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May 2008

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EXECUTIVE SUMMARY

In November 2007, Oregonians defeated Measure 50, an 84.5-cent cigarette tax increase to fund children's health insurance, by a vote of 59% no to 41% yes. This ballot measure would have established the Healthy Kids Program for otherwise uninsured children. Measure 50 revenues would also expand the Oregon Health Plan (Oregon's health care coverage for low-income residents) and provide additional funding for rural health and safety net clinics. Only 5% of the new revenues were dedicated to tobacco control.

Measure 50 was a legislative referral of a bill that failed to pass as a statute during the regular legislative session. The Governor's Office and health and labor advocates tried several times to secure the three-fifths majority vote needed to pass a revenue-raising measure. Deprived of crucial votes with a Republican lockdown in the House, the Governor's Office and local contract lobbyist for the American Cancer Society (ACS) decided to support a legislative referral of the Healthy Kids Plan as a constitutional amendment, which only required the approval of a simple majority in the Legislature, to the ballot in the 2007 special election.

Campaign spending for Measure 50 was the costliest in Oregon's history. The Yes on Healthy Kids PAC spent \$3.7 million. The tobacco industry spent \$12.1 million opposing the measure (\$7.1 million from Philip Morris' Stop the Measure 50 Tax Hike PAC and \$5.0 million from RJR's Oregonians Against the Blank Check PAC).

From the outset, the Yes campaign faced several issues that put them at a disadvantage: the short timeline of less than five months from referral to election for a public education and media campaign, the unfavorable recourse of amending the constitution, and relatively low initial levels of public support (59% in March, falling to 53% in August).

During the campaign, leadership was concentrated among three individuals who had experience in Oregon initiatives and politics, but who lacked the ability to effectively communicate and mobilize other advocates and volunteers involved in the campaign.

RJ Reynolds and Philip Morris ran separate campaigns against Measure 50. Their combined \$12 million directed at defeating the measure went to paid media and continuous polling that allowed the tobacco companies to define messages and hone in on issues that resonated most with voters throughout the state. The RJ Reynolds campaign had an effective spokesperson who was visible and stayed on message, unlike the Yes on Healthy Kids campaign, which lacked a strong identity with several speakers and changing messages.

Measure 50 supporters blamed massive tobacco industry spending for their loss. This conclusion ignored flaws in the legislation itself; its small allocation to tobacco control and amendment to the constitution made it susceptible to attack from the tobacco industry. The Yes campaign also suffered from a lack of communication and cooperation within the campaign and did not learn lessons from other cigarette tax increase initiatives throughout the United States. The tobacco control community will continue to be disappointed with their campaign efforts to increase tobacco taxes until they begin to learn from these repeated past mistakes.

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PREFACE

In September 2007, we published *The Cost of Caution, Tobacco Industry Political Influence and Tobacco Policy Making in Oregon 1997-2007*,¹ which provided a detailed description and analysis of tobacco policy making in Oregon through the date of publication. At that time there was a campaign under way to increase the tobacco tax and use the proceeds to pay for health insurance for children. This report provides the details and analysis of that campaign.

INTRODUCTION

In November 2007, Oregonians resoundingly defeated Measure 50 by a vote of 59% no to 41% yes (Table 1). This ballot measure would have established the Healthy Kids Program to provide health insurance coverage for uninsured children with an additional 84.5-cents to the current \$1.18/pack cigarette tax and a 30% increase in the other tobacco products tax to a total of 95% of the wholesale price.^{2,3}

Democrats, who gained control in both legislative houses and governor's office in the 2006 election, wanted action on their healthcare agenda to cover Oregon's 117,000 uninsured children.⁴⁻⁶ The measure appeared on the ballot as a legislative referral of a bill that increased the tobacco tax by 84.5 cents (to \$2.025) through a constitutional amendment to fund the Healthy Kids Plan, an effort led by Governor Ted Kulongoski (D).¹ Almost all the revenue raised from the tobacco tax increase would fund health services for low-income, uninsured children under

March 2007	Riley Research poll finds 59% support for Governor Kulongoski's plan to raise the cigarette tax 84.5-cents per pack to fund children's healthcare coverage and tobacco control efforts.
May	Oregon ACS contract lobbyist Maura Roche meets with the Governor's office to discuss strategy for Healthy Kids Plan legislation
June 9-10	National ACS becomes aware of Oregon's proposed tobacco tax increase
June 15	Senate passes Senate Bill (SB) 3, the Healthy Kids Plan bill, with a vote of 22-7 (1 absent)
June 22	Conference call held with local and national ACS representatives to discuss role of national ACS
June 23	House passes SB 3 with 33-24 vote (1 absent, 2 excused)
June 25	Senate repasses SB3 with 20-8 vote (1 absent, 1 excused)
June 28	Senate President signs SB 3
July 6	House Speaker signs SB 3 Ballot referral filed with Secretary of State; proposed 84.5 cent cigarette tax increase and Healthy Kids Plan will appear as Measure 50 on ballot
July 12-16	Grove Insight poll conducted; 61% in favor of Measure 50
July 17	Governor signs SB 3
August 20	Riley Research poll finds 53% for Measure 50
Late August	First Yes on 50 ad aired
August 27	Lawsuit filed against Measure 50 by Senator Jeff Kruse
Mid-September	Tobacco ads begin airing
September 26	Lawsuit dismissed
October 19	Ballots mailed out to Oregonians
November 6	Measure 50 results: 59% No, 41% Yes

Table 2. Distribution of the Proposed 84.5-cent Cigarette Tax Increase		
	Senate Bill 3	
	Introduced	Passed (6/25/07) Referred as Measure 50 on Nov 2007 ballot
Tobacco Control (TPEP)	4%	5% in 2007-09 10% in 2009 on
Healthy Kids Plan	76%	72% in 2007-09 68% in 2009 on
Rural Health Care Revolving Account	0%	1%
Healthy Kids Safety Net Fund	0%	3%
Oregon Health Plan Fund	0%	19% in 2007-09 18% in 2009 on
Other health programs	20%	0%
Source: Oregon State Legislature ²		

the Plan and expand the Oregon Health Plan (Oregon’s health care coverage for low-income residents), as well as provide additional funding for rural health and safety net clinics (Table 2).⁷

A small fraction of the money also went to tobacco control efforts overseen by the state-run Oregon Tobacco Prevention and Education Program (TPEP), which has been funded with 10% of a \$0.30 per pack cigarette tax passed in 1996. (The Governor and Legislature have not always honored this requirement and TPEP receives no funds as of 2008 from the Master Settlement Agreement.¹) Tobacco control advocates hoped to secure 10% of the new revenue generated by the 84.5-cent cigarette tax increase for TPEP, but settled for a graduated distribution of 5% to tobacco control in the 2007-09 biennium and 10% thereafter.¹ The Oregon Legislative Fiscal Office estimated that \$19.5 million in additional funds would be dedicated to tobacco prevention and education programs in the 2007-09 biennium, with \$38.9 million expected in the 2009-11 biennium.³ These constitutionally-protected funds for TPEP would have greatly enhanced Oregon’s tobacco control spending, which received an “F” grade from the American Lung Association in 2007,⁸ and was only at 43% of the Centers for Disease Control and Prevention’s annual minimum recommended funding level based on their 1999 *Best Practices for Comprehensive Tobacco Control Programs*⁹ and 29% based on the CDC’s updated 2007 recommended level.

The version of the bill ultimately referred to the people of Oregon in July for a vote the following November 6 was the result of extensive legislative maneuvering as advocates and Democratic legislators attempted to revive the legislation throughout the 2007 regular legislative session. The first version of the bill established the Healthy Kids Plan and 84.5-cent cigarette tax increase funding mechanism by statute. In order to gain bipartisan support on a primarily Democratic-backed, Governor-driven bill, advocates for health and labor spent more than \$80,000 to lobby legislators to support the passage of the Healthy Kids plan by statute.¹⁰ Since the Healthy Kids program was funded by a tobacco tax increase, the House needed a three-fifths majority vote to pass the bill as a revenue-raising statute. With Democrats occupying 31 of the

60 seats in the House, five Republican votes were necessary to pass the bill.

After several failed attempts in the House to secure crucial Republican support (only Rep. Vicki Berger (R-Salem) voted with Democrats in the final 32-24 vote¹), the Governor's Office presented two options to Maura Roche, then the American Cancer Society's contract lobbyist who advocated for the Healthy Kids bill.¹¹ The advocates could either gather enough signatures for a ballot initiative or amend the Healthy Kids legislation from a statutory law to a Constitutional amendment, which only required a simple majority vote to legislatively refer the bill to the people of Oregon. However, Roche gave her client only one option, which was to pass the Healthy Kids legislation as a constitutional amendment that would then be legislatively referred to Oregonians as Measure 50 on the November 2007 ballot.¹¹ In a 2007 interview, Roche believed "there was no way to pass the legislation in the legislature without doing it as a referral to the voters."¹⁰ Oregonians supported cigarette tax increases in 1996 and 2002, although these measures became law by statute, not constitutional amendment (Table 3).

