions](#), [marketing and distribution restrictions](#), and [preemption](#). For more information about how federal law impacts the retail environment, see the Consortium's publication [Federal Regulation of Tobacco and Its Impact on the Retail Environment](#). In addition, the Consortium's publication, [Cause & Effect: Tobacco Marketing Increases Youth Tobacco Use](#), summarizes findings from the 2012 U.S. Surgeon General's Report on Youth and Young Adult Tobacco Use, including findings related to how tobacco retailer location and density impact public health.

Contact Us

Please feel free to contact the Public Health Law Center's Tobacco Control Legal Consortium at publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, made possible with funding from the Centers for Disease Control and Prevention.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.



Endnotes

- 1 Douglas Luke et al., *Tobacco Retail Policy Landscape: A Longitudinal Survey of US States*, 25 TOBACCO CONTROL (Supp. 1) i44–i51 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5099223>.
- 2 The promotion and sale of tobacco products online, particularly electronic cigarettes, has also markedly increased in recent years despite regulation and voluntary efforts by credit card companies, PayPal, and private shipping companies. While this remains an important issue for tobacco control policy, this document focuses on brick and mortar retail locations. For more information about online sales of tobacco products, see Tobacco Control Legal Consortium, *E-Cigarettes and Other Tobacco Products Online: Preventing Sales to Kids* (2016), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-online-tobacco-products-kids-2016.pdf>.
- 3 Richard J. Bonnie et al., Inst. of Med., *Ending the Tobacco Problem: A Blueprint for the Nation* (2007).
- 4 U.S. DEP'T OF HEALTH & HUMAN SERVS, PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL 545 (2012) [hereinafter 2012 U.S. Surgeon General's Report].
- 5 U.S. FED. TRADE COMM'N, FEDERAL TRADE COMMISSION CIGARETTE REPORT FOR 2016 (2018), https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc-cigarette_report_for_2016_0.pdf.
- 6 *Id.*
- 7 *Id.*
- 8 Ellen C. Feighery et al., *Retailer Participation in Cigarette Company Incentive Programs is Related to Increased Levels of Cigarette Advertising and Cheaper Cigarette Prices in Stores*, 38 PREVENTIVE MED. 876–84 (2004).
- 9 Kurt Ribisl et al., *Disparities in Tobacco Marketing and Product Availability at the Point of Sale: Results of a National Study*, 105 PREVENTIVE MED. 381–88 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28392252>.
- 10 Lindsay Robertson et al., *A Systematic Review of the Impact of Point-of-Sale Tobacco Promotion on Smoking*, 17 NICOTINE & TOBACCO RES. 2–17 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4832971>.
- 11 2012 U.S. SURGEON GENERAL'S REPORT, *supra* note 4, at 543; see also Lisa Henriksen et al., *Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?*, 47 PREVENTATIVE MED. 210–12 (2008); William J. McCarthy et al., *Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students*, 99 AM. J. OF PUB. HEALTH 2006, 2011–2012 (2009); Sandy J. Slater et al., *The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake*, 161 ARCH. PEDIATR. ADOLESC. MED. 440 (2007); Nina Schleicher et al., *Tobacco Outlet Density Near Home and School: Associations with Smoking and Norms Among Teens*, 91 PREVENTIVE MED. 287–93 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5065244>.
- 12 People are most likely to start smoking when they are 15 or 16 years old, and 88 percent of all adult daily smokers tried their first cigarette by the age of 18 years old. See, e.g., U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL* (2014), https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm.
- 13 Kurt Ribisl et al., *supra* note 9.
- 14 Joseph J. Lee et al., *A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing*, 105 AM. J. PUB. HEALTH e8–e18 (2015), <https://www.ncbi.nlm.nih.gov/pubmed/26180986>.
- 15 2012 U.S. SURGEON GENERAL'S REPORT, *supra* note 4, at 600.
- 16 Teenagers are an important customer segment for convenience stores, with 70 percent of adolescents shopping at them at least weekly. *Id.* at 543.



- 17 See, e.g., Ellen C. Feighery et al., *An Examination of Trends in Amount and Type of Cigarette Advertising and Sales Promotions in California Stores, 2002–2005*, 17 *TOBACCO CONTROL* 93 (2008); Rachel Widome et al., *The Relationship of Neighborhood Demographic Characteristics to Point-of-Sale Tobacco Advertising and Marketing*, 18 *ETHNICITY & HEALTH* 136–51 (2013).
