

CPPW: Putting Politics to Work:

*How the Centers for Disease Control and Prevention's
Communities Putting Prevention to Work (CPPW) Grant
Program Became a Front for Lobbying, Government
Propaganda, and Cronyism*



**CAUSE
of ACTION**

Advocates for Government Accountability



Investigative Report

CPPW: Putting Politics to Work

How the Centers for Disease Control and Prevention's Communities Putting Prevention to Work (CPPW) Grant Program Became a Front for Lobbying, Government Propaganda, and Cronyism

About Cause of Action

Mission

Cause of Action is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Our mission is to expose the ways our government is playing politics in its use of taxpayer dollars, in its decision-making on behalf of individual Americans, and how it seeks to burden the economic opportunities that employ us and make our lives better. Cause of Action seeks to prevent the federal government from politicizing agencies, rules, and spending by bringing transparency to the federal grant and rule-making processes. Cause of Action's representation of organizations and individuals helps to educate the public about government overreach, waste, and cronyism.

Investigative Function

Cause of Action uses investigative tools to attack federal government waste, fraud, and mismanagement as well as overreach in the form of arbitrary and burdensome regulations. Cause of Action employs "sunshine advocacy" tools to achieve its goals, including document and information requests, lawsuits, ethics complaints, and requests for investigation. Through its use of advocacy and investigatory tools, Cause of Action promotes transparency, integrity, and accountability in government. Cause of Action's investigations help expose the ways our government is mismanaging federal funds and educate the public on how government can be made more accountable. Rigorous oversight can prevent taxpayer dollars from being wasted on improper activities.

Table of Contents

Mission	i
Investigative Function	i
I. Executive Summary	iii
II. Findings	1
III. Introduction	1
A. Illegal Lobbying With CPPW Funds	1
B. Stealth Coalition Lobbying	2
C. Inadequate CDC Supervision of Grantee Compliance	4
IV. CPPW Timeline.....	5
V. Let Me Count the Ways: Federal Law Prohibits the Use of CPPW Funds for Lobbying Not Once, But Thrice	8
VI. 18 U.S.C. § 1913 Violations.....	11
A. South Carolina	11
B. Arizona.....	15
C. Alabama	17
D. Florida	19
E. Georgia.....	20
F. California	25
VII. Conclusion: The CDC & HHS Acted with Indifference to Established Law When They Created CPPW, and Turned a Blind Eye When They Learned that CPPW Funds Were Being Used in Violation of the Law.	28

I. Executive Summary

Since 2009, Congress has appropriated \$373 million to the Centers for Disease Control and Prevention (CDC) for the Communities Putting Prevention to Work (CPPW) program. The goal of CPPW is to educate the public about obesity prevention and the dangers of tobacco use. Despite this noble goal, Cause of Action's (CoA) nineteen month-long investigation shows that at least seven communities that received CPPW funds violated federal law, as well as CDC guidelines, by using taxpayer dollars to lobby for higher taxes and new local laws.

Although Congress conducted hearings in 2011 to question the CDC's oversight of the program and followed up with letters to Department of Health and Human Services (HHS) Secretary Kathleen Sebelius in 2012, these questions only addressed one potential violation in one community in South Carolina. CoA found seven other potential violations of the CPPW program that have not been public until now, and learned that the CDC's one recorded violation was worse than disclosed.

The CPPW program was intended for public education and job creation as part of the American Recovery and Reinvestment Act of 2009 (ARRA). CoA's investigation revealed that CPPW money went to support lobbyists and public relations companies who used taxpayer dollars to push laws and agendas that would lead to tax increases on tobacco and high calorie products – essentially transforming the CPPW program into a conduit for lobbying for higher taxes and bans on otherwise legal consumer products.

CoA uncovered evidence of seven different communities around the country using CPPW money to lobby in violation of federal law and CDC policy. These warrant investigation, review, and accountability, especially in light of the \$2 billion in annual funding scheduled for disbursement in 2015 under the 2010 Patient Protection and Affordable Care Act's Community Transformation Grants program to fight obesity and tobacco use at the local, state, and federal level. The HHS, the federal agency that oversees the CDC, is also the largest grant-issuing agency in the federal government.

The following report reveals how the CDC permitted and even encouraged CPPW grantees in Arizona, Alabama, Florida, Georgia, and California to violate federal law and use CPPW funds to lobby state and local governments. Internal emails, applications to the CDC outlining plans for the funds, and meeting notes blatantly show systemic corruption and use of taxpayer dollars for lobbying.

CoA found that lobbying by CPPW grant recipients violates the following four laws and guidelines:

1. The Anti-Lobbying Act prohibits the use of money appropriated by Congress to influence, "an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation."
2. The CDC issued additional guidance prohibiting CPPW funds from lobbying use. Known as Additional Requirement 12 (AR-12) in the CDC's guidelines, this rule "specifically [applies] to lobbying related to any proposed, pending, or future Federal,

state, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product.”

3. In 2012, Congress included language in an appropriations bill to clarify that CPPW funds were prohibited from “any activity to advocate or promote any proposed, pending, or future Federal, State, or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product.”
4. Office of Management and Budget Circular A-122 prohibits the use of federal funds to attempt to influence federal or state legislation through “communication with any member or employee of the Congress or State legislature” or “by preparing, distributing, or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.”

South Carolina: A Case Study in Corruption

In addition to the previously mentioned five states, the CPPW pattern of corruption can most easily be traced through the example of South Carolina.

Direct use of federal funds to lobby

As revealed by communications between local officials and the CDC, funds from a CPPW grant to the South Carolina Department of Health and Environmental Control (DHEC) were used to illegally lobby city council members in support of a pending local smoke-free ordinance, proof of direct illegal lobbying with CPPW funds.

Stealth lobbying by coalitions to avoid legal oversight

The Smoke Free Florence (SFF) coalition is a group of like-minded organizations that formed to lobby for the causes outlined in DHEC’s CPPW grant application, and yet, by design, the SFF evades regulations that apply to lobbyists. Known as stealth lobbying, this approach is one way to avoid lobbying rules but still, in effect, conduct lobbying while receiving federal dollars.

CDC failure to properly oversee the use of grant funds

In its review of South Carolina’s grant application from Florence County, which includes a proposal to hire a coordinator “to promote comprehensive smoke-free policies/ordinances throughout the county,” the CDC failed to prohibit lobbying activity, and in fact sent a CDC grants officer to local community meetings where this officer announced that securing a comprehensive smoke-free ordinance was “the number one priority with the [SFF] initiative and 100% adoption will be the determining factor” of success. While the CDC later reprimanded the South Carolina recipients for their misuse of funds, they largely ignored that meeting minutes were scrubbed to change the appearance of impropriety, raising other potential legal issues outside of improper lobbying.

This report evidences a complete failure of an HHS grant program to adhere to the law, use taxpayer dollars responsibly, or secure jobs it was intended to create. What follows are numerous examples of counties and states across the country advocating, planning, and supporting legislation in direct violation of federal law and CDC guidelines. The clock is ticking toward 2015, when \$2 billion more will be allocated to similar programs. This report only begins to document the extent of waste, fraud, and abuse within CPPW, as CoA is still awaiting copious amounts of documents from both the CDC and HHS Office of Inspector General. The systemic pattern of misfeasance among grantees will end only when the CDC acts responsibly on behalf of the American taxpayers who have become the biggest losers in the government's campaign to end obesity.

II. Findings

- **Finding:** *The CDC found that South Carolina’s DHEC used CPPW funds to plan a press conference and “action alert” to mobilize allies to lobby the local city council in support of a pending clean indoor air ordinance with no exemptions. While the CDC eventually recognized that this activity constituted a violation of AR-12, prior to the CDC’s issuance of the notice of an AR-12 violation, a CDC grants officer assured DHEC staff that securing a comprehensive smoke-free ordinance was “the number one priority . . . and will be the determining factor” of success.*
- **Finding:** *As a proposed remedy for illegal lobbying by the DHEC, the CDC required all CPPW-supported staff and contractors attend AR-12 training, held by the American Lung Association and Alliance for Justice, not the federal government. In disregard of CDC instructions, some staff did not attend, including a CPPW grants manager and a public relations coordinator directly involved in arranging a press conference in support of pending legislation.*
- **Finding:** *Despite the CDC’s representation to government officials that the lobbying violation in South Carolina was limited to plans for a press conference and action alert, meeting minutes from a participating local coalition in South Carolina reveal that CPPW-staff developed a legislative strategy with a city councilmember to tighten the proposed smoke-free ordinance and provided talking points to pro-ordinance speakers at city council meetings. In fact, insider documents reveal that CPPW staff in South Carolina orchestrated a cover-up to alter coalition meeting minutes to depersonalize the involvement of the DHEC CPPW program coordinator in directing illegal lobbying activities in support of smoke-free ordinances.*
- **Finding:** *The Pima County Health Department used taxpayer dollars to contract with the University of Arizona to lead policy workshops and develop neighborhood plans in support of zoning codes, regulations, and ordinances.*
- **Finding:** *The Mobile County Health Department used its CPPW funds to work with the Tobacco Free Mobile Coalition to remove preemption language from the state tobacco excise tax.*
- **Finding:** *With its taxpayer dollars, the Jefferson County Department of Health funded the American Lung Association of the Plains-Gulf Region personnel’s promoting the passage of tobacco-free ordinances at city council meetings.*

- **Finding:** *The Miami-Dade County Health Department used taxpayer funds to hire the Health Council of South Florida to provide a legislative agenda for CPPW-funded policy work.*
- **Finding:** *The DeKalb County Board of Health used CPPW funds to support the adoption of a strengthened county clean indoor air ordinance and partnered with the Georgia Alliance for Tobacco Prevention to train coalition partners and finance a media campaign in support of a state cigarette tax increase. Additionally, the DeKalb County Board of Health used CPPW funds to conduct a focus group using exotic dancers from a local adult entertainment establishment to gauge support for a strengthened clean indoor air ordinance.*
- **Finding:** *The Los Angeles County Department of Public Health used CPPW funds to coordinate legislative policy through local tobacco control coalitions and to hire the Technical Assistance Legal Center to draft and review legislation and policies.*
- **Finding:** *The Santa Clara County Public Health Department used tax dollars to hire a tobacco retail license coordinator to lobby for a workplace smoking ordinance and also used CPPW funds to support a state-wide tobacco tax increase.*

III. Introduction

The Communities Putting Prevention to Work (CPPW) program was created with a \$373 million appropriation from the Prevention and Public Health Fund established by the American Recovery and Reinvestment Act of 2009 (ARRA). The U.S. Department of Health and Human Services (HHS) distributes CPPW funds by issuing grants from the Centers for Disease Control and Prevention (CDC) to various state and local public health departments, which, in turn, subgrant CPPW funds to an array of non-profit organizations.¹ Starting in 2015, the Patient Protection and Affordable Care Act of 2010 will provide an additional \$2 billion annual funding through Community Transformation Grants for programs to fight obesity and tobacco use at the local, state, and federal level.²

Upon learning that the HHS Office of Inspector General (OIG) had issued a report in June 2012 on the alleged misconduct of CPPW grantees, Cause of Action (CoA) expanded its own investigation. We submitted requests pursuant to the Freedom of Information Act (FOIA)³ seeking, among other things, documents, emails, text messages, or other communications that the HHS OIG had reviewed during its investigation of the CPPW program. CoA submitted requests to the HHS OIG, CDC, and state agencies. So far, CoA has received six partial productions from the CDC consisting of documents regarding twelve of forty-four CPPW-funded communities, as well as three partial productions from the HHS OIG.

