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Advancing smoke-free policy adoption on the Navajo Nation

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ABSTRACT

Background Comprehensive smoke-free laws are effective at protecting non-smokers and reducing tobacco use, yet they are not widely adopted by tribal governments.

Methods A series of smoke-free policy initiatives on the Navajo Nation, beginning in 2008, were reviewed to identify key issues, successes and setbacks.

Results It has been essential that proposed policies acknowledge the Navajo people's spiritual use of *nát'oh*, a sacred plant used for gift-giving, medicinal purposes and traditional ceremonies, while simultaneously discouraging a secular use of commercial tobacco. Concern that smoke-free policies economically harm tribal casinos has been a major barrier to broad implementation of comprehensive smoke-free laws in Navajo Nation.

Conclusions It is necessary for tobacco control researchers and advocates to build relationships with tribal leaders and casino management in order to develop the business case that will take comprehensive smoke-free policies to scale throughout tribal lands.

INTRODUCTION

This article describes efforts conducted on the Navajo Nation to adopt comprehensive smoke-free legislation impacting worksites and public places, including casinos. It summarises tobacco use within its historical cultural context of the Navajo people; the problem of secondhand smoke exposure in casinos and Navajo Nation smoke-free policy campaigns, and concludes with a discussion of what can be learnt from these efforts to make progress in the future.

Navajo Nation is the largest geographic land-based Indian reservation in the USA, covering >27 000 square miles of New Mexico, Arizona and Utah. Navajo Nation maintains a three-branch government system consisting of executive, legislative and judicial branches. The legislative branch is comprised of a 24-member council, representing 110 chapter houses or communities. With >300 000 enrolled tribal members, the Navajo Nation is the second largest tribe in terms of population.¹ Because of its high unemployment rate (43%),² the Navajo Nation began to explore gaming as a form of economic development in the late 1990s and the Navajo people approved gaming in a 2004 referendum. In 2007, the Navajo Nation Council and the Navajo Nation President Joe Shirley approved a \$100 million line of credit for casino gaming development.

While smoking prevalence has been declining within the US general population, Navajo people are experiencing increasing rates of smoking, with

rates as high as 38% in some communities (nearly 17% greater than that observed in the US general population).^{3–5} The alarming rate of smoking is especially notable in the young adult and adolescent population, with current smoking rate of 26.5% among Navajo high school youth (8.4% greater than the general population).^{6,7}

Owing to the sovereign status of the Navajo Nation and other federally recognised tribes, tribal lands are exempt from state tobacco control laws. However, tribes have the authority to adopt laws that regulate smoking on tribal lands, including tribal casinos.⁸ While the states of Arizona, Utah and New Mexico implemented comprehensive smoke-free laws between 2007 and 2009,⁹ the Navajo Nation and most tribes have not adopted similar written comprehensive smoke-free policies.¹⁰

Because of the unique relation, the Navajo people have with *nát'oh*, a sacred plant used for gift-giving, medicinal purposes and traditional ceremonies, any educational and policy efforts on commercial tobacco use on the Navajo Nation are approached in a cultural context that reflects the role of *nát'oh*.^{11,12} In recent decades, though, *nát'oh* is increasingly replaced by, or used in combination with, commercial tobacco within ceremonial practices. This use of commercial tobacco is a topic of discussion and controversy among Navajo ceremonial healers and community members. (Lee A, personal communication, October 1, 2012).

Today, Navajo Nation is faced with a dilemma not found in cultures that do not have a sacred connection with tobacco: how to maintain the use of *nát'oh* that promotes spiritual growth and harmony, while discouraging secular uses of commercial tobacco. In addition, the Navajo Nation is dealing with the need to create economic development opportunities for its people while facing increasing rates of smoking and no comprehensive smoke-free policy.

A review of smoke-free policy efforts in Navajo Nation over time provides an opportunity to find out how these unique factors influence smoke-free policymaking on tribal lands.