- 18 Daniel Rodriguez et al., *Predictors of Tobacco Outlet Density Nationwide: A Geographic Analysis*, 22 *TOBACCO CONTROL* 349–55 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3431432>.
- 19 See, e.g., Andrew Hyland et al., *Tobacco Outlet Density and Demographics in Erie County NY*, 93 *AM. J. PUB. HEALTH* 1075, 1075 (2003); Michael B. Laws et al., *Tobacco Availability and Point of Sale Marketing in Demographically Contrasting Districts of Massachusetts*, 11 *TOBACCO CONTROL* ii71 (2002) (Massachusetts study); Scott P. Novak et al., *Retail Tobacco Outlet Density and Youth Cigarette Smoking: A Propensity-Modeling Approach*, 96 *AM. J. PUB. HEALTH* 670, 673–74 (2006) (Chicago study); N. Andrew Peterson et al., *Tobacco Outlet Density, Cigarette Smoking Prevalence, and Demographics at the County Level of Analysis*, 40 *SUBSTANCE USE & MISUSE* 1627, 1630 (2005) (Iowa study); Joshua H. West et al., *Does Proximity to Retailers Influence Alcohol and Tobacco Use Among Latino Adolescents?*, 12 *J. IMMIGRANT & MINORITY HEALTH* 626, 631 (2010) (California study).
- 20 2012 U.S. SURGEON GENERAL'S REPORT, *supra* note 4, at 542–43.
- 21 Retailer violation rates for tobacco product sales to minors are also comparable for cigarettes and electronic cigarettes. See Arnold H. Levinson et al., *Assessment of the US Federal Retailer Violation Rate as an Estimate of the Proportion of Retailers That Illegally Sell Tobacco to Adolescents*, *JAMA PEDIATRICS* (Aug. 20, 2018), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2696520>; see also Arnold H. Levinson, *Nicotine Sales to Minors: Store-Level Comparison of E-Cigarette Versus Cigarette Violation Rates*, 20 *NICOTINE & TOBACCO RES.* 267–70 (2018).
- 22 Joseph G. L. Lee et al., *Inequalities in Tobacco Retailer Sales to Minors by Neighborhood Racial/Ethnic Composition, Poverty, and Segregation, USA, 2015*, 25 *TOBACCO CONTROL* (E2) e142–e145 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5177468>.
- 23 Novak et al., *supra* note 19, at 674–75; Ying-Chih Chuang et al., *Effects of Neighbourhood Socioeconomic Status and Convenience Store Concentration on Individual Level Smoking*, 59 *J. EPIDEMIOLOGY & COMMUNITY HEALTH* 568, 570–71 (2005).
- 24 A 2016 study of a nationally representative sample of US households found that 41 percent of 13–16 year olds lived within a half mile of a tobacco retailer, and 44 percent attended a school within 1000 feet of a tobacco retailer. See Nina Schleicher et al., *Tobacco Outlet Density Near Home and School: Associations with Smoking and Norms Among Teens*, 91 *PREVENTIVE MED.* 287–93, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5065244>.
- 25 Henriksen et al., *supra* note 11; Scott T. Leatherdale & Jocelyn M. Strath, *Tobacco Retailer Density Surrounding Schools and Cigarette Access Behaviors Among Underage Smoking Students*, 33 *ANNALS OF BEHAV. MED.* 105, 106 (2007); McCarthy et al., *supra* note 11; Joshua H. West et al., *Does Proximity to Retailers Influence Alcohol and Tobacco Use Among Latino Adolescents?*, 12 *J. IMMIGRANT & MINORITY HEALTH* 626, 631 (2010); Sharon Lipperman-Kreda et al., *Local Tobacco Policy and Tobacco Outlet Density: Associations with Youth Smoking*, 50 *J. ADOLESCENT HEALTH* 547–52 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3360878>.
- 26 Jennifer Cantrell et al., *Tobacco Retail Outlet Density and Young Adult Tobacco Initiation*, 18 *NICOTINE & TOBACCO RES.* 130–37 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4830222>.
