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Fiscal versus social responsibility: how Philip Morris shaped the public funds divestment debate

N Wander, R E Malone

Calls for institutional investors to divest (sell off) tobacco stocks threaten the industry’s share values, publicise its bad behaviour, and label it as a politically unacceptable ally. US tobacco control advocates began urging government investment and pension funds to divest as a matter of responsible social policy in 1990. Following the initiation of Medicaid recovery lawsuits in 1994, advocates highlighted the contradictions between state justice departments suing the industry, and state health departments expanding tobacco control programmes, while state treasurers invested in tobacco companies. Philip Morris (PM), the most exposed US company, led the divestment opposition, consistently framing the issue as one of responsible fiscal policy. It insisted that funds had to be managed for the exclusive interest of beneficiaries, not the public at large, and for high share returns above all. This paper uses tobacco industry documents to show how PM sought to frame both the rhetorical contents and the legal contexts of the divestment debate. While tobacco stock divestment was eventually limited to only seven (but highly visible) states, US advocates focused public attention on the issue in at least 18 others plus various local jurisdictions. This added to ongoing, effective campaigns to denormalise and delegitimise the tobacco industry, dividing it from key allies. Divestment as a delegitimisation tool could have both advantages and disadvantages as a tobacco control strategy in other countries.

Calls for institutional investors to divest (sell off) tobacco stocks began to gain traction in US tobacco control circles in 1990. Although there had been earlier tobacco industry divestment efforts, several circumstances, including the rise of the socially responsible investment movement, increasing litigation against major tobacco companies, and an increasing emphasis on tobacco industry delegitimisation as a tobacco control strategy created a climate within which tobacco divestment was open for serious discussion. Divestment advocates framed the issue as one of responsible social policy, focusing on the ethical disconnect involved in profiting from such a health-destroying product. When the industry responded by framing refusal to divest as a matter of responsible fiscal policy, advocates replied with arguments about the increasing lability of tobacco industry finances in the face of ongoing litigation and proposed government regulation, adopting the industry’s preferred framing while stressing a different solution. As state attorneys general began suing the industry to recover smoking-related Medicaid costs in 1994, advocates enlarged their frame to highlight the contradictions arising from state justice departments suing the industry, and state health departments expanding tobacco control programmes, while state treasurers invested in tobacco companies. Each of these frames entailed certain scenarios, privileged some authorities over others, and excluded or included varying decision-making criteria.

For some institutions, divestment went no further than privately reconciling missions with investment portfolios, while others intended to be social exemplars. Some tobacco control advocates saw divestment as a way to increase the public isolation of the tobacco industry, divide it from traditional financial and political allies, and further campaigns to denormalise smoking and delegitimise the industry. As Philip Morris (PM) documents show, as early as 1993, the tobacco industry expressed fear that a divestment movement might interfere with its ability to raise investment capital, and/or increase its growing public stigmatisation. In 1996, PM strategic fiscal issues manager John Dunham observed that industry-targeted divestment “Labels the company as being different from others — a rogue”, showing that divestment efforts were impacting delegitimisation.

Previous research using tobacco industry documents has shown how PM stymied divestment at medically prestigious universities. This study describes PM’s role in combating divestment by more financially significant government funds. It demonstrates how the tobacco company countered divestment advocates’ framing of the issue, considers the role of policy champions, and examines the future implications of divestment as a tobacco control strategy.

THEORETICAL CONCERNS

Framing has been defined as “selecting some aspects of a perceived reality and making them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation”. Framing defines both the issues themselves and the parameters within which it seems reasonable to think about issues. Framing may be a deliberate effort to promote a particular viewpoint, or it may represent a largely unconscious selectivity: whether conscious or unconscious, how issues are framed influences whether issues are seen as problems and what solutions are viewed as likely to be effective. Through case studies related to public funds divestment, we illustrate how divestment supporters and foes both relied heavily on framing the issue in terms of responsibility, and how divestment succeeded, where it did, largely through the efforts of policy champions.

