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SWEET TALK:

**A SURVEY OF PERSUASIVE MESSAGING FROM TEN
SUGAR-SWEETENED BEVERAGE TAXATION REFERENDA**

A Thesis in

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by

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Abstract

America faces an obesity epidemic affecting both children and adults – one broadly tied to increased consumption of sugar-sweetened beverages (SSBs), such as soda. This public health crisis has instilled a strong drive in policymakers to identify causes and solutions. Health policy researchers quickly zeroed in on the potential of taxes or other regulations to disincentivize the consumption of sodas and other SSBs. SSB tax laws have been implemented by municipal legislatures and by voter referenda, with voter referenda proving the more successful method in early years. SSB tax referenda have faced stiff resistance from industry-funded anti-tax messaging and advertising campaigns. Pro-tax forces have responded with dueling persuasive campaigns of their own. To this point, the public-facing messaging efforts of pro- and anti-SSB tax referendum groups have not been closely catalogued.

This study gathered and analyzed pro and antitax messaging from all US SSB tax referenda to date. The methods and strategies used in each campaign were identified. Common themes and arguments are distinguished and a set of particular decisions that appeared to heavily influence referendum outcomes are discussed.

While past research in the SSB taxation area has looked closely at specific campaigns or focused on lay press coverage of campaigns, to this point an overarching review of direct messaging strategies by pro and anti-tax organizers has not been conducted. This study identifies the changing tactics that both pro and anti-tax campaigns used during this period and identifies three factors in messaging approaches that influenced referendum outcomes. Finally, this study suggests how the successes and failures of both sides can potentially inform similar referendum efforts in the future.

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Introduction

For the majority of the 20th century, Americans battled nutrient deficiencies and underweight. Public understanding of nutrition was limited and the importance of sufficient consumption was a focus of nutrition education and communication efforts. In the latter part of the century the situation has undergone a dramatic reversal. In 1990 no states had a prevalence of obesity greater than 15%; by 2010 no state had a prevalence of obesity less than 20% (CDC, 2010). Today more than one third (36.5%) of all US adults are obese, and it is predicted that over 40% of all adults in the US will be obese by 2020. Obesity is a recognized risk factor for a number of serious diseases and health outcomes including all causes of death, high blood pressure, high cholesterol, type 2 diabetes, coronary heart disease, and stroke among many others (Schulze et al., 2004, Ogden, Carroll, Kit, & Flegal, 2014, CDC, 2016). Public understanding of the causes of obesity represents a new priority, and a new set of challenges, for institutional communicators. Public outreach and communication had a role in creating the obesity crisis, and holds the potential to also be a part of its solution.

One risk factor for all obesity-related outcomes is sugar-sweetened beverages (SSBs) (Park et al., 2015). The USDA defines SSBs as “Liquids that are sweetened with various forms of added sugars. These beverages include, but are not limited to, soda (regular, not sugar-free), fruitades, sports drinks, energy drinks, sweetened waters, and coffee and tea beverages with added sugars.” (HHS & USDA, 2015). Consumption of calories from SSBs generally increased in the U.S. from 1965 to the early 2000s (Duffey & Popkin, 2007), including specifically among children (Wang, Bleich, & Gortmaker, 2008), although a recent decline has partially reversed that trend (Kit, Fakhouri, Park, Nielsen, & Ogden, 2013). Based on data from the National Health and Nutrition Examination Survey (NHANES), approximately half of all US adults consumed one or more SSBs on any given day, equivalent to 7% of their total caloric intake (Kit, Fakhouri, Park, Nielsen, & Ogden, 2013). The high availability of HFCS as a sweetener has enabled a

general decrease in SSB costs, increase in portion sizes, and, ultimately, increase in the consumption that preceded and closely matched the onset of the obesity epidemic (Bray, Nielsen, & Popkin, 2004).

SSBs and Obesity. Researchers have produced an extensive body of research linking SSB consumption and weight gain. Systematic literature reviews have found an association between weight gain and both soft drink (Vartanian, Schwartz, & Brownell, 2007) and generalized SSB consumption (Malik, Schulze, & Hu, 2006). None of these results are particularly surprising, given that SSBs, particularly sodas, have long been seen as nutritively deficient sources of “empty” calories. As early as the 1940s, the American Medical Association mentioned soft drinks as a particular contributor of added sugar to the American diet, without any other macronutrient benefit (“Council on Foods and Nutrition,” 1942). On a volume basis, SSB consumption also may result in reduced intake of nutrient-dense food, causing heavy consumers to have lower intake of calcium, dietary fiber, and a variety of other essential nutrients. (Vartanian, Schwartz, & Brownell, 2007).

The evidence base connecting SSBs with obesity emerged at the same time that researchers began to calculate the tremendous macroeconomic costs of the obesity epidemic (Finkelstein, Trogdon, Cohen, & Dietz, 2009). Researchers and lawmakers considered a variety of policy interventions that could reduce SSB consumption in both adults and children, to both directly benefit public health, and to defray these costs. In looking for ways to reduce consumption behavior, researchers considered direct restrictions on large drink sizes, as well as banning vending machines that dispense SSBs in public schools (Mello, Pomeranz, & Moran, 2008, Pomeranz, 2012, Taber, Chiqui, Powell, & Chaloupka, 2012, Taber, Chiqui, Vuillaume, & Chaloupka, 2014). As research and policy development continued, however, some leaders were driven to act.

SSBs and Taxes. CDC estimates that the medical cost of obesity to the nation was \$147 billion in 2008 dollars (CDC, 2016). Given this cost, it is not surprising that local governments and states have

begun to take action to attempt to reduce consumption of SSBs through point of source actions such as vending machine regulations, calorie and nutrient posting in restaurants, and a recent surge in a tax on SSBs.

The first attempt to regulate access to SSBs that drew major public attention was then-New York City Mayor Michael Bloomberg's Sugary Drinks Portion Cap Rule, enacted in late 2012 (Maximum Beverage Size, 2012). The law restricted the maximum size of some SSBs sold in New York City, with a large number of significant exceptions. The portion cap was one in a series of smaller efforts to reduce SSB consumption by the New York municipal government, including more conventional school marketing restrictions and public education campaigns (Kansagra et al., 2015). The soda ban, as it would be called by its detractors, was uniquely contentious, and the subject of a blistering public messaging campaign by the American Beverage Association (ABA), the trade organization representing soda manufacturers, who made use of a wide cast of proxies and allies (Pilkington, 2013). After its passage, industry groups immediately sued and eventually prevailed in getting the law overturned as an act beyond the government's legal authority, in a case that eventually reached the New York Court of Appeals, the highest court in the state (*N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y. City Dep't of Health and Mental Hygiene*, 2014). The failure of this direct sale restriction did not dent Bloomberg's interest in promoting policies designed to reduce SSB intake nationwide— though future regulation attempts would take a very different form.

While Bloomberg's size cap was developed, implemented, opposed, and ultimately overturned, another, more popular policy, was developing in research circles. One of the most traditional inhibitory measures under consideration was a sin tax, which could discourage the distribution and sale of SSBs. Preliminary research on the viability of a soda tax did not have access to cases where a soda tax was actually in place, so alternative research methods had to be used, such as computational and statistical modeling based on prior small changes in sales taxes in various US states, or by asking participants in a

panel to estimate how they'd respond to a tax. Initial results were encouraging. Economic modeling that simulated changes in beverage demand suggested that even a half-cent-per ounce sales tax would have a dramatic reduction in both purchasing and consumption (Zhen, Finkelstein, Nonnemaker, Karns, & Todd, 2014). A weighty excise tax, applied to distributors and effecting consumers only indirectly, could be even more effective overall (Brownell et al., 2009). Despite concerns that consumers would substitute other sources of sugar in their diets, estimations using small panels suggested such backsliding would not occur (Finkelstein et al., 2013).

Researchers also evaluated the likely effects of a tax using cohort modeling, a technique that takes data mapping small variations in existing population behaviors and applies computational statistical modeling to predict the likely effects of broader changes in the environment. This approach suggested that economic concerns regarding a potentially regressive sales tax were not warranted, as the economic benefits would similarly accrue to those who reduced their SSB consumption (Long et al., 2015). Even effective taxes, which reduced the total number of people purchasing SSBs, could generate significant revenues. These revenues could be placed back into public health services, providing a useful self-contained argument for implementation that appealed to political leaders (Andrejeva, Long, & Brownell, 2010). While some consumers would simply pay the increased price and continue purchasing SSBs (or make up the calories by consuming more of something else), there was reason to think that taxes were still ultimately effective as a disincentive. Preexisting, much lower sales taxes were found to slightly decrease purchase and consumption rates, and were correlated with weight loss (Finkelstein et al., 2013, Powell, Chiqui, Khan, Wada, & Chaloupka, 2013, Finkelstein, Strombotne, Zhen, & Epstein, 2014). Although taxes on SSBs could not solve the obesity epidemic on their own, they could be an effective policy tool when used in combination with broader health interventions.

