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What Does a Camel and Vaping Have to Do with Public Policy?

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Introduction

“It is one of the great ironies that this industry, so protective of its prerogatives and so aggressive in defense of its secrets, would be so publicly exposed that we now know more about the history of the tobacco industry than any other business in the history of business.”¹

The compelling story reveals a controversy created out of lies and brilliantly designed to steer public policy in the industry’s direction. The truth is unraveled by stolen documents, whistleblowers, and a mysterious package addressed to Mr. Butts. Fast-forward almost seventy years and this curriculum unit will examine the history of the tobacco industry to shed light on the current storm that is brewing around e-cigarettes.

This cross-curricular unit will use the context of the tobacco industry to learn about public policy, media messages, various types of writing, and different viewpoints. It is written for my fourth grade students who live in a city with a storied history rooted in tobacco.

My school, Mary Munford Elementary School, is located in the west end of the city of Richmond, Virginia. It is a part of Richmond Public Schools. The students mostly come from middle class homes with a lot of parental support, but there are also immigrants, students from low-income homes and a few homeless families. My school also serves low-incidence autistic students. The range of skill level in fourth grade is huge. A few students barely speak English, some perform two years below grade-level, and other students perform in the 99th percentile on norm-referenced tests for reading and math. My students’ general knowledge also varies greatly. Some students read constantly and have the opportunity to travel around the country and to other countries, while others rarely leave Richmond.

Rationale

In Virginia, fourth graders study the state’s history including the three branches of state government. The idea for this unit evolved from trying to connect public policy to the fourth grade state curriculum in a meaningful way. The obvious connection was Virginia’s storied history with tobacco. The topic really appealed to me

because there is a current controversy over the risks of e-cigarettes, and the fact that many young people start vaping in fifth grade. As I took a deeper dive into the history of the tobacco industry, my head was spinning with ideas. This topic was tied directly to public policy, legislation, political alliances, lobby power, media messages, regulations, public health, and the judicial branch. The topic will provide an excellent context and the unit will help my students understand how the branches of government work in a deeper way.

Many Virginians helped design the federal government. Thomas Jefferson, James Madison, George Washington, and George Mason brought with them their knowledge about how the first elected legislative body in the American colonies was working and their ideals. The Virginia General Assembly would serve as a model for the federal government. So, the unit will not only help my students to understand how the state government works, but also the federal government.

As I read page after page of Allan Brandt's book *Cigarette Century*, I couldn't help but notice several things. The first was how the tobacco industry acted in such a calculated and manipulative way, only thinking of its interests. The second was that my own dislike for cigarettes and smoking turned into animosity for the tobacco industry and its total disregard for human health. The third take away was that I couldn't help but notice how articles and news stories that I have read and heard about over the past few years seemed to be an instant replay of the cigarette controversy.

This unit will help my students develop critical thinking skills as they examine both sides of the controversy, learn how public policy is created and gain valuable insight into the harmful effects of e-cigarettes. Hopefully, my students and many others around the country and world will learn to avoid e-cigarettes.

Background

A Glimpse into Tobacco Regulation in the 1600's

Tobacco has a storied history in America going back to 1611 when John Rolfe began to cultivate tobacco at Jamestown. Tobacco regulation in Virginia dates back to 1619, and was focused on improving the price.² Tobacco became the cash crop of Virginia bringing wealth and slavery to the Virginia colony. Tobacco was also grown in North Carolina, South Carolina and Georgia. From the beginning, tobacco was linked to wealth and power, which continues to this day within the tobacco industry.

Through my research I learned that William Gooch, a governor, and Goochland County's namesake, developed a system of tobacco regulation in 1731, as there was an issue with quality control. He developed a system of inspections to weed out the poor quality tobacco. The idea of lobbying and political favors was evident back then. Governor Gooch would "promise lucrative tobacco inspectorships for burgesses who backed his plan."³ By 1742, the Tobacco Act was rewritten, and it signaled the start of tobacco regulation as a permanent part of the economy.⁴ Governor Gooch was politically savvy. He was able to find a middle ground and appeal to the tobacco growers, English merchants, and officials. His plan worked successfully for Virginia and Great Britain.⁵

The hallmark of politics and public policy is the interplay between the two, and Governor William Gooch did this well.

The Tobacco Industry

In 1890, Washington Duke formed the American Tobacco Company, which was a consortium of the four major tobacco producers.⁶ The American Tobacco Company soon was referred to as the “Tobacco Trust,” and was responsible for 90 percent of all cigarette sales in the United States. The Tobacco Trust was a powerful organization and important part of the United States economy. In two decades from 1890-1910, a \$25 million investment grew to \$350 million.⁷ However the success of the Tobacco Trust would be called into question, and in 1911 the American Tobacco Company was found to be in violation of the Sherman Antitrust Act and forced to dissolve.⁸ This would be the first time, but certainly not the last time that the tobacco industry would take advantage of an act of regulation.⁹

In response to the dissolution, the big four tobacco manufacturers, The American Tobacco Company, Liggett & Myers, R.J. Reynolds, and Lorillard, would each invest heavily in marketing their cigarettes in an effort to secure market share. The dissolved Tobacco Trust monopoly reemerged as an oligopoly only to violate the Sherman Antitrust Act again in 1941. This time the infraction was for price-fixing and collusion.¹⁰

In the late 1920's, following the women's suffrage movement, the cigarette companies targeted the liberated women in an effort to change the social taboo. Ads and the use of cigarettes in film became a way that the cigarette companies could influence consumer culture.