METHODS

Between 17 October 2002 and 18 October 2005, we searched previously undisclosed tobacco industry documents, made public under State of Minnesota v. Philip Morris, Inc. et al, and the 1998 US Master Settlement Agreement (MSA), and posted electronically as a result of the latter. We searched the...
electronic documents archives of the Legacy Tobacco Documents Library at the University of California, San Francisco (http://legacy.library.ucsf.edu/), the seven tobacco industry defendants, and Tobacco Documents Online (http://tobaccodocuments.org/).

Using a snowball sampling approach, we expanded our search from the keywords “divestment”, “disinvestment”, and “divestiture” to the names of individuals and organisations involved in divestment activities, corporate financial documents that tracked and analysed institutional investing, and the “File areas” of key industry executives in legal, corporate, media, and financial affairs. We identified and analysed more than 1100 relevant industry documents, which we cite here representatively rather than exhaustively. (All but 19 of these documents came from PM files; thus what we know about divestment from the industry side is largely confined to this company.) We also reviewed contemporaneous news accounts and other materials related to institutional investment in, and divestment from tobacco.

To highlight key strategic and tactical issues in the struggle to control divestment framing, we compiled three case studies. We gathered additional information on California divestment from three electronic sources: the Legislative Council’s Official California Legislative Information (http://www.leginfo.ca.gov/), and two sites of the Secretary of State—California Automated Lobbying And Campaign Contribution & Expenditure Search System (Cal-Access) (http://cal-access.ss.ca.gov/), and the Political Reform Division (http://www.ss.ca.gov/prd/). We also used electronic sources and personal interviews to supplement more limited case studies of divestment issues in the states of North Dakota and Washington.

In addition, we interviewed divestment advocates and observers regarding their perceptions of events. We reviewed a detailed study of the history and economics of institutional tobacco investing and divestment, and supplemented this through discussions with public fund investment professionals.

Drawing on findings from the corporate documents, we constructed a chronology/geographic distribution of industry-monitored divestment and counter-divestment activity (fig 1), as well as a table of industry strategies for managing divestment threats (table 1). This study is part of a larger project documenting tobacco industry responses to public health campaigns that focus on the industry’s activities.

RESULTS

Background

Tobacco stock divestment initiatives arose from multiple sources over an extended period of time. During the 1980s, social welfare foundations (for example, Henry J Kaiser Family Foundation, Rockefeller Family Fund, Robert Wood Johnson Foundation) and health organisations (for example, American Cancer Society, American Lung Association, World Health Organization) began divesting, mostly to reconcile their institutional finances with their stated missions. Until the American Medical Association’s explicit call for medical school divestment in 1987, divestment mostly remained a “quiet” phenomenon. Activist-driven, publicly conducted divestment campaigns accelerated in 1990, focusing first on academia, and later on large private and public investment and retirement funds. Between 1990 and 2000, divestment discussions drawing media attention took place in at least 25 states. However, only seven states (plus a number of counties and cities) partially or fully divested (fig 1).

Divestment as a Philip Morris issue

Although it might seem that smaller or less profitable tobacco manufacturers would suffer most from campaigns to destabilise stock values, our research suggests that PM dominated counter-divestment activities from the beginning. Arguably, the company actually had the most at stake.

By 1990, PM controlled a 42% share of the US cigarette market, while that of RJ Reynolds, its closest competitor, had fallen to 29%. As the most visible symbol of the US tobacco industry, PM became a lightning rod for industry-focused advocacy campaigns. Although RJ Reynolds and others were also subjected to these actions, most attention was directed at PM.

PM was also the most exposed to a campaign targeting corporate stock because of its large number of outstanding common shares. Of the total market capitalisation of the four leading US cigarette manufacturers, 68% was credited to PM in the Master Settlement Agreement of 1998. (In 1990 and

Figure 1 US state level divestment.