As a scientific and policy consensus emerged in the late 00s, public health organizations rapidly began advocating for restrictive taxes on SSBs, using two general trajectories: top-down (lobbying state

and municipal politicians to introduce bills that would implement a tax) and bottom-up (proposing taxes as referenda items in municipal elections). However, as in New York City, each of these democratic and legislative processes have not occurred in a communication vacuum. Every attempt to regulate SSBs has been the subject of intense, well-funded persuasive messaging campaigns, by public health advocates (largely funded by Michael Bloomberg) on one side and the beverage industry (represented by the ABA) on the other. Each campaign, pro and con, is the product of a sophisticated persuasive messaging apparatus that uses a wide variety of techniques to identify audiences in the target jurisdiction, and construct a comprehensive media campaign that will sway voters to vote for (or against) SSB regulation. This is especially the case with bottom-up voter referenda efforts, where the pro and anti-tax lobbies must directly reach out to and communicate with the public.

Focus and Scope of the Project

A full analysis of SSB regulation history and advocacy communication is beyond the scope of this paper. Previous researchers have broadly catalogued arguments made by industry against regulation (Niederdeppe, Heley, & Barry, 2015), and have considered the role of media coverage (Nixon, Mejia, Cheyne, & Dorfman, 2015, Elliott-Green, Hyseni, Lloyd-Williams, Bromley, & Capewell, 2016, and Niederdeppe, Gollust, Jarlenski, Nathanson, & Barry, 2013) and prevalent messages (Berkeley Media Studies Group, 2014, Berkeley Media Studies Group, 2014a, Jou, Niederdeppe, Barry, & Gollust, 2014) in specific settings. Until now no analysis has addressed which elements predicted the success or failure of SSB regulation efforts— that is to say, which arguments were *effective*. This paper narrows its investigation to the setting of bottom-up regulation and SSB tax voter referenda, and focuses on messages directly promulgated by pro- and anti-tax campaigns to the voting public, through television, print, radio, and social media systems. After specifying the ten SSB tax referenda that have occurred in the United States to date, it identifies three major factors that distinguish the first, less successful wave of regulation attempts, from the greater victories of a second wave of tax referenda in 2016. First, in

2016 industry attempted to frame the taxation issue by heavily investing in an argument that called the proposed law a “grocery tax.” Second, industry messaging in the latter period focused more on business owners than on voters as an audience, crafting messages that appealed to their support base rather than the general voting public. Third, in 2016 pro-tax advocates changed the aim of their messaging, drawing attention to the motives of regulated industry and not on the health benefits or specific mechanisms of the tax. After assessing these factors, this paper considers the failure of an SSB tax referendum in early 2017, pointing toward the lessons both sides have learned from 2016.

These message framing efforts appear to have been decisive in turning the tide in favor of attempts to regulate SSBs, and we speculate that they will play a similar role in the future, as SSB taxes and other regulations continue to reduce SSB consumption and ultimately improve the American diet. The strategies used by both sides in this conflict carry lessons for public health messaging campaigns and industry responses in years to come.

Method

All US municipal SSB tax referenda were identified by cross-referencing results of a search for “soda tax” and/or “sugar-sweetened beverage” on ballotpedia.org, as well as several public health organization websites that maintain lists of legislative and referenda efforts to regulate SSBs. For each referendum, primary pro- and anti-tax advocacy organizations were identified from referendum polling voter information material (which generally lists formally identified pro and con organizations) and from local media coverage.

In total, ten SSB referenda have occurred in the United States as of this writing in August 2017. Coordinated mass media anti-tax campaigns were located for all ten referenda, along with nine pro-tax campaigns (the 2012 tax proposal in El Monte was largely a local political insider effort and, while it had

the backing of larger entities, did not use the concentrated public-facing media advertising that was the focus of this study).

Messaging materials were collected from the internet presence of the nineteen pro and con campaigns. For each campaign, collection began with any freestanding website hosted to act as a hub for the campaign, then spread to linked Facebook, Twitter and Youtube accounts. Hashtags, images or retweets were then separately searched to identify further ancillary messages, organizations and conversations that were tied into the campaign discourse. The collected messages included text, audio, video, and images shared through social media, as well as archived copies of messages spread through radio, television, and conventional print advocacy advertising (such as mailers or billboards).

In many cases, campaigns sought to expunge media from the internet after the election had ended. Where campaign websites or materials had been removed, archived versions of the site and campaign materials were retrieved from the Internet Archive. Messages and campaign sites sometimes identified communication firms hired to produce and operate SSB tax campaigns. Where this was the case, these firms' websites and social media accounts were also searched for SSB tax campaign messages that had been removed from other locations, but still existed in their professional portfolios. Many campaigns held ties to umbrella organizations, such as the American Beverage Association (anti-tax) or Kick the Can (pro-tax), which maintained internal messaging and strategy archives. These archives were sometimes publicly accessible to automated search engine indexing systems. When this was the case, the archives were searched and their contents were included in data collection.

All collected messaging material was studied for the purpose of identifying relevant messaging elements: arguments, themes, claims, and strategies as employed in individual campaigns, as well as strategies that were used in more than one location. Patterns of successful and unsuccessful tax referenda and message components were identified. Major arguments that correlated with periods of

success and failure were isolated. Features of the law or political setting that were leveraged in pro- and anti-tax arguments were also drawn into the analysis.

Results

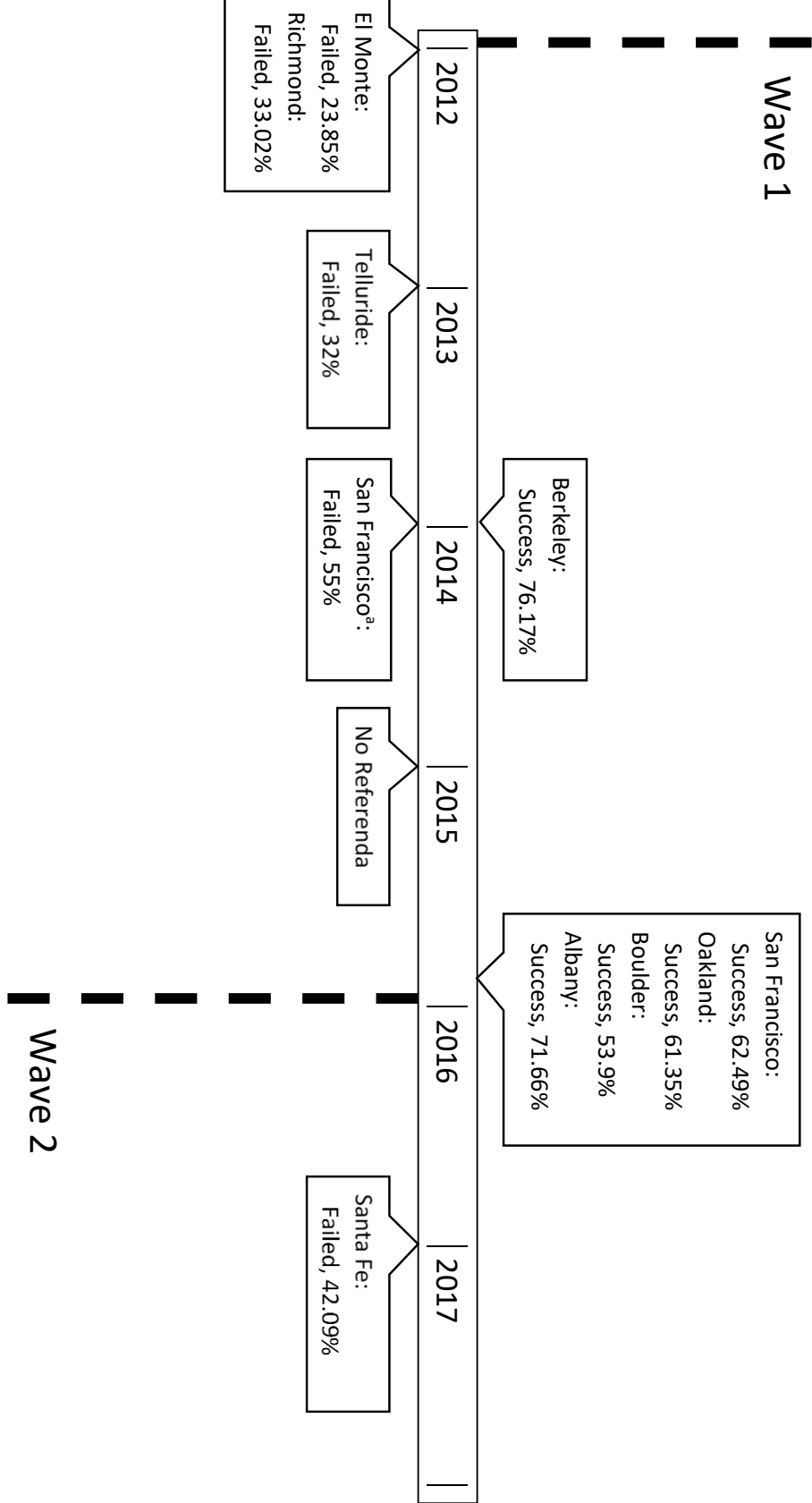
Number of Referenda and Outcomes. To date only ten SSB taxes have been placed on the ballot as referendum measures, during the period from 2012 to 2017 (See Figure 1 for a timeline of referenda dates, locations and outcomes). Of these ten referenda, five passed and five failed. The first nine of these referenda can be informatively divided into two waves, based both on a change in the predominant outcome, and a shift in persuasive approach that occurred between the waves.