Over the course of its investigation, CoA has uncovered evidence that the CDC permitted and even encouraged CPPW grantees to violate federal law and use CPPW funds to lobby state and local governments.⁴ Grantees also laundered money through so-called stealth lobbying coalitions, formed to skirt prohibitions on lobbying by non-profits, in order to promote local laws banning otherwise legal consumer products such as sodas, e-cigarettes, and fast food – money that was originally appropriated by Congress to stimulate job creation following the 2008 financial crisis.⁵

A. Illegal Lobbying With CPPW Funds

The Anti-Lobbying Act and agency regulations prohibit the use of any part of congressionally-appropriated funds for the purpose of lobbying.⁶ According to the Government Accountability Office, responsibility for ensuring that grant recipients follow these laws and

¹ *Communities Putting Prevention to Work*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 2, 2013, 11:49 AM), <http://www.cdc.gov/communitiesputtingpreventiontowork/>.

² Armstrong Williams, *Righteous Indignation: Robin Hood Politics with the stimulus*, WASH. TIMES (Apr. 26, 2010).

³ 5 U.S.C. § 552 (2006 & Supp. II 2008).

⁴ Williams, *supra* note 2.

⁵ A CDC spokeswoman was unable to offer any analysis of CPPW's impact on government hiring. Mark Lisher, *Overweight? Smoke? Uncle Sam wants to help*, TEXASWATCHDOG.ORG (Sept. 17, 2012, 10:29 AM CST), <http://www.texaswatchdog.org/2012/09/wellness-programs-started-with-stimulus-get-fatter-in-health-care-law/1347549446.story>.

⁶ 18 U.S.C. § 1913.

regulations is left to the agencies administering the grant program in question.⁷ HHS Inspector General Daniel Levinson warned CDC Director Thomas Frieden in June 2012 that CPPW grantees were illegally lobbying with CPPW funds, noting that materials on the CDC’s website appeared “to authorize, or even encourage, grantees to use grant funds for impermissible lobbying.”⁸

CoA began its investigation after learning that the CDC encouraged grantees to use CPPW funds to “educate” decision makers about the benefits of local ordinances designed to limit the sale of fast foods, sugar sweetened beverages, and tobacco products, including comprehensive smoking bans.⁹ For example, the CDC awarded grants to communities committed to changing tobacco-related policies.¹⁰ Since the advent of CPPW funding, there has been an increase in the number of local governments considering tobacco-related ordinances.¹¹

CoA has also learned that the CDC’s instruction to “educate” state and local governments about the benefits of these policies was effectively a mandate to lobby illegally.¹² For example, a CPPW grantee in Wisconsin explicitly proposed using stimulus money to lobby against flavored tobacco.¹³ Investigators for Senator Susan Collins found a CPPW grantee in California used federal funds to analyze “proposed state legislation . . . to levy a tax” on tobacco, while another grantee in Pennsylvania used funds earmarked for anti-tobacco programs to promote smoke-free ordinances.¹⁴ The Boston Public Health Commission used its CPPW funding to advocate for a ban on e-cigarettes, a product designed in part to eliminate the risk of second-hand smoke.¹⁵ The CDC itself has documented at least one instance where a CPPW subgrantee in South Carolina illegally lobbied the local city council to adopt a pending clean indoor air ordinance (CIAO).¹⁶

B. Stealth Coalition Lobbying

Stealth coalition lobbying occurs when a group of like-minded organizations, typically non-profits, form a loosely knit compact to lobby for a specific cause or issue. The arrangement is designed to evade regulations that discourage and in some cases prohibit non-profit

⁷ JACK MASKELL, CONG. RESEARCH SERV., RL34725, POLITICAL ACTIVITIES OF PRIVATE RECIPIENTS OF FEDERAL GRANTS OR CONTRACTS 5 (2008).

⁸ Memorandum from Daniel R. Levinson, Inspector Gen., Dep’t of Health & Human Servs., to Thomas Frieden, Dir., Ctrs. for Disease Control & Prevention, *Communities Putting Prevention to Work – EARLY ALERT* (June 29, 2012) (Exhibit 1).

⁹ Tom Schatz, *Lucre for lobbyists; Gucci crowd could end up damaging local economy*, WASH. TIMES (Apr. 8, 2010).

¹⁰ Jeff Stier, *ObamaCare’s big bucks*, THE HILL’S CONGRESS BLOG (Apr. 4, 2011, 11:04 AM), <http://thehill.com/blogs/congress-blog/healthcare/153625-obamacares-big-bucks>.

¹¹ Melissa Vonder Haar and Mitch Morrison, *Federal Tobacco Program Under Fire*, CSPNET.COM (Mar. 4, 2013), <http://www.cspnet.com/news/tobacco/articles/federal-tobacco-program-under-fire>.

¹² George Will, *Why the government needs a diet*, WASH. POST (Aug. 22, 2012) available at http://articles.washingtonpost.com/2012-08-22/opinions/35490115_1_excise-tax-prevention-grant.

¹³ Schatz, *supra* note 9.

¹⁴ Letter from Sen. Susan Collins, Senate Homeland Sec. & Governmental Affairs Comm., to Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs. (May 1, 2012) (Exhibit 2).

¹⁵ Stier, *supra* note 10.

¹⁶ Letter from Mildred Garner, Lead Grants Mgmt. Officer, Ctrs. for Disease Control & Prevention Procurement & Grants Office, to Michael Byrd, Principal Investigator, S.C. Dep’t of Health & Env’tl. Control (May 17, 2011) (Exhibit 3).

organizations, such as 501(c)(3) and 501(c)(4) organizations, from lobbying, with the added benefit that the opaque coalition structure frequently makes it impossible for the public to learn who is funding the coalition and who controls it.¹⁷ The Center for Responsive Politics recently reported that stealth lobbying coalitions have paid over \$565 million to firms for lobbying activities, none of which is accounted for.¹⁸

In 2007, Congress passed the Honest Leadership and Open Government Act, which introduced new lobbying disclosure provisions designed to bring transparency to stealth lobbying coalitions.¹⁹ These provisions require that coalition members who donate \$5,000 or more to fund lobbying efforts be identified in quarterly reports to the Federal Election Commission.²⁰ CoA wrote to the Internal Revenue Service (IRS) on March 22, 2012, asking whether the IRS has investigated stealth lobbying coalitions and to learn the requirements for coalition financial reporting.²¹ The IRS responded that no such records exist.²² For now, it appears data from media reports, websites, press releases, and public interest groups reveal more about stealth lobbying coalitions than government disclosure forms.²³

CoA's investigation has found that the misuse of CPPW grant funding for illegal lobbying was often facilitated by stealth lobbying coalitions. For example, Tobacco Free St. Louis (TFST), a coalition associated with St. Louis University, was formed to support "policies to eliminate the burden of tobacco."²⁴ The St. Louis County Department of Health received a \$7.6 million CPPW grant, of which the TFST received \$545,000 from funds paid to St. Louis University to assist with grant activities.²⁵ \$2 million of the grant also went to one of the largest public relations companies in the world to "develop and implement a public education/advocacy campaign." During the grant period, the TFST launched a campaign to end various smoking ban exemptions in St. Louis, a stated goal in the county's CPPW application.²⁶ A CDC official has since acknowledged that one of the goals the agency set for the grantee was to persuade at least two municipalities to adopt more restrictive smoking bans but claimed the CPPW grantee was not ultimately responsible for passing a smoke-free ordinance.²⁷ CPPW funds have helped finance similar coalitions in Austin, Texas and other communities.²⁸

¹⁷ Jim McElhatton, *Obama nominee omitted ties to biotech*, WASH. TIMES (Sept. 8, 2009), available at <http://www.washingtontimes.com/news/2009/sep/08/obama-nominee-omitted-ties-to-biotech/print/>.

¹⁸ Lindsay Renick Mayer, *Empty Disclosure*, OPENSECRETSBLOG (Mar. 19, 2009, 12:00 AM), <http://www.opensecrets.org/news/2009/03/empty-disclosure.html>.

¹⁹ Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735.

²⁰ Jeanne Cummings, *New disclosure reports lack clarity*, POLITICO (Apr. 29, 2008), available at <http://www.politico.com/news/stories/0408/9929.html>.

²¹ Letter from Cause of Action to Douglas Shulman, Comm'r, Internal Revenue Serv. (Mar. 22, 2012).

²² Andrew Joseph, *Watchdog Group Says IRS Not Monitoring Lobbying Coalitions*, NAT'L J. (Jun. 15, 2012), available at <http://www.nationaljournal.com/blogs/influencealley/2012/06/watchdog-group-says-irs-not-monitoring-lobbying-coalitions-15>.

²³ Cummings, *supra* note 20.

²⁴ *Mission & History*, TOBACCO FREE ST. LOUIS, <http://www.tobaccofreestl.org/w/history> (last visited Apr. 2, 2013).

²⁵ Paul Hampel, *Airtight smoking ban proves elusive, Group that has failed in fighting county exemptions contacts CDC*, ST. LOUIS POST-DISPATCH (Sept. 19, 2011) available at http://www.stltoday.com/news/local/metro/airtight-smoking-ban-proves-elusive-in-st-louis-county/article_ababeaef-313f-51ff-85b5-433d14bacd63.html.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Lisher, *supra* note 5.

