

Legal Resource Center for Public Health Policy
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**A Policy Evaluation: Local Tobacco Control in Maryland and the Diminished Authority to
Legislate**

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I. Introduction

The Legal Resource Center for Public Health Policy (LRC) at the University of Maryland Francis King Carey School of Law, in conjunction with its funder, the Center for Tobacco Prevention and Control, Maryland Department of Health (MDH) collaborated on this Policy Evaluation and set out to determine whether a relationship exists between a Maryland Court of Appeals decision, which limited the ability of local jurisdictions to pass laws relating to some areas of tobacco control, and the number of local tobacco-related bills passed before and after this decision.

The LRC provides *pro bono* technical legal assistance on federal, state, and local tobacco policy, law, and regulation. Established in 2001 and funded by MDH, the LRC offers legal guidance to state and local governments, legislators, non-governmental organizations, health advocacy groups, and Maryland residents. In addition, the LRC works closely with state agencies such as the Office of the Comptroller and the Office of the Attorney General, as well as members of the Maryland General Assembly.

II. Policy Evaluation Scope

This Policy Evaluation sets out to provide insight on the relationship between a Maryland Court of Appeals decision, which limited the ability of local jurisdictions to pass laws relating to some areas of tobacco control, and the number of local tobacco-related bills passed before and after this decision.

A. Altadis U.S.A., Inc. v. Prince George's County, Maryland, 431 Md. 307 (2013)

In 2013, the Maryland Court of Appeals altered the legal landscape in Maryland by finding that state law preempts some local tobacco control laws. Preemption refers to the legal concept that a higher level of government limits or eliminates the power of a lower level of government to regulate certain issues. There are two types of preemption: express and implied. With express preemption, the law explicitly states whether it preempts a lower-level authority. For example, a federal law may use language to prohibit state and local governments from enacting laws relating to air pollution. When a law is impliedly preempted, a court decides that the higher-level authority has preempted the lower-level authority because it conflicts with the higher level or because the higher level has legislated comprehensively, demonstrating its intention to prevent a lower-level government from enacting law in a specific field. The case in question, herein referred to as “Altadis” finds implied preemption by conflict.

This matter stems from a 2009, Prince George’s County ordinances, CB–47–2008 and CB–6–2009, which attempted to regulate the packaging of cheap cigars. Specifically, it prohibited the purchase, sale, distribution, or gift, by a retailer, wholesaler, or their agent or employee, of individual or “unpackaged” cigars. The term “unpackaged cigars” is defined in the Prince George’s County Code as “any cigar or cigar product not contained within a sealed original package of at least five (5) cigars or cigar products.” Cigar manufacturers, distributors, wholesalers, retailers, trade groups, and a Prince George’s County taxpayer filed suit against Prince George’s County because of the ordinance. Collectively, we refer to these plaintiffs as

“Altadis.” The trial court, Circuit Court for Prince George’s County, found in favor of the County, concluding that the ordinance was constitutional and that the County had the authority to pass such an ordinance. Altadis appealed the decision and it was heard by the Maryland Court of Appeals, the highest appellate court in Maryland. In 2013, the Court published its opinion in favor of Altadis.

The Court reasoned that the legislature has passed extensive laws relating to the packaging and sale of tobacco products and preempts any local jurisdiction from regulating in this area. Because of the breadth and extent of these laws, the legislature did not intend to leave any authority to locals to regulate this subject matter. In reaching its decision, the Court focuses on the existence of Maryland Code, Business Regulation Title 16.5, which passed in 2011. This set of laws created a licensing scheme for the distribution and sale of non-cigarette tobacco products. The Court also highlights the definition of “package” as “not more than 10 cigars” which it argues is at odds with the Prince George’s County ordinance, defining a cigar package as “at least 5.”

In reaching its decision, the Court relies almost exclusively on the existence of the 2011 licensing provisions that did not exist when the Prince George’s County Council passed the packaging law. The ordinance was enacted in 2009, oral argument for the lawsuit took place in 2010, the state licensing scheme passed in 2011, and the Court’s opinion was published in 2013. The 2011 law was a collaborative effort between the Office of the Comptroller and public health experts to create a regulatory scheme for non-cigarette tobacco products, known as “other tobacco products” (OTP). Business Regulation, § 16.5-101, defines OTP as a product “intended for human consumption or likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested in any other manner, and that is made of or derived from, or that contains: 1. tobacco; or 2. Nicotine.” OTP includes products such as cigars, chewing tobacco, snuff, and snus.