The first wave of attempts to implement SSB taxes by referendum occurred in 2012-2014 and met with limited success. In this first wave, an entrenched and centrally organized anti-tax public communication campaign overwhelmed disorganized, underfunded local advocates (e.g., “Soda industry outspends beverage tax supporters 10-1 in Richmond,” 2012). Referendum efforts to pass SSB taxes in the Californian cities of El Monte, Richmond, and San Francisco, and Telluride, CO, failed to pass, most by heavy margins. (Berkeley Media Studies Group, 2014, Berkeley Media Studies Group, 2014a). The only city to successfully pass a tax during this period was Berkeley, CA, in 2014. The Berkeley tax would be the first SSB tax to be successfully implemented by any means, referenda or legislation.

In a sharp contrast to these early disappointments, attempts at SSB regulation in 2016 were universally successful. Tax votes succeeded in Oakland, Albany, and San Francisco, CA (overcoming a previous failure), as well as Boulder, Colorado (Philpott, 2016). These represented a second wave of regulatory and persuasive efforts that reflected lessons learned by both sides in communicating and litigating tax proposals. Coupled with growing public awareness and acceptance of SSB taxes, the future looked bright for SSB taxation (O’Connor & Sanger-Katz, 2016).

In 2017, however, a special election measure to enact an SSB tax in Santa Fe, New Mexico failed by a significant margin (Last, 2017). That campaign exhibited new and substantively different strategies from both sides of the debate, illustrating a shift in tactics as pro and anti SSB tax forces continued to hone their arguments and invest more heavily in public messaging appeals.

Figure 1: Timeline of Sugar-sweetened Beverage (SSB) Tax Referenda



Note: All percentages are votes in favor.

a: The 2014 San Francisco referendum required a two thirds supermajority to pass.

The Players

Pro-tax actors. Pro-tax campaigns were underwritten and endorsed by a variety of local public health organizations and advocates, grassroots actors from within the community that frequently had limited public communications experience and funding to promote their message. This lack of organization and funding severely hampered public campaign efforts at first. Over time, however, a substantial portion of funding for referendum support came from former New York City Mayor Michael Bloomberg, who personally bankrolled large amounts of campaign spending (Dinkelspiel, 2014, Vinton, 2016). With the influx of funding and coordination that Bloomberg provided, pro-tax messaging efforts rapidly grew in sophistication— even as local political and grassroots entities continued to drive and influence specific taxation efforts.

Beyond direct funding from Bloomberg, national public health organizations also provided direct support in the form of endorsement statements. The American Heart Association’s public policy endorsement explained and justified the rationale for SSB taxes at length, concluding that “The American Heart Association supports taxing sugar-sweetened beverages as an important policy intervention within a multi-pronged policy, programmatic, systems, and environment change approach to decrease consumption across the US population with the goal of improving health.” (“Reducing Sugar-Sweetened Beverage Consumption,” 2016) Press releases such as these, however, could do little to penetrate public consciousness of the issue.

More significant was indirect, logistical support that these organizations funded through proxy groups. In 2013, the local Kick the Can Telluride campaign was one of the first pro-tax efforts that operated under the partial direction of the broader pro-tax Kick the Can organization, an umbrella organization that served as a clearinghouse for information, language and strategy in the first few referendum campaigns (“Sugary Drink Action Guides and Tool Kits | Kick the Can,” n.d.,

“Communications | Kick the Can,” n.d.). Kick the Can is a project of Public Health Advocates, itself a proxy for a large number of public health organizations principally oriented toward states on the West Coast (“ABOUT US | Kick the Can,” n.d., “Funders,” n.d.). Kick the Can would go on to quietly support subsequent campaigns through 2016. Although the organization still exists as of mid 2017, it does not play as public a role in individual referendum-level messaging as locally organized entities, instead it retweets and copies message material by other public health organizations. Organizations such as Kick the Can are most relevant for this analysis because they illustrate that pro-tax efforts were at least partly reliant on centralized organization sources for information- and because, as a result, this study was able to use the Kick the Can website as a source of messaging material and strategic statements from multiple pro-tax campaigns.

Pro-tax advocates could also count on a consistent source of support in municipal government. Soda taxes generally were introduced by sympathetic city aldermen or mayors seeking the revenue that a tax would bring, and thus enjoyed the support of politicians who were experienced with the local environment. The benefit of this group was sometimes mixed, as competing local politicians could lend their voices to anti-tax campaigns. Instead of a blessing, municipal political support could also become a liability. When an elected official acted as a proxy for, or champion of, SSB taxation, they invited attacks regarding the politicization of a nominally nonpartisan health issue. Any negative attributes associated with the politician could also be attributed to the pro-tax campaign. Despite this limitation, SSB tax referenda generally enjoyed the benefit of a diverse combination of local and national-scale support, even if this support was sometimes disorganized.

Anti-tax actors. In contrast to the diverse array of interests supporting SSB taxation, one organization underwrote virtually all anti-tax campaigns: the ABA. The ABA functions as the trade group for beverage manufacturers in the United States, alongside a collection of state-level subsidiaries. In each municipality, the ABA would operate one or more nonprofit public advocacy organizations formed

solely to serve as local proxies for the ABA's interest in the election. On the national level, the ABA maintains dozens of such proxy organizations across the United States, each promoting the interests of the beverage lobby and fighting a rearguard action to block efforts at regulation. Such organizations maintain a minimal presence, becoming more active when legislation or regulation poses a risk to ABA member companies. As needed, new organizations are created to suit particular rhetorical or legal needs. During the period of analysis one organization, Californians for Food and Beverage Choice, also acted as a hub of anti-tax messaging for multiple jurisdictions ("About Us - Californians for Food and Beverage Choice," n.d.). Like the Kick the Can organization, it operated less as a direct source of public messaging, and more as a repository and coordination center for all ABA anti-regulatory efforts in the state. In the absence of natural allies, the ABA attempted to recruit local beverage distributors to act and appear in campaign messaging, putting a human face on companies that would be negatively affected by the proposed tax. As with pro-tax efforts, ABA investment in public-facing messaging increased from year to year ("Soda Industry Spent \$67 Million Opposing State, City Soda Taxes & Warning Labels," 2016).

Message Contents

A wide range of persuasive messages, intended for mail, radio, television, and internet social media consumption, were gathered (see Appendix for a selection of images of visually constructed messages). In general, a rapid shift in the methods and scale of pro- and anti-tax messaging and methods was found as SSB taxation referenda became more expensive and complex. These shifts reflected different expectations for the cost and potential returns of more unified, large-scale or disciplined message campaigns. Such shifts also reflected a growing need to respond to increased funding and advocacy by opposition groups. These shifts are best observed by considering the methods, messages and choices made in each campaign, and across each wave of referenda, as time went on.

