

Testimony of Edward Miller in Support of LD 1523 An Act To Establish the Trust for a Healthy Maine

Good morning Senator Claxton, Representative Meyer and members of the Committee on Health and Human Services. My name is Ed Miller. I am a resident of Hallowell and a retired public health professional who worked for over 12 years in the Maine Department of Health and Human Services and 29 years for the American Lung Association. I have been advocating for funding for prevention from the Fund for a Healthy Maine since it was created more than two decades ago. I am pleased to appear here today to support LD 1523, An Act To Establish the Trust for a Healthy Maine.

A 1996 Federal CDC study found that Maine had the highest young adult smoking rate in the United States. This finding sent shock waves through the public health community in the state. Governor King and the Legislature took immediate action by doubling the state excise tax on cigarettes and dedicated \$3 million to support a tobacco control program within the Maine CDC. This was Maine's first investment of state funds to address smoking. It consisted largely of a mass media campaign designed to both educate the public about the problem and gain support for the additional funding needed to fully implement a comprehensive program. This additional funding came in 2000 from an unexpected event...the Master Settlement Agreement (MSA) between the states and the major tobacco companies.

The MSA was signed in November 1998 following individual state settlements in Mississippi, Florida, Minnesota and Texas in 1997. States had brought suits against the major tobacco companies under a variety of legal theories including state consumer protection and antitrust laws. They argued that cigarettes caused health problems that were being paid for by state tax dollars. Congress was asked by both parties to pass a global settlement but failed so the states and industry reached agreement on their own. In April of 2000 Maine received its first annual payment of about \$50 million to the Fund for a Healthy Maine (FHM). As difficult as it was to believe at the time, these payments were to be received in perpetuity. Annual payments are based on national sales volume of combustible cigarettes and payments can also be impacted by disputes from participating manufacturers. As you will hear in subsequent testimony, both of these variables are now coming into play in the current structural deficit within the Fund for a Healthy Maine.

You may hear that the settlement contained some special provision that favored spending these funds on Medicaid or health care in general. This is simply untrue. Despite the protests of much of the public health community, these funds went to states as completely unrestricted revenue. It also may be helpful to look at the original MSA document to get a sense of what the parties were thinking at the time. Not only did the settlement give money to the states, it also severely restricted tobacco advertising and promotion, established the American Legacy Foundation (now called the Truth Initiative) to prevent youth smoking and help smokers quit. It disbanded a number of tobacco industry Councils, Institutes and Centers that were little more than industry front groups.

I have attached the two-page Recitals section of the MSA to my testimony for you to review. Please note that there is not one reference in the Recitals to funding medical care. There are however, many points made about reducing youth smoking, restricting youth access to tobacco and improving public health.

Maine policymakers were solely responsible for determining the spending priorities for the new MSA dollars. They did the best job in the nation in using these funds for tobacco control and prevention programs. To get a clear picture of the original intent for how the funds were to be used in Maine it is necessary to look at the Fund for a Healthy Maine original statute and the early year budgets passed by the Maine Legislature and signed by Governor King. The Fund created nine program categories eligible for funding. These were: tobacco prevention and cessation, early childhood education, child care, home visitation, elderly low-cost drugs, substance abuse, family planning, medical care and oral health.

Since it took some time for the programs funded by this source to get fully operational, State FY 2002 provides typical example of the early legislative funding priorities. Of the \$47 million spent in FY 2002, \$13.6 million (29%) went to Tobacco Control and \$5.9 million for MaineCare (12%). However, by FY 2020 MaineCare spending reached \$31 million (54%) and Tobacco Control spent \$10.3 million (18%) of the \$57.6 million available. Over this time period, MaineCare funding increased 500% while Tobacco Program funding decreased 24%.

One critical provision in the FHM law was that the MSA funds were to be used to supplement, not supplant other state or federal funds. There are at least two reasons that this provision was needed. Policymakers wanted these unrestricted dollars used to provide ongoing support for reducing the impact of smoking, improving child health and preventing disease in Maine. But they also knew there would be ongoing political pressures to spend the money in many other ways.

While medical care was one of the original categories eligible for support from the Fund, it remained a relatively small percentage until the last decade. Due to supplantation, MaineCare is the now the largest program area supported by the settlement.

Given the future funding projections from the MSA, you and other policymakers will need to strongly support the use of these unique funds to prevent nicotine addiction and support prevention focused public health activities or they will be gone. MaineCare needs to be supported, but that should be an ongoing General Fund line item and not done at the expense of prevention.

Maine is unique in our culture of common sense and our bipartisan commitment to prevention. We don't wait for other states – we innovate and lead. You will not see an example from another state that is as comprehensive and forward-thinking as the Trust for a Healthy Maine. We have learned and adapted. Now it's time to once again do what no other state has done – make a fresh start and protect this special revenue for at least the next 20 years.

Thank you.

Edward Miller (edmill12750@gmail.com)

Edward Miller
Hallowell
LD 1523

MASTER SETTLEMENT AGREEMENT

This Master Settlement Agreement is made by the undersigned Settling State officials (on behalf of their respective Settling States) and the undersigned Participating Manufacturers to settle and resolve with finality all Released Claims against the Participating Manufacturers and related entities as set forth herein. This Agreement constitutes the documentation effecting this settlement with respect to each Settling State, and is intended to and shall be binding upon each Settling State and each Participating Manufacturer in accordance with the terms hereof.

I. RECITALS

WHEREAS, more than 40 States have commenced litigation asserting various claims for monetary, equitable and injunctive relief against certain tobacco product manufacturers and others as defendants, and the States that have not filed suit can potentially assert similar claims;

WHEREAS, the Settling States that have commenced litigation have sought to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws, in order to further the Settling States' policies regarding public health, including policies adopted to achieve a significant reduction in smoking by Youth;

WHEREAS, defendants have denied each and every one of the Settling States' allegations of unlawful conduct or wrongdoing and have asserted a number of defenses to the Settling States' claims, which defenses have been contested by the Settling States;

WHEREAS, the Settling States and the Participating Manufacturers are committed to reducing underage tobacco use by discouraging such use and by preventing Youth access to Tobacco Products;

WHEREAS, the Participating Manufacturers recognize the concern of the tobacco grower community that it may be adversely affected by the potential reduction in tobacco consumption resulting from this settlement, reaffirm their commitment to work cooperatively to address concerns about the potential adverse economic impact on such community, and will, within 30 days after the MSA Execution Date, meet with the political leadership of States with grower communities to address these economic concerns;

WHEREAS, the undersigned Settling State officials believe that entry into this Agreement and uniform consent decrees with the tobacco industry is necessary in order to further the Settling States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States; and

WHEREAS, the Settling States and the Participating Manufacturers wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts), and, therefore, have agreed to settle their respective lawsuits and potential claims pursuant to terms which will achieve for the Settling States and their citizens significant funding for the advancement of public health, the implementation of important tobacco-related public health measures, including the enforcement of the mandates and restrictions related to such measures, as well as funding for a national Foundation dedicated to significantly reducing the use of Tobacco Products by Youth;

NOW, THEREFORE, BE IT KNOWN THAT, in consideration of the implementation of tobacco-related health measures and the payments to be made by the Participating Manufacturers, the release and discharge of all claims by the Settling States, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Settling States and the Participating Manufacturers, acting by and through their authorized agents, memorialize and agree as follows: