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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING AND PUBLIC MEETING

4

BEFORE THE COUNCIL COMMITTEE

5

ON PUBLIC HEALTH & HUMAN SERVICES

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, May 5, 1998
10:28 a.m.

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BILL NO. 960367 - An ordinance amending Title 9 of
The Philadelphia Code entitled "Regulation of
Business, Trades and Professions" by adding a new
chapter prohibiting cigarette vending machines and
providing penalties.

16

PRESENT: COUNCILWOMAN MARIAN B. TASC0, Chair
COUNCILWOMAN ANNA CIBOTTA VERNA
COUNCILMAN MICHAEL A. NUTTER
COUNCILWOMAN HAPPY FERNANDEZ
COUNCILMAN ANGEL ORTIZ
COUNCILMAN RICHARD T. MARIANO
COUNCILMAN FRANK RIZZO

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4 TEACH Representatives:

5 Dr. Jeffrey Barg, Chair. 9
 6 Mary Tracy, Program Associate. 15
 7 Elena Patterson, teen volunteer. 19
 8 Joe Hagarty, teen volunteer. 20
 9 Donnell Whitmore, teen volunteer 21

10

11 Michael Savar. 32
 12 Penn Triple S Vending

13

14

15 L&I Representatives

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17 John P. Campbell 79
 18 Legislative Regulatory Affairs Manager

19

20 Rudy Paliaga 82
 21 Director, Business Regulatory Enforcement Program

22

23

24 Dr. Lawrence Robinson. 88
 25 Philadelphia Deputy Health Commissioner

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27 Dr. Steven Gambescia 93
 28 American Heart Association

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30 Dr. Bob Sklaroff (and son) 106
 31 President of the Pennsylvania Society of Internal
 32 Medicine, the America Cancer Society

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2 P R O C E E D I N G S

3 COUNCILWOMAN TASC0: Good morning.

4 Council's Committee on Public Health and Human
5 Services is reconvened to continue the hearing
6 on Bill No. 960367.

7 And would the clerk like to -- well,
8 I'll just read the ordinance as what we're
9 hearing, okay?

10 The ordinance amending Title 9 of The
11 Philadelphia Code entitled "Regulation of
12 Business, Trades and Professions" by adding a
13 new chapter prohibiting cigarette vending
14 machines and providing penalties. The Council
15 of the City of Philadelphia hereby ordains
16 Title 9 of The Philadelphia Code entitled
17 "Regulation of Business, Trades and
18 Professions" is hereby amended by adding a new
19 Chapter 9-2000 to read as follows. . .

20 The chair now recognizes Councilwoman
21 Fernandez, who is the sponsor of this bill, who
22 will give a background and bring us up to date
23 on where we are.

24 COUNCILWOMAN FERNANDEZ: Thank you,
25 Madame Chair.

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2 This bill was introduced, and we had
3 some initial hearings two years ago. And this
4 bill is in the Health and Human Services
5 Committee because this bill addresses a serious
6 health problem among our children.

7 We were here two years ago and held
8 some hearings. The bill was not reported out
9 of committee but held pending further
10 information. In those two years, we're all
11 aware that at the federal level, there was an
12 agreement between the tobacco companies and the
13 attorneys general to clearly address the
14 tobacco products as a serious health problem in
15 our country. And part of that settlement or
16 agreement included a total ban on cigarette
17 vending machines throughout the country.

18 So I have not asked for hearings back
19 on this bill since I was hopeful that at the
20 federal level, they would address this issue
21 and we would not have to take action with a
22 local ordinance. However, as we know, at the
23 federal level, that settlement seems to be
24 going nowhere. It is either falling apart or
25 seriously delayed.

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2 So we felt it was very important, in
3 light of the information that we are gathering
4 here on the local level, to hold hearings and
5 get this bill out of committee, voted on by
6 Council, so it can become law in the City of
7 Philadelphia.

8 In the two years since we held our
9 initial hearings, there has been some good news
10 in efforts to tackle tobacco use by our young
11 people and access to tobacco products. Over
12 these two years, an organization called "TEACH"
13 (Tobacco-Free Education and Action Coalition
14 for Health) has been working very closely with
15 City officials to implement a law that this
16 Council passed several years ago.

17 The law that Council passed made it
18 more difficult for young people to illegally
19 purchase cigarettes and other tobacco products
20 by tightening the law and getting some real
21 teeth in the law so that it could be enforced
22 and to prevent young people -- minors -- from
23 illegally purchasing tobacco.

24 That law that Council passed required
25 that all tobacco products be behind the

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2 counter, that anyone attempting to buy tobacco
3 products would have to show a photo I.D. if
4 they appeared to not be over 26 years of age.
5 And it also made provisions for clear signage
6 and clear penalties for store-owners who
7 illegally sold tobacco products to young
8 people.

9 Due to the work of TEACH,
10 hand-in-hand with License and Inspections, we
11 have been able to fairly dramatically reduce
12 the percentage OF times that young people are
13 able to illegally buy tobacco in this city.

14 When the bill was passed, 85 percent
15 of the time, young people in this city were
16 illegally able to purchase cigarettes and other
17 tobacco products in stores. Those numbers have
18 now been reduced to 50 percent. That is still
19 way too high of a percentage, but progress is
20 being made.