C. Inadequate CDC Supervision of Grantee Compliance

The HHS is the largest grant-issuing organization in the federal government, with \$370 billion in grants awarded in fiscal year (FY) 2010.²⁹ Both the Office of Management and Budget (OMB) and HHS have guidelines prohibiting grantees from using funds to influence government policy.³⁰ Yet the highest-ranking officials at the CDC and HHS have been unable to agree on what is or is not prohibited under federal law; their interpretation has changed to accommodate an evolving set of facts brought to light by congressional investigators.

As noted above, HHS Inspector General Daniel Levinson warned as early as June 29, 2012 that CPPW grantees “did not understand prohibitions on lobbying . . .”³¹ In testimony before the House Committee on Appropriations on March 6, 2012, HHS Secretary Kathleen Sebelius (Secretary Sebelius) claimed the HHS instructed grantees that federal lobbying prohibitions applied at the state, local, municipal, and school board level. However, she also insisted that “the lobbying prohibitions don’t apply to local lobbying.”³² When Congress presented Secretary Sebelius with several examples of lobbying by CPPW grantees, she countered, “I think the pages of examples . . . were grantees who are lobbying at either the state or local level, not lobbying the federal government.”³³

Nonetheless, CDC and HHS officials insisted they adequately warned grantees about the Anti-Lobbying Act³⁴ and had a “robust plan” in place to identify violations of the law.³⁵ Congress removed any doubt about the application of lobbying prohibitions to state and local governments by amending the 2012 Consolidated Appropriations Act to explicitly ban lobbying at any level of government.³⁶ In response, the CDC has “clarified” its guidance to CPPW grantees: the CDC now acknowledges that federal law prohibits the use of grant money for “any activity designed to influence action in regard to a particular piece of pending legislation,”³⁷ but continues to insist grantees are free to use CPPW funds to “influence” local government policies.³⁸

²⁹ Rich Daly, *CDC warned of prevention-fund grant misuse*, MODERNHEALTHCARE.COM (July 10, 2012), <http://www.modernhealthcare.com/article/20120710/NEWS/307109975>.

³⁰ Caroline May, *Congressmen demand answers on lobbying conducted with stimulus, anti-obesity grants*, THE DAILY CALLER (Mar. 11, 2012, 11:40 PM), <http://dailycaller.com/2012/03/11/congressmen-demand-answers-on-lobbying-conducted-with-stimulus-anti-obesity-grants/>.

³¹ Daly, *supra* note 29.

³² Letter from Rep. Darrell Issa, Chairman, House Comm. on Oversight & Gov’t Reform, to Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs. (Mar. 16, 2012) (Exhibit 4).

³³ May, *supra* note 30.

³⁴ Letter from Rep. Fred Upton, House Comm. on Energy & Commerce, to Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs. (Aug. 13, 2012) (Exhibit 5).

³⁵ *Id.* at n. 5.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

IV. CPPW Timeline

- ◆ March 19, 2010 - The HHS announced awards of more than \$372 million to 44 communities to support public health efforts to reduce obesity and smoking, as part of the CPPW initiative, a wellness program funded through the ARRA.³⁹
- ◆ April 12, 2010 - At a hearing on smokeless tobacco before the House Energy Subcommittee on Health, Representative Ed Whitfield raised concerns regarding CPPW spending on lobbying activities in violation of federal law. In response, CDC officials claimed that grantees were properly informed about federal restrictions on lobbying with CPPW grant awards.⁴⁰
- ◆ June 9, 2010 - Representative Whitfield raised similar concerns to Secretary Sebelius about the use of CPPW funds for lobbying.⁴¹ In response, CDC officials reassured Representative Whitfield that the CDC has a “robust plan” to “identify early warning signs that a program is falling off track or using federal funds for unauthorized or inappropriate activities.”⁴²
- ◆ March 9, 2011 - At a hearing before the House Energy Subcommittee on Health, Secretary Sebelius stated that the “CDC takes seriously its role in ensuring that grantees comply with lobbying restrictions, and [we] will continue to closely monitor grantees.”⁴³
- ◆ May 17, 2011 - The CDC issued a notice of an AR-12 (“Lobbying Statement”) violation to a CPPW grantee in South Carolina after CDC officials learned that the grantee had coordinated press events and an action alert calling upon the public to support a pending CIAO.⁴⁴
- ◆ May 19, 2011 - Representative Darrell Issa, Chairman of the House Committee on Oversight and Government Reform, wrote to the HHS asking about the criteria used for CPPW grant awards and the instructions given to grantees on federal lobbying restrictions.
- ◆ June 5, 2011 - Staff oversight investigators for Senator Susan Collins of the Senate Homeland Security and Governmental Affairs Committee sent a memorandum to HHS Inspector General Daniel Levinson detailing several instances in which CPPW grantees used federal funds to lobby.⁴⁵

³⁹ Press Release, Dep’t of Health & Human Servs., *HHS Awards \$372 Million in Prevention and Wellness Grants to 44 Communities Around the Nation*, (Mar. 19, 2010), available at <http://www.dhhs.gov/news/press/2010pres/03/20100319a.html>.

⁴⁰ Upton, *supra* note 34.

⁴¹ Letter from Rep. Ed Whitfield, House Comm. on Energy & Commerce, to Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs. (Jun. 9, 2010).

⁴² Upton, *supra* note 34, at n. 5.

⁴³ *The Fiscal Year 2012 HHS Budget and the Implementation of the Pub. Laws 111-148 and 111-152: Hearing Before the H. Subcomm. on Health of the H. Comm. on Energy and Commerce*, 112th Cong. 180 (2011) (statement of Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs.) available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67590/pdf/CHRG-112hhrg67590.pdf>.

⁴⁴ Garner, *supra* note 16.

⁴⁵ Memorandum from Trey Hicks, Oversight Investigator, Senate Homeland Sec. & Governmental Affairs Comm., to Daniel Levinson, Inspector Gen., Dep’t of Health & Human Servs. (Jun. 5, 2011) (Exhibit 6).

- ◆ June 17, 2011 - Jim Esquea (Esquea), Assistant Secretary for Legislation at the HHS, admitted that the actions of at least one CPPW grantee violated AR-12.⁴⁶ According to Esquea, funds from a CPPW grant to the South Carolina DHEC were used to illegally lobby city council members in support of a pending local smoke-free ordinance.⁴⁷
- ◆ December 23, 2011 - The President signed the Consolidated Appropriations Act, 2012 into law.⁴⁸ Section 503(b) broadened the scope of appropriation restrictions barring the use of federal funds to grantees or agents “related to any activity designed to influence the enactment of legislation” before Congress or any state or local government. The FY 2012 appropriations rider also specified, for the first time, that the restrictions apply to lobbying to tax or place restrictions on “any legal consumer product.”⁴⁹
- ◆ February 25, 2012 – CoA sent twenty alert letters to health departments that received CPPW grants to warn against potential illegal lobbying with federal grant funds.⁵⁰
- ◆ March 1, 2012 - Members of the House Energy Subcommittee on Health again questioned Secretary Sebelius about the CPPW program.⁵¹ In response to questions regarding unlawful spending of CPPW funds, Secretary Sebelius declared the federal anti-lobbying prohibition (18 U.S.C. § 1913) “applied to the [HHS] but not our grantees,” a statement squarely at odds with the plain language of the statute, as per the guidance provided by the Department of Justice (DOJ) Office of Legal Counsel (OLC), Government Accountability Office, and the Congressional Research Service (CRS).⁵²
- ◆ March 16, 2012 - Chairman Issa wrote to Secretary Sebelius noting her March 6th testimony before the House Committee on Appropriations, during which she claimed that the HHS instructed CPPW grantees that the lobbying prohibitions apply to state and local governments, but at the same time insisted “the lobbying prohibitions don’t apply to local lobbying.”⁵³ Congressman Henry Waxman wrote to CDC Director Thomas Frieden on the

⁴⁶ Letter from Jim Esquea, Ass’t Sec’y for Legislation, Dep’t of Health & Human Servs., to Darrell Issa, Chairman, House Comm. on Oversight & Gov’t Reform, (Jun. 17, 2011) (Exhibit 7) *see also* E-mail from Anna Berkowitz, Grants Management Officer, Ctrs. for Disease Control & Prevention, to Sharon Biggers, Dir., Div. of Tobacco Prevention & Control, S.C. Dep’t of Health & Envtl. Control, Re: Response to PGO (June 15, 2011) (Exhibit 8).

⁴⁷ *Id.*

⁴⁸ Letter from Jacob Lew, Dir., Office of Mgmt. & Budget to Rep. John Boehner, Speaker of the House of Reps. (Jan. 4, 2012) *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/7_day_after/bea_01-04-12.pdf.

⁴⁹ Levinson, *supra* note 8.

⁵⁰ Letters from Cause of Action to, *e.g.*, Dr. Barbara Ferrer, Exec. Dir., Boston Public Health Commission, *RE: Liability Alert* (Feb. 15, 2012).

⁵¹ *The Fiscal Year 2013 HHS Budget: Hearing Before the H. Subcomm. on Health of the H. Comm. on Energy and Commerce*, 112th Cong. (2012) (statement of Kathleen Sebelius, Sec’y of the Dep’t of Health & Human Servs.) *available at*

http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/030112%20HE%20The%20Fiscal%20Year%202013%20HHS%20Budget.pdf.

⁵² Upton, *supra* note 34.

⁵³ Issa, *supra* note 32.

same day to list concerns over illegal lobbying through CPPW-funded activities in 25 states.⁵⁴

- ◆ March 16, 2012 - CoA wrote a liability alert letter to Attorney General Eric Holder, warning him that CPPW grantees appeared to be using federal funds to illegally lobby in support of pending legislation.⁵⁵
- ◆ May 1, 2012 - Senator Susan Collins sent a letter to Secretary Sebelius noting that in response to CDC guidance, several grantees engaged in conduct which appears to violate federal laws that prohibit lobbying state and local governments. Senator Collins further requested that Secretary Sebelius address whether she agrees with a CRS legal opinion concluding that since 2002, 18 U.S.C. § 1913 has prohibited lobbying at all levels of government without express Congressional authorization.⁵⁶
- ◆ June 29, 2012 - HHS Inspector General Daniel Levinson sent an Early Alert letter to CDC Director Thomas Frieden, advising that it planned to “review the fiscal controls that CDC has in place to prevent grantees from expending funds on prohibited lobbying activities” in light of additional lobbying prohibitions included in the FY 2012 Appropriations Act.