By the 1950's the Big Five tobacco companies were established and would remain the top producers of tobacco products for the rest of the century.¹¹ Around the time of World War II, cigarettes made up 1.4% of the GNP and 3.5% of consumer spending on non-durable goods. “Tobacco was the fourth largest cash crop in the nation, and in Connecticut, Maryland, North Carolina, and Virginia, it ranked first.”¹² By the middle of the 20th century, the cigarette had become an important part of the country's industrial economy. The success of the industry enabled its strong influence on politics and regulation.

A British study conducted by Richard Doll and A. Bradford Hill from 1948-1949 examined about 650 lung cancer patients and concluded that cigarettes were a crucial factor in lung cancer.¹³ In 1953, as a response to the mounting evidence of the harm caused by tobacco, representatives from the industry met with and retained Hill & Knowlton, the top public relations firm in the United States.¹⁴ Hill & Knowlton would devise a strategy that would guide the tobacco industry through many challenges throughout the century. The strategy Hill & Knowlton used to counter the increasing health concerns was to create “controversy” about the connection between cigarettes and lung cancer. The tobacco industry used “doctors” in ads and claimed the link between cigarettes and disease was “unproven.”

One way to create the controversy was to invest in medical research and to call for new research, thus implying that the current research may not be accurate. The unified front posed by the industry cast doubt on the current research and link to cancer which would enable another five decades of industry collusion.¹⁵¹⁶ Another strategy was to create the Tobacco Industry Research Committee, TIRC, as a method of controlling the science. Soon the TIRC issued the “Frank Statement.”

We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business.

We believe the products we make are not injurious to health.

We always have and always will cooperate closely with those whose task it is to safeguard the public health.¹⁷¹⁸

By the 1960's the strategy of the "controversy" was working. The controversy not only proved valuable to keep people smoking, but more importantly to protect the industry against regulation. The economic power of the tobacco industry also kept legislation and public policy at bay.

In 1964 the first *Surgeon General's Report on Smoking and Health* was published, and would mark the expansion of the federal government's regulatory powers. This report was an example of how government regulatory power increased during the Kennedy and Johnson administrations.¹⁹ The government had to promote health and protect the public from disease. With the Surgeon General's report, the battlefield for the tobacco industry would shift from science to regulation and public policy. In response to the report, Congress passed the Federal Cigarette Labeling and Advertising Act, (FCLAA), in 1965.

This legislation came out prior to labeling regulation by the Federal Trade Commission (FTC), which sought a stricter label, "cigarette smoking is dangerous to health" and "may cause death from cancer and other diseases." The warning placed on the packages instead read, "Caution: cigarette smoking may be hazardous to your health." The act also preempted states from passing stricter labels. What is not as well known is that, "with the FTC rules pending and the laws regulating the promotion of cigarettes being proposed in up to twenty state legislatures, the tobacco industry brilliantly reversed field."²⁰ The tobacco industry realized that congressional oversight was in its best interest for several reasons. Federal law preempted state law, and there could have potentially been many diverse state or local laws to follow. The preemption would ban any regulation of tobacco for four years.²¹ The FCLAA benefitted the tobacco industry and was practically written by the tobacco industry.²² In "The Theory of Economic Regulation," George Stigler provides insight into how regulations can be potentially valuable to members of the industry. The way the cigarette industry used Congress and the FCLAA to further their interests is a great example of what Stigler describes. According to Shapiro, "major producer groups will typically prevail in politics."²³

There is a spectrum on which public policy can range. The least restrictive policy is doing nothing and the most restrictive is prohibition. Kansas, Minnesota, South Dakota, and Washington actually enacted prohibition in 1909, but the prohibition was not enforced.²⁴ There are other regulatory options that fall in between such as education, restrictions (age, location), marketing, and labeling.

The regulation of tobacco would prove to be tricky. It was determined around the time of the Surgeon General's report that tobacco products did not fall under the control of the Food and Drug Administration (FDA), as tobacco was not considered a food or a drug. So, the first regulations were placed on advertising.

As regulations began to address the industry's misleading ads about the safety of cigarettes, the industry began to use filters to make them safer. One company added a chemical to the tobacco so the filter would turn darker to provide the illusion of filtration. As questions began to arise about monitoring the ads and regulation on the industry, the Federal Trade Commission (FTC) proposed warning labels. The tobacco industry strategized again. The industry wielded its power and allied with tobacco farmers and at another point with doctors who wanted the tobacco states' congressmen to vote against Medicare and Medicaid to once again keep the regulation at bay.

The Tobacco Institute is one of the most influential lobbies in Washington, D.C. In an effort to avoid regulation,

many smaller agencies approached Congress to enact legislation knowing that working with Congress would be in the best interest of the industry. Given the challenges of regulating the tobacco industry at the federal level, more progress has actually been made with legislation at the state and local levels, especially when it became clear that smoking not only harms the one taking the risk and choosing to smoke, but also the innocent bystanders affected by second hand smoke.