21 What we are finding here at the local
22 level, however, and the reason I'm bringing
23 this bill back up is that a big loophole, as we
24 try to prevent young people from illegally
25 getting access to tobacco products, is the fact

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2 that they are so readily available through
3 cigarette vending machines in this city.

4 The figures from TEACH young people
5 who have been doing surveys show that 85
6 percent of the time, young people in this city
7 are able to illegally purchase cigarettes from
8 cigarette vending machines. And what is most
9 tragic is too often, it's our very young
10 children -- ages 10, 11, and 12 -- that are
11 using cigarette vending machines to get access
12 to cigarettes.

13 So these hearings today will call for
14 hearings on a bill to totally ban cigarette
15 vending machines in the City of Philadelphia.
16 We need to close the loop and make it very,
17 very difficult, if not impossible, for kids to
18 be able to get their hands on cigarettes. And
19 what we are suggesting is we should not make
20 cigarettes as readily available as candy and
21 gum and soda pop to our young people through
22 vending machines.

23 So with that background, Chairwoman
24 Tasco, I hope this committee can hear the
25 people who've come to testify here today and

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2 see if we're ready to take action here at the
3 local level to protect our young people from
4 getting hooked on cigarettes and tobacco, which
5 we know is the leading cause of cancer in this
6 country -- the leading cause of death in this
7 country.

8 COUNCILWOMAN TASC0: Thank you very
9 much.

10 We recognize the first panel, TEACH,
11 the Tobacco-Free Education and Action Coalition
12 for Health. We have Jeff Barg, who is the
13 TEACH Chair; Mary Tracy, who is the TEACH
14 Program Associate; Donnell Whitmore, a
15 15-year-old TEACH volunteer.

16 Would you come forward, please.

17 We also have Elena Patterson,
18 16-year-old TEACH volunteer; Joe Hagarty, a
19 15-year-old TEACH volunteer; and Jennifer
20 Campbell, a 17-year-old ex-smoker.

21 (TEACH panel comes forward.)

22 COUNCILWOMAN TASC0: Good morning.
23 We welcome you to City Council. We appreciate
24 your coming, and would you please state your
25 name as you testify for the record.

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2 MR. BARG: Good morning. My name is
3 Jeffrey Barg, I am Chairman of the
4 Tobacco-Free Education Action Coalition for
5 Health -- much more easily said as "TEACH."
6 I'm also President of the Coalition for a
7 Tobacco-Free Pennsylvania and publisher of
8 Physician's News Digest. I appreciate the
9 opportunity to testify here today on this
10 important issue.

11 Former FDA Commissioner David Kessler
12 has labeled tobacco "a pediatric disease."
13 This is because almost all people addicted to
14 tobacco begin using tobacco in their teens.
15 And in the 1990s, we've seen an alarming
16 increase in teen use not duplicated among
17 adult.

18 Just last week, the U.S. Surgeon
19 General released a report on tobacco use among
20 U.S. Racial and ethnic minority groups which
21 found that teen smoking rates rose in the 1990s
22 among all four racial and ethnic minority
23 groups studied. African-Americans, American
24 Indians and Alaskan natives, Asian-Americans
25 and Pacific Islanders, and Hispanics, after

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2 several years of substantial decline.

3 Contrary to data from the early 1990s
4 indicating that increases in tobacco use among
5 white teens were not occurring among
6 African-American teens, smoking rates among
7 African-American teens were up 80 percent
8 between 1991 and 1997.

9 How can we stem this epidemic of what
10 is already our number-one cause of preventable
11 death? Clearly, there are no easy answers, and
12 the problem will need to be addressed in a
13 variety of ways if we are to be successful.

14 Experience in California and
15 Massachusetts show that a combination of higher
16 tobacco prices, hard-hitting counter-tobacco
17 and advertising education, and curbs on youth
18 access to tobacco can make a difference.

19 Several years ago, Philadelphia City
20 Council passed a law designed to make it more
21 difficult for minors to obtain tobacco
22 products. At that time, 85 percent of
23 merchants were illegally selling tobacco
24 products to minors.

25 After a year of vigorous enforcement

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2 by the Department of Licenses and Inspections,
3 that rate dropped to 54 percent. This
4 remarkable rate of reduction is the best in the
5 state. However, the rate of illegal sales of
6 tobacco products to minors remains up at 83
7 percent in our last random survey for cigarette
8 vending machines. This should be of no
9 surprise to anyone.

10 Cigarette vending machines cannot
11 check for I.D. to determine someone's age.
12 Cigarette vending machines cannot turn away
13 people who want to use them. They are
14 frequently located in places where they cannot
15 be monitored. And even when they can be seen,
16 their utility is in freeing clerks for the need
17 to attend to those purchases. And believe me,
18 they do not.

19 While some will contend that banning
20 cigarette vending machines will inconvenience
21 adult smokers, the primary people it will
22 inconvenience are teens attempting to purchase
23 cigarettes. Research shows that the younger
24 you are, the more likely you are to use
25 cigarette vending machines.

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2 Research also shows that when it is
3 more difficult for teens to purchase tobacco
4 from clerks in stores and more difficult to
5 steal because of placement restrictions, such
6 as are in place in Philadelphia, cigarette
7 vending machines become an even more important
8 means of obtaining cigarettes for teens.

