



Amendment 35

Taxing Tobacco Users to Fund Special Interests

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1 Introduction

Proponents of the Tobacco Tax initiative claim that increasing taxes on tobacco products will improve health care for children, help smokers by making them quit, and help taxpayers by making smokers pay for the extra health care that their habit makes them consume. These claims are grossly misleading. At bottom, Amendment 35 is a reverse Robin Hood, an attempt to take money from the relatively poor for the benefit of the relatively rich who populate a handful of special interest groups. The Amendment

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freezes spending by these groups from both TABOR and normal legislative oversight, requires that spending levels increase in a fashion reminiscent of Amendment 23, and gives them eternal control of the new tax revenues.

1.1 Amendment 35 will increase waste in anti-tobacco programs.

Even though there is a huge amount of waste at current levels of spending, Amendment 35 allocates almost \$70 million in additional funds to anti-tobacco research and education. In one recent representative anti-tobacco

effort, anti-tobacco activists received \$1 million in state money to write and publish a new book called *The Berenstain Bears and the Sinister Smoke Ring* in English and Spanish. It was distributed to every 4th grader in the state in hopes that it would “increase family interaction around anti-tobacco messages.” The project evaluation concluded that the book did nothing to change 4th grade attitudes about smoking. Colorado 4th graders, it turned out, hated cigarettes before they got the book. They also hated cigarettes after they got the book, even though most sensible families apparently threw it out without reading it, let alone interacting around its messages.

1.2 Amendment 35 will take from the relatively poor to give to the relatively rich.

Voting more money for such wasteful programs is even more distasteful when one considers that the money funding the people who propose such

things will primarily come from people with relatively lower incomes and education. Estimates for Colorado suggest that smokers make up 30 percent of people with less than a high school education. Average annual income for high school dropouts peaks at about \$24,000. With the Amendment 35 increase, a pack a day smoker will end up paying about 1% of his income in additional taxes. Most of that money will be wasted on expanding health and anti-tobacco programs that provide nice salaries for those who run them and very few benefits for those who pay the taxes.

Tobacco tax advocates say that robbing the poor to pay the rich is justified because smokers burden taxpayers with higher health care costs. In fact, the consensus of the reputable studies of the costs that smokers impose on taxpayers is that at current tax levels smokers already pay more in taxes than they consume in public services.

1.3 Amendment 35 will increase youth access to tobacco by stimulating black markets.

Because Amendment 35 increases state cigarette taxes by 320 percent, it gives smokers at all income levels an incentive to abandon high priced legal cigarettes for cheaper black market ones. Colorado law prohibits the sale of tobacco products to minors, a law that legal cigarette sellers have a good record of observing. People selling illegal cigarettes are disobeying the law already. As the markets for illegal drugs have shown, people in illegal markets have no qualms about selling their product to children. If Amendment 35 passes, there is a real possibility that children will find it easier to obtain tobacco products.

Displaying an astounding lack of common sense, tobacco tax advocates are steadfast in the denial of black market effects. Citizens for a Healthier Colorado, the most visible organization backing Amendment 35, says that “immediately after a substantial increase in the price of tobacco, there may be an initial effort by smokers to go across state borders to buy cigarettes. But those cross-border purchases generally fade as smokers go back to their

usual habit of buying cigarettes.” The Campaign for Tobacco-Free Kids, a Robert Wood Johnson Foundation funded backer of Amendment 35 efforts, opines that smokers who stockpile to avoid cigarette tax increases soon “tire of driving across state border [sic] or going to the internet to buy cheaper cigarettes and return to the convenience of normal full-tax purchases in their own state.”¹

One wonders just where they think that state is. Britain has the second highest cigarette taxes in the world. It is also an island, a fact that makes driving to other jurisdictions even more inconvenient than in the United States. Contrary to the predictions of tobacco tax advocates, the proportion of untaxed cigarettes consumed in the country has been rising along with its taxes. It is now approaching 30 percent, smuggling is big business, and armed robbers routinely hijack cigarette cargos.

In fact, illicit cigarette trafficking is a global business involving an estimated one third of worldwide cigarette exports. New York City has one of the highest cigarette taxes in the United States. Like Britain, it is awash in illegal cigarettes brought to smokers’ doorsteps by organized crime, terrorist groups, street gangs, and small bootleggers. Untaxed cigarettes can be ordered via the internet from foreign retailers and from Indian reservations located in the U.S. Retailers located outside of state and national jurisdictions have little incentive to monitor youth access tobacco. In one experiment, youths ordering over the internet were successful 90 percent of the time.

1.4 Amendment 35 will do little to stop smoking.

Virtually all of the studies on the effect of higher prices on smoking behavior ignore the black market and thus overestimate the effects that higher prices have on smoking behavior. When prices go up, changes in retail tobacco sales are assumed to reflect reduced tobacco consumption. In fact, a number of smokers simply switch to illegal retailers. The few studies that try to take illegal sales into account have concluded that increasing cigarette taxes has a small effect on smoking behavior and virtually no effect on

the number of young people who pick up the habit.

1.5 Amendment 35 will give more money to federally subsidized health care providers already charging more than private physicians.

Amendment 35 proponents also claim that taking funds from smokers will pay for medical care for the uninsured. In fact, most of the money will be directed to activities designed to increase state spending on Medicaid without increasing the Medicaid budget. An estimated \$80 million is earmarked for increasing enrollment in programs that rely on Medicaid dollars to provide health care for real people. Funding enrollment increases does not fund actual health care. An estimated \$33 million will go to Section 330 Community Health Centers. Community Health Centers are federally subsidized clinics that charge more than cash paying patients pay for private office visits. Under federal law, Colorado Medicaid already has to pay them 5 times more than it pays private physicians for the same service.

None of these problems trouble the special interests funded by Amendment 35. At present, they are on an equal footing with other groups when they petition the Colorado legislature for funds. Amendment 35 would end this. To its credit, the Colorado General Assembly has historically resisted profligate spending on anti-tobacco programs and unreasonable Medicaid and CHIP expansions.

1.6 Amendment 35 will fund special interests

Frustrated by the sensible caution of the Colorado legislature, Amendment 35’s authors are seeking to create a stream of tax revenue for their exclusive use that is not controlled by the General Assembly. Rather than going to the legislature, most of the money from the tobacco tax goes directly to select subdivisions of executive branch agencies like the Department of Public Health and the Department

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of Health Care Policy and Financing. Should they so desire, sympathetic staffers can frame program requirements so that specific agendas are met and the money is directed to specific interest groups.

Defenders of Amendment 35 argue that it is right and just to burden lower income smokers because they impose costs on other people through tax

When budgets are on the line tobacco users are portrayed as helpless sufferers unable to pay for the high priced medical help needed to wrest themselves from the clutches of an addictive scourge more powerful than cocaine or heroin.

funded health programs. This is not the story that the same anti-tobacco proponents tell government officials when they want more money from the legislative. When budgets are on the line tobacco users are portrayed as helpless sufferers unable to pay for the high priced medical help needed to wrest themselves from the clutches of an addictive scourge more powerful than cocaine or heroin. As the flip-flop on smokers shows, at bottom Amendment 35 is a cynical exercise in taxing an unpopular minority for the benefit of politically powerful special interest groups. Those groups seek to use tax money to free their lobbying efforts both from legislative oversight

and the necessity of constantly seeking donated funds. If they succeed, other unpopular minorities should expect similar treatment.

2 What Amendment 35 Really Says

The Amendment will levy a new tax of 3 and 2/10 cents per cigarette, 64 cents per pack of twenty. It will also impose new taxes on “the sale, use, consumption, handling or distribution of tobacco products by distributors at the rates of 20 percent of the manufacturer’s list price. The Colorado Coalition for the Medically Underserved, a group consistently in favor of increasing the number of people dependent on government health care, estimates that the measure will take an additional \$155 million from Colorado tobacco users,² the Colorado Secretary of State says that the annual toll will be \$175 million.³

2.1 Removes TABOR restrictions, and ends legislative supervision.

The initiative seeks to funnel funds to special interest groups via the executive branch of state government. It controls how the new revenues will be spent by replacing legislative judgment with a constitutional rule. Even if the new tax increases criminal activity to unacceptable levels, the initiative stipulates that the legislature may not repeal or reduce tobacco taxes. And, as Amendment 23 did for education spending, Amendment 35 would put certain kinds of health spending on automatic pilot. Section (6) says that “revenues...shall be used to supplement revenues that are appropriated by the General Assembly for health related purposes on the effective date of this section, and shall not be used to supplant those appropriated revenues.” The Amendment also says that existing tobacco taxes “shall not be repealed or reduced by the general assembly.”