Year	Measure	Purpose	Increase	Vote
1996	Measure 44	90% to Oregon Health Plan 10% Tobacco control	\$0.30	56% Yes 44% No
2002	Measure 20	Oregon Health Plan (and one time transfer of \$2 million to tobacco control)	\$0.60	64% Yes 36% No
2007	Measure 50	72% Healthy Kids Plan 19% Oregon Health Plan 5% Tobacco control 4% Other (safety net fund, rural health clinics)	\$0.845	41% Yes 59% No

Source: Oregon Secretary of State, Elections Division¹²

The decision to deal with the Republican lockdown by amending the Constitution to include a product tax⁶ would become a significant obstacle for the Yes campaign, which was never able to persuade voters to support the idea of constitutionally protected tobacco tax increase that funded children's health insurance. The Oregon Constitution, which has been successfully amended 241 times since 1857, with Oregonians passing 233 of the 407 legislative referrals,¹³ was far from the untouched document that the tobacco companies characterized in their television advertisements opposing Measure 50. The Yes on 50 campaign chose not to engage the issue; despite the Measure's proposal to constitutionally-protect funds for the Healthy Kids Plan, tobacco prevention and education, and other health programs, the constitution issue was rarely mentioned in the Yes campaign's messaging because the message tested poorly in comparison to other messages.⁶ Although Carol Butler, the Yes on Healthy Kids Plan's campaign manager, told the Salem-based *Statesman Journal* in mid-August that "voters don't seem overly concerned that the measure is a constitutional amendment,"¹⁴ the tobacco companies opposing Measure 50 successfully framed the issue first with their high-powered media buys, placing heavy emphasis on Measure 50's effect of "rewriting the Constitution."¹⁵

CAMPAIGN CONTRIBUTIONS TO MEASURE 50 PACs

According to campaign finance records at the Oregon Secretary of State, the Yes on Healthy Kids Plan political action committee (PAC) reported a total of \$3.7 million in cash and in-kind contributions while the tobacco industry spent \$12.1 million opposing Measure 50 (Tables 4 and 5).¹⁶ Philip Morris' Stop the Measure 50 Tax Hike PAC reported total spending of \$7.1 million and RJR's Oregonians Against the Blank Check PAC reported \$5.0 million.¹⁶ Per capita, the health advocates spent \$0.98 supporting Measure 50 and the two tobacco companies spent \$3.23 per capita opposing it. The previous campaign spending record for a ballot measure was \$7.1 million total, in 2008 dollars, spent by Portland General Electric in 1992 to prevent the passage of two measures aimed at closing a nuclear power plant.^{17,18}

The *Argus Observer*, a newspaper serving Eastern Oregon, noted a week before the November 6 election that “insiders on both sides have been predicting that the onslaught of tobacco spending will be enough to sway voters.”¹⁷ In the last week before the election, the tobacco companies continued to contribute to their PACs even though internal polling by RJR suggested the easy defeat of Measure 50.¹⁹ Philip Morris reported contributing another \$1.1 million in the final week to “finish our plan,” according to PM’s spokesperson, Lisa Gilliam, in the *Argus Observer*.¹⁷ This money was targeted to convince undecided voters to oppose Measure 50.²⁰ RJR pitched in another \$150,000 in the last week.¹⁷ In a 2007 interview after the election, JL Wilson, who had been a spokesperson for the RJR campaign, said that the \$12 million spent by the tobacco industry to defeat Measure 50 was “totally unnecessary. ... We [Reynolds and Philip Morris] could have achieved the same outcome with \$6, maybe \$7 [million]... We did not unite under a banner or one campaign, and so there were just a lot of inefficiencies.”¹⁹

The Yes on Healthy Kids Plan PAC received its top contribution from the division and national levels of the American Cancer Society (ACS), as well as ACS’ Cancer Action Network (Table 5). Governor Kulongoski’s PAC, “Opportunity PAC II,” was the third largest contributor at \$200,000, a notable investment given the political priority that he put behind his Healthy Kids Plan. The top contributions to the Yes campaign only made up 50% of the total amount of money spent. In comparison, Philip Morris and RJ Reynolds made up virtually all (93%) of the money against Measure 50 (Table 4).

HEALTHY KIDS OREGON CAMPAIGN (YES ON MEASURE 50)

The possibility of a legislative referral of the Healthy Kids Plan, and the subsequent campaign that would be necessary to support it, was most likely first discussed toward the end of

PAC	Contributors	Total contributions
Stop the Measure 50 Tax Hike	Philip Morris/Altria	\$6,700,000
	Other sources	\$393,845
Oregonians Against the Blank Check	RJ Reynolds	\$4,550,802
	Other sources	\$470,782
Total \$ opposing Measure 50		\$12,115,429

Source: Oregon Secretary of State, Elections Division¹⁶

Contributor	Affiliation	Aggregate amount
American Cancer Society	Voluntary health group	\$600,000
Providence Health System	Health insurance	\$202,500
Opportunity PAC II	Governor's PAC	\$200,000
Healthy Communities Coalition	Oregon Association of Hospitals and Health Systems	\$168,000
Regence BlueCross	Health insurance	\$165,000
Oregon Education Association	Education	\$150,000
AFSCME Council 75	Labor	\$125,000
American Heart Association	Voluntary health group	\$110,000
SEIU Local 503	Labor	\$107,312
Subtotal		\$1,827,812
Other sources		\$1,826,957
Total		\$3,654,769

Note: The American Lung Association contributed a total of \$24,309. Source: Oregon Secretary of State, Elections Division¹⁶

the 2007 legislative session, when it became clear that Democrats would not be able to secure the necessary three-fifths majority vote to pass the Healthy Kids legislation as a statute. Before the Measure 50 campaign began, public opinion polling for Governor Kulongoski's proposed Healthy Kids Plan was conducted by Portland-based Riley Research Associates in March, and found 59% support for the 84.5 cent cigarette tax increase to fund "a variety of programs, including health coverage for children and anti-smoking programs."²¹ In May, Maura Roche, ACS' contract lobbyist in Oregon, met with Governor Kulongoski and his staff to discuss options for the bill, which was high on the Governor's political agenda.^{5,22} Since "ensuring every child in Oregon can access affordable health care"²³ was a priority for Governor Kulongoski in the 2007 legislative session, the Governor's Office discussed two options with Roche.¹¹ The option that would give advocates a longer timeline to work with and to build public support was a ballot initiative, in which the advocates would gather the necessary number of signatures and establish a grassroots base for the 2008 election. The second option, which presented a much shorter timeline, involved changing the Healthy Kids legislation from a statute into a Constitutional amendment, an action that required a simple majority vote by legislators to refer the bill to the ballot for a special election in November 2007. After the meeting, Roche did not give her client, ACS, both options, but rather told her colleagues that the final decision was made during the meeting to support the legislative referral of the constitutional amendment.^{11,24} Roche's leadership and decision-making autonomy were not questioned by local ACS staff in Oregon.^{1,24}

The Healthy Kids Plan is Referred to the November 2007 Ballot

When the Healthy Kids Plan was legislatively referred to the ballot in June, the coalition of health and labor advocates that had supported the Healthy Kids Plan during the legislative session knew that the ballot measure campaign to pass Measure 50 was not going to be an easy one, especially because they had less than four months from referral to election to educate the public and garner support. The Oregon Association of Hospitals and Health Services (OAHHS) was a major supporter of the Measure and a leader in the campaign. In an interview after the election, OAHHS advocacy director Andrea Easton, who was campaign co-chair of the Measure 50 campaign after the legislative referral, reported that they were worried from the beginning:

We did have our concerns, however, about the language [as it related to the Constitutional amendment]. That's not how the coalition wanted the bill to be presented. We would have rather seen it pass the legislature [as a statutory law] instead of being referred out to the public for a vote.⁶

Advocates from the national level at ACS learned that Oregon advocates planned to support a legislative referral of the tax as a constitutional amendment from Courtni Dresser, ACS' government relations director in Oregon, during an ACS activity at an unrelated meeting in Denver, CO from June 9-10, 2007. A conference call to discuss the level of national ACS involvement was subsequently held on June 22 with Roche, Dresser, Sharlene Bozack, ACS' vice president of government relations for the Great West Division, Cathy Callaway, the senior representative of state and local campaigns for the ACS' national Cancer Action Network (CAN), and Carter Steger, the senior director for state and local campaigns for ACS CAN. The national ACS advocates questioned their decision to support Measure 50 by the end of the campaign. Specifically, they felt that low level of support reflected in public opinion polling and the short timeline from the legislative referral in late June to the vote in November did not give Measure 50 supporters enough time to develop the right messages, secure adequate funding early in the campaign, and provide the voter education necessary to counteract the tobacco companies' ads to oppose Measure 50.²⁴ In hindsight, they believed that the bill should have been killed in the Legislature so that advocates could regroup and develop the infrastructure to either pass the tax through the legislature or to mount it as an initiative campaign through signature gathering.

