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Constitutional Basis for Chronic Disease Control

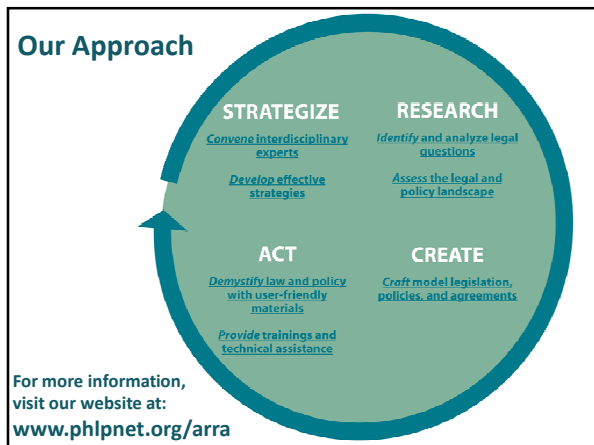
Building capacity for environmental change strategies

*Northwest Conference on Chronic Disease Control
November 2, 2010*

Public Health Law & Policy

We are a nonprofit corporation that improves community health outcomes by building the capacity of public health leaders to use sophisticated legal and policy tools in their everyday practice.

We are a multi-disciplinary team of lawyers, urban planners, policy analysts – many also with advanced training in public health; all committed to working with public health agencies and their community-based partners.

Topics We Work On

- Law & Policy: Understanding the Framework
 - Preemption
 - Enforcement
- Creating Opportunities for Physical Activity
 - Safe Routes to School
 - Complete Streets
 - Joint Use Agreements
 - Child-Care & Schools
- Creating Access to Healthy Foods in Communities
 - Farmers' Markets & Produce Carts
 - Healthy Corner Stores
 - Community Gardens
 - Fast Food Regulation
 - Sugar-Sweetened Beverage Consumption
- Creating Access to Healthy Foods in Schools
 - Healthy Vending
 - Healthy Food Environment Strategies
 - Junk Food & Beverage Advertising
- Neighborhood Design & Development
 - Land Use
 - Transportation Planning
 - Economic Development & Redevelopment
 - Community Engagement Strategies
- Tobacco Control
 - Smokefree Housing & Outdoor Areas
 - Secondhand Smoke
 - Tobacco Marketing, Sales, & Distribution
 - Tobacco Retailer Licensing
- Climate Change
 - Health and Climate Change Connections



Disclaimer

The information provided in this seminar is for informational purposes only, and does not constitute legal advice. Public Health Law & Policy does not enter into attorney-client relationships.

Today's roadmap

- What's the role of law and policy in chronic disease prevention?
- What are some important constitutional principles that set the context for chronic disease prevention?

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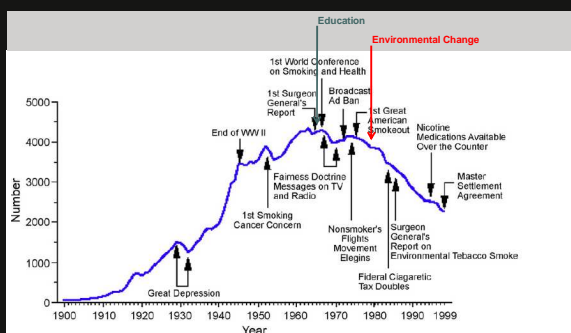
The Spectrum of Prevention



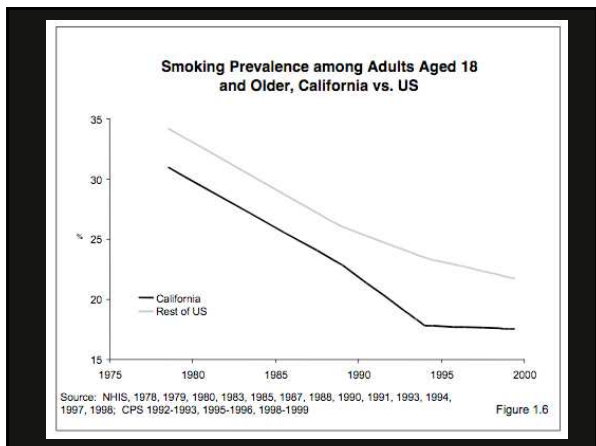
The Prevention Institute

Influencing Policy & Legislation

A Case Study



Social Norm Change



Social Norm Change Campaign Results

California Tobacco Control Program 1989 – 2004

- ✓ \$86 billion were saved in personal health care expenditures (95% CI \$28b to \$151b)
 - 50-fold return on \$1.8b program investment
- ✓ 3.6 billion fewer packs of cigarettes sold
 - \$9.2b loss to the tobacco industry of pre-tax cigarette sales (95% CI 1.5b to 5.9b)