⁵⁴ Letter from Rep. Henry Waxman, House Comm. on Energy & Commerce, to Thomas Frieden, Dir., Ctrs. for Disease Control & Prevention (Mar. 16, 2012) (Exhibit 9).

⁵⁵ Letter from Cause of Action to Att’y Gen. Eric Holder (Mar. 16, 2012) (Exhibit 10).

⁵⁶ Collins, *supra* note 14.

V. Let Me Count the Ways: Federal Law Prohibits the Use of CPPW Funds for Lobbying Not Once, But Thrice

Since 1919, the Anti-Lobbying Act has prohibited the use of appropriated funds for the purpose of lobbying. The measure has been codified at 18 U.S.C. § 1913, and was most recently amended in 2002. The statute now reads, in part:

No part of the money appropriated by any enactment of Congress shall . . . be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, *or an official of any government*, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation.⁵⁷

Originally a criminal statute, violations of 18 U.S.C. § 1913 are now subject to civil penalties under the “Byrd Amendment,” 31 U.S.C. § 1352(a). The decision to bring an enforcement action under the Byrd Amendment is left to the discretion of the DOJ by 31 U.S.C. § 3803(b)(2).

The DOJ OLC has repeatedly interpreted the Anti-Lobbying Act as prohibiting “grassroots lobbying,” i.e. campaigns of telephone calls, telegrams, letters, or other disseminations particularly directed at members of the public urging them to contact government officials about pending legislation.⁵⁸ The DOJ OLC has also addressed whether the statute is restricted in its application solely to federal employees, concluding that, since the 2002 amendment, the answer is no:

We do not believe that section 1913 is limited to lobbying by agency officials as such. The prohibitory portion of section 1913 – “[n]o part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly” for prohibited purposes – is not limited to the communication of agency positions. Rather, its language on its face applies to the use of appropriated funds for any communications designed to influence Members of Congress or other officials with respect to any legislation, law, ratification, policy, or appropriation . . . [A]mendments to section 1913 enacted in 2002 removed language that had limited the penalties under that section to ‘an officer or employee of the United States or of any department or agency thereof,’ *see* Pub. L. No. 107-273, Div. A, Title II, § 205(b), 116 Stat. 1778 (2002), and thus undermined any argument that only lobbying by persons acting for an agency in an official capacity would be covered.⁵⁹

The CDC attached AR-12 to CPPW grant awards, which stipulates that recipients of HHS grants are prohibited from using the funds “to engage in any lobbying activity.” AR-12 clarifies that this agency policy “specifically [applies] to lobbying related to any proposed, pending, or future Federal, state, or local tax increase, or any proposed, pending, or future requirement or

⁵⁷ Anti-Lobbying Act, 18 U.S.C. § 1913 (emphasis added).

⁵⁸ Application of 18 U.S.C. § 1913 to “Grass Roots” Lobbying by Union Reps., 29 Op. O.L.C. 1 (2005).

⁵⁹ *Id.* at 4.

restriction on any legal consumer product . . .” including “grass roots lobbying efforts . . . that are directed at inducing members of the public to contact their elected representatives to urge support of, or opposition to, proposed or pending legislation.”⁶⁰ The Assistant Secretary for Public Legislation at the HHS assured the House Committee on Oversight and Government Reform that AR-12 was broader than 18 U.S.C. § 1913.⁶¹

OMB Circular A-122 prohibits the use of federal funds to attempt to influence federal or state legislation through “communication with any member or employee of the Congress or State legislature” or “by preparing, distributing, or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign, or letter writing or telephone campaign.”⁶²

Federal law in the form of appropriation riders additionally prohibits the use of appropriated funds – such as those disbursed to CPPW grantees – for the purpose of lobbying. In 2012, after several instances of CPPW grantees illegally lobbying state and local governments, Congress included language in § 503 of the 2012 Consolidated Appropriations Act expressly prohibiting the use of CPPW funds:

(a) for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body . . . or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.

(b) to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of any legislation, appropriations, regulations, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body.⁶³

§ 503(c) further adds that the prohibitions in (a) and (b) “shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product.”⁶⁴

⁶⁰ Esquea, *supra* note 46.

⁶¹ *Id.*

⁶² OFFICE OF MGMT. & BUDGET, *Circular A-122 Revised May 10, 2004*, Attachment B, “Lobbying,” http://www.whitehouse.gov/omb/circulars_a122_2004 (last visited April 5, 2013) *see also* Memorandum from Cynthia Brougher, Legislative Att’y, Cong. Research Serv., to Trey Hicks, Oversight Investigator, Senate Homeland Sec. & Governmental Affairs Comm., *Prohibitions on Lobbying Local Gov’ts with Fed. Funds* (Apr. 5, 2012) (Exhibit 11).

⁶³ Consolidated Appropriations Act, 2012, Pub. L. 112-74, 125 Stat. 785 (2011).

⁶⁴ *Id.*

The CDC updated its guidance to CPPW grantees in June of 2012. However, the CDC's revised guidance provides a distorted history of its faithful adherence to 18 U.S.C. § 1913. As per the CDC website:

There are new statutory restrictions on lobbying at the local level. These have limited impact on CDC grantees, *since [the] CDC has already imposed this restriction through policy*. The provisions now prohibit lobbying directed at city councils, county commissions, and other local legislative bodies, and regulations and administrative orders issued by state and local executive branch officials.⁶⁵

But this is at odds with the story Secretary Sebelius told the House Committee on Energy and Commerce at a hearing several months earlier, in March 2012, in response to a question from Representative Brett Guthrie of Kentucky:

What was added to our appropriation bill in 2012 and what I was trying to explain is that no new prevention grants have been issued under this new language and we are retraining grantees is that a prohibition for grantees to lobby at the local level or the State level is now an additional piece of the law that was not part of the underlying statute.⁶⁶

Secretary Sebelius' treatment of the 2012 appropriations rider as a wholly new restriction raises several important questions. If the new appropriations rider simply reiterates existing CDC policy prohibiting local government lobbying prior to FY 2012, then why would any of the grants awarded prior to FY 2012 have funded local government lobbying? Why would the CDC need to retrain grantees about a policy that the CDC says was already in place? And why would the DOJ fail to bring enforcement actions against grantees that violated a supposedly pre-existing policy?

What follows in this report is a summary of the evidence CoA has uncovered to date showing CPPW grantees misusing federal funds for lobbying. Note this is only a limited sample as the grant applications for the majority of CPPW grantees have yet to be provided to CoA in response to our FOIA requests.

⁶⁵ CTRS. FOR DISEASE CONTROL & PREVENTION, *Anti-Lobbying Restrictions for CDC Grantees* (July 2012) available at <http://www.cdc.gov/obesity/downloads/Anti-Lobbying-Restrictions-for-CDC-Grantees-July2012-508.pdf> [emphasis added].

⁶⁶ *The Fiscal Year 2013 HHS Budget: Hearing Before the H. Subcomm. on Health of the H. Comm. on Energy and Commerce*, 112th Cong. (2012) (statement of Kathleen Sebelius, Sec'y of the Dep't of Health & Human Servs.) available at http://democrats.energycommerce.house.gov/sites/default/files/image_uploads/030112%20HE%20The%20Fiscal%200Year%202013%20HHS%20Budget.pdf.

VI. 18 U.S.C. § 1913 Violations

A. South Carolina

Florence County

- **Finding:** *The CDC found that South Carolina’s DHEC used CPPW funds to plan a press conference and “action alert” to mobilize allies to lobby the local city council in support of a pending CIAO with no exemptions. While the CDC eventually recognized that this activity constituted a violation of AR-12, prior to the CDC’s issuance of the notice of an AR-12 violation, a CDC grants officer assured DHEC staff that securing a comprehensive smoke-free ordinance was “the number one priority . . . and will be the determining factor” of success.*
- **Finding:** *As a proposed remedy for illegal lobbying by the DHEC, the CDC required all CPPW-supported staff and contractors attend AR-12 training, held by the American Lung Association and Alliance for Justice, not the federal government. In disregard of CDC instructions, some staff did not attend, including a CPPW grants manager and a public relations coordinator directly involved in arranging a press conference in support of pending legislation.*
- **Finding:** *Despite the CDC’s representation to government officials that the lobbying violation in South Carolina was limited to plans for a press conference and action alert, meeting minutes from a participating local coalition in South Carolina reveal that CPPW-staff developed a legislative strategy with a city councilmember to tighten the proposed smoke-free ordinance and provided talking points to pro-ordinance speakers at city council meetings. In fact, insider documents reveal that CPPW staff in South Carolina orchestrated a cover-up to alter coalition meeting minutes to depersonalize the involvement of the DHEC’s CPPW program coordinator in directing illegal lobbying activities in support of smoke-free ordinances.*

The CDC awarded a CPPW grant worth \$6 million to the DHEC, the SFF coalition, and the Horry County Breathe coalition for tobacco control efforts.⁶⁷ CoA obtained documents from the CDC showing that the DHEC financed lobbying efforts in support of a smoke-free ordinance that was pending before a local city council.⁶⁸ The grantees orchestrated a press conference and sent an “action alert” to their allies asking them to urge the council to support the ordinance:⁶⁹

⁶⁷ CIRCLE PARK BEHAVIORAL SERVS., Smoke Free Florence Timeline (May 16, 2011) (Exhibit 12).

⁶⁸ Garner, *supra* note 16.

⁶⁹ *Id.*

The aforementioned activities were documented in emails received at the CDC that related to a proposed smoke free ordinance. The e-mails demonstrate CPPW funded staff significantly contributed to planning and scheduling a press event designed to influence the decisions of city council members, with regard to a smoke free ordinance. Also, CPPW funded staff proposed sending an action alert with an "ask" to "explain the situation ... to the face book members and/or advocate list". This "ask" list appears designed to influence action in regard to the pending ordinance. An e-mail message further states "we must get as many people as possible to communicate the "protect all works in indoor work-places" message to council, especially Brand & Willis..." This communication shows additional actions of CPPW staff attempting to influence the public to contact city council members in support of the smoke-free ordinance.

CoA has uncovered emails between DHEC staff, the SFF, and Circle Park Behavioral Services (Circle Park) - a DHEC subgrantee and SFF partner - which show that staff members, paid with CPPW funds, intended to contact city council members immediately before a vote on the pending ordinance.⁷⁰ An additional email further documents efforts to pressure the city council to secure passage of the ordinance without any exemptions:⁷¹

To clarify -- are you saying that they want to get the council meeting moved to Friday so that Ed will be there?