9 Moreover, research shows that adults
10 are willing to put up with a little
11 inconvenience in order to protect the health of
12 their kids. A recent survey conducted by the
13 Robert Wood Johnson Foundation found that 91
14 percent of the public, both smokers and
15 nonsmokers alike, endorse a ban on cigarette
16 vending machines that are accessible to minors.

17 After all, we would be rightfully
18 shocked if alcohol or handguns were sold from
19 vending machines. And, yet, both combined
20 cause fewer deaths than tobacco use.

21 There have been a number of halfway
22 measures proposed by the vending machine
23 industry, both inside and outside of these
24 chambers over the past ten years, ranging from
25 locking devices to placement restrictions to

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2 tokens to credit card activation and the like.

3 Interestingly, as the threat of legislation

4 subsidizes, so does their interest in these

5 measures or any other measures to reduce teen

6 use of their cigarette vending machines.

7 Since this issue came up first in

8 City Council back in the early nineties, has

9 the industry adopted locking devices in

10 Philadelphia? Have they limited placement of

11 their machines to where they could be located

12 by -- monitored by clerks? Or have they

13 limited their machines to so-called adults-only

14 establishments? Are you really surprised that

15 the answer to all three questions is no?

16 In other parts of the country where

17 placement restrictions and locking devices on

18 cigarette vending machines have been tried,

19 they have had only limited success in

20 preventing sales to minors. Thus, all the

21 major reports on this issue, from the Institute

22 of Medicine, from the U.S. Public Health

23 Service, from a working group of state

24 attorneys general, and the Office of the

25 Inspector General of the U.S. Department of

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2 Health and Human Services, they all call for a
3 total ban of cigarette vending machines.

4 Notwithstanding their protestations
5 to the contrary, even the tobacco industry and
6 the vending machine industry can see the
7 writing on the wall. The tobacco industry has
8 signed off on a total ban of cigarette vending
9 machines in their agreement with state
10 attorneys general, including Pennsylvania
11 Attorney General Mike Fisher. This agreement,
12 however, requires congressional action.

13 The FDA has also outlawed all
14 cigarette vending machines in locations
15 accessible to minors. This regulation
16 currently is tied up in appeal, however.

17 Even the vending machine industry, by
18 their actions if not by their rhetoric, has
19 acknowledged the situation. The number of
20 cigarette vending machines in the U.S. Has
21 decreased significantly from 373,800 to 181,755
22 between 1988 and 1993. And cigarettes
23 comprised only 4.7 percent of total vending
24 machine revenues in 1993, compared to 45.5
25 percent in 1960. Clearly, the vending machine

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2 industry has been shifting its business and
3 would not be impacted significantly by a ban on
4 cigarette vending machines.

5 The primary group to be impacted by
6 this bill would be our kids. They might find
7 it more difficult to become addicted to this
8 most deadly substance. That is why we can't
9 wait for the U.S. Congress or the FDA, because
10 our kids' lives are literally at stake.

11 Please take the next logical step to
12 the youth access law you passed several years
13 ago, and pass a ban on cigarette vending
14 machines.

15 Thank you.

16 COUNCILWOMAN TASC0: Thank you very
17 much.

18 MS. TRACY: Good morning. My name is
19 Mary Tracy, and I represent TEACH, the
20 Tobacco-Free Education and Action Coalition for
21 Health.

22 It has been my job and, really, my
23 pleasure to have served this city for the past
24 20 months in helping to enforce the wonderful
25 ground-breaking law that was passed here by

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2 City Council.

3 Through TEACH's efforts and some of
4 the youth, others that aren't here today but
5 are represented by those that have graciously
6 agreed to come today to testify before this
7 committee, we have been able to reduce the
8 over-the-counter sales from 85 to 50 percent in
9 this short time.

10 One of the discrepancies of this law,
11 however, is the fact that as we have made
12 through collaborating our efforts with L&I, we
13 have educated merchants in corner stores in
14 7-Elevens, in Rite-Aids about the law. And
15 they have posted signs, they have moved their
16 tobacco behind the counter, they have put all
17 the tobacco in locked cases, and they ask
18 anyone who appears to be 25 years of age or
19 younger for a photo I.D..

20 This is a tremendous breakthrough.
21 Communities call us -- over a thousand people
22 from the community have called up to report
23 underage sales in their neighborhood stores,
24 and we have written to those merchants and we
25 have gone out to visit them with our youth.

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2 And we are making progress.

3 But the thing that sticks in my gut
4 is that the people who have vending machines in
5 their stores, in their restaurants, in their
6 bowling alleys, in their gas stations, in their
7 pizza joints, have a vending machine that is
8 not monitored because they are not in the
9 business of selling tobacco; they are in the
10 business of serving food, they are in the
11 business of renting people rooms, they are in
12 the business of fixing people's cars. They are
13 not in the business of selling tobacco.

14 And, yet, they are selling tobacco,
15 and they are selling tobacco at a more
16 expensive rate and to a greater young people
17 who can't get their tobacco elsewhere.

18 And if the City is really serious
19 about making difference in youth smoking, then
20 we have got to look at how accessible we are
21 making tobacco to our young people. Because,
22 as we crack down on one hand and educate
23 merchants and they cooperate with us, we are
24 letting this huge vacuum exist where tobacco is
25 accessible. And so I think we need to

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2 seriously address this.

3 Some of the students that I've
4 brought today, I'll introduce them to you. I
5 think you'd really rather hear from them than
6 from me.

7 But we have gone -- through the
8 summer, we had a random sample that was
9 mandated by the State, and we visited stores.
10 And, as Mr. Barg has said, 83 percent of those
11 stores sold.

12 And then, just this past week,
13 despite all the news about the evils of
14 tobacco, the dangers of tobacco, what a killing
15 drug it is, how we shouldn't be selling to
16 youth, nine out of ten stores sold to this
17 young man. Some of the stores even asked our
18 students, Did they need change, did they have
19 enough change? Oh, the machine is in the back.

20 Either they don't have a clue what
21 the law is or they really don't care. But I
22 don't really care what the reasons are; I want
23 the machines out of the City of Philadelphia so
24 we can be more effective in doing our job and
25 telling our young people that we care about

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2 them and that cigarettes are not candy; they
3 are a very deadly drug, and we don't want them
4 to become addicted to it.

5 So I'll start off by introducing you
6 to Elena Patterson.

7 COUNCILWOMAN TASCO: Thank you very
8 much. We do want to hear from you, and we
9 appreciate what you said.

10 MS. TRACY: Thank you.

11 MISS PATTERSON: My name is Elena
12 Patterson, and I've worked with Miss Mary Tracy
13 over the summer. Some of the stores we went
14 to, they did ask me, Did I need change? They
15 directed me toward the machine, and some of
16 them just stared at me as I bought it, but they
17 never approached me and said don't buy.

18 And I think this is a very serious
19 issue, and I don't think it will be affecting
20 the adults as much as the children because the
21 adults, they can easily buy over the counter,
22 but the vending machines is the main source for
23 tobacco for the children. And I think this is
24 a very serious law.

25 Thank you.

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2 COUNCILWOMAN TASC0: Thank you.

3 Next. State your name for the
4 record.

5 MR. HAGARTY: My name is Joseph
6 Hagarty. I also work with Mary Tracy for
7 TEACH. Over the summer, I primarily did most
8 of my work, and I bought cigarettes at several
9 vending machines all over the city -- from
10 South Street to Roxborough, everywhere.

11 And people also have given me change
12 to buy cigarettes out of the machines, and no
13 one has really deterred me from buying
14 cigarettes there.

15 It's very easy and it's very
16 accessible for kids who can't buy over the
17 counter.

18 COUNCILWOMAN TASC0: When you
19 purchased the cigarettes, did you say anything
20 to the adult in the store that they were not
21 supposed to allow you to buy those cigarettes?
22 Did you say anything to them?

23 MR. HAGARTY: No.

24 COUNCILWOMAN TASC0: No, you just
25 purchased.

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2 MR. HAGARTY: Yes.

3 COUNCILWOMAN TASC0: Thank you.

4 COUNCILWOMAN FERNANDEZ: And was that
5 -- you're talking about buying from cigarette
6 vending machines?

7 MR. HAGARTY: Yes.

8 COUNCILWOMAN FERNANDEZ: That's what
9 you're talking about?

10 MR. HAGARTY: Yes.

11 COUNCILWOMAN FERNANDEZ: And could I
12 just ask, where did you find -- well, maybe we
13 should hear the last young man.

14 COUNCILWOMAN TASC0: Right, and then
15 we'll ask questions.

16 MR. WHITMORE: How you doin'. I'm
17 Donnell Whitmore.

18 COUNCILWOMAN TASC0: Speak into the
19 microphone, please. And we have old ears, so
20 you have to speak very slow.

21 MR. WHITMORE: Okay. I'm Donnell
22 Whitmore.

23 All the cigarettes you see right
24 here, I purchased on Friday and Monday. I went
25 to a lot of stores down in South Philly. And

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2 most of the stores, the people, they was like
3 helpful toward me buying the cigarettes. And
4 the one place I went in, I saw the machine but
5 I acted like I didn't see it, and I went up
6 there and bought some.

7 And I asked them, Do you sell
8 cigarettes? They said, Yeah, in the vending
9 machine. And she walked me over there, and she
10 said, Did I have the correct change? I did
11 have it; I just wanted to see if she told me.

12 And a lot of the cigarettes that we
13 bought, even those that are ore expensive, it
14 was easier, 'cause some of the them, it wasn't
15 supervising -- it's like a little kid and be as
16 young as whatever, as long as he knew how to
17 put the quarters in the machine, he could buy
18 them because all the supervision was inside the
19 store and the vending machines was right next
20 to the door. So it was like no one was going
21 to see them.

22 And in most cases, people in the
23 store, they did see me. And a lot of stores
24 was -- the people, they would stand there and
25 watch me. Or, in some cases, the clerk, he

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2 would just walk past me or whatever. And when
3 I get cigarettes, he never bothered to look
4 back and tell me -- or ask me how old I was.

5 And on the machines -- I saw on a few
6 of the machines, I saw the one machine, if
7 you're under 18, you have to have an I.D. And
8 the people that stood there and looked at the
9 machine 'cause it was -- I saw it. Before I
10 got in the store, I saw the thing on the
11 machine. And they were standing there already,
12 and they didn't ask me for I.D. or nothing like
13 that.

14 COUNCILWOMAN TASC0: Thank you.

15 Before we begin the questioning
16 process, I'd like to recognize the senior
17 civics class from Germantown High School to my
18 left. Would you like to stand and be
19 recognized.

20 (Germantown High students stand for
21 recognition).

22 (Applause.)