Local groups in favor of Amendment 35 are part of a national effort to raise taxes on tobacco products and pass increasingly stringent restrictions on their sale and use.

The American system of government places legislatures in control of decisions to tax and spend because elected legislatures most closely reflect the will of the People. Legislatures reallocate state expenditures as old problems are solved and new ones arise. Legislators faced with programs that turn out to be wasteful can cancel them and put the money to better use. Local groups in favor of Amendment 35 are part of a national effort to raise taxes on tobacco products and pass increasingly stringent restrictions on their sale and use. Although the Colorado legislature passed restrictions on sale and use, it has steadfastly resisted the intense pressure to raise taxes. Frustrated, Amendment 35 supporters have taken the initiative route.

The authors of Amendment 35 did not define tobacco products in the text of the Amendment. Nor did they limit the Amendment’s taxes to products known to harm health. This could be a problem in the near future. Transgenic tobacco plants are now

in use detoxifying contaminated soil, and tobacco looks promising as a vehicle for producing medically useful products like cancer antibodies and edible vaccines.⁴ Under current Colorado statute, “tobacco products” includes “other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking...”⁵ Though the detoxifying plants look safe from taxation, edible vaccines would escape tax only if no chewing is involved.

The initiative specifies that revenues raised by the tax must be used for certain programs. Though initiative supporters say that the revenues from the tax will be used to expand health care, reading Amendment 35 shows that its wording does not guarantee how the money will be used. In fact, it specifically directs the lion’s share of the revenue to purposes that are more akin to lobbying than they to ministering to the sick.

2.2 More money for anti-tobacco programs already wasting substantial sums.

The initiative requires that funding for anti-tobacco education and second-hand smoke be routed through the Part 8 of Article 3.5 of Title 25 of the Colorado Revised Statutes. In general, this statute places tobacco tax revenues under the control of the State Board of Health. It may award money to government agencies, state universities with teacher education programs, schools, and “community-

based” organizations for tobacco education, prevention, and cessation. It may also award money for technical training and vaguely defined “assistance” if it feels so inclined.

It is clear that many anti-tobacco projects waste money at current funding levels. One two year, \$1 million program wrote, published, and distributed a book called the *Berenstain Bears and the Sinister Smoke Ring* to about 85,000 4th graders. The idea was to “increase family interaction around anti-tobacco messages” by imitating the hugely popular *Berenstein Bears* series

of children’s books.

When Colorado kids were compared to a control group in Wyoming, evaluators found that “most students had strong negative smoking-related attitudes at the onset of the study and that these attitudes... remained unchanged, throughout the completion of the program...most teachers and parents did not read the book or discuss it with their students/children.”⁶

At least the *Berenstain Bears* effort took place in the real world. Other projects have been more theoretical. A communications professor at the University of Colorado Denver received \$637,714 to “develop, evaluate and test the efficacy of a theoretically-based media literacy intervention to help children counter the influence of smoking imagery found in popular culture,” something that the Colorado 4th graders in the *Berenstain Bears* project had apparently already figured out. A \$671,861 study at Colorado State University was designed to examine “how prevention programs should be developed” and implications for “the design of culturally appropriate prevention programs.” The earthshaking finding from this half million dollar effort was the long established fact that kids with friends who smoke are more likely to smoke themselves.⁷

The American Lung Association of Colorado received \$58,160 to study whether the tobacco industry tried to build coalitions to influence tobacco control policymaking in Colorado. As most sentient adults know, all industry groups try to curry legislative favor all legal means. The real question is why anyone would think that it is worth spending \$58,160 in taxpayer money to study an already a well known fact.

Although local anti-tobacco activists constantly complain that Colorado under funds programs for tobacco education, the experience with the tobacco mas-

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ter settlement funds makes it clear that the money available has already exceeded the number of useful projects. Additional funds will likely be wasted.

If anything, the recession induced budget reevaluation of 2002-03 applied some much needed discipline to Colorado's tobacco education and prevention spending. During its first year of operation, FY 2000-01, the State Tobacco Education and Prevention Partnership (STEPP) received \$11.9 million. Although it knew how it wanted to spend the money, the agency ended up with \$8 million unspent dollars. They were rolled forward to FY 2001-02.

In FY 2001-02, the program received \$12.25 million for grants. Once again, almost \$10 million was rolled forward into the next fiscal year. In 2002-03 the Colorado legislature appropriated \$14,847,618 along with \$9.88 million in spending authority based on unspent funds from previous years. During these periods Colorado's estimated per capita cigarette pack consumption continued to fall. It was 82.3 in 1993, 82.6 in 1994, and 63.9 in 2002. The national average was 93.3 in 1993, 92.4 in 1994 and 72.8 in 2002.⁸ When the recession induced fiscal shortfall occurred, the legislature sensibly cut STEPP funding to \$3.8 million for FY 2003-04.

2.2.1 Anti-tobacco overload: One year, 817,563 pieces of literature.

STEPP grants generally follow the Centers for Disease Control recommendations for tobacco control activities. These include activities to make the public support stronger anti-smoking legislation, efforts to integrate anti-tobacco messages into programs presented by various non-profits, pressure on colleges and universities to punish students who use tobacco, statutory changes in existing law and policy on smoking, and a veritable sea of redundant media advertising, web sites and glossy paper signs, brochures, and resource kits. In 2002-2003, 817,563 pieces of anti-smoking literature were produced.

Spending for anti-tobacco education also funded numerous positions in select non-profits including The American Lung Association of Colorado,

The Asian Pacific Development Center, the Colorado Foundation for Families and Children, Colorado Gay, Lesbian, Bisexual and Transgender Community, the Denver Health and Hospital Authority, the American Cancer Society, and GASP of Colorado.

2.2.2 Interlinked pro-tax groups help one another to state tax dollars.

The grants often required that recipients implement programs already developed by national anti-smoking groups. In both 2001 and 2002 the Colorado Academy of Family Physicians was awarded \$211,232 for organizing "Tar Wars" presentations given to 22,000 5th graders. "Tar Wars" is an anti-smoking poster contest coupled with an in class presentation. All of its materials, including a teaching script, worksheets, flashcards, and activities, are available on the web for free download.⁹

The University of Colorado Health Sciences Center's Department of Family Medicine has a close relationship with the Colorado Academy of Family Physicians. It evaluated the Tar Wars program and concluded that funding should continue. Tar Wars was effective, the Department said, because it "increased students' knowledge of tobacco and engaged students in interesting and memorable activities."

To its credit, STEPP disagreed. It concluded that the Tar Wars money could be better spent because "the value of attempting to effect additional change in this population of 5th graders that already have strong anti-tobacco attitudes [was] questionable."¹⁰ Not to mention that the materials were available to anyone with an internet connection at zero cost.

At a cost of \$242,170 the American Lung Association of Colorado promised to distribute a CD ROM on Hollywood to 1,297 adolescents. It

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also sent 29 people to “Youth Access Training,” a program that propagandized them that they should support stronger laws against adolescent tobacco use.

For \$289,499, the AMC Cancer Research Center delivered yet another media campaign called “Consider This.” The result was a web-based tobacco curriculum designed for middle school youth. Only 3,398 people ever looked at the web site. Taxpayers paid \$85 per hit.