The “controversy” will continue to work in the industry’s favor for a while, as the battleground will once again shift for the tobacco industry. The battleground will go from legislation to litigation. First the industry will face individual battles, then class action suits such as the Master Settlement Agreement.

Political Climate through the Decades

In order to better understand public policy as it relates to tobacco regulation one must consider the interplay between politics and public policy. As a general rule, countries with weak political parties are more susceptible to industry lobbying, so the regulation they get will be more likely to have regulation that protects the big players in an industry. The United States has weak political parties, but the U.S. has managed to have better regulation of cigarettes than other countries. So why is this the case?

The Surgeon General’s Report that came out in 1964, and The Federal Cigarette Labeling and Advertising Act of 1965 (FCLAA) soon followed, which required the first warning label to be placed on cigarette packages. The FCLAA contained a general preemption provision that prohibited state and local regulation of cigarette advertising and promotion based on smoking and health.²⁵ At this time Chief Justice Earl Warren led the Supreme Court. The Warren Court as it is referred, was more liberal and therefore more sympathetic to federal law. Thus, federal preemption was less likely to be struck down by the Warren Court if the law was challenged. The notion of *preemption* is such that a decision by the federal Supreme Court or a federal law trumps a decision by a state court or state law.

The Warren Court would have been less friendly than the current court to legal challenges to federal regulations. The New Deal and the Civil Rights decisions regarding segregation were indicative of the more liberal times.

On the flip side, the Burger Court, Rehnquist Court and the current, Roberts Court are more conservative and favor the 10th Amendment and states’ rights. The 10th Amendment, in particular Article 4 states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”²⁶

The FCLAA was amended by Congress on June 22, 2009. The Amendment is known as The Family Smoking Prevention and Tobacco Control Act (FSPTCA). It gave the FDA authority to regulate the manufacture, distribution, and marketing of tobacco products. The amendment provided authority to state, local, and tribal governments to regulate certain aspects of tobacco products.²⁷ The FSPTCA was passed when the Democrats had control of both houses of Congress. The tobacco companies have since challenged the FDA’s authority and the constitutionality of the Act. The cases were mostly heard in district courts and court of appeals and have upheld the FSPTCA.²⁸ It seems likely that if a case is challenged and were to reach the Roberts Supreme Court that the Act would be upheld.

In the 1970’s the parties weakened. So, as my students learn about the regulation of e-cigarettes, the current court favors state’s rights and there are definitely weak parties right now. It is likely that the Roberts Court will

favor the 10th amendment and the regulation of e-cigarettes will not be as strong given the political climate of the early twenty-first century.

The FDA

The FDA was unable to regulate tobacco for years because tobacco was neither, a food or a drug. In August 1996, David Kessler, the commissioner of the FDA, announced that the FDA would regulate tobacco products, as medical devices. Cigarettes were created to deliver nicotine to the body. This decision would be contested for years. The FDA and scientists argued that nicotine is a drug because it is addictive. The tobacco companies claimed for decades that the addictive nature is unproven, however the internal tobacco papers revealed otherwise. The papers revealed that the industry not only knew the nicotine was addictive, but took steps to make the tobacco more addictive. The industry also targeted young people knowing that if they became addicted when they were young the industry would have replacement customers. As the notion that nicotine is additive played out, the tobacco companies claimed that smoking was, “a personal choice.” This debate would come into play in the 1996 presidential election and would also demonstrate the influence the tobacco industry had politically. Vice-President, Al Gore convinced President Bill Clinton to support the tobacco issue. Robert Dole, the Republican nominee, spoke to the uncertainty of the addictiveness. Later it was revealed that Robert Dole had accepted \$477,000 in contributions from the tobacco industry and had been shuttled around thirty-eight times on the industry’s private jet.²⁹ Bill Clinton would use the tobacco issue in some of his campaign ads and would ultimately defeat Dole in the election.

The tobacco industry, with a deep history in North Carolina, would challenge the FDA’s new regulation in court. The industry argued that only Congress had the right to regulate tobacco. The case would eventually reach the Supreme Court, and in March 2000 it was determined by a 5-4 vote that the FDA did not have the authority to regulate tobacco.³⁰ This decision meant that only Congress could establish jurisdiction. President Clinton pushed for Congress to support FDA regulation. This policy decision must be viewed through the political lens. The Republicans took over the Congress in 1994. More telling is the fact that chair of the House Subcommittee on Health and the Environment shifted from Waxman to Thomas Bliley, a Republican from Virginia, and a huge supporter of the tobacco companies. The Republican Congress had strong antiregulatory views. On top of that, about 80% of political funding from the tobacco companies went to the Republicans. The request for Congress to support the FDA’s right to regulate tobacco never came to vote. The antitobacco push would then shift to liability litigation.³¹

Litigation

In terms of litigation, not much traction was gained with individual lawsuits because the tobacco industry had massive financial resources. However as several whistleblowers came forward and internal tobacco industry documents were leaked, the industry would have a tougher time using denial and “unproven” tactics.