Campaign Organization

The Healthy Kids Oregon campaign launched in support of Measure 50 on August 9, 2007 with a broad base of coalition support (Table 6) and \$0.5 million in funding from health and labor groups.²⁵ Along with the logos of the three major national voluntary health agencies – the American Cancer Society, American Heart Association and American Lung Association -- stamped on the face of the campaign, Measure 50 also had the support of the PTA, labor groups, nurses, physicians, and the Oregon Association of Hospitals and Health Systems (OAHHS).²⁵ The campaign appeared to lack the engagement of tobacco control advocates, particularly a strong presence from the Tobacco Free Coalition of Oregon, which became inactive in 2007.²⁶ However, national tobacco control advocates, including the Campaign for Tobacco Free Kids (CTFK) and the American Cancer Society's Cancer Action Network, endorsed Measure 50 and provided a significant amount of funding as cash or in-kind contributions.¹⁶ (The direct mail pieces for the "get out the vote" effort were paid for by CTFK.¹¹) Carol Butler, an experienced campaign manager in Oregon,^{6,24} was contracted as campaign manager.⁶ Other leaders included two campaign co-chairs, Maura Roche, the contract lobbyist for ACS, and Andrea Easton, the advocacy director for OAHHS.²⁷

These three individuals were a part of a larger Steering Committee of 16 voting members.⁶ This committee met weekly and included the Oregon Medical Association (OMA), voluntary health groups (ACS, AHA), CTFK, labor unions such as the SEIU and AFL-CIO, the

Table 6. Organizations endorsing Measure 50 as of November 2007		
AFSCME Council 75	Legacy Health System	Oregon School-Based Health Care Network
AFSCME, Local 328	March of Dimes, Greater Oregon Chapter	Oregon State Council for Retired Citizens
Albertina Kerr Centers	Medford Chamber of Commerce	Oregon State Fire Fighters Council
American Association of University Women	Metropolitan Alliance for Common Good	Oregon State Public Interest Research Group
American Cancer Society	Mid-Valley IPA	Oregon Supported Living Program
American Cancer Society Cancer Action Network	National Association of Social Workers - Oregon Chapter	Oregonians for Health Security
American Federation of Teachers	National Council of Jewish Women, Portland Section	Our Oregon
American Heart Association/American Stroke Association	Northwest Health Foundation	PeaceHealth - Oregon Region
American Jewish Committee	Nurse Practitioners of Oregon	Pearl Buck Center
American Lung Association of Oregon	Oregon Academy of Family Physicians	Planned Parenthood Advocates of Oregon
Basic Rights Oregon	Oregon Academy of Ophthalmology	Portland Business Alliance
Basic Rights Oregon	Oregon Academy of Otolaryngology B head & Neck Surgery, Inc	Portland City Club
Campaign For Tobacco Free Kids	Oregon AFL-CIO	Portland Habilitation Center
CareOregon	Oregon Alliance of Children=s Program	Providence Health System
Children First for Oregon	Oregon Alliance of Retired Americans	Regence BlueCross BlueShield of Oregon
Children's Institute	Oregon Association for the Education of Young Children	Save Oregon Seniors
Coalition for a Healthy Oregon	Oregon Association of Hospitals and Health Systems	SEIU, Local 503 and Local 49
Community Action Partnership of Oregon	Oregon Association of Nurse Anesthetists	Social Action Committee, West Hills Unitarian Universalist Fellowship
Community Health Advocates of Oregon	Oregon Business Association	Stand for Children
Community Health Partnership	Oregon Dental Association	The Oregon Rehabilitation Association
Council for Children's Expanded Physical Education	Oregon Education Association	The Urban League of Portland
Ecumenical Ministries of Oregon	Oregon Federation of Nurses and Health Professionals	Tuality Healthcare
Governor Ted Kulongoski	Oregon Food Bank	UFCW 555
Gray Panthers of Oregon	Oregon Health Action Campaign	United Cerebral Palsy of Oregon and SW Washington
Human Services Coalition of Oregon	Oregon Medical Association	United Seniors of Oregon
Jewish Federation of Greater Portland	Oregon Nurses Association	Upstream Public Health
Juvenile Rights Project	Oregon Pediatric Society	Willamette Dental Group
Kaiser Permanente	Oregon Primary Care Association	Women's Rights Coalition
Lane Coalition for Healthy Active Youth-LCHAY	Oregon PTA	
Lane Individual Practice Association	Oregon Public Health Association	
Source: Healthy Kids Oregon ²⁷		

Nurses Association, and the Dental Association.⁶ The “buy-in” for this committee was \$50,000, which gave an organization a vote on decisions concerning the campaign’s budget and strategy.²⁸ From this larger group of people, a smaller “executive-like” committee of five individuals was responsible for providing direction for the campaign when decisions needed to be made quickly, rather than waiting for the full Steering Committee to vote.^{6,28} This executive committee was comprised of the original group of Healthy Kids Coalition advocates who lobbied for the bill when it was still in the legislature, and included Duke Shepard representing the Oregon AFL-

CIO, Claudia Black for the OMA, Maura Roche for ACS, Angela Dilkes for Coalition for a Healthy Oregon, and Andrea Easton for OAHHS.²⁸ Easton said that all decisions were made by consensus, and the Steering Committee wholly supported Butler's leadership: "We all knew what needed to be done or had a good understanding of how to get there, and we agreed with the way that Carol was taking the campaign."⁶

Oregon's Measure 50 campaign was led by Oregonians and specialized consultants with experience in local politics and running tobacco control campaigns.²⁸ While Butler, Roche, and Easton were identified as the campaign's leadership on the Yes on Healthy Kids website, another Oregonian with experience in political campaigns was heavily involved in the strategy and decision making process. Lisa Grove, a Portland pollster and owner of Grove Insight, a Democratic polling and communications firm, was paid about \$95,000 for polling and surveys conducted throughout the campaign.^{6,16}

The national voluntaries, including ACS, the American Lung Association (ALA), and the American Heart Association (AHA), were involved from the beginning of the campaign. Although neither the ALA and AHA were major cash donors to the campaign, these two organizations were both present at Steering Committee meetings and contributed their grassroots networks.¹¹ While the American Cancer Society was the largest single contributor to the Yes on 50 campaign, their \$600,000 did not buy campaign leadership for the national advocates who assisted with the Yes campaign. Rather than having an ACS staff person from either the local or national levels involved in the decision-making, Maura Roche became co-chair of the campaign's Steering Committee due to her experience as ACS' local contract lobbyist and as a veteran lobbyist in Oregon politics.²⁴ Bozack recalled that this decision was made by ACS's government relations director in Oregon, Courtni Dresser, and that Dresser had said "she just felt more comfortable having Maura on the campaign committee than herself."²⁴ However, national ACS realized too late that they might not have been Roche's "top client when she was at that [decision-making] table, or that tobacco control was her main priority."²⁴

Local and National Advocates Differ in Approach to Campaign Strategy and Leadership

Even when national ACS and their sister political advocacy organization, the ACS Cancer Action Network, provided funding for the campaign beginning in late July,¹⁶ Bozack and Callaway were disappointed by the lack of cooperation and communication between Oregon locals and national advocates. Bozack recalled that "on numerous times we were told that Oregon was different, Oregon ran different campaigns, and Oregon didn't like outsiders. We were viewed as outsiders."²⁴ Callaway agreed with Bozack's assessment:

[National ACS was] left out of key meetings, and left without having key information. We were not given an opportunity to approve media messages, materials...all of the things we usually are very involved with... Meetings were happening behind closed doors... We all have other jobs at the same time, and often I was on conference calls or had to step aside from Oregon campaign duties to do something else, and that did not make them happy.²⁴

Easton, the co-chair for the campaign's steering committee, described the role national ACS advocates played as "more of a listening partner," and did not recall any active advisory

role ACS had with Steering Committee members, although she noted that “they may have done some one-on-one with Carol [Butler, the campaign manager] or with Maura [Roche, the co-chair of the campaign’s steering committee].”⁶ Easton, however, acknowledged that national ACS advocates were “vocal during the [early] meetings about what they think is going to happen and sometimes their predictions were correct. Other times they were not.”⁶

The national advocates expressed concern for the campaign from the beginning. According to Bozack, “they had low polling numbers and there wasn’t much time to organize a campaign.”²⁴ As in most political campaigns, the Yes on 50 campaign did not publicize these low numbers; campaign manager Carol Butler told the Salem-based *Statesman Journal* in mid-August that “initial polling shows strong voter support.”¹⁴ However, national and local ACS staff differed in their analysis of polling results. According to Bozack, the July poll conducted by Grove Insight and commissioned by the Campaign for Tobacco Free Kids²⁹ during the legislative session showed public support in the 60% range.^{6,24} This percentage indicated steady support from March, when Portland-based Riley Research Associates determined in their uncommissioned public opinion poll that 59% of those surveyed supported the Healthy Kids Plan.²¹ These numbers alarmed national ACS, but Callaway said that even though ACS “stressed [to the Oregon campaigners] that in these campaigns we see an automatic 10% reduction just by the nature of it being on the ballot, [the campaign leaders] dismissed that and said, ‘No, that’s not the way it works in Oregon.’”²⁴ However, by August, Riley released another uncommissioned public opinion poll about the upcoming ballot measures appearing on the November ballot, and found that support for Measure 50 had dropped to 53% (Table 7).³⁰ Neither Riley nor Grove Insight released any subsequent polling. Easton explained in a 2008 interview that “polling was not shared with external sources because of the sensitivity of it [the information found in the polling data].”⁶

Despite the fact that national ACS provided money for the campaign, the results of the polling data collected by Grove Insight were not shared with Bozack or Callaway after the initial July poll. Polling data was also withheld from others involved in shaping campaign strategy.¹¹

Table 7. Statewide voter survey released August 20, 2007 gauges mediocre support for Measure 50

	Total (n = 406)	Male (n = 179)	Female (n = 227)	Democrat (n = 174)	Republican (n = 155)
Yes	53%	47%	57%	64%	44%
Yes - very likely	39%	37%	40%	48%	27%
Yes - somewhat likely	14%	10%	18%	16%	17%
No	28%	35%	22%	20%	37%
No - very likely	22%	28%	16%	14%	29%
No - somewhat likely	6%	6%	6%	5%	8%