By far the most expensive programs maintained by STEPP are the Colorado QuitLine and QuitNet, telephone and web-based programs that offer counseling, referrals to local programs designed to help

people quit smoking, special calendars, and information on helpful pharmaceuticals. Their combined cost in FY 2002-03 was \$617,000. Program officials boast that although only 4.5 percent of Colorado smokers who try to quite on their own succeed, more than 10,000 residents have enrolled in the cessation program provided by the Colorado Quitline and that 19 percent of them report remaining smoke free after six months.¹¹ The conventional wisdom holds that most people try to quit several times before succeeding. Although Quitline presumably attracts

more motivated people likely to succeed even without help, taking its data at face value suggests that the program produces about 1,900 quits at a cost of about \$325 each.

Far more people quit for free. Anti-tobacco advocates estimate that at least 20 percent of Colorado adults smoke. If there are 3,000,000 adults in the state, the number of smokers would be about 600,000. If only 4.5 percent of them quit on their own as Quitline supporters maintain, even more people, 2,700, quit at no cost to taxpayers. This rough estimate is in accord with 1992 data from the Centers for Disease Control which estimated that there were “about as many former smokers in this country as there are smokers, and some 90 percent of them

gave up the habit on their own, usually by quitting abruptly.”¹²

This discussion has included only programs funded by Colorado’s anti-tobacco education program. Other taxpayer supported agencies have substantial anti-tobacco components in their efforts. These include programs funded by the Centers for Disease Control, DARE, and the Safe and Drug-Free School Program.

2.2.3 New Jersey foundation funds anti-tobacco tax increase efforts.

Anti-tobacco groups in Colorado benefit from significant Robert Wood Johnson Foundation Funding. The Colorado Tobacco Education and Prevention Alliance (CTEPA), which runs a large web site billing itself as the umbrella organization for the Colorado anti-tobacco movement,¹³ received a \$1,149,526 grant in February 2001 from the Foundation’s Smokeless States program. The grant expiration date was August 31, 2004.¹⁴ The Robert Wood Johnson Foundation spent about the same amount to underwrite the failed 1996 Tobacco Tax initiative, a political campaign which, despite state laws to the contrary, was for all practical purposes run out of official government offices.

As was the case in 1996, the Foundation’s influence is felt throughout the state. CTEPA’s financial connections allow it to exert significant influence on official state policy. It was, for example, the only organization to have two members on the Strategic Planning and Oversight Committee the formulated the Colorado Tobacco Prevention and Control Strategic Plan for 2004-2010.¹⁵ Though it is structured as a 501(c)(3), the group has an explicitly political agenda. In a list of its policy accomplishments it includes the passage of anti-smoking laws, ensuring that 15% of Colorado’s tobacco policy settlement funds were allocated to tobacco prevention, and passing a statewide ban on the sale of loose cigarettes.¹⁶

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2.3 Research money for favored diseases only.

Amendment 35 states that 16 percent of the new tobacco tax revenues shall be appropriated for “the prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases. Such revenues shall be appropriated to the Prevention Services division of the Colorado Department of Public Health and Environment...” Though how this money will be spent is up to the Prevention Services Division of the Colorado Department of Public Health and Environment, it already administers Colorado’s Tobacco Research Program. The Tobacco Research Program’s activities probably give a good indicator of how additional funds will be spent.

Most current funding goes to academic researchers at state universities. The medical research projects that have historically been funded are unlikely to benefit today’s taxpayers. The medical projects are early stage research projects using animal models like mice and zebra fish. The social science projects that receive funding typically rehash or evaluate the tired anti-tobacco education programs similar to those funded by the State Tobacco Education and Prevention Partnership (STEPP).

The medical research projects that have historically been funded are unlikely to benefit today’s taxpayers.

In 2001 and 2003 Colorado’s Tobacco Research Program consumed \$6.1 million and \$6.8 million. Funding dropped to \$3 million in financially stringent 2003. In practice, the

Tobacco Research Program makes money available to researchers doing work in Colorado.

2.3.1 University of Colorado system gets most funds.

In 2003, over 75 percent of the Tobacco Research Program awards went to members of the University of Colorado system. National Jewish Medical & Research Center was the other major recipient. This is a way to given the University of Colorado system extra money without going through the legislative process.

When grants are awarded to institutions, the institution charges researchers a specific fraction of the grant in the form of “overhead.” Pursuing tax money via initiative lets universities receive tax money over and above their annual appropriation from the legislature.

Funding via research grants can be lucrative. At the University of Colorado Health Sciences Center, Professor Robert O. Greer received \$718,007 in grant funds to study telomerase expression in tobacco associated oral cancer. His goal was to further efforts to assessment the risk of malignancy. The University of Colorado Health Sciences Center received \$223,477 of the total. The remaining \$494,530 was used to build the tissue collection Professor Greer envisioned.

Tobacco Research Program prevention awards included a program to “develop a sophisticated marketing approach to identify youth who are most likely to use tobacco,” a project to “determine if culturally appropriate ...methods improve smoking cessation treatment compliance” among American Indian Elders, and whether putting people with chronic obstructive pulmonary disease on antidepressants improves their “treatment adherence.”

2.3.2 Constitutionally controlled research funding unwise.

If Amendment 35’s cancer, cardiovascular and pulmonary disease revenues are spent in Colorado, they would create a pool of money for which there is less competition than there would be for nationally competitive award grants. This increases the probability that money will be wasted on less than compelling research projects. It also makes it more difficult for the legislature to track the level of tax subsidy going to higher education. If they are spent outside of Colorado, they could easily be used to fund programs designed to influence legislation both in other states and at the federal level.

This increases the probability that money will be wasted on less than compelling research projects.

The wisdom of using the state constitution to appropriate research funding is questionable. Science progresses by attacking problems that seem likely to be solved given the current state of knowledge. An unexpected breakthrough, like realizing that ulcers are caused by bacteria, may make it possible to

eliminate a specific disease provided funds are available to follow the line of inquiry to its conclusion. If those funds are permanently directed to other diseases, progress will be much slower. Even if voters do wish to tax low income smokers in order to pay college professors, the idea of limiting research funding to cancer, cardiovascular disease, and lung afflictions

is peculiar when smokers are also at risk for kidney disease, diabetes, viruses, bacteriological infections, motor vehicle accidents, and obesity.

If those funds are permanently directed to other diseases, progress will be much slower.

2.4 Funds efforts to change Medicaid and CHIP rules to increase enrollment; does not fund additional program costs.

Section 5(a) of the initiative text says that 46% of the revenue raised by the tobacco tax increase must be spent on increasing enrollment and eligibility for Medicaid and its subsidiary, the Children's Basic Health Plan (CHIP). Note that increasing enrollments means that program costs will also increase. The Amendment specifically does not direct any additional funding to the part of the Colorado Medicaid program that actually pays the bills for patient care.

Medicaid is the federal program designed to provide medical care for the poor. After education, it is the second largest expense in the state's budget. Increasing Medicaid eligibility simply means changing the rules so that more people can be enrolled. For states, the major attraction of Medicaid is the fact that the federal government matches every Medicaid dollar a state spends as long as the state runs its Medicaid program according to federal rules. The federal government does allow states some leeway in defining who is eligible and in specifying the way in which it will deliver Medicaid serv-

es. Colorado has consistently opted to contain costs by limiting Medicaid eligibility and coverages.

Thanks to continual expansions, Medicaid has recently surpassed Medicare as the largest government health program in the United States. CHIP, begun in 1997, is a relatively new program designed to provide medical and dental care for children in families that have assets or income that put them above Medicaid limits, and are not eligible for employee health insurance programs. Some adults are also eligible. Like Medicaid, state CHIP expenditures receive a federal match. The match is double that of Medicaid, \$2 in federal money for every \$1 the state spends, but total annual federal expenditures capped. In FFY 2003, Colorado's federal CHIP allotment was \$37,914,522.

When the public sector offers health care at costs far below those prevailing in the heavily regulated private sector, people tend to drop private insurance in favor of taxpayer supported health care programs. This increases program costs, but pleases those who would prefer that everyone in the United States get their health care from the government.