Either way -- do you think it's necessary to move the news conference up to Friday so that we can go ahead and provide full poll results to council members and generate some press in advance of Monday's meeting?

Generally, I'd shy away from a Friday event since the coverage would get buried over the weekend but want to be sensitive to the politics of this. The poll does provide cover to council members for supporting the ordinance, if that's their concern. But if the larger issue is putting exemptions into the ordinance, I'm not certain that releasing the results earlier would make much difference.

The CDC concluded that the conduct described above violated AR-12.⁷² As a remedy, the DHEC agreed to hold mandatory AR-12-related training for all CPPW-supported staff.⁷³ Employees of the American Lung Association and the Alliance for Justice led the AR-12 workshop, entitled "Advancing Public Health Policies."⁷⁴ In disregard of the CDC's instructions, not all CPPW-supported staff attended.⁷⁵ Noticeably absent from the attendance sheet obtained by CoA were a CPPW grant manager and public relations coordinator directly

⁷⁰ E-mail from Ian Hamilton, S.C. Tobacco Collaborative, to Anna Berkowitz, Grants Mgmt. Officer, Ctrs. for Disease Control & Prevention, FW: Friday Council meeting (Mar. 9, 2011) (Exhibit 13).

⁷¹ Garner, *supra* note 16.

⁷² *Id.*

⁷³ Letter from Lisa Waddell, Deputy Comm'r of Health Servs., S.C. Dep't of Health & Envtl. Control, to Mildred Garner, Grants Mgmt. Specialist, Ctr. for Disease Control Procurement & Grants Office (Jun. 7, 2011) (Exhibit 14).

⁷⁴ Pascale Leone, Am. Lung Ass'n, and Abby Levine, Alliance for Justice, *Communities Putting Prevention to Work: Advancing Public Health Policies* (Apr. 15, 2011) (Exhibit 15).

⁷⁵ *AR-12 Training Sign-in Sheet* (Exhibit 15).

involved in arranging the press conference.⁷⁶ However, the CDC was well aware of the DHEC’s plans before the attempted press conference.

In September 2010, a CDC grants officer attended the monthly SFF meeting and participated in discussions on how to rally community support for smoke-free municipal ordinances and school policies.⁷⁷ The CDC grants officer announced at the meeting that securing a comprehensive smoke-free ordinance was “the number one priority with the [SFF] initiative and 100% adoption will be the determining factor” of success.⁷⁸

The DHEC’s application for a CPPW grant explicitly proposed to “increase the support for and adoption of comprehensive smoke-free laws” using, among other things, grassroots lobbying efforts.⁷⁹ The application likewise made clear the DHEC’s intent to form a coalition with statewide partner organizations and create a “hard hitting media campaign” to promote the adoption of smoke-free ordinances in South Carolina.⁸⁰ A “Community Action Plan” submitted in support of the application proposed to hire a coordinator “to promote comprehensive smoke-free policies/ordinances throughout the county,”⁸¹ who would later oversee efforts to influence key community decision makers and council members in support of the smoke-free ordinance.⁸²

SMART Objectives: By January 31, 2012, increase the support for and adoption of comprehensive smoke-free laws.			
MAPPS Strategy: Media			
Action Steps	Milestones and Timeline	Key Partners	Evaluation Strategies
Mobilize adult supporters to advocate for smoke-free ordinances	Local coalition membership increases, develop lines of regular communication within first six months of grant.	Local coalitions; SCTC; Smoke-Free Partners group	Measure numbers of active and new coalition members.
Work with partners to compile, promote toolkit for promoting and implementing smoke-free ordinances.	Toolkit with specifics for the county will be finalized within two months of grant award.	Media/Communications and Secondhand Smoke Policy Coordinator; SCTC; Smoke-Free Partners group	Toolkit completed and in use.
Conduct municipal smoke-free summits to support education about and adoption of comprehensive ordinances	Smoke-free summits planned and hosted in targeted communities to build support for local ordinances based on level of readiness.	Local coalition, SCTC, Smoke-free Partners group and Secondhand Smoke Policy Coordinator.	Conduct evaluation of participants to determine increases in knowledge and awareness of SHS issues. Number of municipalities

⁷⁶ *Id.*

⁷⁷ CIRCLE PARK BEHAVIORAL SERVS., Smoke Free Florence Timeline (May 16, 2011) (Exhibit 12).

⁷⁸ *Id.*

⁷⁹ S.C. DEP’T OF HEALTH & ENVTL. CONTROL, *Grant Application Appendix III: S.C. State Supplemental – Component I – Non-Competitive Policy and Environmental Change – Tobacco Implementation Plan* (Exhibit 16).

⁸⁰ S.C. DEP’T OF HEALTH & ENVTL. CONTROL, *Nutrition, Physical Activity and Tobacco Proposal* (Exhibit 16) at 7-9.

⁸¹ S.C. DEP’T OF HEALTH & ENVTL. CONTROL, *Grant Application Appendix Four: Communities Putting Prevention to Work Community Action Plan (CAP) Florence County* (Exhibit 17).

⁸² CIRCLE PARK BEHAVIORAL SERVS., Smoke Free Florence Timeline (May 16, 2011) (Exhibit 12).

Tobacco:

South Carolina will address the Tobacco Prevention and Control component by implementing a hard-hitting media campaign to support efforts related to smoke-free ordinance adoption in local municipalities across the state. Though the proposed project specifically addresses the MAPPS strategy of “media,” note that the communications interventions in this plan will not act in isolation. They will be combined with and build upon complimentary grassroots and community-based interventions supportive of policy and environmental change already underway throughout South Carolina.

CoA has uncovered evidence that the DHEC’s misuse of CPPW funding was more extensive than the CDC was led to believe, however. The minutes of SFF’s weekly staff meetings reveal how the DHEC and Circle Park staff developed legislative strategy with a Florence city councilmember to tighten the proposed smoke-free ordinance and provide talking points to pro-ordinance speakers at city council meetings.⁸³ As described in a document exclusively provided to CoA, DHEC employees later attempted to orchestrate a cover-up and encouraged Circle Park employees to alter the meeting minutes after the fact.⁸⁴

Specifically, a CPPW grant manager for Florence County described the DHEC’s plan to remove personal details from the minutes because the CDC expressed concern over the use of grant funds for lobbying.⁸⁵ Circle Park staff resisted, however, because the new minutes did not accurately portray what happened within the SFF.⁸⁶ These staff members felt intimidated by the DHEC and feared job reprisals if they did not agree to cooperate, but were concerned that they might be implicated in an attempt to cover up of illegal conduct.⁸⁷ The DHEC stated outright that the purpose of altering the minutes was to hide the fact that its CPPW program coordinator had directed illegal lobbying in the pursuit of smoke-free ordinances.⁸⁸ The DHEC later forbade Circle Park employees from contacting the CDC.⁸⁹

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Telephone Interview by Daniel Z. Epstein, Exec. Dir., Cause of Action, with [undisclosed insider] (Apr. 5, 2012).

Despite the CDC's determination of illegal lobbying in South Carolina, the HHS awarded the DHEC an additional \$4.6 million Community Transformation Grant in September 2011.⁹⁰

B. Arizona

Pima County

- **Finding:** *The Pima County Health Department (PCHD) used taxpayer dollars to contract with the University of Arizona to lead policy workshops and develop neighborhood plans in support of zoning codes, regulations, and ordinances.*

The PCHD in Arizona received almost \$15.8 million through the CPPW for activities related to obesity prevention.⁹¹ The grant itself makes clear that the PCHD intended to use its CPPW award to hire the University of Arizona's Zuckerman College of Public Health to support "policy work."⁹² The report referring to this subcontract states:

In coordination with the Schools, Neighborhoods, Worksites, and Health/Human Services and Faith Based Teams, the Policy Team will develop educational materials and provide workshops and presentations about the virtues of making informed dietary choices. No!

The PCHD proposed the creation of a Policy Team to serve as a conduit between "community experts" and "policy makers," by providing the latter with education and technical assistance "to increase their capacity to consider and implement policy."⁹³

The PCHD's application further proposed a subcontract with the University of Arizona College of Architecture's Drachman Institute (DI) to support grassroots lobbying through a series of policy workshops aimed at establishing a minimum of fourteen new neighborhood plans.⁹⁴ The PCHD intended that the DI would "be responsible for engaging public officials."⁹⁵ In preparation, PCHD employees reviewed all Pima County and city jurisdictional plans, including "department plans, as well as zoning and other codes, regulations, and ordinances"⁹⁶ to identify potential design changes to "codes, regulations, ordinances, and policies."⁹⁷

⁹⁰ Matt Long, *SC receiving new \$4.6 million grant under new health care law*, SOUTH CAROLINA RADIO NETWORK (Sept. 19, 2011), <http://www.southcarolinaradionetwork.com/2011/09/29/sc-receiving-new-4-6-million-grant-under-health-care-law/>.

⁹¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL, *American Recovery and Reinvestment Act Prevention and Wellness Initiative: Communities Putting Prevention to Work* (Exhibit 18).

⁹² PIMA CNTY. HEALTH DEP'T, *Communities Putting Prevention to Work – Category A, Obesity, Physical Activity and Nutrition, Revised Budget Narrative* (Apr. 16, 2010); PIMA CNTY. HEALTH DEP'T, CPPW POLICY TEAM, *Contract Narrative (Discussion Draft)* (Exhibit 19) at 116.

⁹³ *Id.* at 116.

⁹⁴ *Id.* at 100.

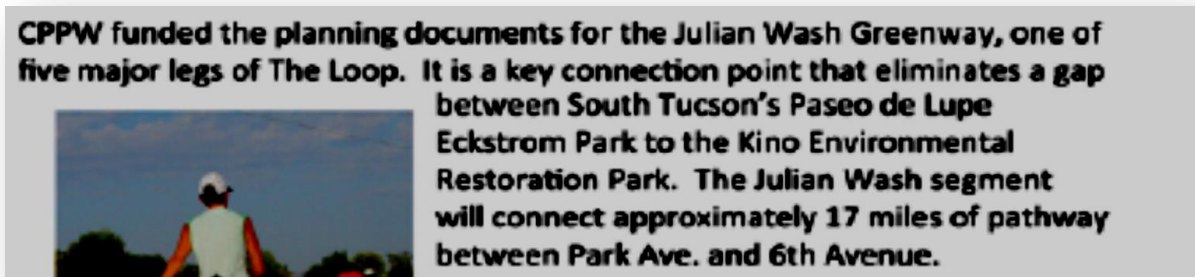
⁹⁵ *Id.* at 099.