2012-2014: El Monte, Richmond, Berkeley and San Francisco, CA, and Telluride, CO

The first wave of pro-tax campaigns were expressed largely in terms of the merits of the taxes on their own terms- and initially, this meant that virtually no organized messaging occurred at all. The 2012 El Monte SSB tax had no comprehensive messaging campaign to back it up. The Richmond Fit for Life tax campaign of the same year used general public health slogans such as “less soda, more sports = healthy children” (See Appendix, Image A, “Richmond Fit For Life - Photos,” 2012). These messages had little to do with the proposed tax and communicated no information about it. Social media images were genuinely amateur efforts, largely detached from any attempt at persuasion (See Appendix, Image B, “Richmond Fit For Life - Photos,” 2012). Campaign messages were apparently made using Microsoft Paint and re-appropriated stock images. They attempted to communicate individual ideas, such as “soda contains a large amount of sugar” that were not connected to the tax, nor to the election. As such, their potential for persuasive impact was severely limited.

In contesting ideas in the public arena, El Monte and Richmond public health advocates were completely outgunned. The ABA-funded No on Measure H (in El Monte) and No on Measure N (in Richmond) organizations used conventional, if scattershot, mailing and public message campaigns that attacked the tax from multiple directions, sometimes along contradictory ideological lines. Some messages argued that “the beverage tax is UNFAIR, it hits Richmond’s poor the hardest.” (“Soda industry outspends beverage tax supporters 10-1 in Richmond | California Watch,” 2012), appealing to egalitarian, liberal principles, emphasizing the regressive nature of the tax. Others applied general antigovernment skepticism, “The beverage tax doesn’t fight obesity, It’s a blank check.” (“Soda industry outspends beverage tax supporters 10-1 in Richmond | California Watch,” 2012). No on Measure N pointed out the tax didn’t earmark revenues in a way that would legally bind spending on a specific cause: “take a closer look — the fine print says city hall can spend the money on anything” (“Soda industry outspends beverage tax supporters 10-1 in Richmond | California Watch,” 2012). No on

Measure N further suggested that the tax was a distraction from other identified local concerns, quoting allied city councilmen saying “The beverage tax is a waste of time. It does nothing to solve our real challenges, like creating jobs, reducing crime and improving schools.” (“Soda industry outspends beverage tax supporters 10-1 in Richmond | California Watch,” 2012). The No on N campaign was not shy about mixing and matching; all of the above quotations appear side-by-side on a single mailed campaign advertisement, in addition to appearing alone on billboards (see Appendix, Image C).

This combination of arguments, attacking from multiple political perspectives, was more than adequate when faced with a largely absent pro-tax communication effort. Shortly after the failure of the El Monte tax, the No on H website posted a message encouraging supporters to “stay up to date on what’s going on in California” with a link to Californians for Food and Beverage Choice. This was an NGO set up to unify and promulgate antitax arguments against any future voter initiatives within the state (“No on Measure H” 2012, “About Us - Californians for Food and Beverage Choice,” n.d.). Even during this early period, ABA groups had begun to link individual messaging streams to an overarching campaign apparatus.

During the 2013 elections pro-tax organizations were already beginning to show increasing signs of coordination as the Kick the Can organization began storing message and strategy materials in a unified repository (see “General SSB | Kick the Can,” n.d.). The most significant messaging effort of the 2013 Telluride campaign is still archived on the Kick the Can website; a set of four poster and social media messages that form the acronym “PLAY” (see Appendix, Image D, “Telluride P is for Play Ad 2014 | Kick the Can,” n.d.). As with less organized campaigns in the past, the Kick the Can Telluride campaign tended to directly quote scientific evidence about the risk of SSBs, and the potential benefits of SSB taxes—focusing on the positive and taking the high road while the ABA freely spread doubt about the effort. Pro-tax advocates made the attempt to directly advocate for taxes on their own merits, but did little to respond to anti-tax rhetoric.

Efforts to block the Telluride tax were generally scrubbed from public sight after the 2013 election, but remaining messages reveal a campaign that tailored itself to the insecurities of a town that depended on business from tourism and a heavy seasonal population. Downtown retailers were depicted posing in their shops, accompanied by a personal, signed letter by the store owner to readers, expressing fear that an increase in taxes and red tape would drive tourists out of town (See Appendix, Image E, “No on 2A,” 2015). This reflects both a sensitivity to local needs, but also a developing plan to connect with and communicate through soda distributors who would be paying the tax directly. This sophisticated combination of direct and indirect messages would continue in the 2014 referenda debates.

When the pro-tax Yes on E/Choose Health SF organization began urging audiences to vote for SSB taxes in 2014, the ABA paid attention. The stakes were high for beverage producers— large metropolitan areas with a generally liberal sensibility were primed to be public victories for SSB taxation, ones that could inspire future imitators in less ideal settings. The San Francisco anti-tax campaign in particular represented the height of sophistication and political expense for early anti-tax communication efforts. Anti-tax messaging in the region applied the typical range of anti-tax arguments, but coupled this wide-ranging approach with tailoring to local minority populations. Messaging for the campaign included parallel Chinese and Spanish radio and television advertising targeting major minority populations (Vote No On Prop E, n.d.). Televised advertisements bombarded viewers with serial economic arguments discussing how the tax would cause pain from several directions:

“...2 pennies per ounce on Sugar-sweetened beverages can really add up! A twelve-pack of soda would cost three dollars more! Some beverages could go up 75%. Businesses would lose \$60 million in revenue, and nearly 6 million dollars of the tax would be paid by families with an annual income of less than twenty thousand dollars... (Vote No On Prop E, 2014)

The public-facing campaign was accompanied by efforts to woo local advocacy organizations for endorsement. In all versions of the advertisement, these arguments were accompanied by a chyron that flashed the names of 14 unions, trade groups, and political organizations, Democratic and Republican, that had been swayed to the No on E campaign. Despite these efforts, it was ultimately the pro-tax campaign's desire to blunt industry attacks that was its undoing in San Francisco. In response to past anti-tax critiques that tax proceeds went into a general fund and could not be guaranteed to be used for their stated purpose, pro-tax advocates ensured that the San Francisco tax was specifically earmarked for "the Active Recreation, Nutrition, and Public Health Fund." The fund was "maintained separate and apart from all other City funds and shall be appropriated by annual or supplemental appropriation." (California Voter Information Pamphlet & Sample Ballot, 2014). This specific allocation of revenue triggered a constitutional requirement that the measure pass by a two thirds majority, a condition that proved fatal when it received 55% of the vote (Cal. Const art. XIII A, § 4)

Even more alarming to soda manufacturers was the successful Berkeley campaign, in which tax proponents had begun to develop a message that was less about the dangers of soda, and more about the danger of soda producers. "Our community has always been a national leader on important issues – and now we are standing up to Big Soda to protect the health of Berkeley children and all Berkeley residents. [The tax] would require the beverage industry, which makes billions of dollars every year selling sugary drinks like soda and sports drinks, to pay a small fee per ounce of sugary drinks sold." ("Berkeley vs. Big Soda," 2014). The Berkeley vs Big Soda campaign continued to emphasize the negative health effects of SSBs, but began to merge the positive message of what the tax could accomplish with a narrative framing Big Soda as a culprit that had been leeching off of children's health in pursuit of profit.

As pro-tax advocates began to take a more negative, targeted approach with their marketing, the ABA also developed a new line of attack. In August of 2014, proxies for the No Berkeley Beverage

Tax campaign brought a lawsuit against the Berkeley City Clerk (Petition for peremptory writ of mandate & complaint for declaratory & injunctive relief, *Johnson v. Numainville*, 2014) Over the course of 85 pages, the attorneys argued that the city government had introduced bias into the ballot label and description by slipping emotionally laden and misleading language into the characterization of the tax. They would prevail on several measures. First, the tax was described as applying to “high-calorie, sugary drinks, language noticeably absent in the actual text of the law. This phrase was replaced with “sugar-sweetened beverage” (*Johnson v. Numainville*, 2014). Second, in the city attorney’s analysis (supposedly impartial summary made available to voters in voting guides), the beverages subject to the tax were characterized as “high calorie, low-nutrition,” when the tax could also apply to nutritious fruit drinks. The same substitution followed. The city attorney slipped up again by saying that the tax would apply specifically to “heavily” sweetened teas, when lightly sweetened teas would also fall under its purview. The offending word was stricken. This case demonstrates the degree of legal pedantry to which parties were willing to resort to gain more favorable ballot guidance material, but it also raised an issue that would become far more serious in the future. Generally unnoticed in this decision was that pro-tax advocates won on a single issue— whether it was appropriate to characterize the SSB tax as a tax on groceries, paid by consumers, or, as the ballot said, a beverage tax, paid by distributors. This issue would raise its head again in the future.

