Lessons from the Tobacco Master Settlement Agreement of 1998

Mark E. Greenwold

October 23, 2019

Smoking prior to State lawsuits

- Cigarette smoking widely accepted as normal, encouraged by federal and state policies
- Large majority of smokers start as teen-agers, high school smoking rates above 35%
- No federal regulations, no state clean air laws
- Cigarette companies had never lost a lawsuit brought by a smoker

Progress of State Lawsuits

- 1994 Mississippi sues major tobacco companies
- 1994 Congressional hearings expose industry misconduct
- 1996 States obtain massive documentary evidence, settle with Liggett
- 1997 Tobacco Resolution proposed; Mississippi, Florida, Texas settle lawsuits
- 1998 Tobacco Resolution fails; Minnesota lawsuit settled

- November 23, 1998 Tobacco Master Settlement Agreement between all other States and all major tobacco companies representing 99% of the market

Goals of the Leading State AGs

Sharply reduce youth smoking and addiction

Denormalize tobacco use—expose and prevent industry misconduct

Obtain monetary compensation from tobacco companies for a portion of the costs of tobacco-related disease borne by the States

Finance state tobacco control programs

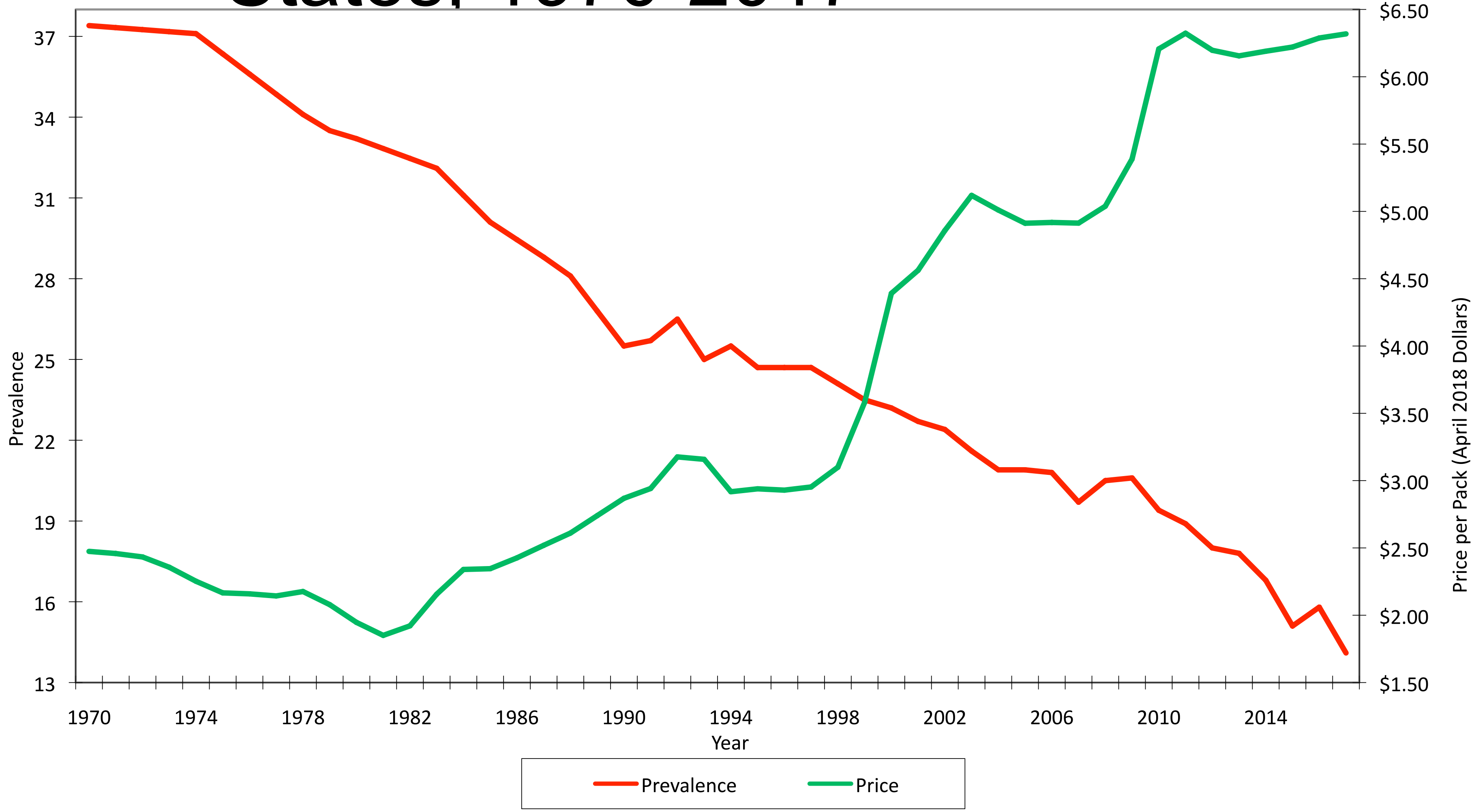
Goals of the Tobacco Companies

- Avoid potential multi-billion-dollar judgments that would put them in bankruptcy.
- Continue to sell product.
- Establish a payment stream that could be supported by increased sales prices.
- Preserve market share by imposing obligations on non-settling companies.
- Enlist states to enforce payment obligations of non-settling companies on pain of severe reductions in payments.

Major provisions of the MSA

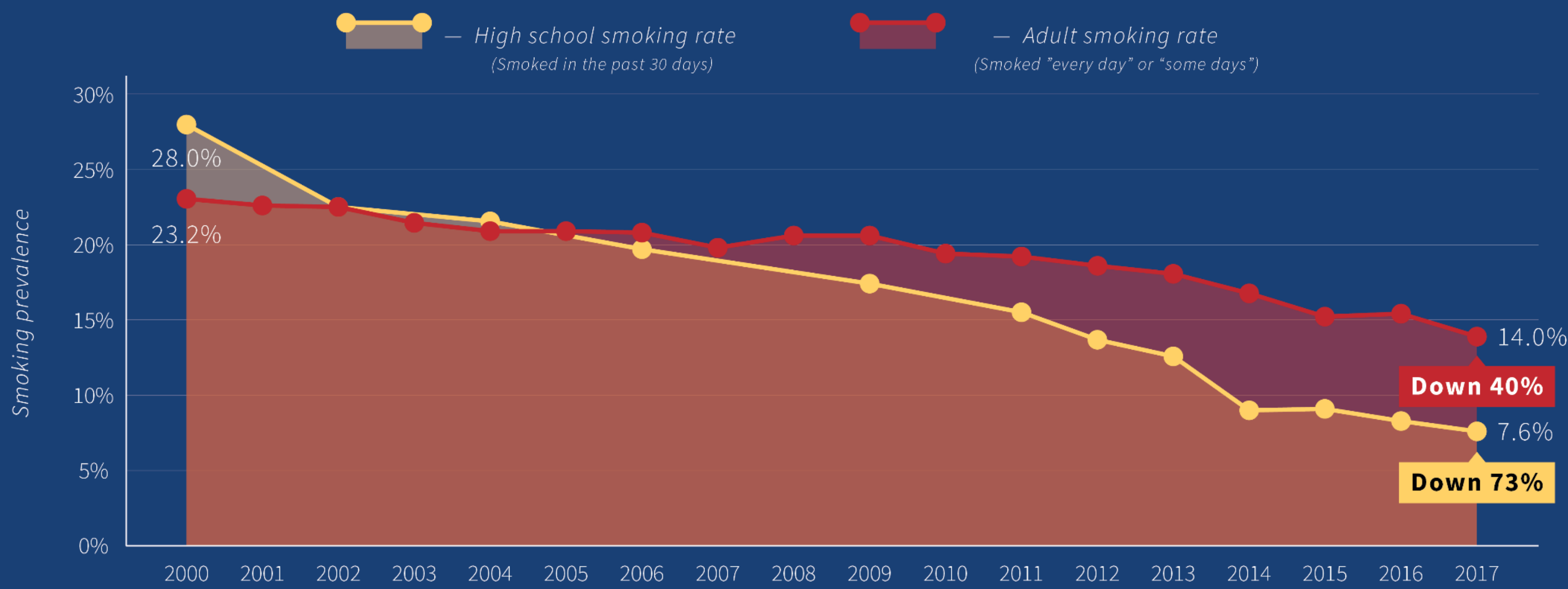
- Initial and annual payments by companies to States under a formula based on annual level of cigarette sales.
- Payments to be made in perpetuity. No fixed payment amount.
- Potential reduction in payments if settling companies lose market share.
- Restrictions on advertising, marketing and promotion of cigarettes.
- Foundation created to engage in ant-smoking efforts.