⁹⁶ *Id.*

⁹⁷ *Id.*

The same PCHD employees then prepared a detailed Action Plan for lobbying that included 25 design and policy workshops around the creation of built environment policy, transit-oriented and green-space development, and mixed-use zoning.⁹⁸ The PCHD's final CPPW progress report for the time period of 2010 to 2012 contains explicit detail about efforts to change land use codes and develop local government resolutions.⁹⁹

CoA's investigation also found that the PCHD used CPPW funds to develop planning documents for the Julian Wash Greenway, the longest of four river parks in the Tucson metropolitan area:¹⁰⁰



This greenway linked major employment sites such as the University of Arizona Science and Technology Park and two major healthcare facilities, including the University of Arizona's Medical Center.¹⁰¹ CoA also learned that several months before the City of Tucson voted to amend plans for the Julian Walsh Greenway, Steve Goldschmid, the Dean of the University of Arizona College of Medicine, registered as a lobbyist for the University of Arizona on April 20, 2011.¹⁰²

⁹⁸ *Id.* at 100.

⁹⁹ PIMA CNTY. HEALTH DEP'T, *Pima County Communities Putting Prevention to Work 2010-2012 Report 26*, available at http://www.pimahealth.org/documents/ CPPW_Final_Report.pdf.

¹⁰⁰ *Id.*

¹⁰¹ Memorandum from Pima Cnty. Bd. of Supervisors, *Completion of the Julian Wash and Harrison Greenways* (Oct. 4, 2011), available at <http://www.pima.gov/theloop/documents/pdfs/092211-bd-julian-wash-harrison-greenway-small.pdf>.

¹⁰² ARIZONA DEP'T OF STATE, OFFICE OF THE SEC'Y OF STATE, *Lobbyist Information* (2011), available at http://www.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3608846.

C. Alabama

Mobile County

- **Finding:** *The Mobile County Health Department (MCHD) used its CPPW funds to work with the Tobacco Free Mobile Coalition to remove preemption language from the state tobacco excise tax.*

The MCHD received a \$2.4 million “flow-through” CPPW grant from the Alabama Department of Public Health.¹⁰³ The MCHD proposed to coordinate a “100% smoke-free intervention” along with the Tobacco-Free Mobile Coalition.¹⁰⁴ CoA’s investigation found that CPPW funds paid the salary of an “outreach coordinator” who worked with the Tobacco-Free Mobile Coalition to “educate decision makers about the benefit of 100% smoke-free policy, increasing the unit price of tobacco products, and reducing tobacco advertising.”¹⁰⁵

Once more CoA found warning signs of potential illegal conduct were present in the MCHD grant application. The CPPW proposal for Mobile County boasts that the Tobacco-Free Mobile Coalition successfully promoted the adoption of smoke-free ordinances in the Mobile County cities of Bayou La Batre, Citronelle, Prichard, and Saraland.¹⁰⁶ The proposal further explains that the Tobacco-Free Mobile Coalition is committed “to promote the creation of a new 100% smoke-free ordinance for Mobile.”¹⁰⁷ Additionally, that Tobacco-Free Mobile Coalition succeeded in persuading the City of Mobile to increase tobacco taxes in 2004 is offered as evidence for why the Tobacco-Free Mobile Coalition’s involvement is crucial to successfully removing preemption language from Alabama’s tobacco excise tax statute.¹⁰⁸

¹⁰³ MOBILE CNTY. HEALTH DEP’T, 2011 Annual Report 14 (Oct. 3, 2011), <http://www.mobilecountyhealth.org/PDF/2011AnnualReport.pdf>.

¹⁰⁴ ALABAMA DEP’T OF PUB. HEALTH, *Application for Federal Assistance SF-424, 93.724 Prevention and Wellness – Communities Putting Prevention to Work* 16 (Sept. 29, 2009) (Exhibit 20).

¹⁰⁵ *Id.* at 053.

¹⁰⁶ *Id.* at 076-077.

¹⁰⁷ *Id.* at 084.

¹⁰⁸ *Id.* at 085.

The promotion of state tobacco excise tax modification to remove preemption language (Price strategy) was included in this proposal because although Alabama is currently ranked 46th in United States cigarette excise tax, collecting only .425 cents on each pack of cigarettes as compared to a national average of \$1.34 per pack, a 2004 state law preempted local governments from any further tax increase on tobacco. The “*Best Practices for Comprehensive Tobacco Control Programs*” sites the stall in continuous decline in youth smoking rates as partially attributed to smaller annual increases in the retail price of cigarettes. Alabama’s nearly stagnant smoking rates are reflective of this after five years of flat state and local taxes. In order for local governments in Alabama to comprehensively address this increase in tobacco use, preemptive language in the state law must be removed. The Tobacco Free Mobile Coalition was instrumental in the 2004 Mobile city tax increase. Coalition partners, still actively involved, are well versed in tobacco excise tax issues and in working on policy change at both state and local level. This coalition has committed to working on this proposal. The Alabama legislative session schedule which begins in January will allow them quick access to legislators from around the state.

Finally, CoA has learned that the MCHD’s Tobacco Control Division used its \$2.4 million flow-through grant from the Alabama Department of Public Health to fund a “Just Breathe” advertising campaign designed to gain support for the adoption of municipal smoke-free ordinances, an increase in the state excise tax on tobacco products, and point-of-purchase restrictions.¹⁰⁹

¹⁰⁹ MOBILE CNTY. HEALTH DEP’T, 2011 Annual Report 14 (Oct. 3, 2011).

Jefferson County

- **Finding:** *With its taxpayer dollars, the Jefferson County Department of Health (JCDH) funded the American Lung Association of the Plains-Gulf Region personnel’s promoting the passage of tobacco-free ordinances at city council meetings.*

The JCDH received \$13.3 million¹¹⁰ for combined tobacco control and obesity prevention efforts through the Jefferson County Health Action Partnership (JCHAP), a coalition of over 100 stakeholders.¹¹¹ Under the guidance and leadership of the JCDH and the United Way of Central Alabama (UWCA), among others, the JCHAP aimed to change land-use codes¹¹² and to promote the adoption of 100% smoke-free air policies throughout the county.¹¹³

The UWCA ultimately funded personnel at the American Lung Association’s Plains-Gulf Region office. In one case uncovered by CoA, the American Lung Association paid 80% of the salary for a “Director of Advocacy” while CPPW funds paid the remaining 20%. CoA has learned that this Director of Advocacy was a registered lobbyist for the American Lung Association.¹¹⁴ When on CPPW time, the Director of Advocacy assisted promotion efforts for tobacco-free ordinances by making presentations to city councils and helping to develop testimonials.¹¹⁵ When not on CPPW time, the Director of Advocacy helped the American Lung Association develop its state legislative agenda and priorities, promoted its policies at fundraising events, and established relationships with state legislators on its behalf.¹¹⁶

D. Florida

Miami-Dade County

- **Finding:** *The Miami-Dade County Health Department (MDCHD) used taxpayer funds to hire the Health Council of South Florida to provide a legislative agenda for CPPW-funded policy work.*

The MDCHD in Florida received almost \$14.7 million through CPPW for activities related to obesity prevention.¹¹⁷ CoA reviewed the MDCHD’s application for the CPPW grant and found that it proposed to use its award to pay the Health Council of South Florida \$457,538 to lobby for legislative change:¹¹⁸

¹¹⁰ U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *American Recovery and Reinvestment Act Prevention and Wellness Initiative: Communities Putting Prevention to Work* (Exhibit 18).

¹¹¹ JEFFERSON CNTY. BD. OF HEALTH, *Jefferson County Health Action Partnership: Putting Prevention to Work Against Obesity*, (Exhibit 21) at 071.

¹¹² *Id.* at 015.

¹¹³ *Id.* at 053.

¹¹⁴ AM. LUNG ASS’N OF THE PLAINS-GULF REGION, *Job Snap Shot: Director of Advocacy* (Exhibit 22).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *American Recovery and Reinvestment Act Prevention and Wellness Initiative: Communities Putting Prevention to Work* (Exhibit 18).

¹¹⁸ MIAMI-DADE CNTY. HEALTH DEP’T, *Communities Putting Prevention to Work Category A, Budget Narrative* (Exhibit 23).

The Health Council	<ul style="list-style-type: none"> ▪ Evaluate all policies ▪ Monitor outcome measures ▪ Monitor output measures ▪ Monitor CDC CHANGE Tool reporting ▪ Provide legislative advocacy and a legislative agenda ▪ \$257,919.20 year one, 199,619 year two \$457,538,40 total.
---------------------------	---

CoA further found that the Health Council of South Florida paid the salaries of its President and Chief Executive Officer out of the CPPW funding awarded to the MDCHD.¹¹⁹ The Health Council of South Florida hired a registered legislative lobbyist for both 2011 and 2012 at the very same time it was using CPPW funds to help the MDCHD develop its legislative agenda.¹²⁰ Lobbying by the MDCHD helped reinforce zoning policies in Miami.¹²¹

E. Georgia

DeKalb County

- **Finding:** *The DeKalb County Board of Health (DCBH) used CPPW funds to support the adoption of a strengthened county CIAO and partnered with the Georgia Alliance for Tobacco Prevention (GA Alliance) to train coalition partners and finance a media campaign in support of state cigarette tax increase. Additionally, the DCBH used CPPW funds to conduct a focus group using exotic dancers from a local adult entertainment establishment to gauge support for a strengthened CIAO.*

CoA found that the DCBH in Georgia received a \$3.2 million CPPW grant for tobacco control and obesity prevention.¹²² The “Community Action Plan” submitted by the DCBH in support of its application for the grant makes clear its intent was to expand smoke-free laws to include public recreational spaces in municipalities throughout the state.¹²³ The DCBH’s application similarly describes plans to support the adoption of CIAOs and an increase in the state cigarette tax.¹²⁴

¹¹⁹ MIAMI-DADE CNTY. HEALTH DEP’T, *Communities Putting Prevention to Work Category A, ARRA Evaluation Budget: Health Council of South Florida*, <http://www.miamidadematters.org/index.php>.

¹²⁰ See Florida Registered Legislative Lobbyist Directory, *2012 Registrations by Principal Name*, http://www.leg.state.fl.us/data/lobbyist/Reports/Principl_LEG_2012.pdf.