Despite their courtroom success, liberal voters in Berkeley, motivated by the negative campaign to vote in protest against Big Soda, handed the ABA their first defeat. The SSB tax, first of its kind, would enter into law. This was not a result that the industry group took lightly, as they responded by pouring money and effort into preparing for the next round of public messaging conflict: a new, more unified strategy that centered on a single framing device arguing that the soda tax was a secret tax on groceries. This argument could sway voters to a pro-soda perspective, relying on grocery store owners (the

beverage industry's biggest supporters) as messengers. Relying so completely on this approach would set the stage for a wave of ABA losses, and new taxes, in 2016.

2016: Boulder, CO and Albany, Oakland, and San Francisco, CA

After the 2013 elections, the ABA faced a substantial challenge: They had barely prevailed in a very expensive campaign in one large, liberal metropolitan setting, and had lost in another. An even greater threat loomed in the form of simultaneous SSB tax referenda in four Western locations: Boulder, CO and Oakland and Albany, CA, plus a reintroduced, simplified SSB tax in San Francisco that no longer needed to reach a supermajority to pass. In response, the ABA attempted to solidify and coordinate the unwieldy messaging machine needed to fight public relations battles on several fronts simultaneously. Californians for Food and Beverage Choice, set up during the 2014 election season, served as a clearinghouse and hub for anti-tax messaging and communication in much the same way that Kick the Can organized pro-tax communications. The ABA went further, hiring a single firm, David Binder Research to manage messaging campaigns and proxies in multiple cities and coordinate minority and industry outreach ("Soda Industry Spent \$67 Million Opposing State, City Soda Taxes & Warning Labels," 2016). This more disciplined and unified messaging approach, executives undoubtedly reasoned, would present a strong narrative that could sway voters away from a new sin tax and prevent further losses to pro-tax advocates.

This unified messaging approach by ABA groups may have been a significant factor in their losses in 2016. While antitax arguments still included health, source denigration, and some smaller amount of location-tailored design [e.g. "Bloomberg is reaching into his wallet to push his personal agenda in Boulder. Don't let him buy your vote." (NoOn2H, 2016)], most messaging was expressed in the context of an overarching grocery tax narrative. The grocery tax argument worked roughly as follows: the soda tax represented a sizeable increase in the cost of soda for distributors, one they could neither

absorb as a cost of doing business, nor one they could pass on in the form of increased soda prices for consumers. Instead, (under the anti-tax argument), a soda tax would inevitably be passed on to consumers by distributors increasing the price of *all* goods. This made it a tax on groceries. Members of the public were exhorted to “read the fine print” and warned that the name of the measure was “what the politicians want you to hear” (“No Oakland Grocery Tax - No on Measure HH, 2014). In practice, the complexity of the grocery tax claim meant that explaining it was an outsized task. Attempting to make this argument sensible required a great deal of time and space in the limited confines of a particular radio spot or print ad. The main anti-tax website for Oakland, which doesn’t have a limit on how much space it can use, tried to present the entire argument for the grocery tax claim, stating that

This is not just a beverage tax — it is a grocery tax. If this proposal passes, distributors would be forced to pay an additional penny per ounce on certain beverages like soft drinks, juice drinks and teas. Many stores could decide to finance the tax by increasing prices on grocery items across the board. That means whether you purchase these beverages or not, you could be seeing a big impact on your grocery bill. At a time when middle- and low-income people are struggling to afford being able to live in Oakland, we shouldn’t be increasing taxes on groceries.

The fact remains that voters in cities throughout the country have rejected taxes on common grocery items like beverages because they are regressive and hurt small businesses, cost jobs and harm the most those who can least afford to pay even a penny more on their grocery bills. Oakland residents have higher priorities for city government than regulating our food and beverage choices. Our elected leaders should be focused on public safety, homelessness, education, keeping our streets and parks clean, and addressing the housing affordability gap. (“No Oakland Grocery Tax,” n.d.)

Almost all of the other arguments available to persuade audiences are pushed to the second half of this message, and are expressed only in the context of the “grocery tax” and its harms. This approach is generally representative of the second wave of anti-tax messaging. While anti-regulatory and anti-government arguments were still used to cast doubt on the proposed tax, these arguments took a back seat to shoring up and attempting to explain the grocery tax moniker, which appeared in the name of every anti-tax campaign, and even took the form of a grocery bag logo in many settings. By committing

to a single overarching narrative across all campaigns, the unified grocery tax frame doomed ABA efforts in 2016. Had a range of approaches been tried in each municipality, it was possible that some contests would have resulted in a victory for anti-tax campaigns in the chaos and uncertainty that resulted. Instead a universal, easily refuted argument allowed tax advocates to unite their message against a common foe: the lies of Big Soda.

A particular incident illustrates how the pursuit of a “grocery tax” antitax narrative fed directly into pro-tax attacks on ABA messaging. During the Oakland campaign, distributors were interviewed opposing the tax for an online journal run by UC Berkeley’s Graduate School of Journalism. The article, titled “Oakland grocers raise concerns about soda tax Measure HH,” (Parish, 2016) mostly portrayed the anti-tax message and arguments in a favorable light. The “No on HH” campaign used an image of the article in a mailed campaign message, after editing the article’s headline to “Oakland grocers raise concerns”. This action was taken without notice to or permission from the original publishers, who naturally publicized the abuse (Oakland North Staff, 2016). Cases like this, where the ABA would commit reputational self-harm, made attack advertising a clear choice for pro-tax groups.

Distributors also played an outsized and difficult-to-defend role in the 2016 antitax messaging. While they had been opportunistically used as faces of the economic harm done by taxes in previous campaigns (See Appendix, Image E, “No on 2A,” 2015), distributors were virtually the only speakers on behalf of anti-tax campaign messaging in the 2014 and 2016 campaigns. While financial harm to retailers was certainly a valid and potentially compelling argument for some audiences, this approach lost much of its power when the sympathetic face in an advertisement was also the one immediately responsible for increased prices at the till, especially when the arguments they were making were clearly not their own. In focusing on the experience of soda distributors, the ABA’s messages spoke predominantly for, and to, business owners who served as their contacts and proxies in the targeted communities, rather than their target audience— the general voting public (see Appendix, Image F, Gammon, 2016).

Although other conventional antitax arguments were still a part of these campaigns, they were less visible within the overarching grocery tax frame. A televised ad (No SF Grocery Tax, 2016) by the San Francisco No on V campaign is illustrative of this staged minority outreach expressed exclusively through business owners. Visibly and audibly reading from a cue card, Hispanic and African-American store owners recite broad arguments, such as “Being a small business, we don’t need another tax...We have bigger priorities...in San Francisco”. Between brief establishing shots of each owner, footage shows them stacking produce, ladling soup, cooking pasta, and generally handling products not subject to the tax. In a particularly shameless display, an African-American restaurant owner is given the closing line, “I have a dream to expand my business. This tax could kill it. Join me, and vote against the SF Grocery Tax”. These messages might have had some impact if they came across as genuine, or if they spoke to consumer’s experiences. Instead, such arguments were alienating, especially for consumers who understood that the ultimate argument being raised by these retailers was that those same retailers were planning to raise prices.

Caught between their customers and their suppliers, some retailers also objected to being used in ABA messaging. When Temur Khwaja, an Oakland store owner who appeared in advertisements for the anti-tax No on HH campaign, was approached by local reporters and asked about his interactions with the campaign organizers, he said that “They tried to use me, and use the business.” (Stock, Campos, Carroll, & Escamilla, 2016). He reported being misled about the structure of the proposal and how it would affect prices, and that his customers had later set him straight about how the law would work. Other store owners, quoted making the grocery tax argument in English in print campaign material, turned out to be unable to speak English without a translator, and to believe the proposal was for a soda tax. This coverage was an unexpected source of negative press for the anti-tax effort, but one that was a direct result of their top-down strategy and grocery tax framing.