One purpose of the law was to require retail locations to obtain a license to sell these products so that local health departments knew where they were sold. Similarly, the Court draws attention to a specific provision in the licensing scheme that defines “package” as not more than 10 cigars. It compares this definition to the Prince George’s County ordinance definition of a package as not more than 5 cigars and claims that these definitions are at odds. Because “5 cigars” is certainly “not more than 10 cigars,” these definitions are in fact NOT at odds, but are consistent. This sticking point tells us that the Court has interpreted broad implied preemption because the state has already legislated extensively in this field and didn’t intend to leave legislative authority to locals.

B. Implications for Local Jurisdictions

The Court’s decision can be read either narrowly or broadly. If read narrowly: The Court only preempts locals from enacting laws relating to cigar packaging. If interpreted broadly: The Court preempts locals from enacting laws relating to the sale and distribution of non-vape tobacco products. Most local jurisdictions were advised by their county offices of law to interpret this case broadly. As a result, no jurisdiction has proposed an ordinance regulating cigarettes or

OTP for fear of lengthy and expensive legal challenge; and some jurisdictions have stopped enforcing local laws that existed prior to the *Altadis* decision. Although the Court’s decision makes no reference to electronic smoking devices (ESDs), these products are directly implicated. If asked to decide whether state law preempts local jurisdictions from passing laws relating to the sale and distribution of electronic smoking devices, the Court must reach the same conclusion by relying on the precedent it set in *Altadis*. Therefore, most local jurisdictions are currently operating under the assumption that it may not enact law relating to the sale and distribution of either vape or non-vape tobacco products.

The national, federal, and state tobacco landscape have changed significantly since 2013, but the legal landscape at the local level in Maryland, has not. Local jurisdictions have been unable to legislate responsively to tobacco-caused issues in their communities and others have stopped enforcing longstanding law in their jurisdictions because of this court decision.

1. Baltimore City Stopped Enforcing Longstanding Law Regulating Minimum Pack Size

Minimum pack size laws set a minimum number of tobacco products that must be in each package. Regulating pack size increases the price of access and thereby decreases accessibility, particularly for youth. Increasing the price of tobacco is associated with reducing initiation rates as well as decreasing youth and adult use.¹ According to state and federal law, cigarettes may only be sold in packs of 20. As a result of the *Altadis* decision, Baltimore City has been unable to enforce its longstanding law prohibiting the sale of single cigarettes, or “loosies,” despite that its existence predates the *Altadis* decision. This is particularly harmful in Baltimore City, because according to local officials, the sale of individual cigarettes is a major concern and contributes to youth use within the City limits.

2. Tobacco 21

Tobacco 21 laws prevent retailers from selling tobacco products, including ESD, to those under age 21. Tobacco 21 laws have been shown to reduce smoking rates, tobacco use initiation, and adolescent use.² In 2019, both Maryland and the federal government passed Tobacco 21 laws, restricting the sale of tobacco products, including ESDs, to those under age 21. Until the Maryland law became effective, local jurisdictions were unable to pass laws increasing the sales age, though several expressed interest for years prior to the state law’s enactment. Given the youth vape epidemic that arose as locals awaited state and federal action, there is direct harm from the preemption of local jurisdictions on Tobacco 21.

3. Flavored Restrictions

¹ 6 Centers for Disease Control (CDC), State Cigarette Minimum Price Laws--United States, 2009, 59 MORBIDITY & MORTALITY WEEKLY REPORT 389, 389 (Apr. 9, 2009), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5913a2.htm>

² Tobacco 21, COUNTERTOBACCO.ORG, <https://countertobacco.org/policy/tobacco-21/> (last visited May 7, 2020).