Named states indicate successful divestments. MD, Maryland; NY, New York; FL, Florida; MA, Massachusetts; VT, Vermont; MN, Minnesota; CA, California.

[Table of data and further details provided in the text]
Table 1 Philip Morris (PM) anti-divestment campaign strategies

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most of 1991, at the outset of the divestment campaigns, RJ Reynolds was not even being publicly traded.) Consequently, even small losses in the value of PM stocks would have totalled large absolute dollar amounts. Geoffrey Bible, who led the company through most of the counter-divestment period, was elevated to CEO in 1994 to restore institutional shareholder confidence in faltering PM stock prices. Bible and other PM executives also had a large personal stake in healthy prices. For example, as of 31 December 1996, Bible and Chief Counsel Murray Bring together owned more than 1.35 million PM shares valued above $66 million, and held exercisable options on an additional 1.1 million shares worth a further $54.4 million.

While PM fought public funds divestment from its inception, the company’s resistance crystallized in 1996–97, as divestment advocacy was boosted by the growing number of states joining the Medicaid-recovery lawsuits. PM had initially acted jointly with industry allies, but its 1996–97 counter-divestment strategic plan explicitly sought to “focus on the company, not on the industry. The issue is not tobacco, but the company as an investment vehicle”. By taking this position, PM could sharpen its fiscal responsibility framing, while side-stepping an unwinnable argument about the health consequences of smoking. Distancing itself from the rest of the tobacco industry was also part of a larger plan to remake the company’s poor public image. PM began with two distinct advantages: those who would make decisions for or against divestment were mostly professionally pre-committed to a fiscal rather than a social perspective, and many believed their funds had been harmed by South Africa-related divestment in the 1980s. Where tobacco control advocates drew on South African divestment as an organising paradigm, PM constantly reminded decision-makers of the purported costs/losses of the earlier divestment.

Philip Morris’ counter-divestment strategies

PM’s counter-divestment strategies encompassed three domains: (a) intelligence-gathering; (b) internal resource organising; and (c) shaping the external environment (table 1). These are typical approaches to corporate issues management. In this paper, we focus chiefly on the third: PM’s effort to control the external environments in which public funds divestment was being debated.

Intelligence gathering

Top PM executives closely monitored divestment advocates, institutional investors, and third party allies. PM’s corporate secretary attended a 1990 Social Investing Conference, reporting to senior management on the presentations of leading divestment advocates. PM’s CEO, chief counsel and corporate secretary carefully scrutinised large institutional sell-offs and tracked institutional investors through mutual fund equity reports and summary updates.

Internal resource organising

Where early budgets rose and fell in correspondence with perceived divestment threats, the 1996–97 strategic planning process institutionalised a standing executive “divestment task force,” assigning responsibilities for “overall policy”, “day to day operations”, and “general communication with the public and media”. The company developed staff briefing materials that posed provocative questions like: “Isn’t it appropriate for government and private institutions to divest their holdings in a death-dealing industry?” The materials instructed staff to respond that divestment-contemplating states never offered to forgo “the millions of dollars tobacco raises for them in tax revenues” and that governments had “a fiduciary obligation to maximize their investments”. Through briefings conducted at state, regional, and national levels, PM informed lobbyists and consultants of “tools available to mitigate the possibility of divestment in their states”, including “expert witnesses, a response team, and written back-up such as white papers and talking points”.

Shaping the external environment

PM sought to reshape the environment within which divestment could be considered in two ways: by reframing the terms of the debate, and by restricting the legal opportunities for divestment. The company’s “targeted audiences” included officeholders and fund trustees, financial specialists, third party allies, the general public, and all types of media.