- 27 Jennifer Cantrell et al., *The Impact of the Tobacco Retail Outlet Environment on Adult Cessation and Differences by Neighborhood Poverty*, 110 *ADDICTION* 152–61 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4270891>; Anna Pulakka et al., *Association Between Distance from Home to Tobacco Outlet and Smoking Cessation and Relapse*, 176 *JAMA INTERNAL MED.* 1512–19 (2016), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2543750>.
- 28 See U.S. DEP'T OF HEALTH & HUMAN SERVS., *E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL* (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.
- 29 Jidong Huang et al., *Vaping versus JUULing: How the Extraordinary Growth and Marketing of JUUL Transformed the US Retail E-Cigarette Market*, *TOBACCO CONTROL* (May 31, 2018), doi: 10.1136/tobaccocontrol-2018-054382, <https://tobaccocontrol.bmj.com/content/early/2018/05/31/tobaccocontrol-2018-054382>.



30 *Id.*

- 31 Mohammadhassan Mirbolouk et al., *Prevalence and Distribution of E-Cigarette Use Among U.S. Adults: Behavioral Risk Factor Surveillance System*, 2016, 169 ANNALS INTERNAL MED. 429-38 (2018), <http://annals.org/aim/article-abstract/2698112/prevalence-distribution-e-cigarette-use-among-u-s-adults-behavioral>.
- 32 Statement from FDA Commissioner Scott Gottlieb, M.D., *On New Steps to Address Epidemic of Youth E-Cigarette Use* (Sept. 12, 2018), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>.
- 33 See Teresa W. Wang et al., *Tobacco Product Use Among Middle and High School Students — United States, 2011–2017*, 67 MORBIDITY & MORTALITY WKLY REP. 629–33 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5991815>. Between 2011 and 2015, electronic cigarette use increased 900 percent among youth. *Id.*
- 34 In comparison, 9 percent of all adults in the United States use electronic cigarettes regularly or occasionally. See Frank Newport, *Young People Adopt Vaping as Their Smoking Rate Plummet*, GALLUP (July 26, 2018), <https://news.gallup.com/poll/237818/young-people-adopt-vaping-smoking-rate-plummet.aspx>.
- 35 Between 2012 and 2016, the percentage of unique e-cigarette products that were flavored increased from 11 percent to 44 percent, and by 2016, 78 percent of e-liquid refill products were flavored. See Nicole M. Kuiper et al., *Trends in Unit Sales of Flavored and Menthol Electronic Cigarettes in the United States, 2012–2016*, 15 PREVENTING CHRONIC DISEASE 170576 (2018), https://www.cdc.gov/pcd/issues/2018/17_0576.htm. Unit sales of flavored e-cigarettes as a percentage of unit sales of all e-cigarettes increased from 2.4 percent in 2012 to 19.8 percent in 2016. *Id.*
- 36 Samane Zare et al., *A Systematic Review of Consumer Preference for E-Cigarette Attributes: Flavor, Nicotine Strength, and Type*, 13 PLOS ONE e0194145 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5854347>.
- 37 In 2014, 73 percent of youth in grades six through 12 believed electronic cigarettes were less harmful than combustible cigarettes, and nearly half believed they were less addictive. See Stephen M. Amrock et al., *Perceptions of E-Cigarette and Noncigarette Tobacco Products Among US Youth*, 138 PEDIATRICS e20154306 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079074>.
- 38 Kristy Marynak et al., *Exposure to Electronic Cigarette Advertising Among Middle and High School Students — United States, 2014–2016*, 67 MORBIDITY & MORTALITY WKLY REP 294–99 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5857199>.
- 39 Jia Pu & Xiao Zhang, *Exposure to Advertising and Perception, Interest, and Use of E-cigarettes Among Adolescents: Findings from the US National Youth Tobacco Survey*, 137 PERSP. IN PUB. HEALTH 322, 322–25 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28379069>.
- 40 See Brian A. Primack et al., *Progression to Traditional Cigarette Smoking After Electronic Cigarette Use Among US Adolescents and Young Adults*, 169 JAMA PEDIATRICS 1018–23 (2015), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2436539>; Samir Soneji et al., *Association Between Initial Use of e-Cigarettes and Subsequent Cigarette Smoking Among Adolescents and Young Adults*, 171 JAMA PEDIATRICS 788–97 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5656237>; Benjamin W. Chaffee et al., *Electronic Cigarette Use and Progression From Experimentation to Established Smoking*, 141 PEDIATRICS e20173594 (2018), <http://pediatrics.aappublications.org/content/141/4/e20173594.long>.