Effect of the California Tobacco Control Program on Personal Health Care Expenditures. Lightwood JM, Dinno A, Glantz SA. PLoS Medicine, Vol. 5, No. 8, e178 doi:10.1371/journal.pmed.0050178



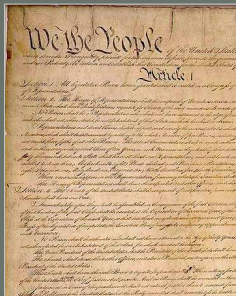
Health in All Policies

Public Health

- Land Use
- Redevelopment
- Economic Development
- Housing
- Transportation
- Schools
- Law Enforcement

The Power of State and Local Government to Create Policy

- Under the U.S. Constitution, the states have primary responsibility for public health.
- The authority is known as *police power*.
- Power comes from the 10th Amendment.



What is Police Power?

From the Greek word "politeia" meaning: state administration, government.



What Is "Police Power"?

The power of government to...

- promote the public health, morals, or safety, and the general well-being of the community
- enact and enforce laws for the promotion of the general welfare
- regulate private rights in the public interest



Examples of Police Power & Public Health Policy

- Investigating infectious disease outbreaks
- Banning cigarette samples near schools
- Requiring menu labeling in restaurants



- Creating farmer's markets (zoning regulations)

State & Local Government's Police Power

States delegate broad powers to elected governing boards of cities and counties.

City councils are given the power to pass ordinances that promote the health, safety and welfare of citizens.

Local boards of health are also given powers but they are narrower.

Basic Requirements

Exercise of police power:

- Can not be arbitrary or oppressive;
- Must be rationally related to public health, morals, safety, or general welfare; and
- Must be reasonably designed to correct a condition adversely affecting the public good.
- Can not violate state and federal constitutions

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The U.S. Constitution

- Distributes power between the federal and state/local governments
- Provides a framework for balancing public health and individual interests



The U.S. Constitution

- Distributes power between the federal and state/local governments
- Provides a framework for balancing public health and individual interests

- **Federalism**
- **Preemption**
- **Constitutional Rights**
 1. Free Speech
 2. Due Process
 3. Equal Protection

Federalism



Cooperative Federalism

SIGN UP FOR EMAIL UPDATES

KIDS COLLECTION

Healthy Choices
Healthier Schools
Physical Activity
Accessible & Affordable Healthy Food

America's Move to Raise a Healthier Generation of Kids

Childhood obesity or excess weight threatens the health of many of our nation's children. On average 150 million every year in total development conditions and that number is growing. Obesity rates tripled in the past 30 years, a trend that means for the first time in our history, American children are more overweight than their parents.

We need to get moving, and First Lady Michelle Obama, community leaders, educators, parents, nurses, doctors and more are a nationwide campaign to make the change of childhood obesity.

Let's Move has an ambitious but important goal: to solve the epidemic of childhood obesity within a generation.

Let's Move will also address the biggest risk factor: providing children with healthy, affordable food available in every part of our country.

Learn more and sign up.