The effect of the grocery tax argument reached its nadir when the ABA, attempting to repeat their methods in Berkeley, sued through proxies to “require the deletion or amendment of certain false and misleading statements” from the statutorily required issue guidance and pro/anti arguments material on the Oakland ballot. In the ten-page filing, attorneys for the ABA attempted to formally litigate the grocery tax argument by attacking ballot measure language that read,

Distributors are companies that deliver sugary beverages to retailers like grocery stores and restaurants. Most are big businesses; for those that are small businesses, there is an exemption. The tax is not paid by your local grocer. (Petition for peremptory writ of mandate, *Coffey v. Simmons*, 2016)

Per the ballot measure, the proposed tax was only paid by the first distributor of SSBs on the distribution chain in the municipality. Companies directly selling to consumers were exempt. Also exempt were small businesses, those with less than \$100,000 in annual gross receipts that sell directly to final customers. Attempting to argue that the tax was a grocery tax given the stated factors, and asserting that the quoted ballot language was false, required a pattern of legal arguments that were as brave as they were contorted. “...Nothing in the measure prevents ‘distributors’ from passing the increased costs of these measures on to the consumer, by raising prices on retail consumer sales...Because it is politically unpopular to raise the cost of groceries”, the ABA claimed, “supporters of Measure HH have sought to minimize and obscure the extent of this effect...Measure HH’s supporters obviously want to paint a picture of a tax that only impacts multinational conglomerates, without harming ‘the little guy’” (Petition for peremptory writ of mandate, *Coffey v. Simmons*, 2016). Principally, ABA attorneys argued that the tax did apply to small grocery stores, if a grocer purchased soda outside of town and gave the sodas to an employee to stock the shelves, or a restaurant owner who similarly purchased soda out of town, then sold soda to patrons, they would be hit with the tax. This reasoning contradicted the definition of a distributor in the law, and stated that the tax was raising the price of “groceries”, the same awkward claim that had failed in Berkeley. The Hon. Judge Rasch was not amused:

Petitioner argues implicitly that the proposed tax would be imposed on local grocers because the distributors would pass the tax through to the local grocers who would then pass the tax on to the consumers. To state the issue is to recognize the obvious, that local grocers and other retailers will likely pass the tax through the chain of distribution to the ultimate consumer. If the local grocers act as a pass through entity[sic], then they will suffer no economic harm from the soda tax. (*Coffey v. Simmons*, 2016).

Additionally, the ABA attempted to assert that the “small business” referred to in the ballot measure was an inaccurate characterization. Because while the statute did provide a clear definition for what size of business was (businesses with less than \$100,000 in annual sales), there was also a federal law governing small business loans that defines small business groceries as having below \$23,500,000 in annual revenue. This argument is, to be gentle, not how legal definitions work. Different laws can use separate legal definitions. Judge Rasch pointed out several other California laws that had other definitions of small business attached, observed that voters were presumed under the law to know that definition could vary, and promptly denied the claim. (*Coffey v. Simmons*, 2016)

The judgement was a disaster for the ABA. Emphatically and at every possible opportunity, the court referred to the SSB beverage law as a “soda tax.” This was nominally to save space, but it had the effect of absolutely repudiating any claim to the contrary by anti-tax litigators— and making the decision extremely difficult to quote in advertising. This ultimately settled that the tax was a soda tax and not a grocery tax, handing pro-tax groups a powerful source of authority against the central framing device of the entire anti-tax campaign (*Coffey v. Simmons*, 2016).

With the Berkeley effort, and throughout the 2016 referenda, pro-taxation groups committed strongly to an industry denigration frame, one which focused on the story of SSB taxes was a story of fighting back against the public health threat posed by soda, and against lies told by soda industry representatives. Under the now-familiar Oakland vs. Big Soda formulation, the Oakland pro-tax campaign directly challenged the provenance, claims, and presentation of ABA messages (See Appendix, Image G, Oakland vs. Big Soda, 2016), making the debate a referendum, not on taxes or groceries, but

on the morality of the soda industry. Similar to the anti-tax campaigns, the Yes on V campaign in San Francisco tailored their messages to major minority populations in the region, but used the structure of their advertisements to directly push back against ABA claims. “The Big Soda companies are saying that it’s a grocery tax. That’s ridiculous. How do I know? I’m a grocer! It’s a soda tax. And it’s not going to raise your prices a penny” is one of a series of choice barbs from the lavishly produced final video of the San Francisco campaign. These videos which simultaneously maintained the strong positive message of the tax’s promise, while attacking the credibility of the ABA. This was accomplished in part by depicting minority retailers promising that their prices would not go up in response to the tax, and in part by showing Asian and African-American clinicians discussing the public health threats presented by “big soda’s lies”. (“Vote YES on Prop V,” n.d.). These messages were able to make arguments that cited the public health benefit of reducing SSB consumption, while still attacking the absurdity of the grocery tax claim. The results of this combined effort were clear, as soda taxes swept the 2016 elections, creating a narrative of progress and a sense of inevitable success for future taxation efforts— one that would be disrupted by the outcome of a special election referendum the following year.

2017 Santa Fe

The 2017 Santa Fe SSB tax campaign represented a strong reversal from the speaker-oriented, pugilistic approach of the 2016 referenda. Both sides instead chose to focus on the ways in which the proposed tax would be *used*, almost entirely eliding the discourse about SSBs’ public health impacts that had been at the core of previous campaigns. Pro-tax speakers dedicated the Pre-K for Santa Fe campaign to the planned use of tax revenue for comprehensive Pre-K education for all Santa Fe residents, mentioning the impact of the soda tax itself only in passing. (“Pre-K for Santa Fe – About Us,” 2017). These messages directed almost no attention to opposition messages or motivations, and left the campaign debunking specific lies, without drawing attention to where the lies were coming from (see Appendix, Image H, Pre-K for Santa Fe, 2017). When pro-tax messages confronted these claims, it was in

a defensive fashion, robbing them of a coherent narrative of how and why the tax would be a net positive. Pro-tax messaging would talk about “soda tax myths”, but would not cite a source for them, and would spend their message correcting the myth without contextualizing it or making a broader argument for the merits of the tax.

Messages by the anti-tax Better Way for Santa Fe & Pre-K (hereafter Better Way) campaign followed suit by emphasizing flaws in the details of the proposed law, thereby framing the issue as a dispute over effective education funding. Notably absent from anti-tax messaging were distributors and retailers. Instead, Better Way found a better messenger, in two steps. First, the campaign released a request on its twitter account: “Advocates that support Better way for Santa Fe and Pre-K tell us how they feel. Share your thoughts on govt overreach & harmful taxes below.” (BetterWayForSF&PreK, 2017). Second, after collecting responses, Better Way took the most appealing and re-posted them to twitter, as curated and promoted statements reflecting the opinions of the grassroots:

‘we cannot afford tax increases every year regardless of what the reasons are. Our city and state needs to be fiscally responsible’. -Dee P., Santa Fe

‘Pre-K education is a terrific goal. Just find another way to raise taxes for it’ – Ralph M., Santa Fe

‘There is enough tax revenue, the officials need to set a budget and stick to it! I only make a certain amount every pay period and can’t spend anymore!’ -Clint D., Santa Fe (BetterWayForSF&PreK, 2017)

At first these quotes simply appeared as text on an abstract, stylized background designed to evoke Southwestern imagery. But this simplicity represented a major step forward in campaign messaging. While soliciting and re-posting supporter messages was not a new tactic in referenda, the Better Way campaign went on to use this simple exercise in viewer participation in several other ways. First, it allowed the production of a grassroots message, from speakers prominently identified as Santa Fe citizens. Second, it let the campaign recruit willing speakers from the public they could select from for future broadcasting. Most importantly, the campaign used the positive feedback such messages

received to tailor their own arguments, matching public insecurities in Santa Fe. After this round of recruitment and re-broadcasting, Better Way began to focus in on the difficulty of sustaining a year-to-year education program with a sin tax in their own messages. Based on the arguments they had gathered from the internet, they also began working to make a pro-tax campaign strength into a liability.

Santa Fe mayor Javier Gonzales was one of the primary architects and public supporters of the Pre-K for Santa Fe campaign, sharing social media images, attending events, and speaking out in support of the tax scheme (see, e.g., Appendix, Image I, “Javier Gonzales - Santa Fesinos understand a small tax on sugar...,” 2017). The mayor’s involvement elicited a mixed response at first, which the ABA capitalized on. Once the ABA realized that the mayor’s taxation approach was unpopular, they began looking for an opening—and quickly, they found it. The Better Way campaign *also* began sharing messages by Gonzales, but instead began quoting earlier statements from the mayor that had trumpeted a net budget surplus (See Appendix, Image J, “Better Way For Santa Fe & Pre-K - Home,” 2017). If the city was already doing so well, why was the mayor advocating for a new tax on already burdened businesses? These arguments worked together to promote doubt and uncertainty about the wisdom of using *this method* to pay for Pre-K programs—surely there was some other (unspecified) option. It is unclear that Gonzales, or the specific budgetary argument, would have appeared in anti-tax messaging were it not for the prior round of solicited grassroots participation.