- 41 Sean E. McCabe et al., *Associations Between Early Onset of E-Cigarette Use and Cigarette Smoking and Other Substance Use Among US Adolescents: A National Study*, 20 NICOTINE & TOBACCO RES. 923–30 (2018).
- 42 Lacy Brame et al., *Electronic Nicotine Delivery System Landscape in Licensed Tobacco Retailers: Results of a County-level Survey in Oklahoma*, 6 BMJ OPEN e011053 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4908906>; Kimberly G. Wagoner et al., *Availability and Placement of Electronic Nicotine Delivery Systems at the Point-of-Sale*, 20 NICOTINE & TOBACCO RES. 1020–24, <https://www.ncbi.nlm.nih.gov/pubmed/29059443>.

- 43 See Shyanika W. Rose et al., *The Availability of Electronic Cigarettes in US Retail Outlets, 2012: Results of Two National Studies*, 23 *TOBACCO CONTROL* iii10, iii10–iii16 (2014); Daniel P. Giovenco et al., *E-Cigarette Market Trends in Traditional U.S. Retail Channels, 2012–2013*, 17 *NICOTINE & TOBACCO RES.* 1279–83 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4683368>; Hannah R. Day et al., *Point of Sale Scanner Data for Rapid Surveillance of the E-Cigarette Market*, 3 *TOBACCO REG. SCI.* 325–32 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5613983>.
- 44 This was an estimate from 2013: however, because of the lack of regulation of vape shops and marked instability in the market, more current estimates are not available. See Youn Ok Lee & Annice E. Kim, *'Vape Shops' and 'E-Cigarette Lounges' Open Across the USA to Promote ENDS*, 24 *TOBACCO CONTROL* 410–12 (2015); Joseph G. L. Lee et al., *A New Form of Nicotine Retailers: A Systematic Review of the Sales and Marketing Practices of Vape Shops*, 27 *TOBACCO CONTROL* e70, e70–e75 (2018).
- 45 Many vape shop owners and employees see themselves fulfilling a social function, offering a friendly and inclusive environment: nearly 25 percent of vape shop patrons lounge (e.g., sit in chairs or couches, watch television, play video or board games). Jennifer Y. Tsai et al., *Vape Shop Retailers' Perceptions of Their Customers, Products and Services: A Content Analysis*, 2 *TOBACCO PREVENTION & CESSATION (Suppl.)* 3, 3 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5517047>; Steve Sussman et al., *Who Walks Into Vape Shops in Southern California?: A Naturalistic Observation of Customers*, 14 *TOBACCO INDUCED DISEASES* 18 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4880826>.
- 46 Ellen J. Hahn et al., *Electronic Cigarette Retail Outlets and Proximity to Schools*, 29 *AM. J. HEALTH* 380–83 (2015), <https://www.ncbi.nlm.nih.gov/pubmed/24968182>; Andrea D. Burbank et al., *A Pilot Study of Retail 'Vape Shops' in the San Francisco Bay Area*, 2 *TOBACCO PREVENTION & CESSATION (Suppl.)* 6 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5382868>.
- 47 Hongying Dai & Jianqiang Hao, *Geographic Density and Proximity of Vape Shops to Colleges in the USA*, 26 *TOBACCO CONTROL* 379–85 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/27302700>.
- 48 Georgiana Bostean et al., *E-cigarette Use Among Students and E-Cigarette Specialty Retailer Presence Near Schools*, 42 *HEALTH & PLACE* 129–36 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5126978>; Daniel P. Giovenco et al., *Association Between Electronic Cigarette Marking Near Schools and E-Cigarette Use Among Youth*, 59 *J. ADOLESCENT HEALTH* 627–34 (2016), <https://www.ncbi.nlm.nih.gov/pubmed/27720358>.
- 49 See Daniel P. Giovenco et al., *Census Tract Correlates of Vape Shop Locations in New Jersey*, 40 *HEALTH & PLACE* 123–28 (2016); Georgiana Bostean et al., *Sociodemographic Disparities in E-Cigarette Retail Environment: Vape Stores and Census Tract Characteristics in Orange County, CA*, 50 *HEALTH & PLACE* 65–72 (2018); Daniel P. Giovenco, *Smoke Shop Misclassification May Cloud Studies on Vape Shop Density*, 20 *NICOTINE & TOBACCO RES.* 1025–26 (2018).