Although policy makers generally say that they want to expand public programs in order to cover the uninsured, program expansions since the 1990s have also encouraged people to drop private health insurance and enroll in taxpayer supported public health entitlement programs. This is called "crowd out." Estimates from the Medicaid expansions in the early 1990s suggest that the crowd-out of private health insurance was between 50 and 75 percent. Recent papers on the effects of the CHIP expansions describe similar results.¹⁷ In 2002, Cunningham et al. concluded that CHIP was more likely to enroll people who had had private insurance than it was to enroll the uninsured.

Nationwide, CHIP enrollments have been lower than projected. After rising for six years, they declined in the second half of 2003. This resulted in a pool of unspent money at the federal level. The only way activists can get their hands on that

money is to expand CHIP spending at the state level.¹⁸ Amendment 35, because it specifies that 46 percent of the money from the new tobacco tax must be spent on increasing CHIP and Medicaid enrollments, is designed to help do that. Once the enrollments are increased, it is up to general tax payers to meet the increased program costs.

Increasing enrollment in state and federal entitlement programs is not the same as paying for actual health care. Unlike private insurance plans, neither CHIP nor Medicaid guarantees access to necessary care. Increasing numbers of private physicians refuse to take Medicaid patients due to burdensome rules, legal hazard, and low reimbursements. In many parts of the state, CHIP and Medicaid clients do not

have any choice in their health care providers, many of which are health maintenance organizations. People who receive care from health maintenance organizations have far less ability to direct their health care than people with access to other forms of health care delivery.

Because they are limited to providers who face relatively little competition, people dependent on Medicaid and CHIP may wait for months for

care. Their health care is also subject to the political whims of other interest groups. In 2004, the American Association for Retired People (AARP) lobbied the Colorado legislature in favor of a bill that would have substantially reduced Medicaid clients' access to prescription drugs. Apparently Colorado AARP mistakenly believed that creating Medicaid preferred drug lists to limit pharmaceutical access for Medicaid patients would lower prescription drug prices for its members. This despite the fact that most of its members are likely on Medicare rather than Medicaid. Other groups have lobbied to require that Medicaid patients be treated according to best practices legislation, cookie cutter, one-size-fits-all requirements that focus more on costs than individual medical care.

Increasing numbers of private physicians refuse to take Medicaid patients due to burdensome rules, legal hazard, and low reimbursements.

If Amendment 35 backers were serious about providing actual health care for Colorado's uninsured, they could have directed that the estimated \$80 million a year the measure will spend on expanding enrollments and eligibility be used to provide real health insurance for needy children. Children are a relatively healthy group. Private policies that insure children cost less than \$1,000 per healthy child and include first dollar coverage for both routine immunizations and well baby care. At \$1,000 per child per year, \$80 million would buy basic private policies for roughly 80,000 children. Private policies are not cancelled or terminated when the family income rises by a few dollars, they do not limit people to Medicaid providers, and they provide much larger choice and greater convenience.

In FY 2003-04 the state reported that about 53,000 children were enrolled in the CHIP program.¹⁹ According to the Centers for Medicare and Medicaid Services, only 74,144 children had ever been enrolled in Colorado programs.²⁰ In FY 02-03 the Department of Health Care Policy and Finance estimated that the program cost about \$80 per member per month. FY 03-04 program costs were estimated at \$46,067,442 for medical premiums for the children in the program, \$6,359,497 for total dental benefits, and \$16,425,520 in costs for prenatal care and delivery for women making less than 185% of the federal poverty level.²¹ In round figures, these amounts add up to about \$70 million.

They include the federal match, which was \$31,181,315 in 2002. In short, Amendment 35 will direct more money to lobbying for CHIP and Medicaid expansion than both the state and federal government typically spent on the entire CHIP program in 2002.

2.5 Sends money to federally subsidized clinics that already charge Colorado Medicaid higher rates than private physicians.

Amendment 35 states that 19 percent of the revenue

In short, Amendment 35 will direct more money to lobbying for CHIP and Medicaid expansion than both the state and federal government typically spent on the entire CHIP program in 2002.

raised by the tax increase must be given to Section 330 Community Health Centers (CHC). In theory the money can also be awarded to other providers with a patient population that is at least 50 percent uninsured or medically indigent, meaning that they are eligible for enrollment in government entitlement programs like Medicaid and CHIP. In practice, only Section 330 CHCs will meet the 50 percent criterion because state Medicaid reimbursement rates are below cost. This makes it impossible for private providers to accept such large percentages of Medicaid patients. Plus, Section 330 CHCs must be non-profit.

In return for their federal funding, Section 330 Community Health Centers (CHC) must provide care in “medically-underserved areas” in the United States. According to the Health Resources and Services Administration, medically underserved areas are determined by a weighted average of primary care physicians per 1,000 residents, infant mortality rates, the number of people 65 or older, and the number of people below the federal poverty. The agency also takes special local conditions into account. These definitions are so expansive that 47 Colorado counties have medically underserved designations. Douglas, Broomfield, and Eagle are the most populous counties that are not included. Even without them, about 90 percent of the Colorado population lives in medically underserved counties.

The U.S. Bureau of Primary Care lists 13 clinic operators in Colorado. The program is so lucrative that Community Health Clinics operate in such medically underserved areas as Colorado Springs, Denver, Boulder and Aurora. A representative Community Health Center might receive one quarter of its annual income in grants from the federal government, and one half of its income in fees from various tax supported programs, including Medicaid, Medicare, and various federally subsidized child health programs. Other monies come from private insurance, and cash paying patients. Cash paying patients pay fees based on income. At one clinic, reduced rate fees range from \$5 to \$35.²²

Colorado Community Health Centers support the Colorado Community Health Network (CCHN) which acts as a trade association. Among other things, it works to increase the flow of tax money to the Section 330 operators. It is also funded by a \$950,000 grant from the Covering Kids & Families Project of the Robert Wood Johnson Foundation. The grant runs from 2002 to 2006. The Robert Wood Johnson Foundation has provided funding and technical support for a number of projects designed to abolish private choice in U.S. health care.

The Covering Kids grant requires the CCHN to increase the number of adults and children enrolled in Medicaid and CHIP. It also requires that the CCHN meet a 50% grant matching requirement, a common string attached to Robert Wood Johnson Foundation money. Requiring that tobacco tax funds flow to community health centers able to forward money to the CCHN would make meeting such match requirements a great deal easier.

The Community Health Center model is one of many models for providing medical care to people with lower incomes. It almost certainly is not the best. Community Health Centers are an extremely expensive provider. In 2004, Colorado Medicaid paid private physicians \$27.00 for a basic visit. According to Karen Reinertson, executive director of Colorado’s department of Health Care Policy and Financing, a 1990 federal law stipulates that Colorado’s Community Health Centers must be paid 100 percent of their costs.

Cost-based reimbursement is an open invitation to maximize expenses rather than minimize them and Community Health Centers appear to pull out all the stops. At present, they charge the state Medicaid program about \$130 per Medicaid visit.²³ Colorado taxpayers would get a better deal if the state simply paid Medicaid patients a cash bonus for avoid-

Cost-based reimbursement is an open invitation to maximize expenses rather than minimize them and Community Health Centers appear to pull out all the stops.

ing Community Health Centers in favor of private urgent care clinics. Cash paying patients with \$100 are seen immediately, seven days a week, at privately run clinics like the ImmediaCare urgent care clinic in Lakewood.²⁴

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2.6 Creates new government slush funds.

The Amendment language says that 3 percent “of such revenues shall be appropriated for health related purposes to provide revenue for the state’s general fund, old age pension fund, and municipal and county governments to compensate proportionately for tax revenues reductions attributable to lower cigarette and tobacco sales resulting from the implementation of this tax.”

To even an averagely creative government official, a “health related purpose” includes almost anything. Teaching children to read makes them literate and literate people have higher incomes which are associated with better health. Funding environmental study programs reduces pollution and improves health. Funding sports programs of any kind, from marble shooting contests to cheerleading to marathons, can be justified because exercise of any sort is thought to improve general health. Funding any sort of social interaction, from sewing circles to musical evenings to costume parties could be justified as increasing social interaction thus minimizing the effects of stress and depression. Though everyone has access to this funding, only smokers have to pay for it.