SECONDHAND SMOKE EXPOSURE PROBLEM

The 2006 United States Surgeon General Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, concluded that there is no safe level of exposure to secondhand smoke and that establishing smoke-free environments is the only proven way to prevent exposure.¹³ A 2012 systematic review of smoke-free policies concluded that there is strong evidence that smoke-free policies are effective at: reducing exposure to secondhand



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smoke; increasing quitting behaviours; reducing tobacco use; reducing the initiation of tobacco use and reducing tobacco-related morbidity and mortality.^{14 15} This review also determined that smoke-free policies can substantially reduce healthcare costs and that they do not adversely impact businesses, including bars and restaurants.^{14 15}

While the public health benefits of smoke-free workplaces are well known, the gaming industry is a sector that lags in adopting comprehensive smoke-free policies.^{16–18} Casino workers and patrons are exposed to high levels of secondhand smoke, including carcinogens and fine particulate matter associated with cardiovascular disease (PM_{2.5}).^{18–23}

Air quality studies demonstrate that non-smoking areas within casinos, without physical barriers, provide no protection from secondhand smoke exposure; non-smoking areas, partially separated from smoking areas, provide minimal protection and smoke-free areas, completely separated from smoking areas by physical barriers, provide good protection.^{18 21 22} Studies show that a small portion of actively smoking casino patrons (7–12%) are responsible for the high levels of secondhand smoke found in casinos and ventilation systems are not effective at removing secondhand smoke.^{19 21 23} Among casinos that became smoke-free, pre- and postair quality measures demonstrated that the smoke-free policy virtually eliminated smoking-related air pollutants.^{19 23}

NAVAJO NATION SECONDHAND SMOKE LEGISLATIVE CAMPAIGN HISTORY

A grassroots coalition—Team Navajo—formed in 2006, after its leaders identified the lack of a comprehensive smoke-free policy as a major public health problem in Navajo Nation, because having no law: (1) fosters a social norm that commercial tobacco use is acceptable; (2) increases the likelihood that commercial tobacco use will lead to tobacco-caused diseases and (3) increases the risk of morbidity and mortality among non-smokers exposed to secondhand smoke. Team Navajo established goals to increase community involvement in tobacco control efforts, to reduce smoking among Navajo people and to protect non-smokers from secondhand smoke, all while respecting the role of *nát'oh* for ceremonial purposes. A key strategy was to promote legislation to prohibit the use of commercial tobacco in all public spaces and workplaces. The 120-member coalition engaged community members, ceremonial healers, local leaders, employers and non-Navajo advocacy organisations.

Educational outreach to chapter houses and community organisations stressed the differences between *nát'oh* and commercial tobacco. Initially, tobacco control was viewed as a low priority, but views changed as Navajo-specific smoking data were shared. In 2008, Team Navajo drafted strong legislation aligned with Navajo Nation Fundamental Laws—laws based on the customary, traditional and common principles of Navajo people.²⁴ In part, this legislation states:

The Navajo Nation hereby finds commercial tobacco to be harmful to the sacred elements of air and earth. Commercial tobacco disrespects the Navajo fundamental traditions. Commercial tobacco abuses our people and harms our environment resulting in disharmony with the body and the earth. “Air” embodies life. 1 N.N.C. §201. It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse. 1 N.N.C. §204 (E).²⁵

While the 2008 legislation stated that, ‘Bona fide religious and traditional ceremonial tobacco uses are not regulated by this

Act’, this was a topic of considerable discussion. As trusted spokespersons, Navajo ceremonial healers provided clarification and reassurance that ceremonial tobacco use would not be prohibited. ‘There is big difference between commercial tobacco—cigarettes or chew—and *nát'oh*. There have been studies by scientists on the ingredients that are in commercial tobacco’, said Anthony Lee, Sr., president of the Diné Hataalii Association (a pre-eminent association representing Navajo spiritual and ceremonial practitioners on the Navajo Nation). On the other hand, ‘*Nát'oh* has a role in many Navajo ceremonies and its use is governed by rules to produce beneficial results... There are protocols and a process involved and the idea behind that now is to educate people about the traditional uses of *nát'oh*’.²⁶

As radio is the primary source of communication to the Navajo people, Team Navajo conducted multiple radio forums to discuss the proposed legislation. In addition, Team Navajo created and distributed booklets that highlighted studies on the null economic effect from implementation of smoke-free policies in casinos. These efforts were instrumental in facilitating adoption of the Navajo Nation Commercial Tobacco-Free Act of 2008 by the 21st Navajo Nation Council in July 2008.