Source: Riley Research Associates³⁰

This situation established a negative dynamic that permeated the Yes campaign and reflected a general lack of communication and collaboration outside of the small circle consisting of the campaign’s leaders and pollster. For example, the Campaign for Tobacco Free Kids decided to pay its consultants for the “get out of the vote” initiative directly instead of through the Yes on Healthy Kids PAC in order to ensure that deliverables were executed as envisioned by CTFK—without unapproved changes.¹¹ With no knowledge of polling or ballot return data, Callaway got the feeling that “it almost was like [the campaign leaders] didn't want us to know how bad the campaign was tanking. Rather than admit a misstep and try to fix it, they just kept moving forward.”²⁴

National advocates and the local campaign leaders also differed in their strategic approach of justifying the Healthy Kids Plan as a constitutional amendment. National ACS representatives advised the campaign that the issue of the constitutional amendment would be a strategic weak point in the campaign,²⁴ although this advice was probably not especially helpful to the campaign since national ACS became involved after the bill’s language was finalized. To the media, lead local strategist Carol Butler told the Salem-based *Statesman Journal* in mid-August, “Voters don't seem overly concerned that the measure is a constitutional amendment.”¹⁴ After all, the Oregon Constitution has been successfully amended 241 times since 1857, with the people of Oregon passing 233 of the 407 legislative referrals.¹³ Some examples of amendments include provision for tax rebates, property tax limits, and restrictions on gas tax revenues.³¹ However, the tobacco companies opposing Measure 50 were able to frame the issue first with their high-powered media buys; the Yes campaign did not often explicitly mention the constitutional amendment and its protection of monies allocated to the Healthy Kids Plan, tobacco prevention and education, and other health programs (Table 8). According to Callaway, “We did say not to even bring up the constitution issue... But again, [ACS, at the national level] didn't have access to any polling data that would show that would have been an effective message.”²⁴

The Media Campaign

The Washington, DC-based strategies and media firm Laguens Hamburger Kully Klose was responsible for the preparation and production of advertising.¹⁶ No input from the voluntary health organizations was solicited in the selection of the media contractor, perhaps because Dawn Laguens, the founder and President of the media firm, had worked previously on other campaigns with Carol Butler.²⁴ The media campaign initially included well-tested messages that revealed the tobacco industry’s dirty tricks, discussed the benefit of higher taxes for smoking prevention and cessation, and prominently featured support from the three voluntary health organizations.²⁴ For example, the Yes campaign’s “Pack of Lies” ad highlighted the misleading statements made by RJR and countered their claims with an accurate representation of the Measure’s language and intent.³²

However, in the weeks just before election day, the Yes on 50 media campaign took on a different strategy in its messaging, shifting from tobacco control messages to emotional portraits of uninsured children (Table 8 and Figure 1). Easton admitted after the election that the messages in the latter half of the campaign failed to make sufficient counter arguments to many of the No campaign’s misleading statements, adding “I think if we would have had more

resources and more time, we probably would have [countered their arguments].”⁶ The later television advertisements featured the healthcare plight of young children, such as Amanda Wilkins, who was diagnosed with cancer in 1998 as a baby. As election day approached, ads run in late October continued to feature children, but neither mentioned the tobacco industry nor featured the logos of ACS, ALA, and AHA. Instead, the Oregon Nurses Association took the lead position on a scrolling list of organizations in support of Measure 50 (Figure 1).^{33,34} The Lung and Heart Associations were not even listed; only ACS and the ACS Cancer Action Network appeared in the list of 16 organizations that were briefly featured in the television spot.^{33,34}

The national and local advocates each gave different reasons for the absence of the voluntary healthy organizations’ logos in these later ads. According to Bozack, the decision to drop the logos of ACS, ALA, and AHA was made by the campaign’s small circle of strategists, who told Bozack and Callaway that organizations such as the Nurses Association and PTA were the most trusted in Oregon:

When I questioned why the Nurses Association was the first organization on the list, Maura [Roche] said to me that they tested the highest in Oregon. And I looked at her and I said, “Not on the polls that I’ve seen,” because you always test Heart, Lung and Cancer. That was one of the first polls that was tested. And she just shook her head [no]. So by this time, there was so much animosity between the voluntaries and the campaign. It wasn’t pretty.²⁴

The national advocates at ACS had wanted the campaign to run a “Who do you trust?” ad as election day neared that juxtaposed the credible voluntary health groups against the deceptive tobacco companies.²⁴ Although the “Who do you trust?” message was a component in the very first ads (Table 8), the Yes campaign’s leadership decided to run ads featuring young children who had suffered from lack of health insurance. Bozack believed, “The last two ads did not have our logo because we wanted them to run a “Who do you trust” ad, and that’s when they ran the rolling script with all the organizations—leading off with the Nurses Association.”²⁴ Easton did not provide specific polling data about the influence that endorsements by various organizations or individual would have on voters, but she did acknowledge that the voluntary health groups and Nurses Association both tested well:

Even though Cancer, Heart, and Lung organization are seen as wearing the white hats, maybe this wasn’t the best audience to relate them to... People hear the Cancer Society, and they know it’s a reputable organization. I think [our audience] felt the same way towards Heart and Lung, and I think they felt that way toward their physicians and the nurses.⁶

The campaign’s shift in messaging did not help attract support for Measure 50, and the national advocates did not have much hope for a successful campaign. Bozack said, “By the time that ad ran [in mid to late October], we were so down in the tank [that] it wouldn’t have made a difference in my opinion.”²⁴ Polling results described by JL Wilson, RJR's spokesperson for their Oregonians Against the Blank Check campaign, suggested that the ads featuring children did not include messages that resonated with the voters they surveyed. In a 2007 interview after the election, Wilson said, “I remember they put on at least three, maybe four ads that featured kids, maybe kids in a tough position or uninsured who had some physical abnormality—just

Table 8. Transcripts of television advertisements paid for by the Yes on Healthy Kids Plan	
Date/Title	Message
Late August/ “Yes on 50!”	Female Narrator: Groups like the American Cancer Society and the American Heart and Lung Associations worked hard to put Measure 50, the Healthy Kids Plan, on the ballot. Now, out of state tobacco companies are paying us a visit, and they’re dressing up for the occasion. They’re coming to protect their profits by trying to defeat the Healthy Kids Plan. And they’re going to mislead the public under a cloak of deception. Don’t let the tobacco companies pull the wool over your eyes. For kids’ health, it’s Yes on 50. ³⁵
Late September/ “Pack of Lies”	Female Narrator: Big Tobacco is at it again. Lying about Measure 50, the Healthy Kids Initiative. <i>The Oregonian</i> calls their ads “utterly untrue”... “outright false.” The truth? Measure 50 provides healthcare to a hundred thousand kids, prevents thousands more from smoking, and has accountability guarantees required by law. That’s why the American Cancer Society, and Heart and Lung Associations endorse 50. Don’t let Big Tobacco sell Oregon a pack of lies. Vote Yes on Healthy Kids. ³²
Early October/ “Amanda Wilkins”	Amanda Wilkins: I was diagnosed with cancer when I was a baby. The doctors were able to save me because of early tests. But too many kids in Oregon aren’t so lucky. Measure 50 will make sure that they can go to the doctor. Male Narrator: Measure 50 is a fair and accountable way to provide health coverage for over a 100 thousand kids who need it now. The money promised to healthcare goes to healthcare. Wilkins: The American Cancer Society and the Heart and Lung Associations all support Measure 50. I hope you will too. ³⁶
Mid October/ “50 Kids”	Female Narrator: Of these 50 kids, tobacco companies will convince 27 to smoke. Twenty-three will become addicted. And 8 will die from smoking. That’s why tobacco companies are spending \$10 million to confuse voters about Measure 50. 50 denies them young smokers to replace smokers who die, funds healthcare for over 100 thousand uninsured kids, and protects the money in the constitution so lobbyists and politicians can’t spend it on anything but healthcare. Vote Yes on 50. ³⁷
Late October/ “Ellie Leach”	Male Narrator: Ellie was born with a severe birth defect, and without health insurance, her parents were left struggling to pay for the treatment to ease her constant pain. Ellie, and over 100 thousand Oregon kids, need Measure 50. Yes on 50 will finally give our children healthcare and provide a safety net for families across Oregon. Over 80 groups you trust agree it’s the only way to help our kids now. For Ellie, and all Oregon children, vote Yes on 50. ³⁴
Late October/ “Ethan Russell”	Male Narrator: Ethan Russell has asthma. His lungs close up, and he struggles to breathe. But his family lost health insurance, and can’t afford all of his treatments. Ethan and other 100 thousand Oregon kids need Measure 50. Yes on 50 will finally get our children healthcare and provide a safety net for families across Oregon. Join over 80 groups in helping Ethan and all of Oregon’s kids. Yes on 50. ³³

something that would tug at the heartstrings. It was just very clear...we knew as long as they running those ads, that they didn't stand a chance.”¹⁹ When asked to speculate on why the Yes campaign shifted their messaging, Wilson was unable to understand their strategy:

I’m not convinced they did [their own polling]. I never quite knew where they were coming from. If they did have their own polling, I would have assumed that we would be looking at the same set of information in a general sense. And the conclusions that they reached were just strange... If we were looking at a similar set of information, I’m not sure how they reached those conclusions.¹⁹

In a 2008 interview, Easton’s reflections on the media campaign for the Yes side indicated that messaging was determined by focus groups and polling:

Our side had several messages put together and they ran them by a focus group. Some of those

included talking about the Constitution. Some of them included talking about the measure and what it does. And some of them used more heartfelt emotion messages. Those messages seemed to resonate better with [the focus groups] that we tested versus the Constitutional piece. And so we tried to stay on the emotional side and the “feel[ing]” side—meaning that we tried to put a face on who this bill would impact. That’s why we had the Amanda’s out there in our commercials.⁶

The fact that the “heartfelt emotion messages” resonated better than the “constitutional piece” was reflected in the Yes campaign’s messaging; the constitution was explicitly mentioned once in the television spots (Table 8).