- 50 Marshall Cheney et al., *Marketing Practices of Vapor Store Owners*, 105 *AM. J. PUBLIC HEALTH* e16–e21 (2015), <https://www.ncbi.nlm.nih.gov/pubmed/25880960>; Amanda Y. Kong et al., *Using the Vape Shop Standardized Assessment for Retail Settings (V-STARs) to Assess Product Availability, Price Promotions, and Messaging in New Hampshire Vape Shop Retailers*, 3 *TOBACCO REG. SCI.* 174–82 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/29201950>.
- 51 For example, in Florida, two-thirds of vape shops were not on the state's list of tobacco licensees. See Annice E. Kim et al., *Identifying E-Cigarette Vape Stores: Description of an Online Search Methodology*, 25 *TOBACCO CONTROL* e19–e23 (2016).
- 52 As of August 10, 2018, the U.S. Food and Drug Administration's Deeming Regulations established the following rules pertaining to retail sales of electronic cigarettes: (a) a legal purchase age of 18 years old; (b) a requirement to check photo ID for anyone under 27 years old; and (c) a prohibition on vending machine sales and free sample giveaways. U.S. Food & Drug Admin., *Summary of Federal Rules for Tobacco Retailers*, <https://www.fda.gov/TobaccoProducts/Guidance-ComplianceRegulatoryInformation/Retail/ucm205021.htm>.
- 53 U.S. Food & Drug Admin., *FDA Takes New Steps to Address Epidemic of Youth E-Cigarette Use, Including a Historic Action Against More than 1,300 Retailers and 5 Major Manufacturers for Their Roles Perpetuating Youth Access*, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620184.htm> (last visited Dec. 7, 2018).

- 54 See also Ian McLaughlin, *Tobacco Control Legal Consortium, License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*, Tobacco Control Legal Consortium (2010), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.
- 55 Douglas Luke et al., *supra* note 1.
- 56 Ctrs. for Disease Control & Prevention, *State Tobacco Activities Tracking and Evaluation*, <https://www.cdc.gov/statesystem/index.html> (last visited Sept. 21, 2018).
- 57 Kristy Marynak et al., *State Laws Regarding Indoor Public Use, Retail Sales, and Prices of Electronic Cigarettes — U.S. States, Guam, Puerto Rico, and U.S. Virgin Islands, September 30, 2017*, 66 MORBIDITY & MORTALITY WKLY. REP. 1341-46 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5730213>.
- 58 See, e.g., MINN. STAT. § 340A.503, subd. 4 (prohibiting adults under 21 from entering premises of licensed alcohol retailers with limited exceptions).
- 59 Tobacco Control Legal Consortium, *Prohibiting the Sale of Tobacco Products in Pharmacies — Tips & Tools* (2018), <http://publichealthlawcenter.org/sites/default/files/resources/Prohibiting-Pharmacy-Sales-of-Tobacco-Products-2018.pdf>.
- 60 Boston Public Health Commission, *Regulation Restricting the Sale of Tobacco Products in the City of Boston* (2009), http://www.bphc.org/whatwedo/tobacco-free-living/Documents/TobaccoRestrictionRegulation_12_08.pdf.
- 61 Yue Jin et al., *Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts*, 106 AM. J. PUBLIC HEALTH 679-85 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4986051>.
- 62 Kristy L. Marynak et al., *National and State Trends in Sales of Cigarettes and E-Cigarettes, U.S., 2011-2015*, 53 AM. J. PREVENTIVE MED. 96-101 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5559880>.
- 63 For a list organized by location, see Campaign for Tobacco-Free Kids, *Tobacco-Free Retailers*, <http://shoptobaccofree.org>.
- 64 Marice Ashe et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 93 AM. J. OF PUBLIC HEALTH 1404-08 (2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447982>.
- 65 Shannon Farley et al., *Public Opinion on Tax and Retail-based Tobacco Control Strategies*, 24 TOBACCO CONTROL e10, e10-e13 (2015), <https://tobaccocontrol.bmj.com/content/24/e1/e10>.
- 66 Allison E. Myers et al., *A Comparison of Three Policy Approaches for Tobacco Retailer Reduction*, 74 PREVENTIVE MED. 67-73 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4563823>.
- 67 Douglas A. Luke et al., *Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density*, 107 AM. J. OF PUBLIC HEALTH 740-46 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388950>.