Cigarette Prices and Adult Smoking Prevalence, United States, 1970-2017



ADULT AND HIGH SCHOOL SMOKING TRENDS, 2000-2017

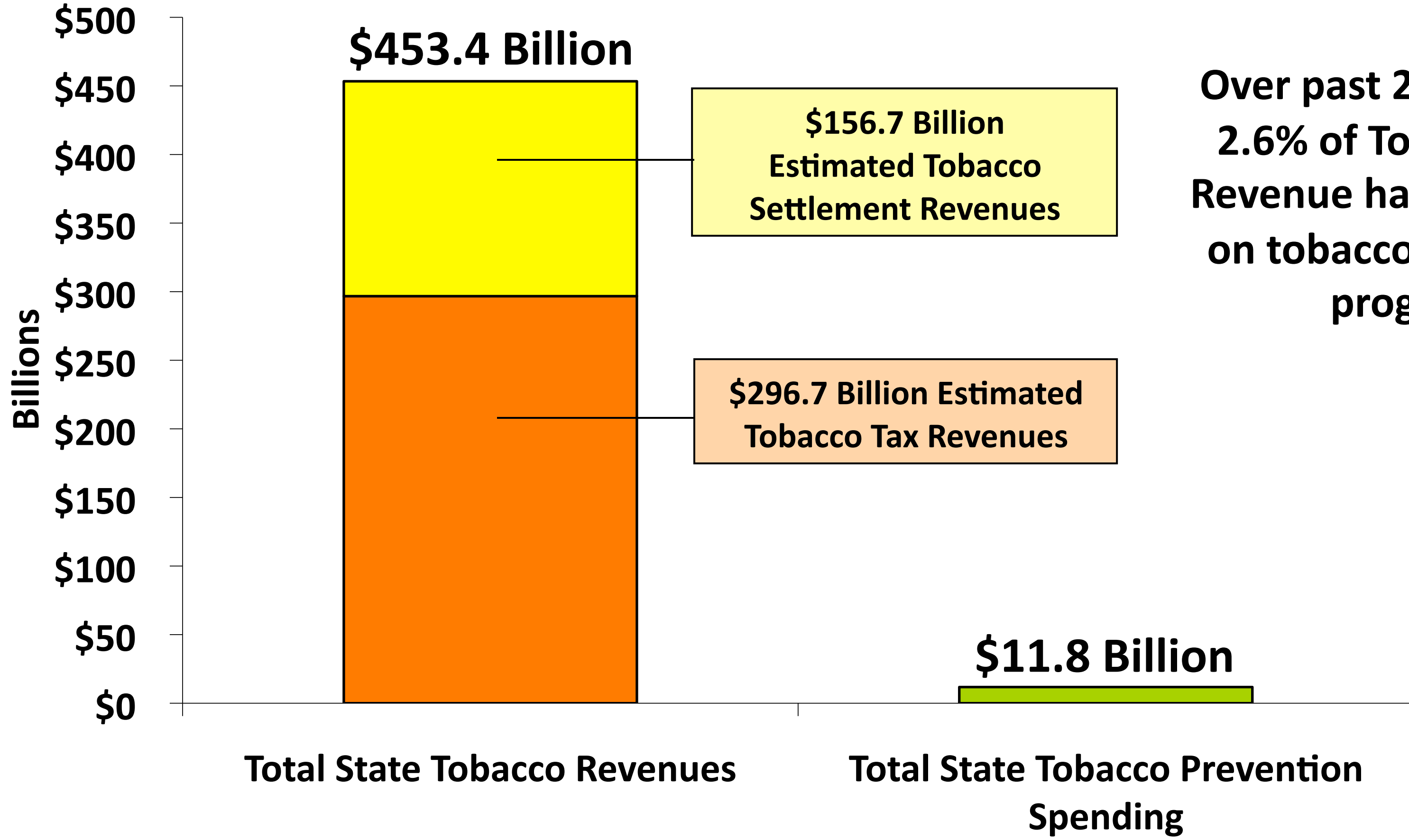
From 2000-2017, smoking declined 73% among high school students and 40% among adults



Sources: National Health Interview Study, 2000-2017; National Youth Tobacco Survey, 2000-2017