Tobacco control advocates emphasised the need for social responsibility, initially pointing to the “ethical contradiction” of “public institutions and nonprofits” using tobacco “profits … to pursue their agendas”. Later, they argued that tobacco investments would “undermine the health and educational programs of the state: tobacco investments will remain safe and profitable only if these efforts fail”. They added the fiscal argument that “the future profitability of tobacco is now very much in doubt in the face of smoking restrictions, proposed FDA regulation and cigarette excise tax policies”, but insisted that “[t]he most compelling reason for divesting tobacco securities is that these investments are morally indefensible” [italics in the original].

PM unremittingly countered that the sole duty of fund decision-makers was fiscal responsibility. “Investment policy should not be used to achieve social goals,” PM insisted. “The merits of political causes should be decided in the political arena not in the financial markets.”

PM insisted to the public and to investment decision-makers that it was not just a tobacco company but a diverse consumer products company, that investing in PM’s high-return securities was prudent for pension beneficiaries, taxpayers and local economies, and that to terminate such investments would be irresponsible, expensive, and possibly illegal. Through the personal and professional interactions of top executives, field operatives and agents, and third party allies, PM disseminated a continuously updated counter-divestment position paper, state-specific talking points, and commentaries in professional newsletters and journals, and mass media letters to the editor, op-eds, and articles.

How or whether PM acted on its goal to restructure the legal environment to all but bar divestment by public funds is less clear, although there is no question about the company’s intentions. “Long term efforts”, its 1996–97 counter-divestment strategic plan emphasised, should “focus on eliminating the opportunities to successfully introduce divestment initiatives, especially in the case of public pension funds.” The company would “work with legislators to pass…investment laws” to “limit the ability of fund managers or trustees to use anything but financial/economic considerations for investment decisions.”

Documents show that PM monitored legislative activities that would have served these purposes in at least three states.

The three case studies that follow demonstrate both the vigour and the persistence with which PM fought the divestment issue. They illustrate key strategies the company employed in re framing the terms of the debate, and show that PM followed proceedings that could restrict the legal possibilities for divestment. Finally, they illustrate the important role of policy champions.

California: 1990–2000

California’s public retirement system funds—CalPERS (public employees) and CalSTRS (state teachers)—are the largest...
in the United States, comprising more than 11% of an estimated $2.7 trillion in public funds.46 CalPERS was recently valued at $181.2 billion,70 and CalSTRS at $124.3 billion.71 PM’s California counter-divestment strategies centred on blocking divestment legislatively, but ultimately failed before the executive authority of a determined state treasurer.

PM initiated monitoring for California divestment activity in June 1990.72 When California Health and Human Services director Kenneth Kizer publicly urged divestment in January 1991, a copy of the CalPERS executive director’s negative response to Kizer was faxed to PM within a day of its sending to Kizer.73 The California Chamber of Commerce’s blasting of Kizer’s proposal as “the worst example of the use of public pension funds to direct social policy” was also quickly reported to PM.74 Kizer’s proposal went nowhere, but the California Tobacco Control Program’s assertive advertisements highlighting industry behaviour began to radically reshape Californians’ perceptions of the tobacco industry.75

In February 1996, divestment legislation introduced into the state assembly (AB 3445)76 was opposed by CalPERS, CalSTRS, the California Retired Teachers Association, and the state Chamber of Commerce and Manufacturers Association, as well as the Smokeless Tobacco Council and Dowd Relations. Identified by the Los Angeles Times as a “lobbyist for the Tobacco Institute”, Phil Dowd’s rhetoric mirrored PM’s. “Pension funds are not play toys to be manipulated for political or social purposes,” he told the assembly.77 PM observed that the bill was “killed” in committee two months later.78

In the following legislative session, the new Democratic majority held a hearing to “investigate the need for alternative investment strategies by the state pension funds regarding their tobacco holdings”.79 Although repeatedly requested to send representation,80–83 PM declined to do so officially.84 However, The Dolphin Group, which functioned as a third party agent for the tobacco industry in California,75 reported back to PM on the hearings.86 87

Three divestment bills entered before the 1997–98 California legislative session ultimately failed to pass out of the Assembly Appropriations Committee.86–88 Again, they met with opposition from the California Retired Teachers Association, Cal-Tax, the Smokeless Tobacco Council, the Tobacco Institute,77 and CalPERS.89 90 At the very least, the Assembly leadership did not press as hard as it might have to move the bills forward.