Figure 1. The voluntary health organizations disappear late in the campaign from television advertisements paid for by the Yes on Healthy Kids Plan. *Left:* The “Amanda Wilkins” advertisement, aired in early October, orally and visually featured ACS, AHA, and ALA at the end of the television spot.³⁶ *Right:* The “Ethan Russell” advertisement, aired in late October just before the election, listed 16 organizations that endorsed Measure 50, beginning with the Oregon Nurses Association. Non-health organizations such as the Oregon PTA, Oregon Business Association, and Oregon State Firefighters Council were listed before the American Cancer Society, which appeared 9th. The ACS Cancer Action Network appeared last during the fade-out.³³

In addition to these television ads, the Yes campaign encouraged Oregonians to upload pictures of kids and personal stories about children's healthcare on the campaign's website to “remind Oregonians of what this effort is all about.”³⁸ Although this grassroots effort remained available on the website throughout the campaign, only 34 pictures of children were posted during the first month of the campaign.²⁷

With limited spending for media in comparison to the tobacco companies, the Yes campaign most likely had to wait later in the campaign season to air their television spots. Callaway credited the campaign with their ability to pay for ad buys and paid canvassing, but noted that the money came in “too little, too late.”²⁴ The delay in funding allowed the tobacco industry to not only “define the debate from the get-go,” according to Wilson,¹⁹ but also to purchase a majority of the remaining media space toward the end of the campaign,⁶ leaving RJR and Philip Morris with ample opportunities to drive home their messages to voters (Table 10). Consequently, Callaway concluded, “I think that a lot of it was reactionary. We never controlled

the message. The opposition got out there first and we were constantly in a response mode.”²⁴ Wilson remarked, “Their stuff just smacked of desperation than actually anything of substance. It really didn’t make an impact.”¹⁹

Despite the failure of the Yes campaign to project convincing messaging, editorial support for Measure 50 was strong (Table 9) and major news outlets in metropolitan Oregon provided extensive coverage of both Yes and No campaign for Measure 50.³⁹ Easton explained that the campaign relied on the press^{7,40-43} to clarify the tobacco industry’s misleading statements about preserving the sanctity of the constitution, lack of legislative accountability, the creation of new bureaucracies, and unchecked government spending.⁶ She also attributed the campaign’s success in garnering editorial support to the efforts of spokesperson Cathy Kaufmann and manager Carol Butler.⁶ Unfortunately, Easton believed that the campaign did not take advantage of the strong editorial support by publicizing this support in media spots or direct mail pieces.⁶

Yes	<i>Daily Astorian</i> (Astoria) ⁴⁹
	<i>Daily Tidings</i> (Ashland) ⁵⁰
	<i>Eugene Weekly</i> (Eugene) ⁵¹
	<i>Gazette-Times</i> (Corvallis) ⁵²
	<i>The Gresham Outlook</i> (Gresham) ⁵³
	<i>Mail Tribune</i> (Medford) ⁵⁴
	<i>The Oregonian</i> (Portland) ⁵⁵
	<i>Portland Tribune</i> (Portland) ⁵⁶
	<i>The Register Guard</i> (Eugene) ⁵⁷
	<i>Statesman Journal</i> (Salem) ⁵⁸
<i>Willamette Week</i> (Portland) ⁵⁹	
No	<i>The Bulletin</i> (Bend) ⁶⁰
	<i>The Daily Courier</i> (Grants Pass) ⁶¹
	<i>The Dalles Chronicle</i> (The Dalles) ⁶²
	<i>News-Register</i> (McMinnville) ⁶³

The Healthy Kids Plan was also endorsed by several politicians, including former Oregon governor John Kitzhaber (D), who said he would support Measure 50, but did not “think the constitution is the best place for complicated policy.”⁴⁰ Although Kitzhaber was quoted in an article in *The Oregonian* that discussed how the constitution “has come to contain a hodgepodge of detailed directives and entitlements that the framers in their handwritten simplicity never imagined,”⁴⁰ the benefit of Kitzhaber’s support for Measure 50 was questionable given that his statement was published on October 11, 2007, a week

before ballots were mailed out to voters on October 19. Of course, the current Governor Ted Kulongoski (D) was also a visible force behind the Measure, which was his “priority bill,” according to Easton.⁶ Kulongoski did not appear in any media advertisement supporting Measure 50 because campaign leaders wanted to feature non-political Oregonians.⁴⁴ Another vocal supporter was Sen. Ben Westlund (D-Tumalo).³¹ Westlund, a lung cancer survivor,¹⁹ was a strong advocate for the bill, arguing that “children have a constitutional right to healthcare.”⁴⁵ However, the Senator’s political transformation from Republican to Democrat in 2006⁴⁶ might have affected his effectiveness as a credible, trustworthy champion of the measure.¹⁹ Other high profile supporters included Lance Armstrong⁴⁷ and Democratic state legislators such as Sen. Laurie Monnes Anderson (D-Gresham), Sen. Bill Morrisette (D-Eugene), Rep. Suzanne Bonamici (D-Beaverton), Rep. Ben Cannon (D-Portland), Rep. Sara Gelser (D-Corvallis), Rep. Mitch Greenlick (D-Portland), and Rep. Tina Kotek (D-Portland).⁴⁸

Opposition Research

The Yes campaign’s opposition research was thorough and extensive.²⁴ The Oakland, California firm VR Research was paid \$25,000 for campaign consulting and public records and

database research¹⁶ to investigate “what the Opposition was saying and who they were having speak for them.”⁶ These efforts successfully bought the campaign earned media attention. In particular, a story that broke in late September exposed the tobacco companies’ tactics to manipulate public opinion. Major newspapers, such as *The Oregonian*, and television news programs reported that RJ Reynolds’ “Oregonians Against the Blank Check” campaign had sent out mailers to voters, supposedly from Ben Matthews, a first grade teacher at a Salem elementary school.^{64,65} The mailer was in the form of a personal letter, but the return address belonged to Public Affairs Counsel, the public relations firm owned by Mark Nelson, RJR campaign director and a longtime lobbyist for the tobacco company.⁶⁴ Despite using the signature and persona of a credible elementary school educator, RJR’s strategy was embarrassingly uncovered in the media. Easton commented that “who they chose to speak for them just was not as credible as [he] probably could have been.”⁶

Grassroots Efforts

Because Measure 50 was referred to Oregon voters by the legislature based on an insider lobbying effort, supporters of the Measure had not built a strong volunteer base before the campaign began (as they would have if the Measure was put on the ballot as an initiative). The campaign never did a good job of mobilizing the voluntary health agencies’ grassroots volunteers in the relatively short timeframe between the legislative referral and election day.²⁴

The best example of inadequate grassroots education resulting in voter confusion was the YES campaign’s failure to counter RJR’s contention that 70% of the revenue generated from the tobacco tax increase was not expended on the Healthy Kids Plan, including \$65 million “earmarked as ‘unexpended’—the legislature’s blank check,” according to reject50.com, RJR’s campaign website.¹⁵ Even though this was completely the opposite of what was specified in the legislation (approximately 72% of the newly generated revenue went to the Healthy Kids Plan²) and the fiscal analysis report prepared by the Oregon Legislative Fiscal Office (“budgetarily, this [\$68 million] reserve would help safeguard the program from variations in caseloads, medical inflation, and modest declines in tobacco revenue”³), RJR was effective in getting their message out.¹⁹ Even Callaway admitted that “we didn’t talk much about the idiosyncrasies of the fund and how it was going to be spent.”²⁴

One advantage of having the labor groups’ endorsement of Measure 50 was access to their members to do door-to-door canvassing in the last weeks before the election.²⁴ The OAHHS was also able to access their affiliated hospitals, and engaged in grassroots efforts and door-to-door rallies with the Oregon Nurses Association.⁶ Easton believed that one of the campaign’s strengths was that these grassroots volunteers were used to the fullest.⁶ Through election day on November 6, advocates for Measure 50 were encouraging votes and knocking on people’s doors.²⁰ By this time, however, these efforts were probably too little, too late to sway public opinion. Callaway also noted that “[the campaign leaders] were very angry at the staff that had volunteered their time to come out and help. There wasn’t a clear direction for what volunteers were supposed to do.”²⁴ Beverly May, CTFK’s advocacy director for the western region and Ohio, agreed that the campaign lost many dedicated and enthusiastic volunteers to a lack of both direction and support for the grassroots.¹¹ A longer time for the campaign would have allowed the advocates to fundraise specifically for a stronger, more effective volunteer field

campaign instead of dedicating most of their money to paid media.