23 COUNCILWOMAN TASC0: Thank you for
24 coming. We appreciate your being here, and we
25 hope that you will gain a valuable lesson from

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2 this session today. Thank you.

3 The Chair recognizes Councilwoman
4 Fernandez.

5 COUNCILWOMAN FERNANDEZ: I was
6 wondering if any of the teens who are a part of
7 TEACH, could you tell us what kinds of places
8 you were able to buy cigarettes out of vending
9 machines? I know I was amazed when I was going
10 over the list that they were in laundromats,
11 apartment buildings.

12 So, I'm wondering, what kind of
13 establishments did you go into where you were
14 able to successfully buy?

15 MISS PATTERSON: Um, my --

16 COUNCILWOMAN TASCO: State your
17 name. Each time you speak, you have to
18 re-identify yourself for the record, okay?.

19 MISS PATTERSON: Okay. My name is
20 Elena Patterson.

21 My experience was in restaurants,
22 pizza houses, pubs, and pizza. That's mainly
23 it.

24 COUNCILWOMAN FERNANDEZ: When you say
25 "a pub," you mean like a bar? Did it sell

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2 alcohol?

3 MR. WHITMORE: It was a place for
4 over 18, like adults. It's not for young
5 people, but --

6 MISS PATTERSON: It sold food also,
7 but like it had a area for adults where they
8 could get drinks. And the vending machines,
9 you had to go upstairs down this dark hall,
10 into this like game area. And she like
11 whispered it to me, that the vending machine
12 was upstairs.

13 COUNCILWOMAN FERNANDEZ: In a bar,
14 and so it was out of the way. Was there any
15 away an adult could see you purchasing --

16 MISS PATTERSON: No. It was no one
17 in there. It was like game machines in there.
18 I guess that was like the kid area or
19 something, and so that's what it was.

20 COUNCILWOMAN TASC0: But when you
21 went into the pub, the machine was not near the
22 door?

23 MISS PATTERSON: No.

24 COUNCILWOMAN TASC0: So they had to
25 tell you where to go --

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2 MISS PATTERSON: Yes.

3 COUNCILWOMAN TASC0: -- to get to the
4 vending machine.

5 MISS PATTERSON: Yes.

6 COUNCILWOMAN TASC0: And it was out
7 of the way, upstairs, out of the way, away from
8 the door?

9 MISS PATTERSON: Yes.

10 MR. HAGARTY: I'm Joseph Hagarty.
11 I've purchased cigarettes through vending
12 machines at pubs, like Elena, bowling alleys,
13 pizza parlors, and other places like that. She
14 pretty much covered them all.

15 And usually, they're right by the
16 door. But other than that, like you have to go
17 up and get change if you don't have it, and
18 they give you the change, they help you buy the
19 cigarettes.

20 COUNCILWOMAN FERNANDEZ: So there
21 were no questions asked about you being -- I
22 mean you don't look 18 -- about you being in a
23 pub?

24 MR. HAGARTY: Not at the places I
25 went to, no.

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2 MR. WHITMORE: Donnell Whitmore.

3 The places that I went to, it was
4 mainly -- they already mentioned the names of
5 pub and stuff like that. But the one pub that
6 I went to, it's like the places that was
7 populated with people in there already,
8 customers and whatever, I went in there.

9 And it was like -- in a few of the
10 places like that I thought was for grown-ups,
11 it's like I walked straight in there, and it
12 was like, no, I went back. And it was like I
13 let them notice me first and then went to the
14 vending machine and see if they was going to
15 say anything to me. And it was like three
16 places.

17 And it was like a pub place for like
18 grown folks that I went to. And I walked in
19 there, and it's -- the vending machine is right
20 next to the door, as you come in there, but
21 it's facing towards when you come out the --
22 like the area where the grown folks are, you
23 can see the vending machine right there in the
24 door space.

25 And I walked in first. Then I just

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2 turned around and went to the vending machine.

3 So a lot of them, I mean, they noticed me

4 before -- before I even came in there 'cause I

5 went in the place first, then I came back out

6 and then bought the cigarettes.

7 COUNCILWOMAN TASC0: Go ahead.

8 MS. TRACY: Can I just comment on

9 that too?

10 Most of the time, if it's a real tap
11 room, bar type of thing, I don't really send
12 the kids in. But sometimes we get these random
13 lists from the State. And if it's a restaurant
14 that happens to have alcohol, and even it's
15 more of a pub, more of an alcohol pub place,
16 but there is an area where there's dining, then
17 our kids are more comfortable going in there.

18 And they're the sort of places I
19 think they're referring to here.

20 COUNCILWOMAN TASC0: Mr. Barg, you
21 talked about the State attorney generals being
22 in support of this kind of legislation. Did
23 you mention the state attorney general from
24 Pennsylvania?

25 MR. BARG: Yes, yes. Mike Fisher,

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2 Attorney General of Pennsylvania, has signed
3 off an agreement, along with other state
4 attorneys general that would include a total
5 ban on cigarette vending machines, which has
6 been signed off by all the major tobacco
7 companies.

8 But, as I said in my testimony, that
9 whole agreement is subject to Congressional
10 action, which has been up and down over the
11 pass year, really. And there's serious
12 question whether that will pass, or in what
13 form it will pass.

14 The tobacco industry is seeking
15 special legal protections that no other
16 industry in the country has to give up these
17 things. So it is an open question at this
18 point, whether that deal will eventually go
19 through.