¹²¹ FLORIDA DEP’T OF HEALTH IN MIAMI-DADE CNTY., *Communities Putting Prevention to Work Accomplishments*, <http://www.dadehealth.org/cppw/PPWresults.asp>.

¹²² U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *American Recovery and Reinvestment Act Prevention and Wellness Initiative: Communities Putting Prevention to Work* (Exhibit 18).

¹²³ GEORGIA HEALTH POLICY CTR., *External Evaluation Report of the DeKalb County Board of Health Communities Putting Prevention to Work Tobacco Control Project: Presented to DeKalb County Board of Health* (Sept. 2012) (Exhibit 24).

¹²⁴ DEKALB CNTY. BD. OF HEALTH, OFFICE OF CHRONIC DISEASE PREVENTION, *CPPW Category B: Tobacco Prevention and Control, Revised FY 2010-2012 Budget* (Exhibit 25) at 055-056.

The DCBH partnered with the Prevention Alliance for Tobacco Control and Health (PATCH) coalition to support the adoption of a CIAO for DeKalb County. PATCH took the lead in amassing support for a strengthened DeKalb County CIAO in 2002.¹²⁵ CoA's investigation found that CPPW funds were used to help train coalition members in grassroots lobbying to urge the DeKalb County Commission to adopt a stronger CIAO.¹²⁶ The American Lung Association and American Cancer Society were among the organizations supporting the DCBH's efforts.¹²⁷

CoA's investigation further found that the DCBH used its CPPW grant to finance a statewide campaign to raise cigarette taxes, a campaign sponsored by the GA Alliance. Among the GA Alliance's members are a member of the Georgia House of Representatives, the American Lung Association, and the American Cancer Society's Action Network (one of the top 150 lobbyists¹²⁸ in the U.S. in 2012).¹²⁹ In support of the campaign, the GA Alliance used CPPW funds to train coalition partners in grassroots lobbying and finance a media campaign touting the benefits of a cigarette tax increase.¹³⁰ The DCBH allocated \$45,000 of CPPW funds to three national advocacy organizations to mobilize grassroots advocates to increase cigarette taxes in DeKalb County.¹³¹

CoA obtained a document that outlines the extent of the DCBH's use of CPPW funds in support of policy change at the local government level:¹³²

¹²⁵ *Id.* at 14.

¹²⁶ GEORGIA HEALTH POLICY CTR., *supra* note 123, at 4-5.

¹²⁷ DEKALB CNTY. BD. OF HEALTH, OFFICE OF CHRONIC DISEASE PREVENTION, *supra* note 124., at 150.

¹²⁸ CTR. FOR RESPONSIVE POLITICS, *Organization Profile: American Cancer Society*, <http://www.opensecrets.org/orgs/summary.php?id=D000031468>.

¹²⁹ DEKALB CNTY. BD. OF HEALTH, *supra* note 124, at 153, *see also* Georgia Alliance for Tobacco Prevention, *Pass the Buck* advertisement (Exhibit 26).

¹³⁰ *Id.*

¹³¹ *Id.* at 055-056.

¹³² GEORGIA HEALTH POLICY CTR., *supra* note 123, at 005-006.

Community Action Plan Objectives

- From July 2010 through March 2012, conduct a county-wide hard-hitting counter advertising mass media campaign reaching youth, LSES Hispanics, African Americans and other sub-populations, using earned/paid television, radio, print, special events and social media
- By February 2012, the DeKalb County School Board will: 1) adopt a district-wide comprehensive tobacco plan to support implementation of the existing 100% tobacco-free school policy and 2) develop a smoke-free campaign that advocates for a tobacco-free environment in schools.
- By February 2012, the policy-making bodies of at least three of the nine college/universities in DeKalb County will adopt a tobacco-free campus policy. Selection criteria will be established for campus selection based on greatest impact/reach and greatest health burden/service to high-risk populations and in accordance with DeKalb County Board of Health's Office of Internal Services regulations.
- By February 2012, DeKalb County Board of Commissioners will adopt a countywide policy that will require all DeKalb Parks and Recreation properties to be tobacco-free.
- By February 2012, DeKalb County Board of Commissioners will expand a countywide comprehensive smoke-free law to include restaurants, freestanding bars, adult entertainment establishments, and county government property in unincorporated DeKalb County.
- By February 2012, at least three of the eight incorporated city councils within DeKalb County will adopt municipality-wide comprehensive smoke-free laws that include restaurants, free-standing bars, adult entertainment establishments, and county government property.
- By March 2012, DCBOH will incorporate system-wide protocol that supports health care

provider compliance with the protocol for the 2 A's and an R-the Ask, Advise, Refer model for cessation counseling and refers clients receiving DCBOH services including WIC, STD and immunization to the GA QuitLine through which NRT is available.

- By March 2012, Georgia General Assembly will increase the state cigarette sales tax from \$0.37 to \$1.37.
- By March 2012, DeKalb County Board of Commissioners will adopt a countywide policy restricting tobacco signage at external picture windows and internal advertising locations at tobacco retail establishments.

Again, CoA found that the DCBH's application for a CPPW grant makes clear its intent to amend the DeKalb County's CIAO in such way that it acts like a comprehensive smoking ban:¹³³

¹³³ DEKALB CNTY. BD. OF HEALTH, *supra* note 124, at 150.

Intervention 2.4: Amending DeKalb's clean indoor air ordinance (usage ban)

Justification of need: DeKalb County adopted a clean indoor air ordinance (CIAO) for unincorporated DeKalb (86.5% of the county) in 2002 (Appendix VII). The CIAO made exemptions for (1) free-standing bars, (2) adult entertainment establishments, and (3) any property owned or leased by the State of Georgia or the federal government. In 2006, a strengthened CIAO was approved by the county commissioners, but ultimately vetoed by the then county CEO. As the CIAO is currently worded, the DeKalb ordinance is stronger than the Georgia Smoke-Free Air Act, yet is still one of the weakest local ordinances in the state.

Description: Work in partnership with the American Lung Association (ALA) and American Cancer Society (ACS) to propose a strengthened CIAO to the DeKalb County Commission. The strengthened ordinance will be based on the Americans for Non-Smokers Rights model policy and include no exemptions. The Tobacco Technical Assistance Consortium will train LHD coalition and community consortium members on leading a grassroots advocacy campaign to

accompany the efforts of DCBOH, ALA, and ACS. This amended policy has the potential to not only impact the 739,956 residents of DeKalb, but also additional people who work, dine, travel, and participate in leisure activities in the county.

Sustainability: The ordinance will be amended and enforced by the County Commissioners. The DCBOH will leverage this amended ordinance and encourage the nine DeKalb municipalities (13.5% of the county) to adopt the same ordinance as part of the OCDP's Strategic Alliance for Health grant.

The DCBH’s application again explicitly stated its intent to assist the “GA cigarette tax campaign.”¹³⁴ CoA’s investigation turned up documentary evidence that CPPW funds awarded to the DCBH were indeed used to coordinate the efforts of partner organizations in support of pending state legislation:¹³⁵

Price Intervention (4.0)

Intervention 4.1: Georgia cigarette tax campaign (evidence-based pricing strategies)

Justification of need: Only three states have cigarette taxes lower than Georgia’s tax of 37 cents.¹¹ A substantial increase in the total price of cigarettes has been shown in other states to reduce smoking by adults and to discourage youth from starting to smoke.¹²

Description: Assist the Georgia Alliance for Tobacco Prevention with the Georgia Cigarette Tax Campaign. The Alliance includes the American Cancer Society and its Action Network, American Heart Association, American Lung Association, Campaign for Tobacco Free Kids, State Representative Ron Stephens, and hundreds of other organizations and individuals. Assistance will be in the form of recruiting support from DeKalb County coalitions, worksites, faith organizations, and residents. This effort will include grassroots coalition training and a media campaign featuring the benefits of a cigarette tax increase.

The DCBH proposed a contract for ‘Coalitions Training’ to garner support for initiatives like amending DeKalb County’s CIAO.¹³⁶ At one point, the DCBH used CPPW funds to conduct an interview with a focus group of exotic dancers at a local adult entertainment establishment to gauge support for the amended CIAO, but learned that group participants found such restrictions unrealistic:¹³⁷

¹³⁴ *Id.*, at 153.

¹³⁵ *Id.* at 153-154.

¹³⁶ *Id.*

¹³⁷ GEORGIA HEALTH POLICY CTR., *supra* note 123, at 052-054.

When participants were asked if they had the opportunity to work in an establishment where smoking was restricted, would they do so, only two stated they would. One of these two stated she would even if meant a decrease in her current income. The others stated they would not. **When asked for justification, one participant stated that working in a smoke-free adult entertainment establishment was not a reality. Another participant noted that restricting the ability to smoke in these environments would ultimately impact income.**

CoA's investigation found that the DCBH used CPPW funds to develop media that clearly called upon the public to support municipal smoke-free ordinances:¹³⁸

The Smoke-Free DeKalb petition utilized by DCBOH partners and distributed by the DCBOH CPPW team included language of a strongly persuasive nature that emphasized the importance of not compromising, including, "We want a smoke-free Atlanta with no compromises" and "Let the DeKalb Board of Commissioners know that workers' health should not be compromised!"

The DCBH planned to place ads in local newspapers in recognition of the DeKalb County Commission once the tobacco-related ordinances were passed.¹³⁹ A CPPW Leadership Team was established to oversee its tobacco control efforts by crafting model policy language and focusing on ordinance review and revision.¹⁴⁰

F. California

Los Angeles County

- **Finding:** *The Los Angeles County Department of Public Health (LA Public Health) used CPPW funds to coordinate legislative policy through local tobacco control coalitions and to hire the Technical Assistance Legal Center (Legal Center) to draft and review legislation and policies.*

LA Public Health received nearly \$32.1 million in CPPW grants for both tobacco control and obesity prevention.¹⁴¹ For its tobacco control grant, LA Public Health used CPPW funds to create its Project Tobacco Reduction Using effective Strategies and Teamwork (Project TRUST),

¹³⁸ *Id.* at 023.

¹³⁹ DEKALB CNTY. BD. OF HEALTH, *supra* note 124, at 153-154.

¹⁴⁰ GEORGIA HEALTH POLICY CTR., *supra* note 123, at 008.