- 68 Kurt M. Ribisl et al., *supra* note 9.
- 69 S.F. Tobacco-Free Project, *Reducing Tobacco Retail Density in San Francisco: A Case Study* (2016), <http://2gahjr48mok-145j3z438sknv.wpengine.netdna-cdn.com/wp-content/uploads/Retail-Density-Case-Study-1.27.16-FINAL-to-TFP.pdf>.
- 70 SAINT PAUL, MINN., ORDINANCE 18-19 (July 3, 2018), <https://stpaul.legistar.com/ViewReport.aspx?M=R&N=Text&GID=125&ID=3127315&GUID=57C83461-3A87-4A97-9391-546D6B030BA4&Title=Legislation+Text>.
- 71 S. F., CAL., ORDINANCE 259-14 (Dec. 9, 2014), <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>.
- 72 City of Phila., *Tobacco Retailer Permit Frequently Asked Questions* (2017), http://www.phila.gov/health/pdfs/environment/Tobacco%20Retailer%20Permit%20FAQ%202_5_2018.pdf.



- 73 Campaign for Tobacco-Free Kids, Am. Heart Ass'n, Counter Tobacco, *Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies*, (2012), https://www.tobaccofreekids.org/assets/content/what_we_do/industry_watch/store_report/deadlyalliance_full_report.pdf.
- 74 Ctr. for Tobacco Policy & Org & Am. Lung Ass'n in California, *The National Association of Tobacco Outlets and Local Tobacco Retailer Ordinances* (2017), <https://center4tobaccopolicy.org/wp-content/uploads/2017/06/NATO-and-Ordinances-Related-to-Tobacco-Retailers-2017-06.pdf>.
- 75 See, e.g., S.F., CAL., ORDINANCE 194-08 (Aug. 7, 2008); S.F., CAL., ORDINANCE 245-10 (Oct. 6, 2010); *Philip Morris U.S. v. S.F.*, 2008 WL 5130460 (N.D. Cal. Dec. 5, 2008) *aff'd sub nom.*, 345 F. App'x 276 (9th Cir. 2009) (affirming denial of temporary injunction based on claim that law restricted tobacco company's First Amendment right to advertise its products); *Walgreen Co. v. S.F.*, 185 Cal. App. 424, 110 Cal. Rptr. 3d 498 (2010) (reversing denial of temporary injunction on grounds that law which exempted certain types of retailers with pharmacies could raise Equal Protection concerns); *Safeway Inc. v. S.F.*, 797 F. Supp. 2d 964 (N.D. Cal. 2011) (dismissing claims that amended law violated grocery chain's substantive due process and equal protection rights, and that it was preempted by state laws regulating pharmacies).
- 76 *Walgreen*, 185 Cal. App. 424, *supra* note 75.
- 77 *Safeway Inc.*, 797 F. Supp. 2d 964, *supra* note 75.
- 78 Robin Hobart, Am. Med. Ass'n, *Preemption: Taking the Local Out of Tobacco Control* 7 (2003), <http://www.rwjf.org/content/dam/supplementary-assets/2006/09/SLSPreemption2003.pdf>. ("We could never win at the local level. The reason is, all the health advocates, the ones that unfortunately I used to call 'health Nazis,' they're all local activists who run the little political organizations. They may live next door to the mayor, or the city councilman, and they say 'Who's this big-time lobbyist coming here to tell us what to do?'...So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level, because the health advocates can't compete with me on a state level." Victor Crawford, former Tobacco Institute lobbyist); At least 22 states have laws that preempt local authority over access to tobacco products, according to a 2011 study by the Centers for Disease Control and Prevention (CDC). CDC, U.S. Dep't of Health and Human Services, *State Preemption of Local Tobacco Control Policies Restricting Smoking, Advertising, and Youth Access — United States, 2000-2010*, 60 MORBIDITY & MORTALITY WKLY. REP. 1124 (Aug. 26, 2011), <http://www.cdc.gov/mmwr/pdf/wk/mm6033.pdf>.
- 79 *Safeway*, 797 F. Supp. 2d, *supra* note 75.
- 80 CDC, BEST PRACTICES FOR COMPREHENSIVE TOBACCO CONTROL PROGRAMS — 2014 (2014), https://www.cdc.gov/tobacco/stateandcommunity/best_practices.