Merrell Williams, a paralegal in a Kentucky law firm, copied internal papers from the Brown & Williamson tobacco company. He then approached an antitobacco activist and lawyer about them. The lawyer wanted no part of the stolen papers. The papers made their way through the Attorney General of Mississippi to Henry Waxman. This was a crucial move since under the Speech and Debate Clause of the Constitution members of Congress are protected from subpoena and certain court orders.³²

The papers were eventually leaked. A set was sent to Stanton Glantz, a key figure in the antitobacco effort, at the University of California San Francisco (UCSF). The papers arrived in a package with a mysterious and

funny return address of “Mr. Butts.” The “Cigarette Papers” as they became known were posted on the internet in 1995 and are still available.

Also, Jeffrey Wigand, a former chemist at Brown & Williamson, became a whistleblower testifying and supporting the FDA’s effort to prove that the tobacco companies knew that nicotine was addictive. Wigand reported that tobacco was genetically modified to increase the level of nicotine and that ammonia-based chemicals were added increase the amount of nicotine delivered.

Eventually class action lawsuits, where many affected people or families of affected people, joined forces to sue the tobacco companies, had more success. States sued the tobacco industry as diseases caused by smoking cost their states big money in Medicaid and Medicare payments. The industry and the states were going to settle in the Global Settlement, but instead the industry turned to Congress. John McCain introduced legislation and the tobacco industry once again used its power having spent \$35.5 million in lobbying.³³ The Republicans added in all kinds of other amendments. The bill failed. Over the next few years, states settled with the tobacco industry. These settlements together would become known as the Master Settlement Agreement. Coupled with four other state settlements, the total payout to states was \$246 billion over 25 years.³⁴ There were also concessions made. Some were for advertising, youth targeting, lobbying. States also gave up their right to future class action lawsuits against the industry.

The 6 Building Blocks of Distributive Politics

In *Wolf at the Door: The Menace of Economic Insecurity and How to Fight It*, Gaetz and Shapiro list six building blocks of distributive politics that improve the likelihood of creating policy. They are 1) build coalitions, 2) advance moral commitments, 3) pursue proximate goals, 4) entrench proximate gains 5) deploy resources, and 6) find effective leadership.³⁵ The five largest companies formed the Tobacco Industry Research Committee. The success of the industry through the twentieth century was in a large part due to how the industry executed each of these building blocks.

The tobacco industry is an incredibly strong *coalition*. Early on the four large companies were considered a monopoly. The industry turned its focus to public relations to counter negative cancer research if and when it would come. Even though cancer research is not a person or group, it represented one form of opposition that had the potential to derail the success of the tobacco industry. The big five companies joined together and hired John W. Hill, president of Hill & Knowlton, the top public relations firm in the country. With Hill’s leadership, the big five companies form the Tobacco Industry Research Committee, which was a collaborative research group, essentially a coalition. Hill would provide the *strong leadership* and guidance through many challenges.

The tobacco industry did not have much of a moral narrative. Initially, the narrative was to portray smoking as cool. However, as evidence mounted that cigarette smoking caused cancer, the moral narrative shifted. A strategy Schlauffer describes is the use of evidence to create scientific certainty of uncertainty as a narrative strategy. She explains, “When a coalition uses evidence to create uncertainty so as to discredit science used by opponents, evidence becomes the focal point of the policy narrative.”³⁶ The tobacco industry used this technique and chose to attack science. Hill carefully aligned the industry science goal: to create uncertainty with the public relations goals: public image and public confidence that smoking was not harmful. “The strategy - invented by Hill in the context of his work with the tobacco industry - would ultimately become the cornerstone of a large range of efforts to distort scientific process in the second half of the twentieth century.”³⁷ Hill’s strategy gave the appearance that that companies were acting in the public’s best interest,

when in fact the industry was buying time with little regard for the public's health. The idea behind this building block is that the coalition must have strong motivation beyond individual interests to hold the coalition together. Even though the individual tobacco companies were competing against each other, they committed to undermine the science to create controversy. According to Brandt, "the industry, meanwhile well understood that its carefully maintained posture of scientific uncertainty provided a shield against new regulatory initiatives."³⁸ The narrative tightly united the industry and protected individual companies from regulation and liability for half a century.

The first public action that resulted from hiring Hill & Knowlton would demonstrate the intent of big five. It would come in the form of a public statement, "A Frank Statement to Cigarette Smokers" and it would outline the commitment of the industry to the people's health. The Frank Statement (see above) as it became known is an example of *pursuing proximate goals*. The industry promised that it was committed to the public's health and had created the TIRC to carry out more research. The Frank Statement also helped to build the coalition and limit opposition.

The notion of the industry's commitment to public health was well received when the Frank Statement was released. The industry *entrenched proximate gains* by keeping up the narrative. "From December 1953 forward, the tobacco companies would present a unified front on smoking and health; more than five decades of strategies and explicit collusion would follow."³⁹

The tobacco industry has tremendous resources and the industry *deployed its resources* when it hired the best PR firm in the nation. Many more resources were committed to establish TIRC. John W. Hill provided the *strong leadership* and engineered a very effective strategy to lead the industry through the second half of the twentieth century.

As Graetz and Shapiro suggest the building blocks are essential to fight economic insecurity. The tobacco industry employed the six blocks and successfully navigated through the looming economic insecurity storm that was brewing as science researched the link between cancer and smoking.