3 Is the Tobacco Tax Fair?

Though fairness is typically in the eye of the beholder, no judgment can be made about tax fairness without understanding who pays a particular tax. Since taxes typically change behavior, it is also wise to understand how people will likely respond to them.

The Strategic Planning Oversight Committee, a group funded by the Colorado Trust, produced a document called the Colorado Tobacco Prevention and Control Strategic Plan for 2004-2010. Only one member of the eight person committee, Karen DeLeeuw of the State Tobacco Education and Prevention Partnership, is listed as a public official. Despite this, the document is published on the State of Colorado Department of Public Health and Environment Prevention Services.²⁵ The State Tobacco Education and Prevention Partnership also lists the Strategic Plan on its publications page. This suggests that the document is official policy even though it was funded by a private group and the majority of its members were from private groups with distinct political agendas.²⁶

Whether private groups receiving private funding expressly designed to change public policy on a hotly contested issue should be invited to publish on official government websites is a question beyond the scope of this paper. Of interest here are the document’s estimates of smoking prevalence. Cigarette smokers make up the largest group of tobacco users and they will likely bear the heaviest burden if Amendment 35 passes.

3.1 People with lower incomes will pay relatively more.

According to the oversight committee, the 2000 Colorado Youth Tobacco survey suggested that 34 percent of Colorado youth uses tobacco. Backers of Amendment 35 often claim that the measure will reduce youth smoking by increasing the prices of cigarettes. But tobacco purchase is already illegal

Cigarette smokers make up the largest group of tobacco users and they will likely bear the heaviest burden if Amendment 35 passes.

for Colorado youths regardless of price meaning that youths who smoke get their cigarettes illegally. Amendment 35 will influence youth smoking only if raising the legal price of tobacco products also raises prices on the black market.

Because the tobacco tax will be levied on all smokers equally regardless of income, the new tax will force smokers with lower incomes to either hand over higher proportions of their incomes or seek cigarettes from illegal markets. The Strategic Plan also makes it clear that increasing the tobacco tax will disproportionately harm Colorado's minority groups. According to the

Plan, "Tobacco is not an equal opportunity burden. Tobacco use and secondhand smoke exposure disproportionately affect Colorado's racial/ethnic minority groups and people with social and/or economic disadvantages."²⁷ "American Indians and Alaska Native adults are more likely than adults in other racial/ethnic minority groups to smoke tobacco or use

smokeless tobacco. African American and Southeast Asian men also exhibit a high prevalence of smoking. Asian American and Hispanic women have the lowest prevalence."

In reality, the differences between white and minority smoking are relatively small. About 21 percent of white Coloradans smoke, compared with 23 percent of African Americans and 22 percent of Hispanics. The only demographic group with substantially different proportions of smokers in the state's survey is the vaguely defined Asian/Pacific Islanders, at 16 percent. Smoking prevalence trends downwards as people get older, become less risk tolerant, and quit. About 25 percent of those in the 18-29 year old age group smoke. The figure is 23 percent for those aged 30-45 and 16 percent of those over 45. This means that people just entering the job market

will bear a disproportionate share of the tobacco tax burden.

Dividing smoking rates by income and education rather than group identity shows that class differences are far more substantial than ethnic ones. Lower income people smoke far more than their better educated peers. Table 1 shows the data for on smoking prevalence by education and household income from the Strategic Plan.

	Household Income <35K	Household Income >35K	<12 years education	12 years education	>12 years education
Percent Smokers	27.2	16.8	32.7	28.0	15.0

The 2000 Census estimated that more than a third of Colorado households, 592,221 of them, had incomes below \$35,000. 1,067,087 households had incomes greater than \$35,000. Colorado's median household income was \$47,203. According to the Denver based Bell Policy Center, the self sufficiency standard in rural Colorado is \$35,000. In the Denver metro area and resort cities, the figure is closer to \$45,000.²⁸ The Bell also reports that people with limited education are most likely to be found in jobs that have average annual wages of \$22,000 a year. These findings suggest that a disproportionately large fraction of the new tobacco tax revenues will be paid by people at what The Bell defines as barely self-sufficient, people with low incomes and little education.

People without high school diplomas also face depressed lifetime earnings and are more likely to be smokers. As Table 2 shows, U.S. Census data say that Colorado residents who were not high school graduates, aged 25 to 34 years old, and who worked year round had median earnings of \$21,087. For 55-64 year olds at the same educational level, median earnings were \$23, 764.²⁹ In short, the proposed

Cigarette smokers make up the largest group of tobacco users and they will likely bear the heaviest burden if Amendment 35 passes.

tobacco tax will decrease the incomes of roughly a third of workers without a high school diploma by 1% a year for the rest of their lives.

It should be noted that households below the poverty line often receive subsidies that are not counted in income statistics. As a result, comparisons based on cash incomes can be a misleading indicator of

Table 2: Average income levels by age and education.

	Total population	<12 years	High school graduate	Bachelors degree	Advanced degree
25-34	643,290	\$21,087	\$26,685	\$36,791	\$41,547
35-44	727,810	\$23,590	\$31,083	\$49,482	\$59,190
45-54	606,500	\$23,511	\$31,156	\$48,674	\$57,261
55-64	335,650	\$23,764	\$30,287	\$46,780	\$55,193
64-74	224,764	\$18,352	\$21,551	\$32,762	\$47,481

the fraction of total income spent on consumption goods. In May 1989, economist James Poterba examined spending on gasoline, alcohol, and tobacco using both income and expenditure data. He found that poorer people spent a higher fraction of their incomes on tobacco even when the

Newly published data from the National Health Interview survey support the contention that the Amendment 35 tax increase will fall most heavily on the poor and near poor. Though smoking prevalence has been trending downwards in all educational and income categories for the last two decades, smoking rates still show consistent differences across the educational spectrum. Rates for the college educated are low—less than 8 percent for people with graduate degrees, and about 12 percent for those with undergraduate degrees. Relatively uneducated strivers have the highest smoking rates and will therefore bear the highest tax—though 34 percent of high school dropouts smoked, the rate was 42 percent for dropouts who earned a GED. The smoking prevalence for people below the poverty level was 37 percent.³⁰

measurement was based on total expenditure data that included subsidies. In 1984, people in the lowest income quintile spent 4.6 percent of their income and 2.2 percent of their current expenditures on tobacco. People with incomes in the highest quintile spent 0.5 percent of their incomes and 0.7 percent of their total expenditures on tobacco.³²

To see how much more those who are poor will pay as a percentage of their income, consider that pack a day smokers who buy legal cigarettes will spend an additional \$0.64 for cigarettes each day for 365 days. This adds up to an extra \$233 a year in taxes. In 2000, the poverty level for a family of 2 was \$11,250.³¹ For pack a day smokers below the poverty line, increasing the tobacco tax decreases annual income by \$233, or 2%. For pack a day smokers without a high school education the tax decreases incomes by about 1%. For pack a day smokers with advanced degrees aged 35-44, the tax decreases income by 0.04 percent.

Tobacco control advocates admit that tobacco taxes make the poor worse off, though they argue that the harm is outweighed by the fact that higher prices will make some individuals quit, producing substantial gains for them. In effect, they are arguing that a policy known to make a particular group of people worse off is fine if it makes a small number of that group substantially better off. Philosophically, this is a difficult case to make. One might as well propose impounding everyone's automobile with the argument that it would make some people better off as it would save them from death and injury in automobile crashes.

In effect, they are arguing that a policy known to make a particular group of people worse off is fine if it makes a small number of that group substantially better off.