The ultimate televised appeal of the campaign was a grand celebration of this message of home-grown doubt. In a 30 second video clip, the Better Way campaign delivered a carefully tuned, intentionally disorienting, message (“Vote Against the Beverage Tax,” 2017, see Figure 2 for full transcript), the equally expensive antithesis of the Yes on V pro-tax video developed for the San Francisco campaign in 2016. First, the camera rapidly switches between 8 anti-tax supporters, each standing in front of a recognizable Santa Fe landscape as they say, “I’m from Santa Fe”- giving the viewer

less than a second to process each introduction. First comes “Jessica”, whom words onscreen identify as a “Small Business Owner” from Santa Fe, followed rapidly by Leahy the Waitress, Kristina (another Small Business Owner), Joseph the Truck Driver (helpfully perched on a truck), and Roland Trujillo, the only individual to go fully named, a city council member who appears with his wife. Another figure, Matt the Restaurant Owner, exhorts the audience, “We’re not outsiders [like the tax advocates], we’re your neighbors!” Katie, a nurse, introduces the subject 10 seconds into the ad, “We’re just worried about this huge new beverage tax.” The second third of the ad among between the speakers in a different order and just as rapidly, as the speakers deliver a range of dire, personal warnings. “It will hurt our economy”, Councilman Trujillo warns. “It will hurt my small business”, says Small Business Owner Kristina. The camera suddenly tightens on Joseph the Truck Driver’s face. “I could lose my job”, he says, his voice catching. Leahy the Waitress, posed in what is presumably her restaurant, talks about how the tax (which is not applied to consumers) will hurt her and her family when they buy drinks, as Small Business Owner Jessica says the cost of a 2-liter soda will double (when her distributor company purchases it, presumably). The advertisement closes with several disconnected shots of the speakers (in a different order, ending with Jessica to fully bookend the experience) asking the viewer to “join us and vote against” the beverage tax.

Figure 2: Better Way for Santa Fe Final Televised Appeal Transcript

Introduction :00-:11 seconds							
Speaker	Jessica, Small Business Owner	Leahi, Waitress	Kristina, Small Business Owner	Joseph, Truck Driver	Roland & Amber Trujillo, City Councilor & Program Manager	Matt, Restaurant Owner	Katie, Nurse
Statement	I live in Santa Fe.	I'm from Santa Fe.	I live in Santa Fe.	I'm from Santa Fe-	-And so are we.	We're not outsiders, we're your neighbors!	We're just worried about this huge new beverage tax.
Arguments :12-:22 seconds							
Speaker	Roland & Amber Trujillo, City Councilor & Program Manager	Kristina, Small Business Owner	Joseph, Truck Driver	Leahi, Waitress	Jessica, Small Business Owner	Leahi, Waitress	
Statement	It will hurt our local economy.	It will hurt my small business.	I could lose my job.	It hits hard- working families like ours the hardest.	The cost of a 2- liter soda more than doubles.	We pay more in taxes than the drink.	
Call to action :23-:30 seconds							
Speaker	Roland & Amber Trujillo, City Councilor & Program Manager		Katie, Nurse		Joseph, Truck Driver		Jessica, Small Business Owner
Statement	Please join us, and vote against-		-and vote against-		-against-		-against the beverage tax.

Note: In each part of the advertisement, speakers and statements occur in order from left to right.

The design is symphonic, and the effect is overwhelming. Local residents (who aren't untrustworthy outsiders) express fear for their jobs. A nurse expresses worries about the tax, implying that health concerns aren't serious enough for clinicians to care about. A restaurant owner appears, then immediately disappears after emphasizing how much he is like the viewer. The passthrough of taxes onto consumer-side prices is assumed. The words "sugar", "health", and "grocery" are never uttered. Stucco buildings are prominently on display. The viewer receives a range of arguments from a range of sympathetic voices, at such a high rate that they can't process what the arguments are, or how they are being spun. In the face of such a sophisticated rhetorical onslaught, the tax didn't stand a chance.

As was the case in Berkeley, it appears likely that the Santa Fe campaign presages a new stage in SSB tax messaging, one far more focused on issues and perceptions at the local level. Although the methods and arguments used by pro and anti-tax campaigners resemble those of the first wave of referenda, the greater tailoring, interaction, and funding involved ensure that future campaigns will be far more sophisticated.

Discussion

The story of the pro-SSB tax movement began with local politics and local approaches, then expanded through links with larger, coordinated organizations that still retained a strong local framing of issues. Pro-tax campaigns started with a focus on the public health and municipal revenue creation benefits of SSB taxes, then rearranged themselves into a larger narrative campaign in which supporters were fighting back against entrenched and deceptive industrial interests. This move corresponded with greater coordination, greater responsiveness to ABA efforts, and greater meta-campaign awareness of how the message was being received. These messages retained a local approach and tailoring to local issues, but connected message recipients to a broader struggle against ABA rhetoric that proved more

effective than attempting to directly promote a new tax on a popular product. Tax advocates also enjoyed the advantage of being able to design the exact legal dimensions of the referendum item, which helped them choose the way the issue was initially presented to voters, although at times poor drafting decisions hurt their appeal.

Anti-tax communication efforts also began at the local level with messages that questioned the efficacy of SSB taxes, the motivations of tax advocates, and the economic impact of the taxes. These messages emphasized the regressive nature of a consumer goods tax, as well as expressing broad anti-regulatory sentiment, but had no need for a single political narrative. Instead, early antitax messaging was opportunistic, identifying and applying pressure to local economic or social insecurities with messages that partnered these insecurities with every possible angle of antitax argument. Although these efforts were less centralized and lacked a coherent theme, they remained highly effective. This changed in 2016 as locally tailored messages (and most other antitax arguments) were consumed and overwhelmed by an overarching effort to reframe the soda tax as a “grocery tax.” The focus of messages on this overarching theme developed, and heavily undermined, later antitax messaging. This messaging was further harmed by a focus on messages that took the perspective of soda distributors (an easier group of industry allies), rather than the broader buying public. While anti-tax messages in this period still included prior attacks on local government and broader antiregulatory appeals, the poorly-considered grocery tax frame allowed tax advocates to instead go on the offensive and attack ABA antitax messages and organizations directly.

Throughout the period of analysis, referendum communications reflected the asymmetric goals of the two sides in a pro-regulatory referendum setting. To persuade a voter to commit to voting for a new SSB tax, advocates usually needed to convince them of the truth of a set of uniform and cohesive claims about the change to the status quo, that: 1) the tax would not cause untoward harm, 2) reducing the consumption of SSBs would result in beneficial health outcomes, and 3) revenues would be spent in

an appealing way. By contrast, anti-tax messengers were free to spread a wide variety of arguments that could collectively instill doubt about the tax's efficacy and necessity. There was no need for all of these arguments to work together or make sense, as any one of them could cause a no vote.

This analysis indicates that three factors determined the success of the second wave of SSB tax referenda where the first failed. The first of these was a mistake: in 2016 industry focused solely on a grocery tax message framing that utterly failed to appeal to their audience. Instead, these messages appealed to their authors and their supporters, rather than the broader voting public. Driven to create a cohesive narrative, ABA message developers ultimately looked inward instead of examining, and responding to, the fears and uncertainties of their target audiences. Second, the ABA depended on distributors and retailers as sympathetic voices, rather than leveraging their direct access to the public via social media. Antitax coordinators failed to take advantage of the ready-made messaging they possessed in their sympathetic support base, even as the more grassroots pro-tax campaigns reached out to and included a broader coalition of stakeholders. Third, pro-tax advocates took advantage of the mistakes of the ABA and made their campaigns about the role of “big soda” in public health, rather than about taxes or their benefits. Although such an antagonistic approach cannot work in every setting, public health advocates at least temporarily recognized the power that a campaign based on fear and a monolithic antagonist can provide. Taken together, these factors also reflected a broader trend: the growing pains of two competing lobbies that have not previously had to directly fight for the public trust. The initial law that brought SSBs into the public limelight was a municipal administrative determination. Beyond the referenda covered in this thesis, an entire universe of legislative and administrative efforts to regulate SSBs continues to develop across the United States. Voter referenda tell an important part of this tale, though, because they are the setting in which interested parties have no choice but to attempt to directly persuade the broader American public— with all the complexity and uncertainty that Democracy entails.

Future directions

The messaging efforts and unexpected outcome in Santa Fe appears likely to reflect an approaching third wave in the history of attempts at voter-enacted soda taxes, with the new form of public messaging conflict that it entails. The ABA has presumably learnt its lesson from the failures of 2016 and will attempt to drive SSB tax debates at the local level, with arguments tailored to the perspective of consumers (rather than distributors) in the target municipality. Future efforts will likely avoid discussion of public health and concentrate on a tailored mix of attacks on government regulation, local politicians, and out-of-state philanthropists.

