

Lessons from Indiana: The Battle Against Preemption

In 1997, Indiana became the first state where a diverse tobacco control community was united in its opposition to a preemption bill, a campaign was developed and funded to preserve the right of local control, and yet advocates lost. The Indiana legislature removed the right of local communities to regulate youth access to tobacco by a single vote, overturning a gubernatorial veto. The unsuccessful battle to preserve local control and uphold the Governor's veto was spearheaded by the *Indiana Campaign for Tobacco-Free Communities*, funded through the National Center for Tobacco-Free Kids.¹ The campaign received technical assistance from the National Center for Tobacco-Free Kids, the American Cancer Society's Tobacco Advocacy Team and Americans for Nonsmokers' Rights.

A variety of tactics were used to fight preemption including petitions, resolutions, candidate surveys, media advocacy, paid advertisements, grassroots capacity building, and advocacy training. The experiences and lessons learned of the *Indiana Campaign for Tobacco-Free Communities*, both successful and unsuccessful, can guide other states facing preemptive legislation in upcoming legislative sessions.

Why We Knew There Was A Battle Brewing

In 1997, Indiana stood on the verge of another preemption battle even before the legislative session began. For the previous three legislative sessions, the tobacco industry had targeted Indiana for preemption. Fronted for the tobacco industry by business groups, these preemption bills survived further into the session each subsequent year. This battle began in 1996 when the General Assembly passed SEA 106, a bill that

preempted all local jurisdiction over the sale, distribution and promotion of tobacco products effectively halting all youth access efforts at the local level. In a major victory for local communities, Governor Evan Bayh vetoed this legislation on March 19, 1996. There was never any doubt, however, that tobacco industry backed front groups would challenge the Governor's veto the following session and lobby hard for an override.

The *Indiana Campaign for Tobacco-Free Communities* developed a plan to protect the Governor's veto and preserve local control four months prior to the start of the '97 legislative session and received funding from the National Center for Tobacco-Free Kids to implement the plan. A grassroots coordinator was hired to coordinate a statewide efforts, to mobilize support for the Governor's veto, and enhance the grassroots network for passing future legislation locally and at the state level. Materials from the campaign were later used as model materials for other states facing preemption battles.

The lessons learned from this campaign are outlined in this case study to help others plan adequately to protect their local control over tobacco issues. We may have lost a battle in Indiana in 1997, but we came out of the battle as a stronger coalition with an even greater commitment to local action. We hope our battle wounds will inspire others to never give up the fight to maintain local control for tobacco issues.

The Battle Background

The "Preemption Strike Force" targeted Indiana as the state most vulnerable to preemption in 1997. The challenge issued as a part of Governor Bayh's veto message had national significance for all states facing preemption threats. As part of his March 19, 1996 veto message, Governor Bayh pointed to the lack of local tobacco ordinances as a weakness in Indiana's effectiveness in fighting preemption:

“A certain unreality surrounds S.E.A. 106: supporters argue this legislation is necessary to preempt local ordinances that, at present, are virtually non-existent in Indiana; opponents defend the right of localities to enact measures which, to date, they have show little or no inclination to enact.”

The overall objective for *The Indiana Campaign for Tobacco-Free Communities* was to prevent an override of Governor Evan Bayh’s veto of legislation. A second objective was to build additional capacity for passing the much needed local legislation that Governor Bayh referred to in his veto message.

Several critical factors put Indiana at risk for preemption:

- Indiana requires only a simple majority for overriding a Governor’s veto instead of the traditional two-thirds majority. Since elections were being held in the fall of ’97, many newly elected legislators would vote on the override even though they were not members when the veto took place.
- It was an election year for the Governor, several Senate and all House seats. Governor Bayh could not run for re-election, and thus would not be at the helm to protect his override. Critical state legislative seat elections could open up room for additional support for the tobacco industry.
- The tobacco industry and business front groups put incredible amounts of time and resources into passing preemptive legislation and were not likely to give up the fight. Their tactics escalated to include threats to voluntary health agencies’ fundraising activities and the filing of an ethics charge stating that inappropriate lobbying had taken place in the ’96 session. (The charge was later dismissed.)

Phase One: Preparing for the Big Battle

The campaign began in September 1996 with the following activities:

Recruitment: Over 1000 preemption packets were mailed to advocates statewide. The packets included an introductory letter explaining the campaign, sample petitions and resolutions, a copy of the Governor’s veto message and preemption fact sheets. Meetings and phone calls were held to recruit new partners who had not been engaged in tobacco issues. Newly discovered networks were tapped. For example, we found out that the Indiana Health and Hospital Association had developed legislative “chain teams” in over 50 hospitals which could be linked with local advocates. Through the Governor’s Council for a Drug-Free Indiana, we identified substance abuse contacts in all 92 counties.

Petitions: Petitions were a popular, easy way to engage the general public and get advocates enthused about the campaign. The signatures helped to build the database for the legislative session.