It is clear that the costs and benefits of a tobacco tax cannot be equally distributed. For example, Steinberg, Williams, and Ziedonis, in a 2004 letter to the journal Tobacco Control, point out that cigarette smoking has significantly worse effects on smokers with schizophrenia both because they

are both more likely to smoke than the general population, and because they are generally dependent on a limited, fixed, income. “Quality of life issues relating to the ability to pay for occasional entertainment desires, or more seriously, adequate housing and nutrition, are already compromised for many with a serious mental illness,” they write, “This is only worsened by their addiction to cigarettes, the financial cost of which comprises a substantial percentage of their monthly budget.”³³

3.2 Smokers already pay more than their share.

Tobacco tax increase advocates often excuse the fact that the tobacco tax will hit people with lower incomes hardest by claiming that smokers deserve to pay more at all levels of income because their self-inflicted health problems impose a higher cost on society via higher medical costs. One of the main public supporters of Amendment 35, Citizens for a Healthier Colorado, claims that tobacco use costs Colorado taxpayers “over \$1 billion annually in health care expenses.”³⁴

Such estimates are notoriously unreliable because agenda driven tobacco cost estimates typically attribute all increased health risks to tobacco use. But in the absence of government regulation and health and income subsidies, the private sector would require that smokers pay for the costs that their habits impose on others. Tobacco dependent health costs are also notoriously difficult to isolate because people who smoke are also statistically more likely to engage in other risky health behaviors including excessive drinking, illegal drug use, promiscuous sex, and unmarried motherhood. Even if people in the socioeconomic groups most likely to be populated by smokers use no tobacco at all, they are still likely to have higher health care

costs including more stillbirths,³⁵ lower birthweight babies, a higher risk of heart disease,³⁶ and more immune-related disorders.³⁷ Agenda driven studies of the costs of tobacco use routinely ignore these confounding variables.

Markets in which private agents are free to charge for additional health risks do require that smokers pay for indulging their habit. In the individual health insurance market, smokers must pay higher health insurance premiums at all ages although the gap is relatively small for younger smokers and widens substantially with age. These differences allow a rough estimate of the minimum cost that health actuaries calculate smokers impose on other policy holders. Table 1 gives sample monthly quotes for premiums from eHealthInsurance.com and ColoradoHealth.com for health insurance plans that limits annual out-of-pocket costs to less than \$3,000 in various Denver metro locations. These amounts are lower bound estimates of costs because smokers who develop health conditions along the way would pay substantially higher premiums.

For a conservative estimate of smoker imposed costs, assume that the premium difference of about \$100 a month at age 55 is the additional health related cost a smoker generates each month at any age. A pack a day smoker smokes an average of 30 packs a month, resulting in a private sector determined health related cost of about \$.34 a pack.

Table 3: Sample best risk monthly individual health insurance premiums.

Zip/County	Age	Sex	Smoker	OOP Limit	Monthly Premium
80202	25	M	Y	2,600	\$92.28
			N		68.36
80401	25	M	Y	2,600	109.15
			N		80.85
80202	55	M	Y	2,600	349.34
			N		258.77
80121	55	M	Y	2,600	274.22
			N		203.12
80121	60	M	Y	\$5,000	315.61
			N		233.78
Denver, Arapahoe, Grand	60-64	M	Y	3,000 (deductible)	240.90
			N		216.90

Amendment 35 advocates make a number of wild claims about the costs that smokers impose on other people; Citizens for a Healthier Colorado claims that medical and productivity losses cost Colorado taxpayers the ludicrous sum of \$224.21 a pack. People who calculate such large losses generally ignore the fact that many of the costs generated by smokers are borne by them, in the form of higher insurance premiums and lower wages. The shorter life spans of smokers also save taxpayers money by generating fewer costs for nursing home care and old age income subsidies. Less ideological researchers, building on the landmark study of Willard G.

People who calculate such large losses generally ignore the fact that many of the costs generated by smokers are borne by them, in the form of higher insurance premiums and lower wages.

Manning et al. in the 1989 Journal of the American Medical Association have generated a small literature of reputable estimates of the costs and benefits transferred between smokers and nonsmokers. In general, they conclude that the extra taxes already paid by smokers exceed any extra health costs that they may impose.

In 2002, Harvard economist W. Kip Viscusi used a 3 percent rate of real interest for discounting to estimate that medical cost increases amount to \$0.58 per pack. "Next in importance,"

he writes, "is the \$0.43 per pack that smokers do not contribute to social insurance programs due to their premature mortality."³⁸ But smokers also save taxpayers money because their risky habit shortens their lifespan. Smokers reduce nursing home costs by \$0.24 per pack and reduce retirement and pension costs by \$1.30 a pack. Even without including the taxes they pay on tobacco, smokers generate a cost savings of about \$0.32 per pack. This does not include tobacco taxes which would more than double the cost savings in most states.

Recent efforts by those more sympathetic to tobacco control have challenged these estimates by changing the definition of external costs. Hanson and Logue estimated total external per pack costs at \$7.00.

Analyses like Hanson and Logue's calculate higher losses because they define some costs borne by smokers as external costs and fail to account for lower pension and nursing home costs. Productivity losses include inability to work and lost work hours due to early death. These are private costs unless one asserts that employers or the nation owns individuals and suffers financial loss when individuals' personal habits reduce the value of the income flow from their working lives. Public health researchers also tend to get much higher loss estimates because they prefer the position advocated by Jeffrey E. Harris, an internist and economics professor at MIT, who, in testimony before a House committee, simply refused to include pension savings claiming that calculating the Social Security savings that result from an early death are "not the kind of calculation that a civilized society engages in."³⁹

In light of the fact that the Henry J. Kaiser Family Foundation reports that Colorado's total Medicaid expenditures in 2002 were \$2.3 billion, the Citizen's for a Healthier Colorado claim that tobacco generates \$1 billion a year in costs for Colorado taxpayers appears to be a gross overestimate. Medicaid is a federal matching program in which the federal government pays roughly half of a state's Medicaid expenditures. While eliminating tobacco use would almost certainly reduce some health costs, believing the Citizens for a Healthier Colorado \$1 billion claim requires believing that almost 90 percent of Colorado's portion of its 2002 Medicaid spending would be eliminated if everyone stopped using tobacco. For FY 2002-03, this included the almost \$14 million spent on anti-psychotic drugs, the \$4 million spent on enforcing nursing home standards, the \$91 million spent on Medicaid mental health services, and the roughly \$21 million spent on people with developmental disabilities.⁴⁰ Because Medicaid also pays for roughly a third of Colorado births, one must also believe that eliminating tobacco will prevent women from having babies.

Like mountaineering or promiscuous sex, smoking is a risky behavior that imposes medical costs on others only when health care or rescue costs are paid

for by taxpayers or when government forces private insurers to ignore known risks in pricing their products. And while there is evidence that higher cigarette prices may decrease cigarette use, there is also evidence that smokers charged higher prices compensate for their reduced smoking by drinking more alcohol.⁴¹ Virtually everyone agrees that the social costs associated with excessive drinking far exceed those associated with tobacco use.

4 Will Amendment 35 Reduce Smoking?

One of the many misleading statements that Amendment 35 proponents make about the initiative is on the “Get Involved” page of the Citizens for a Healthier Colorado website. The page urges people to get involved to “help keep kids away from cigarettes and expand health care for Colorado families.”⁴² As we have seen, Amendment 35 provides nothing in the way of dedicated funding

Colorado children are already protected by laws making it illegal for people to sell cigarettes to minors.

guaranteed to increase health care for anyone in Colorado. It also does nothing to keep kids away from cigarettes. Colorado children are already protected by laws making it illegal for people to sell cigarettes to minors. And, if increasing tobacco taxes extends the reach of the already developed black market for cigarettes, Amendment 35 is more likely

to increase children’s access to tobacco products.

Economic theory suggests that increasing the price of a normal good like cigarettes or loose tobacco generally leads people to use less of it even if the good in question is addicting. Because using less tobacco lowers the risk of suffering from a host of health problems, one of the pillars of the recent public health campaign against tobacco has been a series of efforts to increase its price. Consumer reactions to these price increases have been studied in a number of ways. Following the wave of tobacco demand research that occurred in the 1990s, researchers generally agreed that consensus estimates of the responsiveness of adult cigarette demand to price changes were in the range of -0.3 to

-0.5, meaning that a 10 percent in price would lower cigarette demand between 3 and 5 percent.⁴³

Researchers were particularly interested in youth responsiveness to tobacco product prices for two reasons. Survey data from 1991 suggested that almost 90 percent of American adult smokers tried cigarettes before they were 18, and that 71 percent were smoking daily by that age.⁴⁴ Data from Britain suggest that virtually all smokers had started by the time they were 30 years old.⁴⁵ These data suggest that few people begin smoking after their early twenties. Public health officials therefore concluded that keeping young people from trying cigarettes is the key to eliminating smoking. And since young people typically have less money and less firmly developed habit patterns, public health authorities believed that the young would be more responsive to price increases.

