

**CONFIDENTIAL:**  
**MINNESOTA TOBACCO LITIGATION**

**MEMORANDUM**

September 22, 1992

**TO:** Management Committee  
Coordinating Committee

**FROM:** Bob McAdam

**SUBJECT:** Arkansas Tax Initiative Update

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**Overview**

We are continuing to fight the legal battle aimed at taking the initiative off the ballot. However the legal challenge may not be resolved for some time. As a consequence, we must proceed under the assumption that the measure will be on the November ballot. Thus, nearly all of our campaign operations are up and running, aimed at achieving victory in the November election.

**Legal Status**

The Secretary of State certified the proponents petitions with a surplus of 786 signatures. We have filed a suit with the Arkansas Supreme Court alleging that the Secretary of State incorrectly included signatures in that total that were either forged or that were contained on petitions that were incorrectly circulated or notarized. The total number of signatures that were incorrectly included in the validated total exceeds the number of signatures the proponents had in excess of their minimum.

A second aspect of our suit before the court involves a challenge to the ballot title on the grounds that it is inaccurate in its summary for failing to include a number of issues contained in the initiative.

The legal process does not allow for the challenge of any part of the petition process in the courts until the proponents have achieved certification from the Secretary of State. Consequently, we were unable to file our motion with the court until August. The Court takes recess in August and did not reconvene until September 8. Since that date, the court has considered our motion and begun the process by considering the appointment of a Master to hear evidence on the invalid signatures and to set a hearing schedule.

The Court has decided to consider the two aspects of our challenge separately. They will hear the challenge of the ballot title by the end of September. The hearing for the signature irregularities is scheduled for October 15.

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The late hearing schedule for the signature problems, which we believe is the stronger aspect of our case, is a bit of a disappointment. Should we win either part of our case, it is possible for the court to order the issue to be blocked on the ballot and for the results not to be counted. Despite the possible victory, a substantial amount of the funds budgeted for this campaign will need to be spent by the time a decision is reached in mid to late October.

AAAs

A major issue for both the legal aspects of this effort, as well as the campaign itself, has been the role of the Arkansas Area Agencies on Aging (AAAs). These organizations are private foundations organized in nine regions around the state to provide services to the elderly (home nursing care, meals on wheels, etc.) under contract to the state and federal governments. Each AAA has an executive director and several employees who report to an independent board. The proponents of the initiative (CHAR) relied extensively on the AAAs as a field organization during the signature gathering process. The AAAs are scheduled to receive 15% of the proceeds from the initiative, if it should pass.

Most of the irregularities we have found in checking the validity of the signatures and examining the activities of the opposition through freedom of information requests has involved the AAAs:

- AAA employees circulated petitions on official time
- AAA employees acted as "super-notaries", notarizing petitions from as many as 30 counties at a time.
- AAA employees were coerced into circulating petitions to elderly clients
- AAAs used official funds to hire additional petition circulators
- AAAs failed to report any of their activities as in-kind contributions to the effort

Beyond the abuses of the AAAs during the petition process, there has been a history of abuse of official funds by a number of these agencies. Excessive travel, living expenses, salaries, phantom employees, etc., have all been part of the history of the AAAs in Arkansas.

Our FOI requests of the AAAs have yielded a surprising amount of information about how this initiative was launched. Several meetings were held at which all of the recipients of the proceeds met to decide exactly what percentage of the money each participant would get. Furthermore, they readily admit to using survey data to determine which of the most popular programs would receive funds from the initiative.

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All of this evidence is useful in establishing a pattern of abuse. We expect to have misdemeanor charges filed against a number of CHAR officials, notaries and petition circulators who knowingly abused the petition process. We expect to be able to use the abuse of the AAA funds as an issue in the campaign. We believe that the AAA abuse of the signature process may lead to knocking the issue off the ballot. And we believe what we have learned and what we are able to get reported on in the press will help deter proponents in other states from engaging in this kind of activity in the future.

### Opposition Activities

The Coalition for a Healthy Arkansas (CHAR) has been relatively active in talking with the news media about the initiative. Our understanding is that they have had difficulty in raising money for their campaign. They recently launched a radio campaign during Arkansas Razorbacks football broadcasts. The radio effort has been described as extremely weak and our local media experts do not believe they will get much effect from their buy.

### Survey Data

Our benchmark survey in July showed that 68% of the voters supported the initiative, but that there were substantial arguments that could be waged to reduce that support level significantly. We have just completed (as of 9/23) a follow-up survey which indicates that the support level for the initiative is %.

We conducted focus group tests of a first series of advertising themes based on the original data. Through that process we learned that our messages needed to be substantially more specific and credible.

### Campaign Themes

Survey research and focus groups have yielded a list of several campaign themes which we believe will move voters towards opposing the initiative:

Anti-Tax: There is a substantial base of opposition to any and all taxes in Arkansas. Surprisingly, the anti-tax theme works especially well with minority voters. Arkansas has a history of enacting special taxes, although few are earmarked like this one.

Anti-Bureaucracy: The Department of Human Services and the Department of Health, both of which would be charged with disbursing parts of the proceeds of this tax are rife with bureaucratic abuse. We have a number of examples of excessive travel expenses by various administrators and bureaucratic salaries rising at a disproportionate rate with the Arkansas private sector.

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The State Constitutional Officers Fund, which under Arkansas law receives a portion of the proceeds of any tax, also has some examples of inappropriate travel and expenses.

Control Health Care Costs Before Adding to Their Budget: The initiative dedicates 50% of the proceeds of the tax to Medicaid. As in other states, Medicaid in Arkansas has had a recent history of severe abuse and has been issuing significant fines to a variety of abusers in the state. The theme resonates well with voters, although the linkage between health care costs and tobacco is somewhat tenuous.

AAA Abuse: The above-mentioned abuses by AAAs should become an issue in the campaign. We are still testing the issue through focus groups and survey research to see how to use the information that we have most effectively.

#### Media

We have contracted the original planned television and radio purchase to attempt to take advantage of a favorable court decision should it occur. Consequently, we do not intend to go on the air until the first week of October. We will probably spend less on television and radio as a result; however, we will also probably need to increase our expenditure on coalition building as a result.

We have changed the creative team in Arkansas to include some fresh talent who we believe will be better able to incorporate the factual information we have into a credible and motivating electronic media campaign.

#### Voter Contact

The voter contact component of the campaign includes both direct mail and telephone bank operations. We have assembled the statewide voter list and merged the company lists with it to identify unregistered smokers. We are in the process of contacting these people through the mail and by telephone.

As per the plan, we will begin broad based telephone issue identification shortly and will follow that contact with a direct mail appeal based on the individual responses to the phone interview.

#### Coalitions

We have not had significant success at getting a large number of other groups to join our coalition. We expect to have some other industry groups (poultry, timber, soft drinks, etc.) join with us. Other organizations that have taken a position against the initiative, such as

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the League of Women Voters, are not interested in joining with us; however, they will oppose the initiative with their members and through public statements.

We were unable to obtain the support of the state AFL-CIO. We do expect to be able to get mailings from individual unions who will communicate with their members in opposition to this issue.

We are working on a plan to mobilize the minority community. Roughly 25% of the voting population in Arkansas is black. We are attempting to reach opinion leaders in the black community to convince them to take positions in opposition to this initiative.

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