Inside Lobbying Coalition: Lobbyists from the American Lung Association of Indiana, Indiana State Medical Association, Indiana Dental Association, and the Association of Cities and Towns met regularly with the campaign coordinator to plan the inside lobbying effort. Later, the newly hired lobbyist from the American Cancer Society joined the group.

Resolutions: Because it was impractical to pass local ordinances before the start of the legislative year, we encouraged model resolutions in cities and counties. These resolutions, to be passed by local governments, called for the preservation of local government authority over tobacco regulations and denounced preemption as a tobacco industry strategy.

Candidate Survey: Attempts were made to recruit organizations to include tobacco issues in their candidate surveys.

Tracking Tobacco Industry and Front Group Activity: We worked closely with Americans for Nonsmokers' Rights (ANR) to track the tobacco industry's involvement in the preemption battle. Research time was drastically cut by utilizing the ANR Foundation Tobacco Industry Tracking Database©.

Database of Grassroots Advocates: We started a computerized database of tobacco control supporters built from interested coalition members, voters signing the petitions, and individuals recruited through meetings and presentations.

Coordinated Media Activities: We concentrated on educating State House media and framing the issue as a local control and children's health issue. At every opportunity, we exposed the connections between retail front groups and the tobacco industry, including proactively responding to a news conference on tobacco issues unrelated to preemption held by the Indiana Coalition for Responsible Tobacco Retailing and the Indiana Restaurant and Hospitality Association.

In December, local coalitions in Indianapolis, South Bend and Evansville held concurrent news conferences to call on members of the Indiana General Assembly to pledge their support to local communities and to denounce preemption as a tobacco industry tactic. State legislators and local government officials were involved.

Phase Two: The Battle in the State House

“ To say that our only problem with Senate Enrolled Act 106 is that it preempts local control of the sale of tobacco products is like saying that our only problem with Jesse James is that he robbed banks. Preemption and local control is what this fight is all about.” Indiana Attorney General Jeffrey A. Modisett

The December News Conferences marked the start of the legislative battle. As one headline read, “Anti-Tobacco Forces Fire First Savo”. A major early success came when the newly elected Attorney General held a news conference to announce the formation of the Attorney General’s Tobacco Free Youth Coalition, which included five major state agencies, and to urge the General Assembly to uphold the Governor’s veto.

Three paid advertisements, funded by the Center for Tobacco Free Kids and endorsed by Indiana organizations, ran in the *Indianapolis Star* during crucial points in the Senate consideration of the override. The ads resulted in media stories in other dailies and in the *Indianapolis Reporter*, the largest Black newspaper. We reused the paid ads and quotes from articles in one-page alerts that were placed in the legislators mailboxes.

The high visibility of the preemption issue in Indiana slowed SEA 106 in the Senate, but could not stop it. The fate of SEA 106 ultimately rested with the Senate and House leadership, which was in the pocket of the tobacco industry. The Senate President was a strong proponent of preemption, and used his position to push SEA 106 through the Senate. He rescheduled the full Senate vote on SEA 106 a number of times because he didn’t have the votes needed for passage. The many postponements of the Senate vote lulled the campaign into a false sense of security, while draining its resources.

We held a rally at the State House on the day of the crucial vote in the Senate. Media coverage was excellent including broadcast coverage on all major stations in the capitol. We worked the media hard the day before the event, personally delivering press packets and talking with the reporters. A key local coalition member arranged to have a local daycare center bus in children to participate in the rally.

Once the floor debate started, four prominent Senate members unexpectedly provided floor testimony supporting us. The lobbying was so intense that the one health lobbyist was surrounded by four front-group lobbyists while he talked with a key Senate member who was on the fence. The majority party delayed the vote for more than five hours, until finally gaining the one vote margin needed for passage. The House vote occurred less than a week later. Again, we received unexpected floor testimony by several House members but these combined efforts were not enough to overcome the influence of 12-15 lobbyists who were paid to see the override through.

Hard news coverage of the issue in the conservative *Indianapolis Star* was excellent, with almost daily coverage. The *Star*, which had previously shown little editorial support for tobacco control, published two editorials supporting the governor's veto, one of which ran on the day of crucial Senate vote.

Phase Three: After the Smoke Cleared

The Indianapolis Star ran an in-depth article on the tobacco industry influence in the State House about six weeks after we lost. The article was a culmination of a year of work with reporters who had covered a "statehouse sellout" series that ran in 1996. We spent time with the reporters behind the scenes at the capitol and provided background information. The result was a front page story outlining tobacco industry ties with the retail front groups which included a half-page photo of tobacco industry lobbyists talking with the key lobbyists from the Indiana Retail Council.

We met with a marked difference in member's attitudes after this battle ended. During debates on other tobacco-related bills, legislators asked other members how they voted on SEA 106. SEA 106 became a "litmus" test for commitment to tobacco control.