Three Views of Regulation

Externalities

Externalities are an unintended cost or benefit that result from the exchange of goods or services that affect third parties who are not involved in the exchange. People or private companies base decisions on the costs or benefits to themselves with little regard for society. Externalities have been considered market failures. An Italian economist, Vilfredo Pareto, came up with the Pareto rule, which tries to balance the social benefits and the social costs, in order to obtain the ideal allocation of resources.⁴⁰ In an effort to control these externalities, the government intervenes as a control mechanism. The intervention may place penalties or taxes on negative externalities and provide subsidies for positive externalities.

With the tobacco industry there are several externalities: the cost of healthcare on society, the dangers of second-hand smoke, and air pollution. In the 1980's the tobacco industry realized that second-hand smoke was a problem, a problem for the industry. The industry was losing in regards to public opinion, but still dominated when it came to resources and power. As the push for smoke-free restaurants and workplaces heated up, the tobacco industry pushed for the rights of smokers and non-smokers. The industry lobbied corporations and restaurants trying to push for accommodations for both parties, which was better for the industry than banning smoking in these places. There is a tax, essentially a sin tax, placed on cigarettes and

there are penalties for smoking in public areas. These are examples of government interventions.

Major Producers Prevail in Politics

The next view major producers will prevail in politics obviously applies to the tobacco industry. There are countless examples from when the smoking industry approached Congress as a better option to the FTC and the FCC making regulations, to the industry favoring state laws to local ordinances, to the FDA not regulating cigarettes as a drug delivery device. The fact that the tobacco industry would prevail couldn't be made clearer than reading Brandt's words.

“If Kessler (FDA), had sought to bring tobacco products under drug mandates, he would have had to require the tobacco companies to show that they were both safe and effective. Since they were not, the only alternative would have been to require their complete withdrawal from the market. Kessler knew that this was not a viable political option for the agency.”⁴¹

Brandt's words clearly show how the tobacco industry is able to manipulate the regulators to invoke rules that benefit the large firms and industries. The quote also reaffirms economist George Stigler's notion that consumers and voters are not as powerful as the major industries. Thus, the major industries will prevail in politics.

Sentiments of Voters and Consumers Fluctuate

The third view is based on the ideas of Sam Peltzman. His idea is that politicians enact regulations that harm large firms. This is because politicians face both industry and electoral pressure. There are times of crisis when voter sentiment is extremely high, which makes it particularly challenging to predict which regulations will pass. Following the crisis, the sentiment generally ebbs.

The three views of regulation explain why there is regulation, deregulation, or a possibility of either.

Advertising

The advertisements and marketing strategies by tobacco companies provide insight into history and the history of the tobacco industry. By examining cigarette ads over time, they reveal women, doctors, soldiers, cartoons, and cowboys. The advertisements tell the story.

In the 1920's ads targeted women, but due to cultural mores, women smoked indoors. Women had recently earned the right to vote and were more liberated. The marketers for Lucky Strike focused on getting women to smoke outdoors. They launched a “torches of freedom” campaign in which women lit up their cigarettes during New York City's Easter parade in 1929. Also in the 1920's, Philip Morris's best brand was Marlboro. At that time it was promoted as a light cigarette targeting women smokers.

As concerns grew over the harmful effects of smoking, the advertisements shifted. From the 1930's through the 1950's many ads featured doctors. These ads sent a clear message that the brand is a healthier choice.

During World War II, the famous Camel Man billboard appeared in Times Square. The billboard was not only located in the most iconic location in the heart of New York City, but also was garish in the way it emitted puffs of smoke during a time of war. This billboard shows the power of the tobacco company as well as the

prominence of cigarettes in our culture during the 1940's. Camel Man appeared in military and football uniforms clearly designed to appeal to boys. The fact that the Camel Man billboard would come down in 1966 was not a coincidence. This was two years after the Surgeon General's Report and the announcement that cigarette smoking causes lung cancer.

Joe Camel

The smokers of Camel cigarettes were aging. By 1984, Camel cigarettes only captured 4.4% of the market, and most people who smoked them were sixty-five years or older.⁴² Clearly, if Camel cigarettes were to prevail, they needed replacement smokers and rebranding. Thus, Joe Camel made his debut in 1987. From the late 1980's to 1994 Joe Camel would sit on a billboard once again in Times Square. It was evident from the start that the cartoon figure was designed to appeal to children. Research showed that smokers tend to stick to the first brand that they smoke. It is also harder to quit when one starts smoking at a younger age. So it made sense from a marketing perspective to target young people. Though this practice was illegal, R.J. Reynolds claimed Joe Camel targeted "young adult smokers." Documents released following a lawsuit would reveal otherwise.⁴³

As a part of the Master Settlement Agreement, Joe Camel and other cartoon characters would be prohibited.

E-Cigarettes/Vaping

Understanding the history of the tobacco industry and cigarettes provides an important lens as one examines the current situation that is unfolding regarding electronic cigarettes (e-cigarettes). There are many parallels: should e-cigarettes be regulated as consumer products, tobacco products, as medicine, or a combination of approaches?⁴⁴

E-cigarettes are a battery -powered device that heats a liquid turning it into an aerosol that the user inhales and exhales. As I researched e-cigarettes and vaping, I could not help to notice the cigarette history repeating itself.