The Yes campaign focused their grassroots effort in metropolitan Multnomah County (which includes Portland), but the unexpected high voter turnout in other parts of the state ultimately thwarted their strategy. Maura Roche, the co-chair for the Yes campaign, explained after election day that “the base of supporters who are most easily activated was in Multnomah County... There was not as much firepower behind our TV buys in the other markets.”⁴² Although Roche was correct in seeking support with Multnomah County, which was the only county ultimately to vote with a majority in favor of Measure 50, the tobacco industry managed to take the rest of Oregon.

RJ REYNOLDS AND PHILIP MORRIS RUN SEPARATE CAMPAIGNS

Like their strategy in California,⁶⁶ RJ Reynolds and Philip Morris decided to run two separate campaigns opposing Measure 50. RJ Reynolds formed the “Oregonians Against the Blank Check” political action committee (PAC) and Philip Morris formed the “Stop the Measure 50 Tax Hike” PAC with the Oregon Secretary of State. According to Wilson, “an underlying level of mistrust” between the two companies drove the decision against a united campaign.¹⁹ Ironically, Wilson thought that the relationship between the two campaigns in Oregon was cooperative.¹⁹ RJR posted PM’s ads on their website so they were not two totally disconnected campaigns.¹⁵ The two tobacco companies again used GCW Media Services, Inc for their media buys and production, just as they had in California,⁶⁶ where they opposed a 2006 cigarette tax initiative. Philip Morris also contracted with strategic advocacy firm Goddard Claussen.¹⁶

RJ Reynolds' “Oregonians Against the Blank Check” Campaign

Public Affairs Counsel (PAC), the public relations firm owned by RJR lobbyist Mark Nelson, directed RJR's “Oregonians Against the Blank Check” campaign.⁶⁷ Nelson was a veteran lobbyist for RJR, and had worked with other tobacco lobbyists to unsuccessfully oppose Measure 44, the \$0.30 cigarette tax increase that partially funded the newly-created Oregon Tobacco Prevention and Education Program in 1996.¹ JL Wilson, who has represented RJR on previous issues, though not as a full-time lobbyist, was hired as spokesperson for the campaign, which commenced in mid-August.¹⁹ As the spokesperson, Wilson was the face of RJR’s campaign. Unlike the Yes campaign, which lacked a clear sense of leadership, the No campaign benefited from a strong identity, according to Easton:

[The No campaign] had one key speaker, JL. He resonated well with individuals and groups that he went to go speak to. He went prepared with probably an overwhelming amount of information, and because most of the groups that he spoke to were business-related groups, he was able to talk to these groups about the business impact. I personally believe that we had not just one speaker, but several speakers. While they may have been trained and asked to be kept on message, we did not prepare them with material handouts and takeaways as well as the No on Ballot Measure 50 did.⁶

The RJR campaign was run by “where the numbers told us we needed to go,” according to Wilson.¹⁹ Initial polling by the campaign indicated “surprisingly weak” support of only 53%

in favor of Measure 50, according to Wilson, who said that the RJR campaign “felt that we could draw even [with the Yes side] and then surpass with time to spare.”¹⁹ In addition to polling, two early surveys conducted in August by Nelson's firm tested 35 messages from which the four main messages of the campaign were derived.⁶⁷ Campaign finance records show that RJR paid \$58,000 to PAC for their survey work, and another \$138,000 to Washington, DC-based Voter/Consumer Research for additional surveys and focus groups throughout the campaign.¹⁶ In the last six weeks of the campaign, Wilson reported that RJR polled daily. While they never released their polling data to the public,¹⁷ Wilson commented, “It was easy to see that there was no segment of the population that supported the tax, demographically... I think you found the most support with the youth, with 18-34, which are people who largely don't vote.”¹⁹

Philip Morris' “Stop the Measure 50 Tax Hike” Campaign

Lisa Gilliam was contracted as the spokesperson for the Philip Morris campaign.¹⁷ Gilliam was not a registered lobbyist in Oregon in July 2007,⁶⁸ but had formerly lobbied for several pharmaceutical companies and Oregonians for Accountability, a private insurance company-backed campaign to abolish the state-run workers compensation program.⁶⁹ According to campaign finance data, other consultants worked on the campaign, including C&A Consulting, Gardner & Gardner, Pacific Issues Management, The Dolphin Group, and several law firms.¹⁶ Like RJ Reynolds' campaign, “Stop the Measure 50 Tax Hike” relied mainly on their paid media advertising and their website, measure50facts.com. During the campaign, Philip Morris spent \$237, 575 on surveys and polls, but the results were never publicly shared.¹⁶

Philip Morris Files a Lawsuit to Delay Measure 50

One aspect of the Philip Morris campaign that differentiated it from RJR's was Philip Morris' efforts in August to block Measure 50 from being placed on the ballot.⁷⁰ The lawsuit, against Secretary of State Bill Bradbury, was filed in the Marion County circuit court on August 27 on behalf of Senator Jeff Kruse (R-Roseburg) by Portland lawyer James Dumas, who defended Philip Morris in a 1999 case for the death of an Oregon woman.⁷¹ The plaintiffs, which, in addition to Sen. Kruse, included several tobacco users and retailers,⁷¹ argued that the Measure violated the Constitution's “separate vote” provision by incorporating three separate changes relating to taxes on cigarettes, cigars, and other tobacco products into a single vote.^{70,71} *The Oregonian* reported that Philip Morris was paying for Dumas' legal fees.⁷¹ Sen Kruse received \$5490 in tobacco company campaign contributions during his legislative tenure and was assigned a tobacco policy score (on a 0 to 10 scale, with 10 being the most supportive of tobacco control policies) of 2 by knowledgeable individuals in 2006.¹ The lawsuit, which Judge Paul Lipscomb rejected based on his findings that “the challenge fails as to each of the specific substantive issues it raises,”⁷² did not have any significant effect on the campaign.⁶

The Yes on Measure 50 Steering Committee, at the advice of the campaign manager and others did not get involved in that lawsuit.⁶ According to the Yes campaign, attempting to remove tobacco control-related measures from the ballot was a tobacco industry tactic that has failed 35 times in five states since 2001.⁷²

Tobacco Companies Focused Efforts on their Media Campaigns

Approximately 67% of both tobacco companies' campaign money was spent on paid media ads on radio and broadcast and cable television.¹⁶ *The Argus Observer* reported that the tobacco companies were "relying on their constant media spots, instead of more traditional get-out-the-vote efforts, like door-to-door visits or phone banks."¹⁷

The tobacco companies put out the first television ads in mid-September, enabling them "to hook voters with their message first," according to Wilson in *The Statesman Journal*.⁷³ While Philip Morris and RJR ran separate campaigns against Measure 50, both used similar messages, including the arguments that the tax was regressive and would not support the Healthy Kids program, that HMOs would get all the money, that lawmakers were unaccountable, and that a constitutional amendment was not the appropriate vehicle for a tobacco tax increase (Table 10).

Analysis of their television and radio spots suggested that the RJR campaign focused more heavily on implicating HMOs and health insurers and on emphasizing the unsustainable and unaccountable nature of the Measure (Table 10). The main arguments that RJR made was that "HMOs and health insurers get millions in new insurance business from taxpayers with no competitive bids" and "70% of the funds from the new tax would not go to the Healthy Kids Program."¹⁵ These claims were misleading and did not reflect the language of Measure 50. In fact, Measure 50 allocated 72% of the new tax to the Healthy Kids Program.²

Meanwhile, the Philip Morris campaign highlighted government bureaucracies and inefficiencies, as well as the issue of amending the Constitution with a product tax (Table 10). One of the more grandiose statements made by the Philip Morris campaign was that "Oregon's Constitution is a sacred document that sets forth the tenets that form the basis of our legal system and laws."⁷⁴ Messaging in the RJR campaign did not fail to mention that Measure 50 threatened to rewrite the constitution, but RJR attacked Measure 50 from other angles once they understood that the constitutional amendment was a message that easily resonated with voters. JL Wilson said after the election, "The concerns about the constitution pulled us even, and allowed us to make other arguments... But at the end of the day it was a fairness [to smokers] issue and a lack of sustainability issue."⁴⁵ RJR's "Who Pays?" ad argued that Measure 50 unfairly targeted smokers, a group that Wilson said were "pick[ed] on to fund this general health care program" (Table 10).¹⁹

Toward the end of the campaign, both Philip Morris' and RJR's campaigns began to introduce messages that addressed both smokers and nonsmokers. In "Raise Concern," a Philip Morris ad, a female actor said, "no matter how you feel about smoking, [amending the constitution with a product tax is] a dangerous precedent."⁷⁴ RJR ads pointed out that "they're targeting smokers today," and appealed to nonsmokers with a radio ad in which a woman warily said, "I don't smoke, and I want to help kids, but the more I look into this..."¹⁵ Wilson explained that using smokers in their messaging about Measure 50's unfair tax "initially polled like garbage, but at the end just seemed to be ubiquitous."¹⁹