During this period, PM created a series of 4–7 page, computer-updatable, mini-position papers tailored for use before legislatures and pension boards.89 97 98 Each contained boilerplate promoting the company’s outstanding share returns and asserting its “slippery slope” argument: once exclude tobacco investments and there would remain no defence against other divestment activism. Each also contained state-specific sections addressing fiduciary responsibility laws; lost opportunity and added transaction costs for excluding tobacco investments; projected tax and/or pension fund contribution increases due to investment losses aggravated by aging populations; and PM’s contributions to the local economy in purchases, excise taxes and charitable giving.

PM’s 1998 California talking points quoted the state’s constitution to emphasise two basic principles of financial trusteeship, the prudent person rule:

The members of the retirement board of a public pension or retirement system shall discharge their duties…with the care, skill, prudence and diligence…that a prudent person…would use,

and the exclusivity rule:

The assets of a public pension or retirement system…shall be held for the exclusive purposes of providing benefits to participants.49

TI’s Dowd had testified that one of the bills would violate the prudent person rule by “limiting the scope of possible investments”, and the exclusivity rule because “The state’s tobacco investments are not public money. The money belongs to the pensioners”.92

This interpretation ignored a 1992 California law known to PM executives.93 Proposition 162, while intended to prevent public employee pension assets from being diverted into budget-balancing schemes,94 also sought to protect union and retiree interests from overly narrow-minded retirement fund boards.95 It stated that:

The Legislature may…continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required.96

PM’s California talking points claimed that, had California been divested between 1995 and 1998, the state would have lost $171 million in tobacco stock earnings, while incurring $700 000 in sales and replacement costs. Additionally, the company raised the spectre of a growing population of “elderly persons” requiring pension support from a shrinking “workforce”, but failed to address what percentage of either might consist of persons to whom the state was obligated.

State officials were also reminded that in 1996, PM had employed over 3000 Californians and purchased more than $1.25 billion in California goods and services (mostly through non-tobacco businesses), and paid almost $675 million in tobacco excise taxes. PM highlighted contributions of “millions of dollars to charities in California, including major grants to the San Diego Zoo, the University of Southern California (for a crisis intervention program) and California Food Policy Advocates”.97

PM, however, may have underestimated new State Treasurer Phil Angelides, a proponent of one of the 1997 bills,77 who had expressed both financial and social concerns about tobacco investments as he campaigned for office.94 95 In December 1999, Angelides used his executive authority to make permanent a de facto moratorium on tobacco stock purchases by the California Pooled Money Investment Account (the pooled funds of smaller government entities).100

The following February, Angelides signalled his intention to use seats on the boards of CalPERS and CalSTRS to press for their divestment from tobacco as well.101 At his request, PM provided Angelides’ office with the latest version of its position paper,102 and then continued to monitor his actions from both Sacramento and New York.103–107 Corporate headquarters’ query—“what can be done with Phil?”108—met with Sacramento’s less than reassuring reply: “Angelides has heard our view on this, but appears to be firmly dug in.”110

Pressed by Angelides, CalSTRS voted on 7 June 2000 to divest pending the drafting of technical authorisation criteria.109 CalPERS shortly followed.98 99 100


PM’s activities in this state illustrate how counter-divestment advocacy was coordinated between the field and New York City headquarters, and document the strategic shift from cooperation with other tobacco interests. They demonstrate the persistence of the company’s anti-divestment focus, and show that PM was attending to legislation that could have advanced the legal restriction of public funds divestment.43
In May 1990, Stephen McDonough, the state’s Preventive Health Section director, urged the North Dakota Public Employees Retirement System (NDPERS) to divest of tobacco holdings. Although McDonough recently described the effort as “never a real serious one”, PM responded seriously. In an August memo to vice-president Wall, PM’s regional government affairs director Mary Cramer laid out her actions and intentions in parallel tracks.

