



# Lobbying didn't let up when the CHIP was down

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AUSTIN — When poor kids went up against Big Tobacco in the Texas Legislature, it wasn't even a close call.

Supporters of low-income children and non-profit health associations thought they could show state leaders the merits of a cigarette tax increase three years ago when the state's gloomy budget imperiled the popular Children's Health Insurance Program.

Raising tobacco taxes would have spared the program from major budget cuts: \$744.3 million after federal dollars were tallied.

Furthermore, Texas has one of the lowest cigarette tax rates in the country, and public opinion polls consistently show at least 70 percent of Texans favoring higher tobacco taxes.

"It seemed to be a sensible thing to do — finding a way to help pay for the program as well as discouraging kids and parents from smoking," said Bryan Sperry, CEO of the Children's Hospital Association of Texas and co-chair of the Save CHIP Coalition.

But the interests of low-income children and nonprofit groups often lose out when they collide with money players in the state Capitol, where companies with deep pockets hire high-powered lobbyists to protect their interests.

Tobacco companies fought the proposed \$1-a-pack tax increase on cigarettes the best way they know how — with money and lobbyists.

Big Tobacco hired 30 lobbyists and spent as much as \$1.5 million during the 2003 Legislature, according to Texans for Public Justice, a nonpartisan research organization that tracks the influence of money in Texas politics. Tobacco companies also contributed nearly \$348,000 to Texas political campaigns

in the 2000 and 2002 elections, the organization said.

Legislators meet in a special session next week, and they appear more inclined now to increase tobacco taxes as they face court order to change the way Texas finances public education.

However, the additional revenue from higher cigarette taxes, under current proposals, largely will go to lower property taxes instead of to children's health care.

Three years ago, the low-funded anti-tobacco coalition of nonprofits that advocated higher tobacco taxes to reduce smoking and related health costs and the Coalition to Save CHIP were outnumbered and outgunned.

Prohibited as nonprofit groups from contributing to political campaigns, the coalitions relied on grass-roots organizing and lobbying by officials with coalition groups, such as the Texas PTA, Texas Medical Association and American Cancer Society.

Texans for Reduction of Tobacco agreed with the Save CHIP coalition that CHIP cuts would drive up local property taxes to pay for sick children seeking health care in public hospitals.

"That was our argument. You will drive up local property taxes. You have a user fee (on cigarettes) that a majority of people support, plus it cuts down on the cost of state government," said Texans for Reduction of Tobacco lobbyist David Marwitz, citing figures showing smoking costs Texas taxpayers \$1.5 billion a year for Medicaid alone.

But the CHIP and public health coalitions knew that making a case would be difficult with Mike Toomey serving as Gov. Rick Perry's chief of staff. Toomey had lobbied for the tobacco industry before joining Perry's staff, and the Capitol crowd figured he would return after leaving the state payroll.

"It's important," Marwitz said of Toomey's role. "It was like having an unpaid lobbyist in the back room where the decisions were being made."

Toomey represented a Houston district in the Texas House in the early and mid-1980s before becoming chief of staff for former GOP Gov. Bill Clements. He became a lobbyist in the early 1990s.

Toomey said he doesn't recall participating in any meetings involving CHIP and the proposed cigarette tax increase.

"I deny doing anything on behalf of Philip Morris or any other client while I was there," Toomey said. "In

fact, I did recuse myself on a number of instances."

Jim Arnold, a lobbyist who earned \$25,000 to \$50,000 from the anti-smoking groups, confirmed he discussed the issue during a meeting with Toomey during the 2003 session. He and Toomey are friends.

"The meeting covered several issues I was working on during the session, so I'm not surprised Mike may not remember the specific discussion. But the gist of the conversation about the cigarette tax was that Mike made it clear that the governor would not support the cigarette increase during the regular session," Arnold said.

Toomey said he doesn't deserve any blame for the CHIP cuts: "I think their accusations are sour grapes and fiction."

Those involved in the efforts to raise cigarette taxes and to save CHIP from cuts, he said, "are just looking for scapegoats to cover their own failure to be effective on behalf of their client."

### **Anti-tobacco effort**

The 2003 Legislature was defined at the outset by a \$10 billion revenue shortfall and a pledge by state leaders to plug the gap with spending cuts, instead of tax increases.

In that context, the CHIP and anti-tobacco coalitions marshaled forces to counter tobacco spending and lobbying.

They produced a 10,000-signature petition for a cigarette tax increase, involved clergy members, and asked Texas physicians to write guest newspaper opinion columns.

San Antonio Archbishop Patrick Flores visited the Capitol to make his plea.

An economic impact study by Waco economist Ray Perryman showed the effect of Texas losing millions of dollars of federal CHIP funds.

Meanwhile, advocates such as Toni-Marie VanBuren, director of Public Policy Partners in Community Change for the United Way of San Antonio & Bexar County, were asking what they could do to persuade state leaders and lawmakers not to abandon low-income children.

She described her role as one of "making as much noise as I could to as many people as I could — getting the word out to anybody who would listen to say, 'Please don't let them do this.'"

Many lawmakers supported a cigarette-tax increase, said Kelly Headrick, chief staff officer for governmental relations of the High Plains division of the American Cancer Society. It's probably one of the safer tax votes, since public opinion polls universally show that between 70 percent and 78 percent of Texans support a cigarette tax increase, she said.

Despite the effort, Toomey said he didn't see the pro-CHIP, anti-tobacco coalitions wage "what you would have thought would have been a well-orchestrated campaign to make their position known."

He mentioned tort reform and the current battle over public education funding as examples.

Toomey, one of the architects of Texas tort reform, said, "We spent a lot of energy building support because if the public wasn't for tort reform or lawsuit abuse (reform) or runaway juries (reform), the Legislature still is not going to vote for it — even though there might be some rich guys for it."

The education community is making a case for more school funding and doing it without "high-paid lobbyists," Toomey said. "They're doing grass-roots. They're going to PTAs and they're getting the teachers vocal and they are engaging in elections."

The Cancer Society's Headrick vigorously disagrees with Toomey's assessment.

"I absolutely cringe when I hear that Mike Toomey said we did a poor job of representing our clients' interests — those clients, of course, being patients who are dying of lung and other cancers, their families who are watching them suffer and who will mourn their premature deaths," she said.

But emotional appeals and local support weren't enough to overcome the firepower of Big Tobacco.

"All of those tobacco companies have on retainer people who have the first-hand connections with every legislator. They take them to dinner. You can walk into the Legislature any day and watch when they break for lunch. They look up to the gallery and just point to a lobbyist — 'Take me to lunch,'" said former Democratic state legislator Glen Maxey of Austin.

People representing nonprofit groups "are walking around talking to legislative staffers," Maxey said, "and tobacco lobbyists and HMOs and insurance lobbyists are drinking fine wine with legislators."

Suzy Woodford, head of the Texas Common Cause office, said campaign ethics laws in Texas favor the powerful and well-funded lobby over "the least among us."

"Because we have no campaign contribution limits we continue to have the influence of money," she said. "Unless we curb the amount of special interest money contributions to elected officials, who feel beholden to dance with the ones that bring them, then we will continue to have these kinds of problems."

Maxey offers a more blunt assessment.

"Committee chairs attract thousands of dollars from the lobby firms, companies and high-powered lobbyists — and those people get access," Maxey said.

"The system has been corrupted for a long time," said Maxey, citing people like Toomey who move back and forth from lobbying to influential staff positions.

But Toomey's involvement in the debate over CHIP and cigarette taxes largely was irrelevant, said Jack Gullahorn, spokesman for the Professional Advocacy Association of Texas, which represents the interests of lobbyists.

"I think that Toomey sitting in that office was not interested in his past (clients). He was interested in Perry's interests. Where the two coincided, that's great, but where they didn't, I think that Perry's interests were paramount," Gullahorn said.

## **Stigmatized cause**

The "no-new taxes" mantra gave lobbyists cover.

"So you have the cigarette guys going to their peers saying, 'OK, if they come after us and do the cigarettes, just be aware alcohol; just be aware coffee; just be aware luxury; we all have to stick together, even though you may hate cigarettes, because once you start down that slippery slope, then the whole world gets involved,'" Gullahorn said.

Individual lobbyists may have had sympathy for the CHIP program, Gullahorn said: "But if I go to our association and say, 'We need to stand together and say, let's fund the CHIP, they'll say — 'That's great. But what am I going to do with my clients?'"

Advocates for children and public health groups say they also got tuned out because of the stigma of public assistance programs.

"It is the whims of politics," VanBuren said. "The work that we do focused on children, focused on CHIP, has an air of welfare about it. I can spin that and tell you that we're boosting people up, we're giving people a chance to do better for themselves and families.

"But too many people look at public programs as welfare and people don't like welfare," she said. "In Texas we do not like public programs."

About 32 percent of Bexar County children have no health insurance, VanBuren said.

But not all agree the CHIP bill was doomed because of an anti-welfare mood.

"We've made a really emotional argument out of this. Everybody loves kids. A lot of people hate smoking, so we figure out how to connect the two," said Mary Katherine Stout, a health care expert at the Texas Public Policy Foundation, which supports smaller government. "None of the policy changes made in 2003 did anything except protect taxpayer's dollars to make sure that the folks on CHIP were eligible."

Texas lobbyists play an important role because they bring information to lawmakers, who often have small staffs that are young and insufficiently paid, said Scott McCown, executive director of the Center For Public Policy Priorities, an Austin-based research group that tracks issues affecting middle and low-income Texans.

"Lobbyists bring expertise about how the real world works," he said. "You couldn't do without the lobby. If you want to reduce the influence of the lobby, you would pay more for legislative staff. You would have more experts and tenured legislative staff. What you would like is an even playing field."

With the massive shortfall of funding, the CHIP program underwent profound change in 2003.

The policy change with the greatest impact on CHIP enrollment is a requirement that families re-enroll their children every six months instead of 12, as is the case for most private insurance plans.

"That's a hallmark of most insurance plans, plus it cuts down on administration costs tremendously," said Sen. Leticia Van de Putte, D-San Antonio.

Van de Putte, a pharmacist, said, "Texas has done a great job of erecting barriers to children's health insurance."

Toomey returned to his lucrative lobbying business in 2004 and again counts the Philip Morris tobacco company among his 22 clients — making up to \$100,000 from his tobacco lobbying.

Meanwhile, 214,578 fewer Texas children are enrolled in the Children's Health Insurance Program today than in the fall of 2003 when state budget cuts took effect. The growing number of uninsured children has solidified Texas' standing as the state with the highest rate of uninsured children.

"It was very discouraging, very disappointing to be not successful on something that seemed so right to do," Sperry, of the Save CHIP Coalition, said of the failed effort. "It hurt because we worked hard to build a good CHIP program and, in one session, we managed to take it from one of the best programs to one of the worst. That's the kind of turnaround that you just don't want to see."

About 1.4 million Texas children lack health insurance, according to the Children's Defense Fund.

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