President Obama Names Childhood Obesity Taskforce

#LetsMove2010

Federal regulations incentivize local action

Changes in the WIC Food Packages

A Toolkit for Partnering with Neighborhood Stores

public health law & policy planning for healthy places

Federal incentives through transportation reauthorization

Federal Government Can Prohibit or Preempt Action, too

<p>9 Club <i>grilled or crispy</i></p> <table style="width: 100%; font-size: x-small;"> <tr> <td>6.99 meal</td> <td>4.69 sandwich</td> </tr> <tr> <td>910-1150 Cal. 530 Cal. grilled</td> <td></td> </tr> <tr> <td>1010-1250 Cal. 630 Cal. crispy</td> <td></td> </tr> </table> <p>10 Classic <i>grilled or crispy</i></p> <table style="width: 100%; font-size: x-small;"> <tr> <td>6.79 meal</td> <td>4.49 sandwich</td> </tr> <tr> <td>800-1040 Cal. 420 Cal. grilled</td> <td></td> </tr> <tr> <td>910-1150 Cal. 530 Cal. crispy</td> <td></td> </tr> </table>	6.99 meal	4.69 sandwich	910-1150 Cal. 530 Cal. grilled		1010-1250 Cal. 630 Cal. crispy		6.79 meal	4.49 sandwich	800-1040 Cal. 420 Cal. grilled		910-1150 Cal. 530 Cal. crispy		<p>11 Southern Style Chicken</p> <table style="width: 100%; font-size: x-small;"> <tr> <td>5.99 meal</td> <td>3.69 sandwich</td> </tr> <tr> <td>780-1020 Cal. 400 Cal.</td> <td></td> </tr> </table> <p>12 Chicken Selects*</p> <table style="width: 100%; font-size: x-small;"> <tr> <td>6.49 3 pc. meal</td> <td>4.19 3 pc.</td> </tr> <tr> <td>780-1020 Cal. 400 Cal.</td> <td></td> </tr> <tr> <td>7.89 5 pc. meal</td> <td>Sauces</td> </tr> <tr> <td>1040-1280 Cal. 70-200 Cal.</td> <td></td> </tr> </table>	5.99 meal	3.69 sandwich	780-1020 Cal. 400 Cal.		6.49 3 pc. meal	4.19 3 pc.	780-1020 Cal. 400 Cal.		7.89 5 pc. meal	Sauces	1040-1280 Cal. 70-200 Cal.	
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Preemption

PREEMPTION

...is the invalidation of **local law** by state law.

OR

...is the invalidation of **state and local law** by federal law.



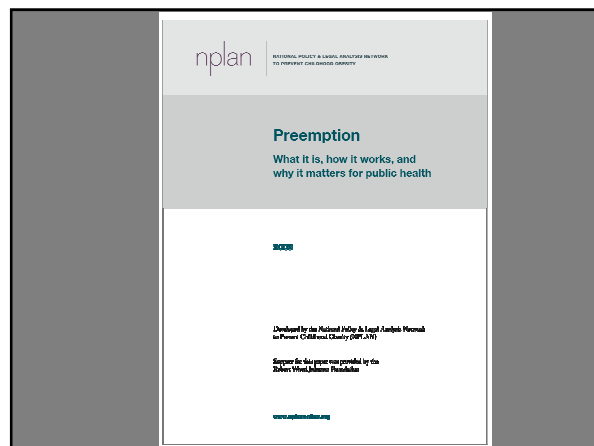
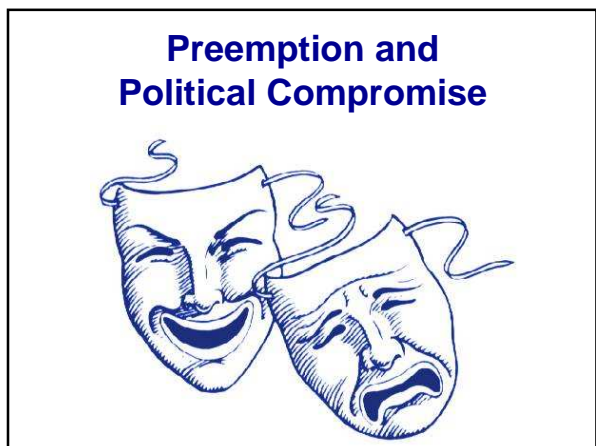
Power.
 Who gets it?
 Who loses it?
 How is it used?
 Who does it serve?

Ceiling preemption provides...

- Uniform Standards
- Efficiency
- Equal Treatment

Floor preemption allows for...

- Flexibility
- Innovation
- Progress



The collage consists of four presentation slides from nplan (National Public Health Law Center). Each slide includes the nplan logo and the Public Health Law Center logo.

- Slide 1: Fundamentals of Preemption** (Orange background)
- Slide 2: Negotiating Preemption: Strategies and Questions to Consider** (Light purple background)
- Slide 3: The Consequences of Preemption for Public Health Advocacy** (Light blue background)
- Slide 4: Preemption by Any Other Name** (Light grey background)