Locally, Cramer planned for the company’s lobbyist to “talk with the NDPERS executive director...and offer the assistance of PM”. After “lobbyists representing all tobacco interests...determine[d] who has the best contacts”, they would meet with board members, and then “determine what pressure must be applied to each individual”. Cramer detailed actions to recruit allies. Having met with the staff representative for the North Dakota Public Employees Association, she asked headquarters for a white paper directed to unions. “I have contacted Miller Brewing,” she continued. “Several barley growers have indicated that they would do whatever necessary to assist... [W]e will work with these individuals as well as the agricultural associations.”

Simultaneously, Cramer called upon corporate headquarters to provide counter-divestment arguments, and to document PM’s value to the state economy. “Tear Dr. McDonough’s letter apart,” she demanded. “I want every fact and figure...refuted.” She asked to know how much tobacco stock “contribute[d] to the total revenue of the retirement fund [and] to a list of ‘other American companies...directly profiting[from]...our tobacco production’, like paper manufacturer Kimberly Clark. She requested data on the value of PM purchases from North Dakota agricultural-producers...directly profiting[from]...our tobacco production”, like paper manufacturer Kimberly Clark. She requested data on the value of PM purchases from North Dakota agricultural-producers— “I have been told...that we are a major purchaser of the sugar beet crop”—and proposed a mass media campaign advertising PM’s purchases of local produce.

According to PM, the board referred the matter to an “Investment Subcommittee”. There is no evidence of the committee having acted by the next full board meeting in January 1991.

In its 1996 state overview, PM declared an “Objective[to] Defeat Divestment Issues” in North Dakota. PM also monitored a 1997 action in the state’s legislature that bore the title of PM’s 31 January 1997 Government Affairs Weekly Report noted the legislative introduction of “HB1092, Uniform State Laws on prudent investor act and duties of a trustee”, amending the North Dakota Century Code to define more specifically the responsibilities of investment fund trustees, and more strictly limit trustees’ focus “solely in the interests of the beneficiaries”. (The bill also contained language regarding contextualization and diversification discussed more fully under the Washington case, below.) The bill was signed into law by the Governor on 26 March 1997.

During this period, there was a national movement afoot to “replace...a patchwork of state[investing] standards with one uniform standard, with that standard being identical to the[federal] ERISA standard”. Uniform standards advocates insisted their only concern was to create a single, strong model of prudence and fiduciary responsibility, but such an ERISA-like standard would have barred states from considering social issues in pension investment decisions. In counter-example, California’s Proposition 162 specifically permitted the legislature to restrict state investments for social/political reasons as long as it maintained standards of fiduciary care and loyalty to beneficiaries.


This case illustrates the development of state legislation that would have made divestment more difficult, or, at least, made it easier to justify continued tobacco investments. This was the kind of legislation envisioned in the tobacco company’s 1996 strategic plan, and PM followed it closely in 1998.

As in California, PM’s Washington monitoring began in 1990, well in advance of the emergence of public divestment activities. From 1991 through 1997, PM followed divestment discussions by the Washington State Investment Board (WSIB), and in the state legislature, preparing testimony for the latter. In the summer of 1997, the company drafted a state-specific counter-divestment position paper, parrelling the California one detailed above.

Then, in January 1998, at WSIB’s request, bills were introduced before the legislature essentially permitting WSIB to engage in less sound financial decisions that could have favoured tobacco investments. SB 6192 authorised the investment board to:

1) consider investments not in isolation, but in the context of the...fund as a whole and...an overall investment strategy.

It mandated WSIB to:

2) diversify...investments unless...the board reasonably determines that the purposes of that fund are better served without diversifying.