¹⁴¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, *American Recovery and Reinvestment Act Prevention and Wellness Initiative: Communities Putting Prevention to Work* (Exhibit 18).

part of which included “comprehensive smoke-free outdoor air policies” and “cigarette butt litter fees.”¹⁴² Project TRUST used a “Policy Adoption Model” developed by LA Public Health’s Tobacco Control and Prevention Program to provide local tobacco control coalitions with a “step-by-step guide to facilitate legislative policy adoption in local jurisdictions.”¹⁴³ \$250,000 of LA Public Health’s CPPW funding went to the American Lung Association to provide “capacity-building, tobacco policy and advocacy technical assistance to the Project TRUST staff and partnering organizations.”¹⁴⁴

CoA also learned that CPPW funds were used by Project TRUST to hire a “Legislated Policy Project Coordinator” who managed teams of policy liaisons, community organizers, and community representatives.¹⁴⁵ LA Public Health budgeted for policy liaisons to lead efforts to draft model policy language, including comprehensive smoke-free outdoor air policies.¹⁴⁶ The community organizers disseminated policy intervention strategies to the targeted communities and informed elected officials through community coalitions and testimony at respective city hall meetings.¹⁴⁷

Project TRUST’s “Legislated Policy Project Coordinator” was responsible for conducting trainings for community partners like the Legal Center to help draft model policy plans tailored to each community.¹⁴⁸ CoA found that LA Public Health used CPPW funding to pay the Legal Center \$500,000 over two years to “provide legal and policy technical assistance,” and to “draft and review legislation, policies, and any legal agreements.”¹⁴⁹ Legal Center lawyers provided “legal advice . . . to guide and draft policies” proposed by Project TRUST.¹⁵⁰ The Legal Center’s CPPW budget contained a line item to “[c]raft model legislation, policies, and agreements.”¹⁵¹ CPPW funds were also used to pay Legal Center personnel to create training modules “to initiate, craft, and mobilize a community to pass tobacco-related policies,” and to advise “in all aspects of adopting tobacco-related policies in local jurisdictions.”¹⁵²

Again, LA Public Health’s CPPW application made clear that Project TRUST’s main focus was municipal adoption of anti-tobacco legislation and policies. Of Project TRUST’s seven listed objectives, four focused on legislative policies in thirty-six cities, including comprehensive outdoor air policies in twelve cities, point-of-purchase policies in six cities, and cigarette butt litter fee policies in eight cities.¹⁵³

For its obesity prevention grant, LA Public Health paid the California Center for Public Health Advocacy \$945,000 to lobby local policymakers in support of food and beverage

¹⁴² CNTY. OF LOS ANGELES DEP’T OF PUB. HEALTH, *Project TRUST* (“*Tobacco Reduction Using effective Strategies and Teamwork*”) *Abstract Summary* (Exhibit 27) at 184.

¹⁴³ *Id.* at 201.

¹⁴⁴ *Id.* at 213.

¹⁴⁵ *Id.* at 200-201.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 201.

¹⁴⁸ *Id.* at 200.

¹⁴⁹ *Id.* at 212.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 213.

¹⁵³ *Id.* at 201.

policies.¹⁵⁴ Again, CoA found that the LA Public Health’s application for a CPPW grant described its plans in explicit detail:¹⁵⁵

The campaign will also include outreach to local policymakers in cities throughout the county and will highlight the need for healthy food and beverage policies, and for measures to reduce access to less healthy food and beverages, including sweetened beverages. This latter focus will build on the growing national public health movement to address the problem of sweetened beverage over-consumption with policy interventions, including taxation or fee assessment¹³ and will generate momentum for state-level policy action. The experience gained in the battle over menu labeling in California has better prepared us for combating what will surely be a major offensive by the beverage industry to defeat proposed policies that seek to reduce access to sweetened beverages.

LA Public Health also proposed to have LA County’s Regional Planning Department develop new ordinances for the unincorporated areas of LA County to assimilate “healthy design” elements into LA County’s land use policies. LA Public Health worked with the County’s Regional Planning Department and a consultant to bring the ordinance before the Board of Supervisors and Regional Planning Commission for a vote before the end of the grant period.¹⁵⁶

Santa Clara County

- **Finding:** *The Santa Clara County Public Health Department (Santa Clara Health) used tax dollars to hire a tobacco retail license coordinator to lobby for a workplace smoking ordinance and also used CPPW funds to support a state-wide tobacco tax increase.*

Santa Clara Health received a \$6.9 million CPPW grant for tobacco prevention.¹⁵⁷ CoA found that Santa Clara Health used its CPPW funds to hire a “Tobacco Retail License Coordinator” to “provide technical assistance to legislators” and serve as a “liaison to state and

¹⁵⁴ CNTY. OF LOS ANGELES DEP’T OF PUB. HEALTH, *Project RENEW LAC* (“Renew Environments for Nutrition, Exercise & Wellness in Los Angeles County”) (Exhibit 27) at 057.

¹⁵⁵ *Id.* at 075.

¹⁵⁶ *Id.* at 082.

¹⁵⁷ SANTA CLARA CNTY. PUB. HEALTH DEP’T, *Tobacco Policy Update* (June 2011), http://www.sccgov.org/sites/sccphd/en-us/Partners/TobaccoPrevention/Documents/TPU_January_2011.pdf.

federal partners.”¹⁵⁸ Santa Clara Health also spent \$225,000 to “advocate with local legislators on the need for [a] workplace smoking ordinance”¹⁵⁹ and \$120,000 to “educate . . . local and state legislators on the importance of a need for a tobacco tax increase” and “advocate with local legislators for local ordinance in support of a state wide tobacco tax increase.”¹⁶⁰

Tobacco Tax Increase Ordinances	\$ 120,000
Method of Selection: Limited competitive bid process	
Statement of Work: Educate and local and state legislators on the importance of a need of a tobacco tax increase. Provide technical assistance. Advocate with local legislators for local ordinance in support of a state wide tobacco tax increase. Organize broad based support in geographic and culturally diverse communities.	
Method of Accountability: Program Manager will supervise contract. OMC will support tracking and monitoring of the contract deliverables and invoices. Payments will not be made until satisfactory work has been completed and in a timely manner.	

Again, Santa Clara Health’s application for a CPPW grant made clear its intent to “establish local tobacco retail licensing requirements” and to “advocate effectively for increasing the price of tobacco through an additional tax.”¹⁶¹ Santa Clear Health proposed to use its CPPW award to “expand current efforts to persuade the County and its thirteen cities . . . to adopt annual tobacco sales licensure requirements,”¹⁶² and to “work with the county’s California legislative delegation to advocate for an increase in the tobacco tax.”¹⁶³ Finally, the application cites the accomplishments of a proposed coalition partner, the Tobacco Free Coalition, among them an ordinance to ban tobacco self-service displays in San Jose and restrictive tobacco advertising ordinances in Los Altos.¹⁶⁴

VII. Conclusion: The CDC & HHS Acted with Indifference to Established Law When They Created CPPW, and Turned a Blind Eye When They Learned that CPPW Funds Were Being Used in Violation of the Law.

The CDC and HHS appear to have ignored explicit statements from CPPW grantees who planned to use CPPW funds to lobby local governments, in violation of federal law. The HHS OIG noted that the lobbying violations by grantees may have resulted from the CDC’s ambiguous or inadequate guidance.¹⁶⁵ But the problem stems from more than substandard guidance to CPPW grantees: CoA’s investigation found internal emails that confirm an indifference among agency officials to well-established federal law that prohibits lobbying at *any* level of government, namely 18 U.S.C. § 1913, AR-12, and OMB Circular A-122.¹⁶⁶ These e-

¹⁵⁸ SANTA CLARA CNTY. PUB. HEALTH DEP’T, *CPPW Tobacco Prevention and Control Program 3*, “Proposal Narrative - Staffing” (Nov. 28, 2009) (Exhibit 28).

¹⁵⁹ *Id.* at 425.

¹⁶⁰ *Id.* at 426.

¹⁶¹ *Id.* at 420.

¹⁶² *Id.* at 450.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 438.

¹⁶⁵ Levinson, *supra* note 8, at 1.

¹⁶⁶ E-mail from Trey Hicks, Oversight Investigator, Senate Homeland Sec. & Governmental Affairs Comm., to Christina Hinkle, Office of Inspector Gen., Dep’t of Health & Human Servs. (Mar. 12, 2012) (Exhibit 29)

mails also demonstrate that CDC officials had trouble coordinating one agency position on the application of federal lobbying restrictions to grantees¹⁶⁷ and the CDC suffered from dysfunctional communication within program divisions.¹⁶⁸

The CDC heavily emphasized the need for policy change to determine the successful implementation of CPPW grants. The CDC's Media, Access, Point of Purchase, Price, and Social Support Services guidelines specifically integrated policy outcomes, and the HHS measured the success of the program by the number of smoke-free policies that were enacted.¹⁶⁹

The HHS is the largest grant-issuing agency in the federal government, with \$370 billion in grants awarded in FY 2010 alone.¹⁷⁰ Congressional testimony from HHS and CDC leadership reflects indifference, if not utter disregard, for the law concerning lobbying. CDC Director Thomas Frieden insisted in a letter to Congress grantees are free to use federal funds to "influence" local government policies.¹⁷¹ That is to say, the American taxpayers funded an ARRA program that did not produce shovel ready jobs so much as protect special-interests.

¹⁶⁷ E-mail from Rebecca Payne, Pub. Health Analyst, Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, Ctrs. for Disease Control & Prevention, to Mildred Garner, Lead Grants Mgmt. Specialist, Procurement & Grants Office, Ctrs. Disease Control & Prevention, *et al.*, Re: SC's Response to GMO's Determination of Lobbying Activities under CPPW Award (June 22, 2011) (Exhibit 30).

¹⁶⁸ E-mail from Beth Patterson, Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, Ctrs. for Disease Control & Prevention, to Elizabeth Reimels, Pub. Health Analyst, Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, Ctrs. for Disease Control & Prevention, *et al.*, RE: letter for South Carolina (March 25, 2011) (Exhibit 31).

¹⁶⁹ Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *FY 2012 Justification of Estimates for Appropriation Committees, Executive Summary - Recovery Act Obligations and Performance*, 22 http://www.cdc.gov/nceh/information/docs/FY_2012_CJ_CDC.pdf.

¹⁷⁰ *Id.*

¹⁷¹ Upton, *supra* note 34, at n. 5.



Advocates for Government Accountability

For press inquiries and information regarding this report:

Mary Beth Hutchins, Communications Director
(202) 400-2721

For general inquiries or to report waste, fraud or abuse:

Phone: (202) 499-4232
<http://www.causeofaction.org>
1919 Pennsylvania Ave Suite 650
Washington, DC 20006