Shortly after this historical vote, a *Navajo Times* (a Navajo Nation owned newspaper) headline read ‘Smoking ban prompts 40% cut in casino jobs’ (figure 1).²⁷ Following this negative publicity and pressure from the Navajo Nation Gaming Enterprise (NNGE), an organisation established in 2006 to develop and oversee gaming venues, the Navajo Nation Commercial Tobacco-Free Act of 2008 was vetoed by Navajo Nation President Joe Shirley, Jr.²⁸ In his veto message, President Shirley stated, ‘The law is ambiguous about the type of tobacco which would be allowable for use in bona fide religious ceremonies. I am afraid the law can be construed to mean no commercial tobacco use for religious ceremonies. Further, the implementation of a smoking ban in our casinos puts the Navajo Nation at a significant competitive disadvantage just as we are beginning to venture into the casino business. According to statistics provided by the Navajo Nation Gaming Enterprise, we can expect a 20% reduction of project revenues. This means, essentially, that Navajo jobs will be cut, the Enterprise will default on the loan with the Nation, and the ability to seek outside financing from the other lending institutions is very unlikely, all of which would prohibit the development of additional gaming establishments’.²⁹ An attempt to override the President’s veto was unsuccessful.

In early 2009, Team Navajo met with partners to discuss a second legislative attempt to protect workers and the public from secondhand smoke. These partners included the Navajo Nation Council Health and Social Service Subcommittee, the Navajo Nation Division of Health, the Navajo Nation Department of Justice, the Navajo Nation Legislative Service and the Navajo Nation Indian Health Service. After considerable networking and revisions to the 2008 legislation—which retained the same wording protecting the traditional use of ceremonial *nát'oh*—the Navajo Nation Commercial Tobacco-Free Act of 2009 was assigned a tracking number (legislation number 0312-09) by the Navajo Nation Legislative Service. Assignment of a tracking number is the first step towards introducing a bill for consideration by the Council.

During this second campaign, Team Navajo’s educational outreach efforts were bolstered by a National Institute for Occupational Safety and Health study on casino workers and exposure to secondhand smoke. This study found significant exposure to secondhand smoke among casino workers and



Figure 1 Navajo times headline.

evidence of a tobacco-specific carcinogen in the urine of casino workers.³⁰ With this evidence, Team Navajo launched extensive educational outreach to Navajo leaders and communities consisting of radio forums, radio and newspaper advertising and participation in events such as fairs, church-affiliated rallies and ceremonial gatherings.

During the fall 2009 legislative session, Team Navajo cultivated legislative support among the seven Navajo Nation Council Delegates' Standing Committees: Judiciary, Public Safety, Government Services, Economic Development, Health & Social Services, Budget & Finance and Ethics & Rules. Before legislation can be brought before the tribal council for a vote, formal support from these committees is required. However, over time, support eroded, culminating in five of the seven standing committees introducing an exemption from the smoke-free requirements for casinos. Team Navajo strongly opposed this exemption, because it would not provide equal workplace protection from secondhand smoke. Consequently, the bill sponsor and a Team Navajo member successfully worked to kill the legislation.

Following two unsuccessful attempts to pass comprehensive smoke-free legislation, Team Navajo regrouped and strategised a plan for future legislation. During this period, Ben Shelly who was the Vice President under Joe Shirley administration was elected as a President of the Navajo Nation.

In January 2011, Team Navajo began a third campaign for comprehensive smoke-free legislation. However, the political complexity for such a campaign had increased substantially from the time Team Navajo began its efforts in 2008. Navajo Nation now owned and operated four casinos and was in the process of building a fifth resort casino. As a result, the main

opposition to the policy became NNGE (figure 2).³¹ Team Navajo's advocacy and education strategies emphasised the importance of smoke-free environments for all employees, including casino workers. In addition, Team Navajo met with President Ben Shelly and his administration regularly to seek support for a smoke-free law. On 26 April 2011, President Shelly signed Executive Order 02-211, which prohibited the use of commercial tobacco products in all public spaces and workplaces, including casinos within the Navajo Nation.³² However, Navajo Nation Attorney General Harrison Tsosie nullified the Executive Order on the grounds that the President did not have the legal authority to issue a prohibition on smoking that extended beyond the executive branch.³³

Despite this setback, the Executive Order raised awareness about the need to protect the public and workers from secondhand smoke and it laid the groundwork for a fourth campaign. With President Shelly's support, Team Navajo introduced the *Navajo Nation Commercial Tobacco-Free and Smoke-free Act of 2011* (legislation number 0261). In response, the NNGE introduced a counter proposal, *Navajo Nation Smoking Regulation Act of 2011* (legislation number 0241). NNGE's bill proposed prohibiting the use of cigarettes and secondhand smoke in all public spaces and workplaces, except for casino gaming floors, and would have exempted casinos from secondhand smoke regulation until all their construction debts were paid.³⁴ NNGE conducted a campaign alleging the loss of tribal revenues if smoking were prohibited in casinos. Team Navajo's comprehensive secondhand smoke protection bill (legislation number 0261), with its inclusion of casinos, was not able to overcome these allegations, despite Team Navajo's promotion of research evidence, showing that casino revenues would not be affected

Figure 2 NNGE Ad in Navajo times. NNGE, Navajo Nation Gaming Enterprise.