“Flavor restrictions” refer to any limitation on a retailer’s ability to sell a flavored tobacco product. The Tobacco Control Act, signed by President Obama in 2009, banned the sale of flavored cigarettes, excluding menthol. In 2016, the United States (US) Food and Drug Administration (FDA) exercised its regulatory authority by publishing the Deeming Rule, which expanded the definition of tobacco products to include ESDs, but did not ban the sale of flavored ESDs or vape liquid. The new rule also covered cigars, hookah tobacco, nicotine gels, and pipe tobacco. For those who sell and/or manufacture these newly covered tobacco products, which were not commercially marketed in the U.S. as of February 15, 2007, a Premarket Approval Tobacco Product Application (PMTA) must be submitted to the FDA to obtain permission to continue selling these products. The FDA, however, agreed to exercise enforcement discretion and take no action against those who continued to sell and manufacture these products so long as they timely submitted PMTAs. This has proven to be a years-long process. Because ESDs were not commercially marketed in the U.S. until after February 15, 2007, all ESD manufacturers were offered this enforcement discretion.

However, on January 2, 2020, the FDA released [guidance](#) prohibiting the manufacturing, distribution, and sale of any flavored, cartridge-based ESD other than menthol or tobacco flavor, all ESDs for which the manufacturer has not taken appropriate action to prevent minor access, and ESDs targeted to minors or likely to promote minor use. Although the Maryland General Assembly has considered comprehensive bills banning flavored tobacco products, the bills have not passed. The Comptroller of Maryland, now the Alcohol, Tobacco, and Cannabis Commission (ATCC), has [prohibited the sale](#) of a narrow class of flavored ESDs that are prohibited under federal law; that provision is only enforceable by the ATCC. The ATCC’s focus is primarily on disposable ESDs but also includes cartridge-based ESDs. Local jurisdictions cannot pass laws restricting flavored tobacco products nor expand upon or enforce the narrow prohibition issued by the Comptroller/ATCC. Unfortunately, youth still have access to these products because enforcement action at both the state and federal level is limited.

As with Tobacco 21, counties await further state or federal action on all flavored tobacco products while youth continue to be enticed into addiction by those products. On April 28, 2022, the FDA [proposed a rule](#) banning menthol cigarettes and flavored cigars, including menthol. However, the rule will not be finalized and/or enforced for many months and will not include ESDs.

C. Preemption and Public Health

Local jurisdictions are often at the forefront of law and policymaking because they are uniquely situated to respond to specific concerns impacting their jurisdictions. Often, local governments serve as laboratories for innovative laws tailored to the needs of their communities. Some of the most effective and innovative public health laws have been enacted at the local level. For example, when Maryland’s Clean Indoor Air Act (CIAA) passed in 2007, 70-80% of the state’s population was already covered by a similar local law. Since the state law would not create new restrictions in these jurisdictions, the statewide law was less controversial for members of the General Assembly. “Tobacco 21” is another example of local law inspiring statewide, nationwide, and federal law. In 2005, Needham, Massachusetts was the first locality to

enact Tobacco 21. In the four years following implementation of the law, youth smoking rates in Needham decreased by approximately half, from 13% to 6.7%. However, in the surrounding communities, youth smoking rates only decreased from 15% to 12.4%.³ This inspired a statewide and nationwide trend toward increasing the legal age of sale for tobacco products. Tobacco 21 is now the “law of the land.”

III. Stakeholder Engagement

For the qualitative portion of the analysis, our team interviewed staff at the local health departments in Maryland. Because of the nature of our project, the University of Maryland Baltimore IRB protocol required we submit our project for review; the Board determined there was no risk to our interview subjects, and we received an exemption.

At the outset of this project, we aimed to identify a representative from 18 of the 24 local health departments, able and willing to speak with us about the impact of the *Altadis* decision on local tobacco control laws in their jurisdictions. We did not contact a representative from six jurisdictions: Calvert, Carroll, Garrett, Somerset, St. Mary’s, and Washington counties because those local governments are structured as a County Commissioner form of government and as such, they do not have authority to pass local law without express authorization from the General Assembly. Therefore, they are not impacted in this way by the *Altadis* decision.

The remaining 18 jurisdictions are structured as either Code Home Rule or Charter form of local government, and have broad authority to pass local laws. An appropriate representative was identified by selecting a person working in tobacco control and enforcement in each jurisdiction. Most often, these representatives were responsible for managing their county’s tobacco compliance check program. These programs operate primarily with funds received by MDH and ensure retailers are not making illegal sales of tobacco products to people under age 21. Because of this unique role and their exposure to retailers, tobacco products, and familiarity with underage use, these local health department employees are in the ideal position to explain and describe the issues facing their communities. They are also best situated to understand what laws may work well to address issues among their constituents and whether gaps exist which could be best addressed by local or state law. We identified and contacted the following representative in each jurisdiction, attached as Appendix A.:

Representatives were initially contacted via email in July 2022 by an LRC staff attorney, Morgan Jones-Axtell. The body of her email is attached as Appendix B.