4.1 Price and the decision to smoke.

Using data from the Monitoring the Future surveys, Tauras and Chaloupka estimated that a 10 percent increase in price would decrease young adult cigarette use by 7.9%.⁴⁶ Page 9 of the media guide booklet that Citizens for a Healthier Colorado circulated to reporters and editors in support of Amendment 35 states that “for every 10 percent increase in the price of cigarettes...the number of children who smoke decreases 7 percent.” This may be a mangled restatement of the Tauras and Chaloupka result. Unfortunately, the reference given in the Citizens for a Healthier Colorado media guide directs the reader to a June 26, 2003 press release on the Robert Wood Johnson Foundation’s Tobacco Free Kids website that says “these estimates are based on research showing that every 10 percent increase in the price of cigarettes reduces youth smoking by approximately seven percent,” which is not the same thing at all as youth smoking could refer either to the total consumption of cigarettes or to the number of children who smoke.⁴⁷

And since young people typically have less money and less firmly developed habit patterns, public health authorities believed that the young would be more responsive to price increases.

In fact, the original research paper by Tauras and Chaloupka makes a much more limited statement.

“This suggests that a ten-percent increase in the real price of cigarettes would decrease the amount of cigarettes consumed by approximately seven percent. More than eighty percent of the effect of price on cigarette consumption is on the average cigarettes smoked by smokers (average conditional price elasticity is -0.104). The remainder of the effect is on the decision to smoke (average participation elasticity is -0.104).”⁴⁸

In short, while a 10 percent increase in cigarette prices appeared to decrease youth cigarette consumption by roughly 7 percent in their sample, most of the reduction came from people smoking fewer cigarettes. The price increase reduced the probability that a youth would start smoking by only 1 percent.

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After examining British data on tobacco taxes and smoking, Forster and Jones (2001) concluded that

while the tax rate does affect the age at which people start to smoke, “the elasticities are relatively small and do not support the evidence cited by the recent UK independent inquiry into inequities in health...that ‘studies in the United States and Canada indicate that young people’s intention to smoke and their uptake of smoking are highly price sensitive.’”⁴⁹ Forster and Jones do agree, however, that higher prices do increase the probability that adults will quit.

With more detailed data, the 2002 paper by Philip DeCicca, Donald Kenkel, and Alan Mathios in the *Journal of Political Economy* developed new estimates of “the likely impact of increases in cigarette excise taxes.” They found that their estimate of price responsiveness altered dramatically when they accounted for the fact that “current smoking participation reflects past decisions to start smoking.” Though they warn that extrapolating their results to large tobacco tax hikes is “problematic,” they

conclude that “cigarette taxes and smoking onset are not strongly related” and that “unobservable heterogeneity across states in antismoking sentiment leads to a bias in cross-sectional models toward finding strong tax effects.”⁵⁰ They also suggest that on a national basis, if the benchmark price elasticity estimate of -0.7 was accurate, after the “70 percent increase in price observed between 1997 and 2000, less than 20 percent of high school seniors should still smoke.” In 2002, the National Youth Tobacco survey suggested that 28 percent of high school students had smoked a cigarette within the last 30 days.⁵¹

4.2 The malign effect of black markets.

A major problem with almost every empirical study of the effect of tobacco tax increases on the demand for cigarettes is that the estimates do not account for black market purchases. This means that they are biased towards saying that higher prices make people stop buying cigarettes. In reality, most smokers probably just stop smoking legal cigarettes, preferring instead the illegal smokes readily available on the black market. This point was made by Galbraith and Kaiserman in an abstract describing their 1997 *Journal of Health Economics*. After studying Canadian cigarette consumption through the tax increase and decrease that occurred between 1980 and 1994, they concluded that “The growth of the contraband market since 1987 appears to have created two classes of cigarette—taxed and untaxed—with responses to changes in the legal price that are respectively higher, and lower, than was previously the case. The sensitivity of total cigarette sales to the taxation instrument is much lower than it would appear from the sales of taxed cigarettes alone.”⁵²

In reality, most smokers probably just stop smoking legal cigarettes, preferring instead the illegal smokes readily available on the black market.

In fact, the whole argument that tobacco taxes will have an effect on youth smoking is called into question by the fact that selling tobacco to minors has been illegal in every state in the United States since 1995. Colorado statute specifically says that giv-

ing or selling tobacco products to someone under 18 can make an offender liable for a fine of up to \$15,000. Anyone under 18 who tries to purchase tobacco products is also subject to a \$100 fine unless he is working for a properly authorized government agency.⁵³

This means that if Colorado children are still smoking, it is because they are either obtaining cigarettes illegally in Colorado or getting them from a legal source not bound by Colorado law. There are all kinds of vendors that are not, and never will be, bound by Colorado law. In September 2003, an article in JAMA, the journal of the American Medical Association, reported that four supervised minors, aged 11 to 15 years old, tried to purchase cigarettes over the internet.

This means that if Colorado children are still smoking, it is because they are either obtaining cigarettes illegally in Colorado or getting them from a legal source not bound by Colorado law.

Their success rate was roughly 90 percent and they received a total of 1650 packs of cigarettes delivered to their doorstep.⁵⁴ A related survey of US internet sales sites shows that internet sites will continue to sell cigarettes to Colorado residents no matter what Colorado lawmakers do--Indian reservations, which do not collect state cigarette taxes, housed 49 of the 88 sites examined.

Should tobacco activists somehow succeed in stripping Native American tribes of their sovereignty, they will still have to contend with outlets like the Swiss retailer Yesmoke whose Italian owners take orders via the internet and ship cut rate cigarettes directly to customers all over the world. Customer acceptance of internet sales appears to be growing rapidly. A population based telephone survey in New Jersey found that the number of people ever purchasing cigarettes via the internet grew from 1.1 percent in 2000 to 6.7 percent in 2002.⁵⁵

Although black markets are difficult to track, there is little doubt participants in worldwide black markets in cigarettes are responding to tobacco control efforts by rapidly increasing their size and sophis-

tication. A 1994 paper by Thursby and Thursby on interstate cigarette bootlegging in the United States concluded that “increases in the federal excise tax are associated with a greater proportion of smuggled cigarettes” via commercial means in which an unscrupulous wholesaler buys cigarettes legally in a lower tax venue and ships them to a higher tax venue possibly with counterfeit tax indicators attached.⁵⁶ Joossens and Raw cite data from the U.S. Department of Agriculture in the late 1990s to conclude that more than a third of global cigarette exports are funneled into illegal markets.⁵⁷ In Britain, which has the second highest cigarette tax in the world, the government estimates that non-UK-duty paid cigarettes accounted for 27% of the market in 2003, in part due to the fact that citizens can import 3,200 duty-free cigarettes a year for personal consumption.⁵⁸ British thieves, like those in America, have begun targeting stores which sell cigarettes and hijacking trucks delivering them.⁵⁹

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In a March 24, 2004, address to a U.S. House of Representatives appropriations subcommittee, Edgar A. Domenech, the Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives pointed out that a typical truckload of contraband cigarettes can “generate a profit of \$1.2 million” and that “current investigations have identified several instances of terrorist groups forming alliances with tobacco traffickers to generate monies to support their organization and activities.”⁶⁰

A May 2004 General Accounting Office report detailed what is known about cigarette smuggling in the United States. While tobacco tax advocates contend that “cross-border purchases generally fade as smokers go back to their usual habit of buying cigarettes at the corner store,” and that it is low tax states that are the major problem, the GAO concluded that

Many states, as well as many foreign countries, have increased cigarette taxes, resulting in a large difference in the wholesale price and the price paid by consumers at the retail level and creating potential illicit profits of \$7 to \$13 per carton of cigarettes. According to an ATF intelligence official, U.S. and European law enforcement information shows that illicit cigarette trafficking has become a multibillion dollar a year, worldwide crime phenomenon.