Finding the Right Balance:
A Sensible Approach to the Smoking Ban Issue
Smoke-Free Navajo Nation Act of 2011, Legislation No. 0240-11

The Navajo Nation Gaming Enterprise seeks to work with the Navajo Nation to coordinate efforts with the Arizona and New Mexico Indian Gaming Associations to ban smoking in **ALL Indian casinos – not just singling out Navajo Casinos – and to fulfill ALL debt obligations before a total smoking ban is implemented.** NNGE is a fierce believer that working together to meet on common ground, yet still educate the public about the health issues involved with smoking, will lead to a win-win for all sides.

The Navajo Casino Exception

Legislation No. 0240-11 seeks to balance the economic interests of the Navajo Nation with health and safety concerns associated with smoking commercial tobacco. This proposed legislation presents a reasonable and fair approach to restricting smoking on the Navajo Nation, and, overtime, includes Navajo casinos. The legislation establishes new common ground, ensuring healthy environments while maintaining job security for many casino and construction workers, construction-related workers and tribal business contractors.

The proposal, supported by the Navajo Nation Gaming Enterprise, looks to eliminate smoking in public venues and workplaces, but creates an exception for Navajo Casinos. This will enable the NNGE to repay its debt obligations to the Nation. Under the present loan agreement, the NNGE is indebted to the Navajo Nation for several years. The proposed legislation allows the NNGE the time necessary to repay its debt to the Nation. This will ensure that the Nation receives its repayment, plus interest, on the loan from the NNGE and that needed jobs will continue. Once the loans are repaid, Navajo casinos can become smoke-free.

The proposal also allows Navajo casinos to succeed and compete with surrounding Indian-owned and non-Indian owned casinos and resorts by removing the threat of isolating Navajo casinos with a total smoking ban.

The Smoke-Free Navajo Nation Act of 2011 also works to ensure the health of the Navajo Nation gaming economy

With more than half of the Navajo Nation looking for work, it is important to understand the many ways the Navajo Nation gaming initiative maintains and creates jobs for the Navajo Nation. If the proposed Smoke-Free Navajo Nation Act of 2011 passes, many of our members will be presented with additional job opportunities, including casino jobs, management positions, construction work, construction-related jobs and tribal business contracts, helping to reduce the all ready high unemployment rate.

“The proposal in front of our leaders represents a sensible approach to balancing the economic interests of the Navajo Nation while also protecting members of the Navajo Nation from the harmful impacts of second-hand smoke.”

Sean McCabe, Chairman, NNGE

More than 480 people are currently employed in Navajo casinos. Of them, 98 percent are members of the Navajo Nation.

The NNGE is striving to bring over 1,800 new full-time jobs. Additionally, over 2,800 construction and construction-related jobs are needed to build the Twin Arrows Navajo Casino Resort in the Luepp Chapter and the Pinta Road Navajo Casino and Travel Plaza in the Nahat’adehli Chapter. If constructed, these two facilities will provide individuals with wages and benefits for their families and surrounding community. Utilities and infrastructure like water, sewer and electrical services, which do not presently exist in some areas, will also be brought to further develop these regions.

NNGE supports the proposed Smoke-Free Navajo Nation Act of 2011 and believes it is a fair and reasonable approach to banning smoking on the Nation. The proposal protects jobs and job creation while also protecting the health and wellness of all Navajo Nation citizens from the effects of second-hand smoke. Passing the proposed Smoke-Free Navajo Nation Act of 2011 is a good business decision for the Navajo Nation.

3-D rendering of the proposed Twin Arrows Navajo Casino Resort

by smoke-free policies. The bill lost support and did not make it past the requisite committees.