PM tracked the course of the legislation from its introduction to its signing by the Governor in March. On the face of it, the requirements for diversification and contextualisation (considering each investment in the context of the whole portfolio) could both make divestment more difficult. As PM noted, excluding an entire industry would limit diversity, and as Dow had argued, might violate the prudence principle. Requiring that each investment be evaluated “as part of an overall investment strategy”, at the same time, could vitiate arguments about the financial soundness of a particular industry. According to National Council on Teacher Retirement attorney Cynthia Moore, contextualisation was on the agenda of many public fund managers at the time. Trustees desired increased flexibility to invest in “risky” stocks if they could show their portfolios were balanced by other investments of especially low risk.

Under rubrics like Washington’s “moderniz[ing]...state law to conform to...current practices”, or North Dakota’s aligning state standards with “modern portfolio theory”, a “Uniform Prudent Investor Act”, specifically intended to require diversification and contextualisation, was being circulated around state legislatures. Produced for the National Conference of Commissioners on Uniform State Laws, this model statute had been co-authored by anti-divestment advocate John Langbein, a Yale law professor who served as PM’s chief counter-divestment consultant and periodically rewrote the company’s evolving “Response to divestment proposals.”

The introduction of this model into Washington in 1998 (as into North Dakota during the previous year), fitted PM’s plan to restrict legislatively the divestment possibilities of public funds.

PM tracked a 2000 Washington divestment bill (HB 2743), but it was quickly consigned to the Appropriations Committee from which it appears never to have emerged. The state legislative web site records no subsequent divestment attempts.

DISCUSSION

Framing the debate

The depth of PM’s concerns about divestment is evidenced by its material and manpower commitments, and the intensity
and perseverance of its attention to the issue. The company sought to control how the debate was framed at two levels: (1) it argued that tobacco investments were good fiscal choices, and fiscal soundness was all that mattered; and (2) it planned to help write and pass laws barring divestment for any other than fiscal policy reasons. That divestment was eventually limited to seven states and an additional dozen or so cities and counties (for example, San Francisco and Denver in 1996, Philadelphia in 1997, Tucson in 1998), suggests that PM mostly succeeded in promoting its framing.

Divestment advocates advanced their own ethical social policy frame, while also arguing that tobacco investments were no longer sound fiscal policy. They found public platforms in states (and additional local jurisdictions), and they carried the field in 30% of these. In the jurisdictions where divestment advocacy succeeded, the issue was championed by at least one important political leader, and these leaders generally put forward negative fiscal as well as positive social policy frames.

While ethics-based arguments may have created pressure on decision-makers to undertake divestment discussions, in the end it was fiscal and not ethical arguments that moved them. Even in those instances where states elected to divest, it was arguments about the growing financial liability of the industry that carried the day. The divestment authorisation policies developed at CalSTRS and CalPERS referred to corporate bank ruptcies, aggressive lawsuits, enhanced government regulation, and capital flight via institutional divestments, and still, the fund directors argued against divestment to the end.

Pre- framing the law

Investment and divestment rules for public and private funds in the United States differ substantially among for-profit and non-profit organisations, unions, and government entities. PM, however, planned to eliminate such differences and any leeway they provided. At the minimum, the company benefited from the 1990s movement to abolish such difference through the nationwide adoption of a “Uniform Prudent Investor Act”. Local proponents spoke of modernising their states’ legislation, or bringing regulation into conformity with existing investment practices, but at least one co-author of the model act was a prominent anti-divestment theorist, and PM’s chief anti-divestment consultant. Adopting the model act would make divestment more difficult, supporting arguments that it limited diversification, while weakening arguments regarding the growing riskiness of tobacco industry investments.

The importance of policy leadership

Policy leadership is critical. This study suggests that both context and leadership are critical.