The manufacturers target young users. There are not only flavored oils that are geared toward children, but also advertisements on children's websites including Nickelodeon and the Cartoon Network. There is currently a lawsuit against Juul® for targeting young people. The packaging also mimics that of candy, Nilla wafers, juice boxes, and whipped cream, which is another way to attract young users. The similarities are striking and are also cause for alarm as young children may confuse the items and ingest a lethal dose of liquid nicotine. According to an article on Reuters, "The allegations in the lawsuit, stemming from a more than year-long investigation, contradict repeated claims by Juul® executives that the company never intentionally targeted teenagers..."⁴⁵ The 2019 National Youth Tobacco Survey found that over 5 million middle and high school students are current users of e-cigarettes.⁴⁶ This number is up from 3.6 million in 2018 and 2.1 million in 2017.⁴⁷ It seems easier to target young people whose decision-making processes have not fully matured. Peer pressure and the desire to feel independent from their parents also influence adolescents to try e-cigarettes. The research shows that vaping is a gateway to cigarette smoking. Does this sound familiar?

Photo courtesy of the FDA.gov copied 7/27/2020



Figure 1: The image shows e-liquid for e-cigarettes on the left and candy on the right with similar packaging. For more examples go to the website below.

<http://wayback.archiveit.org/7993/20180908093641/>

<https://www.fda.gov/TobaccoProducts/NewsEvents/ucm605729.htm>

The tobacco industry is also promoting e-cigarettes as a cessation aid, or a way to help people quit smoking. Despite these claims, the FDA and the Surgeon General do not recognize e-cigarettes as a cessation aid.

The tobacco industry is also claiming that e-cigarettes are safer than cigarettes, and also launching new products that it claims are safer than e-cigarettes. An example is the IQOS, which is an acronym for “I quit ordinary cigarettes,” which uses a heat not burn technology. The tobacco industry is claiming that this is a safer alternative to e-cigarettes, but scientists are unsure what types of toxins “heating” will produce. Dr. Michael Ong, an MD, PhD at UCLA Health says, “there are likely health risks that still are not yet fully known.”⁴⁸ Dr. Humberto Choi, the head of the cessation program at the Cleveland Clinic and a pulmonologist, states that the IQOS marketing method, “sounds like a similar strategy,” used by companies to pitch cigarettes and e-cigarettes.⁴⁹

Health Risks

There is now some evidence that e-cigarettes cause harm to lungs. Vaping has been linked to a rare metal lung disease usually linked to metalworkers. Some of the damage seen in lungs resemble toxic fume injury or chemical burns.⁵⁰ EVALI is an acronym that stands for e-cigarette or vaping product use-associated lung injury. EVALI is an inflammatory response that occurs in the lungs due to inhaled substances. EVALI can present differently as there are many different substances that can compose the different products. As of February 18, 2020 there were 2,807 hospitalizations or deaths associated with EVALI from 50 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands according to the CDC.⁵¹ “Some pro-vaping advocates accused public health officials of exaggerating the health risks of e-cigarettes to protect the interests of big tobacco and pharmaceutical companies, which donated lots of money to fund government research and support political campaigns.”⁵²

E-cigarettes also cause nicotine addiction and in young people are a gateway to cigarettes and other addictive substances. Some e-cigarettes claim to be “nicotine free,” but actually contain nicotine. This is similar to the “filtered,” “low tar,” and “light” cigarettes that claimed to be safer to promote the products. Additionally,

some of the chemicals used in e-cigarettes have been known to cause cancer.

The regulation of e-cigarettes is tricky. The FDA announced in 2011 that e-cigarettes are regulated as tobacco products. Based on court decisions, e-cigarettes are not recognized as a drug-delivery device. The devices are more similar to pipes, inhalers, and nebulizers that are used to deliver regulated and illicit drugs. Other countries regulate e-cigarettes as drugs.

State Government

The Virginia state government dates back to 1619 when the General Assembly first met. The meeting was the first representative legislative body in English America. At this time only certain free, adult men were allowed to participate. The General Assembly was comprised of two representatives from each division of Virginia, the governor's Council, and the governor. This was the first elected legislative body and the settlers had the opportunity to control their government. In March of 1643, the burgesses met as a separate body from the council, thus forming a bicameral assembly. The General Assembly today uses this bicameral structure, as does the federal government. The federal government basically follows the same structure as the state government since many of Virginia's politicians, (Thomas Jefferson, George Washington, James Madison, etc.) played key roles in the Constitutional Conventions.

The state government is composed of three branches: executive, the legislative, and the judicial. The legislative branch consists of the Senate of Virginia (40 members) and the House of Delegates (100 members), which make the laws. The executive branch is made up of the governor, the lieutenant governor and the attorney general. All three positions are four-year terms that are separately elected in the year following the presidential election. The executive branch carries out the laws. The judicial branch makes sure that the laws are legal and follow the Constitution. The judicial branch interprets laws and decides cases when a law is broken or when there is a dispute. Virginia courts have four levels. They are: the Supreme Court, the Court of Appeals, the Circuit Courts, and the District Courts.

How Does a Bill Become a Law?

Bills are introduced to the General Assembly each year. The Delegates and Senators read, discuss, and vote on the bills. Members of the General Assembly are citizens who were chosen to represent their constituents. The process begins with an idea. It may be an idea for a new law, an amendment or a change to a law, or a way of eliminating an existing law. The idea can come from anyone, but a member of the General Assembly must introduce the bill. The person who introduces the bill is the sponsor or the patron of the bill.