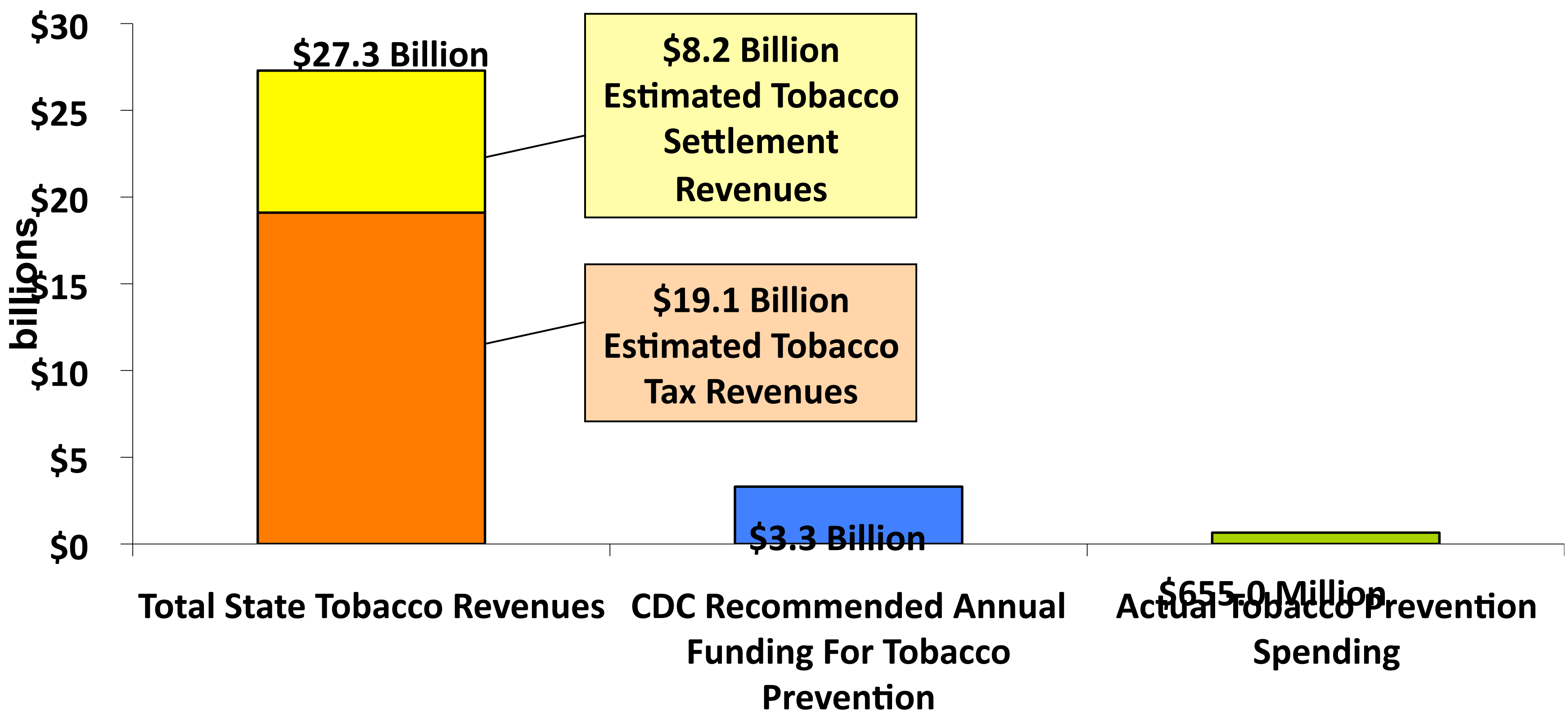
TobaccoFreeKids.org >

Total State Tobacco Revenue vs. Total State Spending on Tobacco Prevention FY2000 - FY2019



Over past 20 years, just 2.6% of Total Tobacco Revenue has been spent on tobacco prevention programs

Total FY2019 State Tobacco Prevention Spending vs. State Tobacco Revenue and CDC Recommendations



Results of the MSA

Substantial stimulus to denormalization of smoking—sharp decline in smoking, especially among youth

Payments to states not used for tobacco control

Payments substantially less than expected

Tobacco companies protected their domestic profits even while sales declined

States enlisted to protect the market share of the major tobacco companies in order to avoid loss of payments

Lessons from the MSA

Unless payment stream is restricted for intended purposes it will not be spent for those purposes.

Payment stream is threatened by potential securitization.

Indian tribes should be a beneficiary in the negotiation of agreements and should have a stake in their enforcement.

States should avoid arrangements that create incentives to protect market share of settling defendants.

States should avoid arrangements that have the potential to divide them.