20 I do think that even if the national
21 deal doesn't go through, there's an excellent
22 chance that once Pennsylvania's case against
23 the tobacco industry comes to court or just
24 before it comes to court, there may well be a
25 settlement, which will include a ban on all

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2 cigarette vending machines in Pennsylvania.

3 You know, I have discussed this with
4 the attorney general, and he is totally in
5 synch on this.

6 COUNCILWOMAN TASCO: Thank you.

7 COUNCILWOMAN FERNANDEZ: One last
8 comment. I want to thank the teenagers from
9 TEACH and also the adult leadership. It's
10 really the kind of information that you collect
11 for us that really helps us, as legislators,
12 and the rest of the adult world here in this
13 city understand what's going on.

14 So what you're able to do to collect
15 that information, I would never have dreamed
16 that little kids could go into a place where
17 alcohol is being served and be able to first
18 not be noticed or stopped, and then secondly,
19 to so easily be able to illegally purchase
20 cigarettes.

21 MS. TRACY: Councilwoman, if I just
22 may add, I think if that shocks you, something
23 that may shock you even more is right across
24 from our own Convention Center here in
25 Philadelphia, at 17th -- I don't know -- 13th

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2 and Arch, is an adult bookstore called "The
3 Pleasure Palace."

4 And we were able to purchase tobacco
5 there very easily because that one happens to
6 be right on the door as you go in. It's almost
7 on the sidewalk.

8 And so, I mean, when we think of an
9 adult bookstore, you know that they wouldn't
10 let him inside, but they certainly are selling
11 their share of tobacco on the outside of that
12 store.

13 COUNCILWOMAN TASC0: Thank you so
14 much for your testimony. We appreciate all the
15 hard work you do. And thank you.

16 MS. TRACY: Thank you for your time.

17 MR. BARG: Thank you very much.

18 COUNCILWOMAN TASC0: Our next panel
19 will include representatives from the vending
20 machine industry: Arnie Aronovitz and Mike
21 Savar.

22 (Mike Savar comes forward.)

23 COUNCILWOMAN TASC0: Good morning.

24 MR. SAVAR: Good morning. I'm Mike
25 Savar. Arnie Aronovitz is coming. We just

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2 found out about this hearing yesterday. He had
3 a previous engagement this morning, but he's
4 attempting to be here.

5 There's a few things for the record
6 that were stated that I would like to address
7 because I have some factual knowledge about
8 some of the things that are going on.

9 There is a Senate Bill 1415 that was
10 introduced by Senator McKean that, in
11 particular, is aimed at addressing the tobacco
12 problem. It's actually an expansion on the
13 agreement that was made by the attorney
14 generals that goes much further than the
15 agreement that they made, which is why, as most
16 of you know, the tobacco companies have
17 withdrawn their support, and they're lobbying
18 against these bills now because the
19 restrictions are too severe, and they argue
20 that it will put them out of business.

21 Where, historically, they've had the
22 strongest lobby in Washington, it appears that
23 there's bipartisan support not to listen to the
24 tobacco companies, and that there will be a
25 bill. And, as I said, this Bill 1415 is

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2 introduced. They expect that it will be voted
3 on by Memorial Day.

4 There's a similar bill being
5 crafted. In fact, I just spoke to Congressman
6 Greenwood's office yesterday. There's a
7 similar bill being drafted in the Congress.
8 And they're waiting to see what happens in the
9 senate. It's a \$560 billion bill. There's a
10 lot of controversy over how the money is going
11 to be used. And politics, naturally, is
12 playing a role in such a huge bill with so much
13 money, but this is moving forward.

14 And we have a State vending -- a
15 national vending association that has been
16 participating in these talks. It's our belief
17 that there will a bill this year and probably
18 before the summer, and that it will be a
19 nonpartisan bill. So I just thought that I
20 would like to comment on that.

21 As far as the ban on cigarette
22 machines, what -- what the deal was, was not to
23 ban cigarette machines per se, although that
24 certainly could be the final result, but to
25 give the FDA the authority, okay, to make the

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2 determination where cigarette machines would be
3 operated. This is something that's in the
4 courts right now. There are lawsuits on both
5 sides, and it has yet to be adjudicated.

6 One of the statistics that was given
7 -- and I would that I would like to say, and
8 maybe I should have it said at the opening,
9 that there's no question but that Council is
10 trying to do the right thing here. As the
11 owner of the largest vending company in
12 Pennsylvania, with the most cigarette machines,
13 we certainly agree in theory to what you are
14 trying to do.

15 And, I guess, to cut right to the
16 chase, we have always felt that it is the
17 government's obligation to regulate -- and not
18 just with one stroke of the pen, have a total
19 ban on an industry that's been around for 40 or
20 50 years.

21 There are devices -- and they're
22 called "lockout devices" -- that we've been
23 using more and more. And we've been using them
24 in conjunction with many laws that have
25 repeatedly been passed by municipalities.

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2 These devices are 100 percent
3 effective, 100 percent effective against
4 stopping minors. They allow for only one
5 purchase at a time. The machine will not work
6 unless it is activated by an adult in charge.
7 And it's the same process that would occur
8 should a minor walk up to the counter and
9 request a pack of cigarettes.

10 There has to be human intervention.
11 They would have to go to the bartender, they
12 would have to go to the clerk, they would have
13 to go to the cashier before they would be able
14 to use the machine.