There are 11 committees in the Senate and 14 in the House of Delegates. The process I describe next is the same for the House of Delegates and Senate. A bill is assigned a number and then it is sent to the committee that handles that particular type of legislation. The committee chair chooses to which subcommittee the bill will go. The subcommittee reviews, discusses and votes on it. If the bill makes it out of the subcommittee then it goes to the committee. The process repeats in committee. The bill needs approval by the full committee. For example a bill might go to the elementary education subcommittee, and if it makes it out then it would go to the education committee. When the bill is in subcommittee or committee the public can speak for or against it. These public sessions happen in smaller rooms within the capitol. If the bill makes it out of committee it will go to the floor.⁵³

Once a bill makes it to the floor, it will have three readings on three different days. The title of the bill is read by the clerk or is printed on the calendar, on three different days. On the second reading the bill can be

amended. The amendment is either approved or rejected. A voice vote is taken. If the bill passes the second reading with or without amendments, it is *engrossed*. If the bill is amended, then it is rewritten and reprinted before the third reading. On the final day, the title is read and the vote is taken and recorded.⁵⁴ The bill must have 2/5 of the members voting in favor of it. If the bill passes in one house then it goes to the other house and the entire process repeats. If the bill passes in both houses, then it goes to the governor. The governor has seven days to act on the bill. The governor may sign the bill, amend the bill and send it back to the General Assembly for approval, veto the bill and send it back to the General Assembly in which case the General Assembly can override it with a 2/3 vote in each house, or take no action and the bill becomes a law without the governor's signature.⁵⁵

Strategies

This unit will be cross-curricular connecting social studies and language arts. The curriculum unit will connect to the following language arts topics: media messages, persuasive writing, oral language, and research. In social studies the unit will cover the state government and products and industries of Virginia.

Graphic organizers

Graphic organizers will be used for a variety of the activities throughout the unit to scaffold and organize the students' thinking. I envision using a custom graphic organizer to analyze advertisements to determine the target audience. Students will use graphic organizers for prewriting.

Guest speakers/ interviews

Guest speakers will visit the class ideally in-person, but given the pandemic, this will be done through Zoom® this year. The guest speakers will present to the students and then the students will pose questions. The speakers will represent different viewpoints. I anticipate someone who represents a tobacco lobbyist and another who represents public health.

Role play/ drama

Students will use role play or drama to simulate the process from when a bill is introduced until it either becomes a law or fails. I plan to create a template for the "play," and the students will use research or persuasive writing to fill in the gaps. The active role the students will play and acting out the scenes will help them to understand the process at a much deeper level. In the event that the students are not in-person, the collaboration will be done through Zoom or Google Classroom so the students can collaborate either by video or by working on a common Google Slide or Google Doc. For the play, the students would videotape their scenes and I will compile it into a movie.

Writing Process

The students will use the writing process to develop persuasive pieces as well as informative essays. The students will use a graphic organizer to brainstorm or prewrite. I also use a second graphic organizer to help them formulate paragraphs with a topic sentence, details, and a closing sentence. This is difficult for fourth graders as they are still learning this structure. Then the students will write their first draft, edit, and compose

their final draft.

Activities

Day 1-3

During the first 3 days, I will provide an overview of the tobacco industry with a Google Slides.

Day 4-5

Students will examine media messages and determine the type, the audience, and the purpose of the media message with an adapted Frayer model (see figure 2).

Day 6-7

Introduce the three branches of state government. Students will collaborate virtually to make a diagram of the branches using Jamboard or the WebPaint Google extension with Google Slides. If in-person the students may use technology or large white paper to make a poster.

Day 8-9

Play the iCivics game “Lawcraft” to learn about legislation.

Day 10

Use Google Slides to teach how a bill becomes a law in Virginia. If in-person, I suggest direct instruction and using Google Slides or other visuals.

Day 11

Google Slide about e-cigarettes using Nearpod to make it interactive.

Day 12 & 13

Each day the class will have a guest speaker representing two views about e-cigarettes. One will be a tobacco lobbyist and the other will work in the public health sector. The students will submit some questions prior to the visit and will take notes during the session.

Day 14 & 15

The students will write mock legislation for a bill to protect youth against the harms of e-cigarettes. This will be the bill that is introduced in the play the students perform.

Day 16 & 17

The class will be broken into groups and will work to complete the script for the General Assembly play.

Day 18 & 19

Students will film their parts at home (homework) so the teacher can compile the video. Students will work to develop the props necessary for their parts.

Day 20 -22

The students will continue filming their parts at home. At school, students will use the writing process and write an informative essay related to an aspect of this curriculum unit. Topics may include the danger of e-cigarettes, how a bill becomes a law, or media messages to name a few.

Day 23 -24

The students will create a media message as an advertisement for e-cigarettes or one “promoted” by the health department against the use of e-cigarettes. The media message must follow federal, state and local legislation guidelines. For online instruction students may use available apps or extensions.

Day 25 (or when ready)

The movie of how a bill becomes a law premieres over Zoom.

Activity 1

The first activity from Day 4 & 5 above will introduce the students to media messages. The message shared in class will reflect cigarette advertisements as well as anti-tobacco campaigns through the years. The selected advertisements will include auditory, visual, written, or a combination of these modalities. The students will use the adapted Frayer model graphic organizer (see figure 2) to assess the media messages.