If no response was provided, Ms. Jones-Axtell contacted the representative again by either phone or email two weeks later. Of the 18 jurisdictions/representatives, five interviews were scheduled, but one person indicated that they did not believe they could provide useful or helpful information. Of the remaining thirteen: three indicated that they could not provide useful or helpful information, two did not answer a scheduled call to discuss the study; two referred

³ <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2014.302174>; <https://pubmed.ncbi.nlm.nih.gov/26071428/>

Morgan to someone else and/or she hit a dead end with respect to an appropriate representative; six did not respond to the LRC's request.

Of the interviews conducted, we did not elicit substantive, responsive, or illustrative information. We attribute this to the high turnover at local health departments and the nuanced legal issues involved with the *Altadis* decision. However, Ms. Jones-Axtell's interview script appears as Appendix C.

IV. Measurement and Procedures

In addition to stakeholder engagement, our team conducted an analysis of local tobacco control laws passed in Maryland jurisdictions⁴. To determine if there is a statistically significant difference in the passage of tobacco control laws at the local level before and after the *Altadis* decision, we conducted a t-test analysis. We searched county bills proposed between 2006 and 2020 for key words including "tobacco," "smoke," "smoking," "cigarette," and "nicotine"; when necessary, we added search terms to capture legislation involving ESDs. Online searches also included agendas and minutes of local government meetings as relevant. Once we completed the search, all data was entered into an Excel spreadsheet including the bill number, date of bill introduction, bill citation and website link where possible, effective dates, and predominant subject matter⁵ (see charts in appendix). Bills were sorted according to the following topics:

1. *ESDs*. Refers to bills aimed at regulating multiple topics relating to ESDs only. However, taxation-related bills appear in a different category, as discussed in number eight below.
2. *Sale (age/ID check)*. Covers age restrictions and/or identification checks for all tobacco products.
3. *Zoning/smoking areas*. Includes prohibition/limitation on places in which tobacco products may be used.
4. *Sale (pack size)*. Limits the minimum number of cigarettes/cigars which may be sold in a pack(age).
5. *Signage*. Requires retailers to post signage notifying patrons of the legal age of sale for tobacco products.
6. *Flavors*. Places limitations on whether tobacco products may be sold with characterizing flavors.
7. *Product Placement*. Requires tobacco products be sold only behind the register and/or in locations that require employee assistance to access.
8. *Tax (ESD only)*. Taxes ESD products.

⁴ Jurisdictions include Allegany, Anne Arundel, Baltimore City, Baltimore County, Caroline, Cecil, Charles, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Talbot, Wicomico, and Worcester Counties.

⁵ Subjects include electronic smoking devices (ESDs); sale – minimum age/ID requirements; zoning/retail locations; sale – minimum package size; signage; flavors; product placement; tax (ESD only); and nicotine replacement therapy (NRT).

9. *Nicotine Replacement Therapy*. Addresses nicotine replacement therapy prescriptions/disbursement.
10. *Multiple Topics*. Covers multiple topics and/or topics that do not fit squarely within these categories.

Once all relevant data was in the comprehensive spreadsheet, we reviewed figures by jurisdiction and by subject to determine any relevant trends or interesting statistics. At this point, we ran a paired t-test analysis using Excel software. Hypothesis tests like the t-test are not used to prove something is true; rather, you can reject the null hypothesis, or fail to reject the null hypothesis. We set alpha at .05 to see if the difference is statistically significant. Our null hypothesis (meaning there is no effect present) is that there is no difference in the passage rates of local tobacco control legislation before the *Altadis* court decision (decided on April 25, 2013) and after. Our alternative hypothesis states that the *Altadis* decision did have an impact on the passage of local tobacco control laws. After running the t-test, we determined $t=.001$ and therefore we reject the null hypothesis - there is a statistically significant difference in local tobacco control passage rates before and after the *Altadis* decision. Note: t-tests were not performed as to each county. Rather, one t-test was performed comparing the total number of bills before the *Altadis* court decision to after.