The NNGE bill was heard during the Navajo Nation Council’s 2011 summer session. Despite a debate highlighting that the bill failed to protect casino workers and patrons from secondhand smoke, it passed on a 14 to 5 vote.³⁵ President Shelly vetoed the bill, indicating his interest in protecting all Navajo people—including those who work in casinos from exposure to commercial tobacco smoke. A Council attempt to override the veto failed.³⁶ President Shelly’s veto message to the Council was strong and to the point: ‘I re-pledge my

commitment to protect our Navajo People from cancer or diseases caused by exposure to secondhand smoke or tobacco use. All partners such as Navajo Division of Health, Division of Public Safety, Judicial Branch, and the Navajo Nation Gaming Enterprise should work together to draft a bill that considers a “healthy lifestyle for the Navajo people”. The passage of this legislation does not adequately address any given employees who are subjected to a smoking workplace environment’.³⁷

On 14 August 2014, Navajo Nation President Shelly signed Executive Order 12-2014 prohibiting the use of all commercial tobacco in all indoor government spaces operated by the

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Executive Branch and within 25 feet of all entrances, windows and ventilations systems. In announcing the Executive Order, Team Navajo was acknowledged for its education and advocacy efforts.³⁷ While this was a success in establishing the first nationwide smoke-free legislation in Navajo Nation, it was much more limited in reach than the previous Executive Order, because it does not cover public spaces and workplaces, nor government spaces owned by the Judicial and Legislative branches, the latter of which includes all 110 chapter houses. However, the Executive Order does not pre-empt the Navajo Nation from enacting a more comprehensive policy that covers casinos and other non-government facilities.

Since May 2014, other grassroots organisations have furthered smoke-free policy efforts in Navajo communities. From May 2014 to April 2016, 39 Navajo Nation Chapter Houses in New Mexico have passed resolutions prohibiting secondhand smoke exposure in all public spaces and workplaces within their jurisdictions. It is worth noting that, despite an initial positive reception by leadership in one of the New Mexico chapter houses with a casino, further attempts to discuss a smoke-free resolution with them were met with no response.

DISCUSSION

Team Navajo directly targeted the public and elected officials with messages about the toxicity of secondhand smoke, the need to protect non-smokers and respect for the role of *nát'oh* in Navajo culture. This strategy was persuasive as evidenced by the consideration and adoption of multiple smoke-free policy proposals, all of which included clauses clearly relating those three messages. However, the strategy did not include simultaneously cultivating a relationship with casino management, which ultimately derailed adoption of a smoke-free law that included casinos. In contrast, Klepeis *et al*²³ reported on a tribal casino smoke-free policy campaign that worked directly with Win River Casino management and indirectly with the California-based Redding Rancheria tribal council. Win River Casino general manager, Gary Hayward, authorised casino air monitoring, employee surveys and patron assessments. This data-driven approach resulted in adoption of a smoke-free casino policy in January 2014.²³ However, similar to the Navajo Nation experience, Redding Rancheria tribal council concerns with revenue resulted in a rollback of the 100% smoke-free policy to a 70% smoke-free policy.²³ While these two experiences illustrate that financial concerns are a barrier to casino secondhand smoke policy adoption, Leischow *et al*¹⁰ identified 12 of 394 smoke-free tribal casinos, suggesting that a business case can be made for smoke-free tribal casinos. Babb *et al*¹⁷ recommended assessing the economic impact of smoke-free casino policies in the context of potential savings from reduced healthcare, cleaning and other costs. Strengthening collaboration between researchers, health groups and casinos would facilitate this type of analysis.

A strength of Team Navajo's policy campaign was the relationship it built with Navajo Nation President Shelly. Similarly, the Redding Rancheria policy campaign developed an important ally in casino manager Gary Hayward.²³ Health messaging provided to them by advocates motivated both of these decision makers. Providing such evidence to internal champions is crucial to policy success.

CONCLUSION

Smoke-free laws are an effective, evidence-based solution that protect non-smokers, reduce smoking and prevent youth tobacco use. Such laws are within the sovereign authority of

What this paper adds

- ▶ Federally recognized American Indian tribes like the Navajo Nation are sovereign and exempt from state tobacco control laws. Few tribal governments have adopted comprehensive smoke-free laws.
- ▶ Fears of negative economic impacts on tribal casinos have been a significant barrier to the adoption of comprehensive smoke-free laws in Navajo Nation.
- ▶ Smoke-free policies in Navajo Nation must acknowledge the spiritual use of *nát'oh* (sacred tobacco), while discouraging secular use of commercial tobacco. Tobacco control researchers and advocates must build relationships with tribal leaders and casino management to develop the business case that will take comprehensive smoke-free policies to scale throughout tribal lands.

tribes to act; however, laws that exempt casinos foster health disparities. A concern that these laws economically harm tribal casinos is a major barrier to their broad dissemination. Building relationships with tribal leaders and casino management appears to be essential to developing the business case that will take this intervention to scale throughout tribal lands.

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