15 This is available to us. And, as a
16 matter of fact, some of the municipalities that
17 had originally -- like Cherry Hill -- banned
18 cigarette machines have amended -- have amended
19 that ban to allow for the lockout devices under
20 certain circumstances.

21 I certainly don't advocate operating
22 cigarette machines in bowling alleys. I don't
23 advocate operating them in places where there
24 is not adult supervision. We've made great
25 efforts to reduce that. I'm sure the industry,

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2 as you've seen, there's still -- we haven't
3 achieved perfection by a long margin, but
4 neither have you with your over the counter.
5 You went from 85 percent to 50 percent, which
6 is still way too by anybody's standards.

7 But what we have available is a 100
8 percent method of, you know, preventing use of
9 the cigarette machines by minors that, as I
10 said, requires adult supervision. And the
11 machine's only allowed for one purchase, and
12 they reset themselves, and they can't be used
13 again until they're activated again.

14 This is a foolproof method that we
15 have for to us stay in business, to continue to
16 sell to our adult customers. And it's
17 something that I hope that you will consider.
18 I don't ask you to consider anything else that
19 looks like -- the emotion, the evidence,
20 everything that's being said about tobacco, I
21 wouldn't argue with any of it.

22 The only argument that I make is that
23 we have an adult market that we sell a legal
24 product to, that we have jobs that are on the
25 line, people that have made a career in this

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2 industry. And our request is that we be
3 allowed to remain in business and continue to
4 serve our adult customers only.

5 And this is possible with the lockout
6 device. These lockout devices are very
7 sophisticated. Some of the earlier ones didn't
8 work the way you would want them to work.
9 They've been perfected. They work quite well.
10 And if at sometime you would like a
11 demonstration or you would like more
12 information on them, I would be happy to
13 provide that.

14 That's really basically the main
15 point that I want to make. I commend you for
16 your work. I agree with what you're trying to
17 do.

18 I would make reference to one of the
19 statistics that were given here today. Where
20 there used to be hundreds of thousands of
21 machines in 1988 and now there are
22 significantly less. One of the reasons that
23 there are significantly less is that the
24 industry has taken measures to remove those
25 machines from the places that sell to minors.

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2 I might add that even though it is
3 not widespread in Philadelphia, that we are
4 using lockout devices right now. We're using
5 them in places where people wanted to continue
6 to sell to their adult customers and knew that
7 they couldn't control the children, so we put
8 them on, and we continue to put them on where
9 we feel that it will solve the problem.

10 Most of the bars in Philadelphia,
11 children won't go in. There are some types of
12 establishments like Bennigan's and Friday's,
13 the Olive Garden, these type of family
14 restaurants that sell alcohol, Denny's
15 restaurants, that doesn't sell alcohol.

16 But our experience with all of these
17 chain operations is that we have removed our
18 machines in our company from 100 percent of
19 these type of operations. That's one of the
20 reasons why there are so many fewer vending
21 machines today.

22 'Cause we have also been working to
23 try and solve this problem. It hasn't gone
24 unnoticed. I mean, this is something that we
25 have been fighting for our survival for the

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2 past eight years. And we have done our share
3 and we have made an impact.

4 It may not be -- just as you're
5 trying to do good, it may not be 100 percent.
6 But, certainly, we've made significant strides
7 to achieve what you're trying to achieve. But
8 at the same time for us, the bottom line is
9 that we want to stay in business, continue to
10 sell a legal product to adult customers. And
11 this is possible with the lockout devices that
12 are available.

13 Some references were made with, you
14 know, one off-the-cuff comment that these don't
15 work. They do work. They work so well that we
16 have regained acceptance from municipalities,
17 mostly in New Jersey, because that's where
18 they've been the most active.

19 And all of our machines in New Jersey
20 have these, and we only sell to adults. That's
21 what we're requesting we would be able to do
22 here in Philadelphia, and that we would achieve
23 100 percent compliance with what you're
24 attempting to do.

25 On the other hand, we feel that it is

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2 appropriate for certain types of locations
3 where minors do frequent that they should be
4 forbidden in those types of locations. We
5 agree with that.

6 It's only those places where we would
7 have complete control over who uses the
8 machines and where human intervention would be
9 required in the same manner that an
10 over-the-counter purchase would be made.

11 And if there's any questions, I'd be
12 happy to answer them.

13 COUNCILWOMAN TASC0: When we had this
14 hearing a couple years ago, the issue of the
15 lockout was discussed. In the two-year time,
16 if that could have been a real deterrent to
17 children buying cigarettes, why didn't you move
18 forward to provide the lockout system
19 throughout your -- on all of your machines?

20 MR. SAVAR: We have. We have
21 hundreds of them out. They're very expensive.
22 We've put them out where we thought they were
23 needed. We've also removed cigarette vending
24 machines.

25 Unfortunately, we have some

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2 merchants, as was demonstrated when the
3 children went out and were allowed to buy,
4 these are the same kinds of people that would
5 sell a pack to children over the counter. It's
6 unfortunate that they would abuse the law in
7 that way.

8 However, we have many, many more that
9 have come to us and said, you know, the kids
10 are a problem, we can't control them, would you
11 take the machine out? And we do and we have.
12 And it's reduced the number of machines on our
13 route dramatically.