V. Raw Data

Condensed Quantitative Data – Local Tobacco Bills Passed

As discussed in section IV above, all of the relevant local tobacco bills counted and analyzed appear in raw data form below. The first chart compares bills passed in each relevant jurisdiction before and after the *Altadis* decision. A bill is counted as “before *Altadis*” if it passed in 2006 through April 25th, 2013. If it passed after April 25th- 2013 through 2020, it was marked as “after *Altadis*.” Each jurisdiction with relevant passed bills appears below. Caroline, Dorchester, Kent, Talbot, and Wicomico Counties do not appear below because no relevant bills were identified.

Jurisdiction	Local Laws Passed Before <i>Altadis</i>	Local Laws Passed After <i>Altadis</i>	
Baltimore City	8	10	
Baltimore County	3	5	
Prince George's	2	5	
Harford	0	1	
Queen Anne's	0	1	
Anne Arundel	0	1	
Allegany	0	1	
Cecil	0	1	
Charles	0	1	

Frederick	0	1	0.00129425
Howard	2	3	t=0.001
Montgomery	2	7	
Worcester	1	0	
Total	18	37	

Local Tobacco Control Laws Introduced – By Jurisdiction
BA = Before Altadis (4/25/2013) AA = After Altadis (4/25/2013)

Baltimore City

Subject	# of Bills	Pass	Fail	Withdrawn
Electronic Smoking Devices (ESDs)	5	2 (2 AA)	1 (1 AA)	2 (2 AA)
Sale – Age/ID Requirements	1	1 (1 AA)	0	0
Zoning/Smoking Areas	17	11 (4 BA) (7 AA)	4 (1 BA) (3 AA)	2 (2 AA)
Sale – Package Size	4	2 (2 BA)	2 (2 BA)	0
Signage	4	3 (1 BA) (2 AA)	0	1 (1 AA)
Flavors	3	2 (1 BA)	0	1 (1 AA)
Product Placement	2	2 (2 AA)	0	0
Tax (ESDs Only)	1	0	1 (1 AA)	0
Nicotine Replacement Therapy (NRT)	1	1 (1 AA)	0	0
Multiple Topics	7	4 (1 BA) (3 AA)	1 (1 AA)	2 (2 AA)

Baltimore County

Subject	# of Bills	Pass	Fail	Withdrawn
Electronic Smoking Devices (ESDs)	1	1 (1 AA)	0	0
Sale – Age/ID Requirements	7	6 (3 BA) (3 AA)	0	1 (1 BA)
Zoning/Smoking Areas	3	2 (2 AA)	1 (1 AA)	0
Sale – Package Size	0	0	0	0
Signage	0	0	0	0
Flavors	0	0	0	0
Product Placement	2	1 (1 BA)	0	1 (1 BA)
Tax (ESDs Only)	0	0	0	0
Nicotine Replacement Therapy (NRT)	0	0	0	0
Multiple Topics	1	1 (1 AA)	0	0

Prince George’s County

Subject	# of Bills	Pass	Fail	Withdrawn
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Electronic Smoking Devices (ESDs)	4	3 (3 AA)	1 (1 AA)	0
Sale – Age/ID Requirements	2	2 (1 BA) (1 AA)	0	0
Zoning/Smoking Areas	7	6 (1 BA) (5 AA)	1 (1 AA)	0
Sale – Package Size	1	1 (1BA)	0	0
Signage	0	0	0	0
Flavors	1	1 (1 BA)	0	0
Product Placement	1	1 (1BA)	0	0
Tax (ESDs Only)	0	0	0	0
Nicotine Replacement Therapy (NRT)	0	0	0	0
Multiple Topics	5	4 (1 BA) (3 AA)	1 (1 AA)	0

Howard County

Subject	# of Bills	Pass	Fail	Withdrawn
Electronic Smoking Devices (ESDs)	3	3 (3 AA)	0	0
Sale – Age/ID Requirements	1	1 (1 AA)	0	0
Zoning/Smoking Areas	3	3 (1 BA) (2 AA)	0	0
Sale – Package Size	0	0	0	0
Signage	2	2 (1 BA) (1 AA)	0	0
Flavors	0	0	0	0
Product Placement	2	2 (1 BA) (1 AA)	0	0
Tax (ESDs Only)	0	0	0	0
Nicotine Replacement Therapy (NRT)	0	0	0	0
Multiple Topics	4	3 (3 AA) (1 BA)	0	0