In the GAO's view it is "the possibility of making huge profits has attracted criminals, including international and domestic organized crime groups,

to smuggling."⁶¹ Smuggled cigarettes come into the United States from a variety of countries including China, Malaysia, Korea, Russia, Mexico, Brazil, and the Philippines.

Despite recently fashionable claims to the effect that the level of taxation has no effect on the level of smuggling because low tax countries in Europe report high rates of

smuggling, both survey and crime data suggest that the opposite. In Taiwan, estimates drawn from a national interview survey on cigarette consumption suggested that higher cigarette prices are strongly associated with the purchase of smuggled cigarettes and that a 1 percent increase in cigarette prices increased the likelihood of buying smuggled cigarettes by at least 2.6 times.⁶²

And in England, innovative researchers decided to examine whether smokers really do revert to buying cigarettes at the corner store when taxes are high. They collected empty cigarette packs in the litter left after major soccer games. After Ipswich made it to the top of a UK soccer league in 2001, researchers found that 41% of the leftover cigarette packs had not had UK duty paid on them. In 1998/1999, the discarded cigarette packages suggested that duty had been paid on all but 5 percent of cigarettes. Soccer matches in other cities suggest a similar pattern of increase in untaxed cigarettes.⁶³

4.3 Cigarette taxes increase crime.

New York City has a long history of instituting massive real increases in cigarette taxes in an effort to get more revenue. As was the case in Prohibition, its history shows that when government officials raise taxes without considering the profit opportunities that they create for criminals, large costs are imposed on ordinary citizens. In a February 2003 paper for the Cato Institute, Patrick Fleenor details the costs of the crime associated with cigarette prohibition efforts. "Perhaps worse than the diversion of money," he writes, "has been the crime associated with the city's illegal cigarette market. Smalltime crooks and organized crime have engaged in murder, kidnapping, and armed robbery to earn and protect their illicit profits. Such crime has exposed average citizens, such as truck drivers and retail store clerks, to violence."⁶⁴ Using data from the Census, and New York State and City tax departments, Fleenor shows that when cigarette taxes were moderate, legal cigarette sales rose. When taxes were relatively high, legal sales fell.

New York City has a history of periodically doubling its cigarette tax in real terms. After the 1965 increase, organized crime began driving independent bootleggers out of the business. By the mid-1970s, mobsters were locked in deadly turf wars for control of the cigarette markets and murdered a string of witnesses to prevent testimony against them. Legitimate stores lived under a constant threat of armed robbery.

Since 1990, New York City's cigarette taxes have more than doubled in real terms. In 1990 they were \$0.58 per pack. In 2002 they were \$1.29 a pack. By July 2002, legitimate cigarettes were priced at more than \$7.50 a pack. Officials sought to stem rising cigarette related crime by criminalizing various activities related to the illegal cigarette trade. Neither crime nor smoking has been deterred by higher prices and stiffer sentences. Though sales of taxed

...illicit cigarette trafficking has become a multi-billion dollar a year, worldwide crime phenomenon.

By the mid-1970s, mobsters were locked in deadly turf wars for control of the cigarette markets and murdered a string of witnesses to prevent testimony against them.

cigarettes reached record per capita lows, data from the Centers for Disease Control show that smoking prevalence in New York City had declined at about the nationwide trend, falling from 21.7 percent in 1993 to 20.7 percent in 2001. Smoking rates among young adults rose, possibly because the diversion of cigarette sales from legitimate sources makes it easier for young people to buy them.

In New York City, illegal cigarettes are now sold by organized crime, terrorist groups, street gangs, and small bootleggers, a volatile mix given the history of the 1970s. Some operations are highly sophisticated, in August 2002 Miami customs inspectors found a \$300,000 shipment of bogus New York tax stamps en route to New York from Paraguay.

5 Amendment 35: Only Special Interests Benefit

Given the clean air laws already in place, at current tax levels Colorado smokers are no different than many other Colorado residents who engage in risky activities that may be harmful to themselves while posing little risk to others. Unfortunately, anti-smoking activists seem to have learned little from the dreadful results of America's experiment with Prohibition. Prohibition showed that enacting outright bans, or confiscatory taxes, on behaviors enjoyed by millions creates huge profit opportunities that spawn criminal empires. In other states with

higher tobacco taxes, these empires have already funded terrorists, caused the death of many innocent people, and turned millions of law abiding Americans into petty criminals.

Amendment 35 creates profit opportunities for criminals that will likely drive cigarette sales further into the same channels that currently deliver illegal drugs to the state's school yards with such

deadly efficiency. Keeping cigarette taxes relatively low leaves cigarette sales in the hands of legitimate outlets with an incentive to observe laws forbidding

Unfortunately, anti-smoking activists seem to have learned little from the dreadful results of America's experiment with Prohibition.

sales to minors. Pricing cigarettes out of legal markets puts cigarette sales in the hands of criminals. They have long since demonstrated that they have not a shred of conscience when it comes to hooking kids on harmful substances.

Amendment 35 also stands tax policy on its head by raising taxes on a population minority that is relatively less affluent in order to give their money to a small group of relatively well paid program advocates. The money it does provide for actual health care goes directly to Section 330 Community Health Clinics. As there are no controls on how the money is used, these already heavily subsidized entities could simply use the extra funds to improve staff working conditions in addition to expanding health services for those who need them. The problem is that Community Health Clinics provide extremely expensive primary care because federal law requires that they be reimbursed on the basis of their costs rather than services rendered. Should voters choose to reward this behavior by passing Amendment 35, they will still charge state taxpayers about \$130 for a typical Medicaid visit that private physicians receive just \$27.00 for. Even private urgent care clinics, which are typically charge more for basic office visits than private physicians do, charge less at roughly \$100 a visit. If Amendment 35 were really about health care, the additional tobacco tax money would have been made available to any CHIP or Medicaid enrollee who needed funds to pay for a visit to any physician. Instead, the Amendment gives it to Community Health Centers to spend as they please.

Worst of all, Amendment 35 dictates that almost half of all the new tobacco tax revenues be permanently allocated to groups that work to increase the number of people enrolled in the Medicaid and CHIP programs. Since it also removes these funds from legislative supervision, even if the special interest groups intent on having state government pay for

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everyone's health care manage to enroll the State's entire legal population in Medicaid and CHIP, only another constitutional amendment could prevent their continual enrichment by tobacco tax money.

If Amendment 35 backers were really interested in improving health care for the poor they would have ensured that the funds raised by the new taxes would expand funding for the new and innovative pilot programs that show such promise for providing the needy with real, lower cost, private, health care and health insurance.

Activist claims to the contrary, a close reading of Amendment 35's actual wording shows that it provides no additional money to pay for any of the extra costs that expanded eligibility and larger enrollments will generate. After activists raise enrollment and eligibility sufficiently they will campaign for increased program funding by pointing to the shortages afflicting the Medicaid and CHIP programs. Those shortages will be real. In Tennessee, Kentucky, and other states that have recklessly increased Medicaid rolls, shortages are a fact of life inevitably followed by increasingly severe rationing and predatory regulatory raids on private health care providers. Advocates will continually campaign for more funds to dump into the insatiable Medicaid

maw, and Colorado tax burdens will rocket upwards.

If Amendment 35 backers were really interested in improving health care for the poor they would have ensured that the funds raised by the new taxes would expand funding for the new and innovative pilot programs that show such promise for providing the needy with real, lower cost, private, health care and health insurance. Instead they produced the language of Amendment 35, a reverse Robin Hood that taxes the relatively less well off so that more highly paid people in selected special interest groups can be further enriched. These groups have combined to create an extraordinarily duplicitous public relations campaign designed to misinform voters about the real substance of the Amendment. The language of Amendment 35 makes it poorly drafted, seriously flawed, and deeply cynical. The prospect of having it end up as part of the Colorado Constitution no doubt makes its framers spin in their graves.

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