Name _____

What do you see?

Describe the location.

Analyzing Media Messages

What is the purpose of the message? (or a combination of these)

To persuade To inform

To entertain To sell

What type of media message is it?

Visual

Auditory

Written

Who is the audience?

Figure 2: An adapted Frayer model graphic organizer

Activity 2

In the next activity, the students will create the mock legislation (Day 14 & 15) to protect youth against the harms of e-cigarettes. The class will brainstorm on Jamboard and then collaborate in a Google Doc to create the legislation. Small groups will collaborate on different sections of the legislation. The class will then make final edits to turn it into one cohesive document.

Activity 3

The students will have many opportunities for a variety of writing throughout this unit. The informative essay writing assignment will use graphic organizers for brainstorming and planning. Then the students will complete a first draft, edit the draft and write a final draft. The students will have a range of topics to choose from as described above for Day 20-21. The writing may take additional time and will be afforded as needed.

Activity 4

The culminating activity is a play. Originally the plan was for the play to be performed in the General Assembly building or in the school auditorium. With the pandemic and the need for all virtual instruction, the

play will be presented as a movie. I will create a template for the play, but the students will help to complete the dialogue for various parts. The play begins with a bill that is introduced by a delegate or senator. Then the bill goes to a committee and a subcommittee. The play will show all of the steps for a bill becoming a law and the students will have different roles to act out as they create each scene.

Appendix on Implementing District Standards

English Standards of Learning

SOL 4.1 addresses oral communication skills in a variety of settings. The finer points of this standard speak to contributing to small group discussions across content areas, seeking opinions of others, supporting opinions with evidence, communicating new ideas, collaborating with diverse groups, and demonstrating the ability to work independently. There are ample opportunities to develop oral language skills through small group collaborations and the play.

SOL 4.3 states that the student will learn how media messages are constructed and for what purposes: a) differentiate between auditory, visual, and written media messages. b) Identify the characteristics of various media messages. As the students learn the history of the tobacco industry, they will examine media messages through the years. The students will then apply their knowledge as they examine media messages for e-cigarettes.

SOL 4.7 focuses on writing and says that the student will write cohesively for a variety of purposes. The various bullets then address audience, focus, organization, style, and the writing process. The informative/explanatory mode of writing is one that is emphasized in grade 4. This curriculum unit provides several opportunities for students to develop explanatory/informative pieces.

Virginia Studies Standards of Learning

VS10 focuses on the three branches of the Virginia government, geography, and economics. The students are expected to understand how the three branches work and the main function of each branch. They also need to learn the major industries, which include the tobacco industry and how Virginia's industries produce goods and services used throughout the United States and the world.

Common Core Standards

Virginia does not use the Common Core standards, but Virginia's standards are similar. This unit also addresses Common Core standards. Below are just a few that are covered in this curriculum unit.

CCSS.ELA-LITERACY.SL.4.1 is designed to develop students' comprehension and collaboration skills through collaborative discussions with diverse partners on grade 4 topics and texts. This unit has ample opportunities for students to collaborate and engage in discourse.

CCSS.ELA-LITERACY.W.4.2 states that students will write informative/explanatory texts to examine a topic and express ideas clearly. Students will write as they develop parts of the play and complete writing pieces.

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Notes

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² Lorenz, "To Do Justice," 351.

³ Ibid, 353.

⁴ Ibid, 388.

⁵ Ibid, 390.

⁶ Brandt. *The Cigarette Century*, 33.

⁷ Ibid, 38.

⁸ Ibid, 39.

⁹ Ibid, 41.

¹⁰ Ibid, 41.

¹¹ Ibid, 96.

¹² Ibid, 97.

¹³ Ibid, 138.

¹⁴ Ibid, 165-166.

¹⁵ Ibid, 169.

¹⁶ Harris, "*U.S. v. Philip Morris, et al*"

¹⁷ Brandt, *The Cigarette Century*, 170.

¹⁸ Tobacco Industry Research Committee, "*A Frank Statement to Cigarette Smokers,*" (1954)
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¹⁹ Brandt, *The Cigarette Century*, 239.

²⁰ Ibid, 253.

²¹ Ibid, 254.

²² Ibid, 256-257.

²³ Ian Shapiro, *The Three Views of Regulation*, 1.

²⁴ Brandt, *The Cigarette Century*, 47.

²⁵ Lange, Hoefges, and Ribisl, "Regulating tobacco," 878+.

²⁶ Constitution.congress.gov

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²⁹ Brandt, *The Cigarette Century*, 394.

³⁰ Ibid, 395.

³¹ Ibid, 394-397.

³² Ibid, 369-371.

³³ Ibid, 428.

³⁴ <https://www.rjrt.com/youth-tobacco-prevention/responsible-marketing/msa/>

³⁵ Graetz and Shapiro, "The Wolf," 37-63.

³⁶ Schlaufer, "The Narrative," 94.

³⁷ Brandt, *The Cigarette Century*, 167.

³⁸ Ibid, 211.

³⁹ Ibid, 169.

⁴⁰ Cheung, "The Myth," 72.

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⁴² Ibid, 387.

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⁴⁴ Berridge. "The Art," 1.

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