Montgomery County

Subject	# of Bills	Pass	Fail	Withdrawn
Electronic Smoking Devices (ESDs)	6	6 (6 AA)	0	0
Sale – Age/ID Requirements	1	1 (1 AA)	0	0
Zoning/Smoking Areas	6	6 (2 BA) (4 AA)	0	0
Sale – Package Size	0	0	0	0
Signage	3	3 (2 BA) (1 AA)	0	0
Flavors	1	(1 AA)	0	0
Product Placement	1	(1 AA)	0	0
Tax (ESDs Only)	1	(1 AA)	0	0
Nicotine Replacement Therapy (NRT)	0	0	0	0
Multiple Topics	8	8 (2 BA) (6 AA)	0	0

Allegany

Subject	# of Bills	Pass	Fail	Withdrawn
Zoning	1	1 (1 AA)	0	0

Anne Arundel

Subject	# of Bills	Pass	Fail	Withdrawn
ESDs; Zoning; Multiple Topics	1	1 (1 AA)	0	0

Harford

Subject	# of Bills	Pass	Fail	Withdrawn
ESDs; Sale – Age/ID; Multiple Topics	1	1 (1 AA)	0	0

Queen Anne's

Subject	# of Bills	Pass	Fail	Withdrawn
Zoning	1	1 (1 AA)	0	0

Cecil

Subject	# of Bills	Pass	Fail	Withdrawn
ESDs; Zoning; Multiple Topics	1	1 (1 AA)	0	0

Charles

Subject	# of Bills	Pass	Fail	Withdrawn
Zoning; Signage; Product Placement; Multiple Topics	1	1 (1 AA)	0	0

Frederick

Subject	# of Bills	Pass	Fail	Withdrawn
Zoning; Signage; Multiple Topics	1	1 (1 AA)	0	0

Worcester

Subject	# of Bills	Pass	Fail	Withdrawn
Zoning	1	1 (1 BA)	0	0

VI. Discussion

As noted in section IV above, there is a statistically significant difference in local tobacco control bills passed before and after the *Altadis* decision. In this case, being statistically significant means that there was a difference in the number of bills passed before and after the *Altadis* decision. The test does not account for positive or negative impact on the number of bills but just that there *is* an impact. Thus, there is a clear correlation between the timing of the *Altadis* decision and the impact on local tobacco bills passed. Interestingly, more bills passed after the *Altadis* decision than before and this difference is statistically significant. This isn't to say that the *Altadis* decision was the only factor causing a shift in the manner in which counties legislate, but it likely played a role. It's possible that local jurisdictions chose instead to focus on passing bills in areas in which they did not anticipate facing industry lawsuits. The *Altadis* decision lacks clarity and the expense of litigation is a true fear for local jurisdictions. It would be unlikely that many would consider passing bills that may be preempted, for fear of facing a tobacco industry lawsuit.

Additionally, the federal and state landscape changed significantly between April 25th, 2013 and 2020. It is possible that many local jurisdictions adopted a “wait and see” approach to determine whether a law they were interested in adopting, would soon pass and apply in their jurisdictions. Prior to *Altadis*, in 2009, President Obama signed the Family Smoking Prevention and Tobacco Control Act, which gave the FDA authority to regulate the manufacture, distribution, and marketing of tobacco products. In 2016, the FDA passed the “Deeming Rule” which used this authority to regulate additional tobacco products including electronic smoking devices, all cigars, hookah tobacco, pipe tobacco, and nicotine gels. Many local governing bodies may have been interested to see how the federal government would implement and enforce their new regulations. In 2019, both the federal and state government passed Tobacco 21, increasing the age of sale for tobacco products to 21. This alleviated the need for local jurisdictions to pass similar law, though many expressed interest prior to the 2019 laws. Instead, they may have chosen to focus on “safe” laws. However, the state and federal government have not yet passed flavor restrictions for all tobacco products and local jurisdictions are limited in their ability to pass such law, though many would like similar laws on their books. Certainly, the *Altadis* decision has played a role in both the age of sale and restricting flavored tobacco products at the local level.

VII. Application and Utility

This Policy Evaluation provides a snapshot of a 14-year timespan of jurisdictions in Maryland, and their efforts to pass tobacco-related bills. There is a statistically significant difference in local tobacco control bills passed before and after the *Altadis* decision. Although we cannot draw a causal link, the *Altadis* decision is correlated with a change in the way local jurisdictions legislate. Only the Maryland General Assembly has the authority to pass law reversing the impact of the *Altadis* decision. This report provides a complete discussion of the legal issues and nuances involved and can be used to serve as education to lawmakers and advocates alike.