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Divestment as a tobacco control strategy

These efforts to promote divestment from tobacco stocks occurred during a time when the tobacco control movement was in its ascendancy. Heavy media coverage of the state attorneys general lawsuits, an activist movement increasingly focusing its attention on the tobacco industry, and increased interest in socially responsible investing as a way to bring pressure on corporate entities, shaped a context in which divestment would be taken seriously. However, as a tobacco control strategy, divestment may have both strengths and weaknesses. This study suggests that both context and leadership are critical.

Divestment’s strengths include the publicity surrounding divestment initiatives, which may engage stakeholders not otherwise concerned with smoking. For example, individuals with retirement funds invested in tobacco stocks may question the long term viability of the industry or the social costs of sustaining it. Divestment builds upon and strengthens ongoing industry delegitimisation efforts by labelling tobacco products as different from “dirtier” than other sources of profits, a prospect which PM documents indicate the company feared. Like campaigns for smoke-free spaces, public funds divestment campaigns provide numerous platforms for creating delegitimisation publicity (as opposed to shareholder initiatives, which only provide such opportunities at annual, company-controlled shareholder meetings). Such efforts have been shown to be an important part of successful tobacco control efforts, undermining the notion that the tobacco business is just like any other, while building public support for regulatory initiatives.

However, divestment efforts may also create disadvantages for tobacco control. First, they require considerable energy and political capital; divestment will likely always be an uphill battle as it requires fund managers not only to reach decisions about tobacco investments, but may require them to adopt new criteria for decision-making. Divestment activists have little control over the performance of tobacco stocks, which in recent years have risen steadily in what is regarded as a more stable political and regulatory environment than during the 1990s. Also, should divestment efforts result in a company deciding to go into private ownership rather than risk continued stock erosion, tobacco control advocates would lose access to valuable information about industry economics and activities, disclosure of which the U.S. requires from publicly traded companies.

Conclusion

The 1990s tobacco stock divestment movement put pressure on the tobacco industry, and caused top PM executives to urgently divest since 1994. It was not until May 1996, however, when his state was on the verge of joining the Medicaid suits, that Curran carried the argument: Maryland, it was asserted, sought both to bolster the credibility of its legal position, as well as to avoid suing one of its own investments. Similarly, Treasurer Jim Douglas spearheaded Vermont’s successful 1998 divestment, even if, as a PM consultant speculated, it was mostly to steal the issue from the Democrats.

Ironically, divestment was delayed for two years in Minnesota, when Attorney General Hubert H Humphrey III—one of the earliest and most successful Medicaid litigants—focused himself in 1996 from being the deciding factor in any state’s divestment because of his lawsuit participation. Minnesota divestment was delayed until the settlement of the suits in the summer of 1998. Meanwhile New York, in the absence of a political champion, became the first state to formally limit tobacco investments in April 1996, but stopped short of actual divestment.
While previous research using tobacco industry documents has shown how Philip Morris (PM) stymied divestment at medically prestigious universities, this study describes PM’s role in combating divestment by financially significant government funds. It demonstrates how the tobacco company countered divestment advocates’ framing of the issue as one of social responsibility with its own preferred framing of fiscal responsibility, considers the role of policy champions in advancing divestment actions, and examines the future implications of divestment as a tobacco control strategy.

What this paper adds

expend considerable time and resources defending against it. Divestment advocacy may have been of limited success in convincing public fund decision-makers to withdraw their funds’ financial resources from the tobacco industry, but the states where divestment advocates succeeded in whole or in part were/are highly visible, often trendsetters in public health and social policymaking. This suggests that an important measurement of the impact of stock divestment advocacy as a tobacco control strategy may be the extent to which it is able to draw public and media attention to the destructive nature of the cigarette industry. Arguably, the industry is weakened whenever major institutional shareholders sell off their holdings, especially if this decision is publicly acknowledged. Even where divestment efforts are unsuccessful, however, they may advance public dialogue about the industry’s fundamental irresponsibility in continuing to promote products that addict and kill half their long time consumers, and the imprudence of continuing to support such a business.

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