To address these challenges, pro-tax organizations will likely return to a stronger focus on inoculatory denigration of Big Soda and its messages, and renew the general public health frame that paid such dividends in 2016. Pro-tax forces have a strength, and a liability, in that they are able to choose the structure of the proposed tax and the place in which it is proposed. The lessons of Santa Fe, San Francisco and El Monte suggest that: 1) taxes that are earmarked for a specific public health benefit are worthwhile only when a supermajority vote is not required by state or municipal law, 2) local political “champions” should be used only with caution, and 3) tax revenue, and its use for a good cause, cannot be the dominant motivation for a new tax on a specific product. Regulatory advocates see greater success when they avoid discussing the specifics of their plans, and instead emphasize the moral monstrosity of their opponents. Isolating and alienating industrial communicators from the public, particularly by documenting their abuses, is one of the few reliable ways to limit the impact of their campaigns, which are likely to be better funded and more sophisticated in execution.

The 2018 general elections will occur about a year after the first major round of soda taxes went into effect, a bare minimum of time from which both sides undoubtedly will consider sufficient to draw strong and conflicting lessons about their impact on markets, diets and consumer waistlines. Both sides

in this process will, as a matter of course, also invest further in public campaigns to promote their view of taxation, its costs and benefits. The lessons of past referenda, however, suggest that the public are far less interested in the details of a tax on SSBs. Nutrition science, public health, and economic policy are far less potent tools of persuasion than fear of an outside enemy and uncertainty about the future.

Appendix: Selected SSB campaign images

A.



(Richmond Fit for Life, 2012).

This image was the source of all campaign signage and was the banner of the campaign's social media sites.

B.



(Richmond Fit For Life, 2012).

This image was both shared as a standalone message on social media, and appeared on social media contest briefly operated by the campaign.

**THE BEVERAGE TAX
IS UNFAIR
IT HITS RICHMOND'S
POOR THE HARDEST.**

**THE BEVERAGE TAX
DOESN'T FIGHT OBESITY
IT'S A BLANK CHECK.**

“TAKE A CLOSER LOOK — THE FINE
PRINT SAYS **CITY HALL CAN SPEND THE
MONEY ON ANYTHING**. NOT ONE CENT
IS EARMARKED TO PREVENT OBESITY OR
HELP RICHMOND'S KIDS.”

**BEA ROBERSON, PRESIDENT
RICHMOND NEIGHBORHOOD COORDINATING COUNCIL**

“IF **CITY HALL** NEEDS TO RAISE MONEY, WHY ARE
THEY PICKING ON THE VERY PEOPLE WHO CAN
LEAST AFFORD TO PAY?”

**JAMES WASHINGTON,
RICHMOND RESIDENT**

**\$8 MILLION PER YEAR IN NEW TAXES
ON RICHMOND RESIDENTS
\$320 PER YEAR IN NEW TAXES
ON EVERY RICHMOND FAMILY**

**THE BEVERAGE TAX
IGNORES OUR REAL PROBLEMS**

**THE BEVERAGE TAX IS A WASTE OF TIME. IT DOES NOTHING TO SOLVE OUR REAL
CHALLENGES, LIKE CREATING JOBS, REDUCING CRIME AND IMPROVING SCHOOLS.**

COUNCILMAN NAT BATES, COUNCILMAN CORKY BOOZE

C.

(“Soda industry outpends beverage tax supporters 10-1 in Richmond | California Watch,” 2012).

This image both occurred as a mailer, and the four parts on this side were split up and used as print and billboard advertisements.

D.

P

— IS FOR —

play

COLORADO'S CHILDHOOD OBESITY RATE HAS REACHED

23%

Roughly 20% of Telluride kids are overweight or obese. Consuming just one sugary drink each day dramatically increases one's chance of developing obesity, heart disease and type II diabetes.

VOTE YES

TO SUPPORT THE SUGARY DRINK TAX

a one-cent per ounce excise tax on sugary drinks sold in Telluride. Revenue from this tax will support scholarships, physical activity and gardening programs for children.


KICK THE CAN TELLURIDE

Learn more at kickthecantelluride.com

("Telluride P is for Play Ad 2014 | Kick the Can," n.d.).

This image was used in social media, and as a poster at campaign events. It was part of a four-part acronymic campaign with three other posters, the subjects spelling out "PLAY".

E.





Vote like Baked in Telluride depends on it—because we really do.

Soda, juice drinks, sports drinks, and coffee drinks like lattes make up a significant part of the revenue local businesses depend on, especially during tourist season. The way the Telluride beverage tax is written, local businesses are responsible for filing all the paperwork that comes with this tax. That means higher operating costs. And that's not to mention the potential blow to tourism and local businesses as consumers simply take their business outside of town.

I'm voting no on Ballot Issue 2A. Will you join me?

John Malone

NO ON 2A
STOP THE TELLURIDE BEVERAGE TAX
NOTELLURIDEBEVTAX.COM

 @No_On_2a  notelluridebevtax

Paid for by No On 2A.

("No on 2A," 2015).

This image originally appeared in magazine advertisements. It was retrieved from an embedded display on the advertising agency's site; most campaigns, successful or not, deleted all message material they could after the target election ended.

F.

Here is what our community store owners are saying about the Grocery Tax:



Kay Kay Amangbo
Store Owner
African Caribbean Food Market

"A tax on groceries will harm working families and those who need help the most."

Pablo Martinez
Store Owner
International Produce Market

"The cost of soda won't be the only thing to increase—the cost of anything in the store could go up."

Temur Khwaja
Store Owner
Marwa Market

"The last thing we need is a tax on groceries. Oakland has higher priorities like focusing on education and crime."

Abdul Taleb
Store Owner
Mi Carnal Market

"The money from this tax will go to the city's general fund where it could be spent on anything."

Please vote NO on the Grocery Tax November 8

For more information, visit us at www.NoOaklandGroceryTax.com



(Gammon, 2016).

This image and variations thereof using other minority store owners appeared in multiple 2016 referenda campaigns, as a mailer or with individual minority store owners appearing in social media or television advertisements. Note that Temur Khmaja later indicated he had been misled by the anti-tax campaign.

G.

**Here's what BIG SODA is saying...
AND IT'S ALL LIES!**


LIE #1
THE TRUTH: This is not a tax on "groceries."

LIE #2
THE TRUTH: This is a tax on the distributors of sugary beverages (Coke, Pepsi, Snapple, etc.), which include some of the wealthiest corporations in the world.

LIE #3
THE TRUTH: The health of Oakland children should be the #1 priority of local government.

LIE #4
THE TRUTH: The Big Soda distributors are required to pay the tax. There is a small business exemption.

SACK THE GROCERY TAX




LIE #5
THE TRUTH: Small business owners are exempt. The tax would cost Pepsi, Coke and other distributors of sugary beverages about 12 cents for a 12-ounce can.

LIE #6
THE TRUTH: The soda companies said the same thing in Berkeley, which passed a similar ordinance. In the first year, the money was spent in Berkeley schools to fund cooking and gardening programs, as promised.

Read the fine print
The giant soda companies are paying for the campaign against Measure HH, the soda tax.

So, who do you believe?

BIG SODA?



OR

WE support Measure HH!

**The American Heart Association
American Diabetes Association
California Dental Association
American Academy of Pediatrics
Asian Health Services
Alameda County Public Health Dept.
La Clínica de La Raza
Oakland Firefighters (Local 55)
League of Women Voters
...and many more.**

(Oakland vs. Big Soda, 2016).

One example of message counterpunch mailers sent during the 2016 campaigns. Note the point-by-point refutation of the anti-tax mailer and listing of supportive public health entities.

H.

LIE: THE CITY WILL USE THESE FUNDS FOR SOMETHING ELSE



(Pre-K for Santa Fe, 2017).

This image was promulgated via social media, as part of a broader FACT campaign. Note that the source of the lie is not identified, and when re-shared the image lacks context.

I.

"Every child in Santa Fe deserves the opportunity for early childhood education. I am FOR the sugary drink tax on distributors because soda is not food."

MARY FREITAS, SANTA FE RESIDENT



("Javier Gonzales - Santa Fesinos understand a small tax on sugar...", 2017).

This message and other public statements of soda tax support were first published on social media by Santa Fe Mayor Javier Gonzales. In response to Gonzales's statements and previously solicited concern about municipal finances, Better Way for Santa Fe made Gonzales a target of their campaign.

J.



("Better Way For Santa Fe & Pre-K - Home," 2017).

This image appeared in social media along with the caption, "Why is the city pushing a beverage tax after touting a surplus of spending money? There is clearly a better way for Pre-K in Santa Fe -- vote AGAINST the beverage tax." The general design of this image, with color and pattern variations, was also used to post and promulgate anti-tax arguments solicited from Santa Fe residents.

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