Table 10. Transcriptions of television advertisements paid for by tobacco companies opposing Measure 50	
Title	Message
Philip Morris: Television	
“First Things First”	<p>Male Actor: I was reading about Measure 50</p> <p>Female Actor: The tobacco tax? Sounds good...</p> <p>Male: No, it’s millions in new taxes to support a new and expanded healthcare bureaucracy.</p> <p>Female: I thought Oregon already had a state health plan.</p> <p>Male: Well, we do! And the bureaucrats can’t even get 60,000 kids who are eligible enrolled in it. But now they want a new one...</p> <p>Female: Shouldn’t we make the existing system work? Enroll all those kids before we raise taxes for a new program?</p> <p>Female Narrator: Fix the system we have before throwing money at a new one. No on 50.</p>
“Measure 50 Research”	<p>Female Actor: Measure 50. Did you know that it amends our Constitution?</p> <p>Male Actor: Well wait a minute... I thought it was a tobacco tax.</p> <p>Female: [Chuckles] Yea, in our Constitution.</p> <p>Male: Taxes on specific products locked into the Oregon Constitution?</p> <p>Female: [Nods] That’s the way the politicians wrote it. These taxes can never be changes without another Constitutional amendment.</p> <p>Male: Oregon has never done that before.</p> <p>Female: Not in 150 years...</p> <p>Male: I’m not going to let them start messing with our Constitution now. I’m voting no on Measure 50.</p> <p>Female: [Nods]</p>
“More Problems”	<p>Female Actor: I want kids insured, but Measure 50 has real problems.</p> <p>Male Actor: Dean Huffman [text on screen: Former Dean, Lewis & Clark Law School], a legal scholar, said this would be the first time we’d ever put a product tax in our Constitution. It’s a very dangerous precedent.</p> <p>Female: And it gives the politicians \$68 million dollars in new taxes to spend on anything they call a “health program.” Who knows how much they’ll waste.</p> <p>Male: Taxes in our Constitution... Potential for more government waste... [Shakes head] More problems than solutions. I’m voting No on Measure 50.</p>
“More Trouble”	<p>Female Actor: You know, the more I read about Measure 50...</p> <p>Male Actor: The more troubling it is... Dean Huffman said it would be the first time we’d ever put a product tax in our Constitution. That’s a very dangerous precedent.</p> <p>Female: And look at this! \$68 million dollars in new taxes for anything the politicians call a “health program.” Who knows how much will be wasted!</p> <p>Male: New tax in the Constitution... More potential for more government waste... [Shakes head] I know I’m voting No on Measure 50.</p>
“Raise concern”	<p>Male Narrator: Measure 50 Facts [Text on screen: For facts: measure50facts.com] raise concerns:</p> <p>Female Actor #1: 50 puts product taxes in our Constitution for the first time in history. No matter how you feel about smoking, that’s a dangerous precedent.</p> <p>Male Actor #1: A fund of at least \$68 million dollars politicians can spend on anything they call “healthcare”? That’s a lot of potential for waste there.</p> <p>Female Actor #2: Bureaucrats can’t get 60,000 kids enrolled in the current healthcare program. Let’s fix what we have before throwing money at a new one.</p> <p>Male Narrator: Concerned? Check it out yourself. Vote No on 50.</p>
Philip Morris: Radio	
“Constitution”	<p>Male Voice: Paid for by Philip Morris USA. Authorized by Stop the Measure 50 Tax Hike.</p> <p>Female: www.measure50facts.com</p> <p>Male: Online again...</p> <p>Female: Oh, so much to learn!</p> <p>Male: So little time... So what is it today?</p> <p>Female: Measure 50. Did you know it amends Oregon’s Constitution?</p>

	<p>Male: A constitutional amendment? I thought it was a tobacco tax. Female: ...written into our Constitution! Male: No, wait a minute. Taxes on specific products written into our Constitution? Female: Mmm-hmm. Male: Have we ever done that before? Female: Not in 150 years of Oregon history Male: So why do that now? Female: Because that's how the politicians voted. These taxes can never be changed without a Constitutional amendment. Male: Yea, but if they get away with that, what tax will they put into the Constitution next? Female: Soft drinks, fast food, who knows? Male Voice: Check it out for yourself at measure50facts.com. Male: Well, I know this. I'm not going to let them mess with the Constitution. I'm voting No on Measure 50.</p>
"Voted Yet?"	<p>Male Voice: Paid for by Philip Morris USA. Authorized by Stop the Measure 50 Tax Hike. Female: So...got this election figured out? Male: Everything but Measure 50. I want to insure kids, but a lot of what I hear bothers me. Female: Like writing a product tax into the Oregon Constitution, for the first time in history? That's a dangerous precedent. And it leaves \$68 million dollars that politicians can spend on anything they call "healthcare." Male: \$68 million leaves a lot of room for waste. Female: Oregon already has a health program, but the bureaucrats can't get 60,000 eligible kids enrolled in it. We should fix the program we have before throwing money at a new one. Male: Product taxes in our Constitution, and more money the politicians can waste? I think I'm voting No on Measure 50. Female: You haven't voted yet? Well then check it out. Male Voice: Measure50facts.com Male: Measure50facts.com Female: Everything you need to know about Measure 50.</p>
RJ Reynolds: Television	
"Constitution"	<p>Female Narrator: Measure 50, to increase Oregon's tobacco tax, sounds like a good idea. But is it? 50 is supported by HMOs and health insurers wanting to rewrite Oregon's Constitution to enrich themselves. It locks massive new spending into law. HMOs and health insurers get millions in new insurance business from taxpayers with no competitive bids. And 50 is the first time our Constitution would be amended to tax a single product. Don't let HMOs rewrite our Constitution to give themselves a blank check. Vote No on Measure 50.</p>
"Blank Check"	<p>Male Narrator: HMOs and health insurers are behind Measure 50, rewriting Oregon's Constitution to increase the tobacco tax. They say it's to fund the Healthy Kids Program, but look where the money goes. Over 70% of the funds from the new tax would not go to the Healthy Kids Program, which is supposed to be the Measure's main purpose. \$68 million isn't even expended for a specific healthcare purpose, and HMOs get millions in new insurance business from taxpayers with no competitive bids. Measure 50 is a blank check at our expense.</p>
"Who Pays?"	<p>Female Narrator: Measure 50 rewrites Oregon's Constitution to increase the tobacco tax. It's supposed to help kids, but over 70% of the money doesn't even go to the Healthy Kids Program. And 50 spends far more than it takes in. Its revenues will decline each year as people buy less. But 50's massive new spending nearly doubles in a few years, leaving a funding gap of over \$200 million dollars. They're targeting smokers today, but who pays more taxes tomorrow to cover 50's huge shortfall? Don't rewrite our Constitution. No on Measure 50.</p>
"Headlines"	<p>Female Actor: Measure 50 rewrites Oregon's Constitution, increasing the tobacco tax—supposedly to help kids. But over 70% of the money doesn't go to the Healthy Kids Program, and \$75 million isn't even expended for a specific health purpose. Oregon's already spent hundreds of millions in tobacco money without establishing a children's health insurance program. Now they want a new program that would create a \$200 million dollar shortfall, raising the question, "Who pays then?" It's not what it seems. No on Measure 50.</p>
RJ Reynolds: Radio	

<p>“Teacher Conference”</p>	<p>Male Teacher: [School bell rings] Okay, kids. Remember, math quiz tomorrow! Mrs. Page, you’re early for our parent teacher conference.</p> <p>Mrs Page: I wanted to do some studying while I waited.</p> <p>Teacher: Studying what?</p> <p>Page: Measure 50, increasing tobacco taxes to fund the Healthy Kids Plan. I don’t smoke, and I want to help kids, but the more I look into this...</p> <p>Teacher: ..The more problems you see!</p> <p>Page: Yeah!</p> <p>Teacher: I researched it myself. They say it’s to help kids, but over 70% of the money won’t go to the Healthy Kids Program. \$65 million of the new tax isn’t even expended for a specific health care purpose. HMOs would get millions in new health insurance business from taxpayers—with no competitive bids! And there’s something else...</p> <p>Page: Measure 50 rewrites Oregon’s Constitution.</p> <p>Teacher: Right. Measure 50 locks massive new spending into law. It’s the first time our Constitution would be amended to tax a single product.</p> <p>Page: I’m not interested in letting HMOs and health insurers rewrite our Constitution to give themselves a blank check.</p> <p>Teacher: Exactly... Now, about your son’s math homework...</p> <p>Male Voice: Check it out yourself at reject50.org. No on 50. Paid for by Reynolds American Incorporated. Authorized by Oregonians Against the Blank Check.</p>
<p>Source: RJ Reynolds’ reject50.com and Philip Morris’ stopmeasure50.com campaign websites</p>	

Grassroots Efforts to Oppose Measure 50

While the majority of the No campaigns’ efforts were focused on paid media spots, some grassroots efforts were directed at defeating Measure 50. Taxpayer groups, such as the Taxpayer Association of Oregon and Freedomworks, and convenience store groups took the lead on encouraging the public to vote against the 84.5-cent tobacco tax increase (Table 11). According to Wilson, the neighborhood and convenience stores “ran a point-of-sale program for us—I couldn’t really tell you how effective it was for us. But they had point-of-sale materials, so people who went in to buy those products knew what was at stake with the ballot measure.”¹⁹ The Smokers Club, Inc, a smokers’ rights group on the internet, contributed to the grassroots efforts with their “Oregon Cash Cow Protest,” and made window flyers and handouts available on their website for download that urged smokers to “let them tax someone else for a change!” or “send the politicians a strong message” by voting against Measure 50.⁷⁵ Similar point-of-sale material, such as fliers and bumper stickers, were left at convenience and tobacco stores such as News & Smokes, a Bend, OR store, by RJR’s “Oregonians Against the Blank Check” and US Smokeless Tobacco’s “Can the Tax,” a smaller, less high-profile campaign.¹⁸

THE DEFEAT OF MEASURE 50

The *Portland Business Journal* conducted an internet poll the week before the November 6, 2007 election. In their “Business Pulse” survey, 57% of the 1061 respondents supported Measure 50, 38% were opposed, and 3% were undecided.⁷⁷ However, by election day on November 6, 2007, Measure 50 was defeated 41-59% with a high voter turnout of 60% and significant regional differences between rural counties and metropolitan Multnomah county (Table 12).⁷⁸ Measure 50 was one of two measures on the ballot for this November special election.