Appendices

Appendix A: County Representatives

1. Allegany County, Jennifer Smith, Director of Cancer Programs
2. Anne Arundel County, Mariah Fortman, Program Supervisor- Community Education
3. Baltimore City, Adeola Alayande, Health Promotion and Disease Prevention Director
4. Baltimore County, Vicki Keller, Tobacco Program Manager
5. Caroline County, Wayne Farrare, Tobacco Enforcement Coordinator
6. Cecil County, Jennifer Padgett, Community Health Educator
7. Charles County, Mary Beth Click, Community Health Educator
8. Dorchester County, Julie Jones, Community Health Educator
9. Frederick County, Todd Crum, Prevention Program Administrator
10. Harford County, Zachary Kosinski, Deputy Director, Clinical Health Bureau
11. Howard County, Vanda Lerdboon, Director, Community Health Education
12. Kent County, Nicole Morris, Director, Chronic Disease Prevention
13. Montgomery County, Cristina Ruiz, Program Manager
14. Prince George's County, Tanya Smith, Tobacco Program Manager
15. Queen Anne's County, Dorine Fassett, Prevention Coordinator
16. Talbot County, Jean Honey, Prevention Administrator
17. Wicomico County, Rhonda Bryant, Tobacco Coordinator
18. Worcester, Crystal Bell, Chronic Disease and Tobacco Supervisor

Appendix B: Email to County Representatives

Good [morning/afternoon] _____,

My name is Morgan Jones-Axtell, I am an Attorney with the Legal Resource Center for Public Health Policy at the University of Maryland Carey School of Law. If you're not familiar with our work, we are funded by the Maryland Department of Health to provide legal technical assistance on public health issues including tobacco regulation. We are conducting a study on the effect of the Maryland Court of Appeals decision in *Altadis v. Prince George's County* in 2013. That decision effectively preempted local regulation of tobacco. Part of our study includes interviewing local officials involved in tobacco control and enforcement about any effect the *Altadis* decision may have had on their work.

Please let me know if you would be willing to participate and your availability for a short phone interview.

Appendix C: Interview Script

Good [morning/afternoon], thank you for taking the time to meet with me. My name is Morgan Jones-Axtell, I am an Attorney with the Legal Resource Center for Public Health Policy at the University of Maryland School of Law. If you're not familiar with our work, we are funded by the Maryland Department of Health to provide legal technical assistance on public health issues including tobacco regulation. We are conducting a study on the effect of the Maryland Court of Appeals decision in *Altadis v. Prince George's County* in 2013. That decision effectively preempted local regulation of tobacco. Part of our study includes interviewing local officials involved in tobacco control and enforcement about any effect the *Altadis* decision may have had on their work.

Before I get your permission to continue, I want to make clear that while I will be asking you questions about topics such as enforcement activities and issues facing your community, I do not expect you to provide any confidential information or information you are not comfortable sharing, nor do I expect you to have quantitative data to support your answers, okay?

Do I have your permission to record this call for my own reference and note-taking purposes?

Do I have your permission to quote you in the final product, or do you wish to remain anonymous? [If anonymous, may I refer to you as "the interviewee from ___ county," or would you prefer that the information you give me only be used in the aggregate?]

1. Approximately how long have you been working in tobacco control in Maryland?
2. Were you aware of the *Altadis* decision before I mentioned it? To what extent?
3. Have you heard of any anti-preemption bills in the state legislature?
4.
 - a. Familiar with *Altadis*: Have your enforcement efforts changed in any way as a result of *Altadis*?

b. Not familiar, been in tobacco control since before 2013: Did your enforcement efforts look different after 2013 than they did prior to 2013?

c. Been in tobacco control less than 10 years: How would you characterize your enforcement efforts as far as vigor, frequency, and priority?

5. What do you believe are the biggest issues [your county] is currently facing with regard to tobacco?

6. Has [your county] had any desire to act on [those/other issues] in recent years through increased enforcement or legislation?

a. Has any action been taken? If so, what?

b. If no action has been taken, why not?

Is there anything else you'd like to share with me regarding tobacco control in [your county] that I haven't asked about or that you forgot to mention?