Battle Lessons Learned

- **Start early.** Our campaign was funded four months before the legislative session began. It was not soon enough to accomplish the groundwork necessary to offset the big money opposing us. We missed opportunities to coordinate a candidate survey and to take advantage of fall elections. For example, the medical association included tobacco questions on a candidate survey but it was sent in mid-summer before our campaign started. We learned that the League of Women Voters arrives “by consensus” at their election issues many months in advance. There wasn’t enough lead time to get on the agendas of important meetings to discuss preemption. Several groups concerned with children’s issues held legislative luncheons and receptions, but agendas were already set. We recommend that development of a preemption plan begin as soon as the legislative session ends.
- **Develop a statewide database of supporters listed by legislative district.** The database is key to countering the power and money of the tobacco industry. Our database, while much improved over the previous year, simply wasn’t enough to counter the sophisticated telemarketing methods employed by the opposition. The retail groups hired telemarketers to do “seamless transfer calls” that linked campaign contributors with their legislator. Our database was not broken out by district so we were unable to utilize these same telemarketing techniques.
- **Poll your coalition members for campaign commitments.** Ask your supporters what they are willing to contribute to this effort. Will they supply lists of names for the database or for telemarketing calls? If they won’t turn over their names, can they give you mailing labels for alerts or agree to broadcast fax alerts to their members?

Will they add money or lobbying time? Will they give newsletter space to the campaign? Will they provide legal or media assistance? Don't assume that an organization that endorses your campaign will provide time or resources to the effort. You need to nail down their specific commitments.

- **Hire a contract lobbyist to provide access to key legislators.** We relied on our inside lobbying coalition, but it wasn't enough to counter the 12-15 lobbyists employed by the opposition. Lobbyists in our coalition who attended legislative fundraisers and had "insider influence" in the capitol were responsible for other issues that took precedence over the preemption issue. Furthermore, as the issue heated up, some of these "insider" allies became nervous about our media advocacy tactics and backed away from the issue. We needed a lobbyist with ties to the Senate and House leadership whose primary job responsibility was to defeat preemption.
- **Secure more local government voice.** When local government spoke, legislators and the media listened. We needed more local officials to take a high profile stance and speak out like a few council members did throughout the state. Resolutions denouncing preemption as a strategy are an excellent method to make the local voice heard.
- **Poll voters on preemption.** The campaign should conduct a poll on preemption for release early in the session. Use the poll as a media card and in one-on-one meetings with legislators to answer arguments that voters do not care about this issue. Unfortunately we started polling when the session began and the poll results were not available until after we lost the vote.
- **Target legislators- especially the leadership, fence sitters, and the Governor.** We

needed a more targeted grassroots strategy to sustain the Governor's veto. After obtaining the veto, we should have developed a target list of key leadership and undecided legislators, and made every effort to find grassroots volunteers with connections to these target legislators. In addition, we should have developed a plan for influencing the newly elected Governor. Although we made efforts to approach the administration, we were unsuccessful, and public support from the Governor's office was absent.

- **Research campaign contributions:** During the course of our campaign, certain legislators said they were supporting SEA 106 to reduce youth smoking, although we had reason to believe they were motivated by tobacco industry contributions. While major players in the state legislative arena were understandably reluctant to undertake campaign contribution research, such information is of great interest to the public and can affect legislative actions. After session started, we approached Indiana Common Cause about campaign contribution research, but our time frame was too short for them. In a number of states, groups such as Common Cause, Citizen Action, and the League of Women Voters have researched and publicized information on acceptance of campaign contributions from the tobacco industry. Make plans for campaign contribution research well in advance of session.
- **When you don't have the money to compete with the lobbyists, turn on the media.** Media advocacy is what we did best throughout the campaign. Successes included print editorials around the state, radio editorial comments, and excellent TV coverage. More attention paid to local media, in addition to the State House media, could have captured more local government voice. With respect to paid advertising,

consider radio ads in targeted districts. Radio lends itself to excellent targeting and is often much cheaper than print ads. Our opposition ran radio ads featuring local retailers in targeted areas.

- **Foster relationships with the new champions found in the State House.** Several new champions for tobacco emerged as this battle unfolded. It is important that these individuals, and all supporters, be thanked for their efforts. New champions should be fostered, especially when the legislature is out of session, to prepare for the next battle.
- **Hold legislators accountable.** Legislators need to know that we are not going away because of one lost battle. Remind them of how they voted on crucial issues, and develop voting records for publication in newsletters of your coalition's members and for distribution to the media.
- **Develop a local ordinance strategy.** The best insurance policy against preemption is the local community voice rising in protection of their local laws. If funding is available, hire local community organizers to coordinate local ordinance campaigns.

¹Readers should be familiar with all federal and state lobbying laws and adhere strictly to these regulations. This campaign was not funded with federal monies.