Americans for Prosperity – Oregon	Korean-American Grocers Association of Oregon	Plaid Pantries, Inc.
Americans for Tax Reform	Leathers Enterprises, Inc.	Rich & Rhine
Core-Mart, Inc.	Mini Mart Neighborhood Stores	Salem Area Chamber of Commerce
Council for Citizens Against Government Waste	National Organization of Black Law Enforcement	Small Business & Entrepreneurship Council
Craig Oil Inc.	Northwest Grocery Association	Taxpayer Association of Oregon
Freedomworks	Oregon Citizens for a Sound Economy	Taxpayer Defense Fund
Harbor Wholesale Grocery Inc.	Oregon Neighborhood Store Association	The American Conservative Union
John A. Charles, Jr., President & CEO, Cascade Policy Institute	Oregon Small Business Coalition	U.S. Chamber of Commerce
James Huffman, Professor of Law and former Dean of Lewis & Clark Law School	Oregon Small Grocers Association	
Source: Philip Morris' Stop the Measure 50 Tax Hike Campaign, ⁷⁴ US Smokeless Tobacco's Can The Tax campaign ⁷⁶		

The Reason Foundation, a libertarian public policy research institute, issued a policy brief regarding Measure 50. The analysis concluded that Measure 50 was flawed because it taxed a minority group (smokers), amended the Constitution, failed to serve as a sustainable answer to healthcare funding, and “will increase incentives for tax evasion and the costs associated with black market tobacco sales.”⁷⁹ The conclusions made in this policy brief were not surprising, given the fact that Reason’s government affairs director, Michael Flynn, previously worked in conjunction with tobacco companies such as RJR⁸⁰ and as the former policy and legislative director at the American Legislative Exchange Council (ALEC).⁸¹ ALEC’s connection to the tobacco industry in the 1990s was established through Tobacco Institute contributions and as a state ally of Philip Morris’ Federal Government Affairs.^{82,83}

Implications of Measure 50’s Defeat

Throughout Measure 50’s short campaign, politicians and the media around the US were paying attention to the fate of Oregon’s Healthy Kids Plan. Wilson said that RJ Reynolds did not consider how Oregon’s Measure 50 fit into the bigger picture with pending SCHIP legislation at the federal level to expand children’s health insurance financed by a \$0.61 increase in the federal tobacco tax: “[The campaign] had everything to do with Oregon and Oregon messaging. Whatever ramifications for SCHIP were conclusions that other people could draw, but that was not our concern.”¹⁹

Table 12. Election results show weak support for Measure 50						
County	Yes	No	Total	% Yes	% No	% Diff
<i>Counties with greatest % "No" votes and greatest difference between "Yes" and "No" votes</i>						
Lake	445	2075	2520	17.7	82.3	64.6
Grant	478	2202	2680	17.8	82.2	64.4
Harney	495	2114	2609	19.0	81.0	62.0
Klamath	3724	15413	19137	19.5	80.5	61.0
Crook	1540	5809	7349	21.0	79.0	58.0
<i>Counties with greatest % "Yes" votes</i>						
Multnomah	121697	91986	213683	57.0	43.0	14.0
Benton	14275	14773	29048	49.1	50.9	1.8
Washington	64081	74532	138433	46.3	53.7	7.4
Hood River	3120	3756	6876	45.4	54.6	9.2
Lane	52581	64464	117045	44.9	55.1	10.2

Source: Oregon Secretary of State, Elections Division⁷⁸



Figure 2. RJR's Reject 50 campaign website cites election results from Oregon (2007), California (2006), and Missouri (2006) to undermine support for tobacco tax-funded health care insurance programs around the United States. This image was posted on www.reject50.com after the November 2007 election in Oregon. Source: RJR's Oregonians Against the Blank Check Committee

However, the arguments for and against Measure 50 and its outcome definitely influenced the SCHIP debate.⁸⁴ An editorial in the *Wall Street Journal* published three days after Oregon's November election dismissed the excuse put forth by Measure 50 supporters, including Gov. Kulongoski, that the tobacco industry had bought the Oregon vote with their \$12 million campaign.⁸⁵ One of the reasons for Measure 50's failure, according to the editorial, was "the notion that voters didn't want to pass a state tax increase to finance a health-care expansion that Congress might soon pass... There are political lessons here, in case anyone in Washington is paying attention."⁸⁵ Indeed, President George Bush, an opponent of the federal SCHIP proposal, called Oregon Congressman Greg Walden (R-District 2) to congratulate him on Measure 50's loss.⁶ In Congress, Walden voted against the SCHIP reauthorization bill, which was passed in both the House and Senate, and the proposal to override Bush's first veto of the bill in October. Following Measure 50's defeat, *The Oregonian* reported that Walden and Bush "agreed there are 'clear similarities' between the idea Oregon voters rejected and the bill Congress is forging."⁸⁶

After Measure 50 was defeated, RJR updated its Oregon campaign website to argue that the definitive lack of support for tobacco tax-funded children's healthcare insurance programs should be noted by "lawmakers around the county" (Figure 2).¹⁵

CONCLUSIONS AND LESSONS LEARNED

Although no exit polls were made public,⁶ supporters of Measure 50 blamed the tobacco industry's massive spending on media advertisements for their loss.^{42,87} This analysis ignored

flaws in the proposal itself as well as the previous success of Measure 44 in 1996 which raised the cigarette tax by \$0.30 despite the tobacco industry spending 8.5 times more on their campaign than the health groups.⁸⁸ As was the case in California a year earlier in 2006, when voters turned down the \$2.60 cigarette tax increase in which the overwhelming amount of money raised would pay for medical services with only a limited allocation to tobacco control in Proposition 86,⁶⁶ heavy tobacco industry spending was not the reason the Yes on Healthy Kids Plan campaign failed.

Easton and national advocates at ACS agreed that a successful campaign would need more time and more funding earlier in the campaign.^{6,24} Despite their initial hope for the campaign, Bozack reflected, “I don’t think the campaign could have been won. The timeline was too short. We should have never taken it. We should have never done a constitutional amendment. We were not ready to do a campaign, whether the Governor wanted to do it or not.”²⁴ A politically viable option for ACS would have been to deny national funding to the Oregon campaign. In the past, ACS delayed implementing campaigns “because we felt the states weren’t ready,” according to Bozack. However, if ACS had withheld funding from the national level for Measure 50, the local politically-driven campaign would most likely have forged ahead without any buying power for media.

For Callaway, the big lessons learned were about leadership and control: “I think we [national ACS] have to have a seat at the decision-making table. We have to be able to control the message, and we have to use messages that we know work. We need to avoid constitutional amendments if at all possible.”²⁴ Although both Bozack’s and Callaway’s strong criticisms of the campaign may have been colored by frustration over ACS’ large financial investment failing to deliver a successful campaign, their opinions revealed several lessons that can be generalized to benefit tobacco control advocates across the US. Importantly, Callaway recognized the necessity of having campaign staff with the skill sets to become effective leaders and communicators in a campaign as big as Measure 50 was.²⁴ In Oregon, the Yes campaign chose leaders who had experience in local politics and political campaigns, but who lacked communication skills and the ability to foster collaboration among advocates. Still, the problem was more fundamental: the way that Measure 50 was written and the way that the money was allocated made it susceptible to attack from the tobacco industry.

Instead, the Yes campaign did not adequately justify a tax increase that funded children’s healthcare – not tobacco control – and the tobacco industry exploited this omission in their well-funded media campaign and polling and surveying efforts. The convoluted nature of the Healthy Kids legislation, which was burdened with a constitutional amendment, was an easy target for the tobacco companies, according to Wilson:

Health care for kids is fine if that’s the only issue we’re talking about, but you’re bringing in taxes, the Constitution, taxes from a certain segment of the population...you’re bringing in where the legislature’s actually going to spend the money. There were just so many other issues to Measure 50 that a reasonable person could argue that this was not about health care for kids at all. There was too much latitude to make this issue something other than kids—and you could in an intellectually honest way. We obviously latched onto that, and most people did, too.”¹⁹

Without a sizeable amount of money dedicated to tobacco control, voters were more susceptible to the tobacco industry's argument that Measure 50 was an "unfair tax." A lack of funding to support the Yes campaign also allowed the tobacco industry to frame Measure 50 early on with their own arguments against it. Consequently, the advocates' inadequate public education efforts and the tobacco industry's misinformation about the Healthy Kids Plan ended with disastrous results for Measure 50. Many of the same mistakes that were committed in the 2006 tobacco tax increase initiative in California⁶⁶ were again committed in Oregon a year later. The tobacco control community will continue to be disappointed with their campaign efforts to increase tobacco taxes until they begin to learn from these repeated past mistakes.

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