14 We sell 25 percent of the amount of
15 cigarettes that we sold in 1988, ten years
16 ago. That amounts to a fraction of all the
17 cigarettes that are sold. We now have less
18 than one percent market share.

19 In giving statistics, the
20 Government's Center for Disease Control did
21 their own study. And they came up with
22 statistics that said that less than 2.2 percent
23 of young people use vending machines.

24 And the reason is simple. They're
25 more expensive, there's other alternatives

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2 available to the children. And right now
3 today, it's easier to steal a pack of
4 cigarettes than it is to buy one through a
5 vending machine.

6 And that's not to say that this is
7 right, and this is why we're here. And,
8 obviously, you're trying to address this issue.
9 I think it's been demonstrated over the years,
10 in all of the hearings that I've attended, and
11 I've attended a lot, that ultimately, that the
12 organizations like TEACH are what you need.
13 It's the education that is going to be the most
14 value ultimately in addition with restrictions
15 and making cigarettes harder to come by.

16 But when you have a country of 250
17 million people and 45 million of those people
18 smoke, there's a proliferation of cigarettes
19 everywhere. And children can get them at home
20 just as easily as they can get them from their
21 peers.

22 It's a problem. Nobody has a real
23 good answer. But, obviously, this is one step
24 that we're attempt to go take. Each step in
25 the direction of reducing availability of

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2 tobacco to minors, obviously, you know, is a
3 step in the right direction is what you're
4 trying to do.

5 Well, we don't have a problem with
6 that. We do have a solution. We have the
7 solution that I offered. It works. We could
8 demonstrate that it works. I feel confident
9 sitting here today and telling you that it is
10 100 percent effective. If you would be
11 interested in taking a look at it, seeing how
12 it works, and possibly putting that in the
13 language, that would regulate tobacco sales
14 through vending machines rather than banning
15 them.

16 COUNCILWOMAN TASCO: Could I ask you
17 a question. What else do you vend? Do you
18 vend other products? Do you vend food?

19 MR. SAVAR: No, we don't vend any
20 other products, we don't handle food.

21 We do operate jukeboxes, pool tables,
22 video games. However, the cigarette portion of
23 our business is significant, and we employ a
24 lot of people.

25 COUNCILWOMAN TASCO: Are you just in

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2 the Philadelphia area? What is your market?

3 MR. SAVAR: We're in five counties in
4 Pennsylvania surrounding Philadelphia, and five
5 counties in New Jersey, all of -- most of South
6 Jersey.

7 COUNCILWOMAN TASCO: The Chair
8 recognizes Councilwoman Fernandez.

9 COUNCILWOMAN FERNANDEZ: Thank you,
10 Madame Chair.

11 I've been trying to uncover some of
12 the basic information before the hearings
13 today. But I'd like, you know, your version on
14 the record to make sure that some of my figures
15 are accurate.

16 Could you tell me what's the dollar
17 volume of your business, Apple Vending
18 Machines?

19 MR. SAVAR: I'm Penn Vending.

20 COUNCILWOMAN FERNANDEZ: Excuse me,
21 Penn Vending in the city. Do you have your
22 figures for the city and/or the state of
23 Pennsylvania? You said you're the largest
24 vending machine --

25 MR. SAVAR: Yes. Our dollar volume

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2 -- we do \$6 million a year in cigarettes
3 totally. That includes New Jersey,
4 Pennsylvania, and Delaware.

5 COUNCILWOMAN FERNANDEZ: And do you
6 know how much of that business is here, in the
7 City of Philadelphia?

8 MR. SAVAR: About 30 percent.

9 COUNCILWOMAN FERNANDEZ: So about \$2
10 million of business, here in the City of
11 Philadelphia?

12 MR. SAVAR: Yes. And of that, I
13 would say 85 to 90 percent is in bars.

14 COUNCILWOMAN FERNANDEZ: And you said
15 that in addition to having cigarette vending
16 machines, you have other kinds of machines,
17 video, poker --

18 MR. SAVAR: No poker.

19 COUNCILWOMAN FERNANDEZ: Or
20 whatever. What did you say they were?

21 MR. SAVAR: Video games.

22 COUNCILWOMAN FERNANDEZ: Video games.

23 MR. SAVAR: Jukeboxes, pool tables.

24 We operate mostly in bars.

25 COUNCILWOMAN FERNANDEZ: Okay. And

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2 how much of your business is accounted for by
3 the non-cigarette vending part of your
4 business?

5 MR. SAVAR: Oh, about 20 percent.

6 COUNCILWOMAN FERNANDEZ: Is it 6 --

7 MR. SAVAR: In dollar terms.

8 COUNCILWOMAN FERNANDEZ: So that's in
9 dollar terms. Do you have a \$6 million
10 business overall?

11 MR. SAVAR: It's a \$7-1/2 million
12 business overall.

13 COUNCILWOMAN FERNANDEZ: So it's a
14 million and a half in the other areas?

15 MR. SAVAR: Yes. However, the other
16 business is different from the cigarette
17 business. It requires -- you can't compare the
18 two.

19 One is just simply selling a product
20 and sharing the profit with the stores where we
21 operate, and we're constantly turning over
22 inventory.

23 Now, the game business is an entirely
24 different business because you have a high
25 capital investment, and you have to be

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2 constantly reinvesting in the new games that
3 come out and in the new jukeboxes that come
4 out. And so a lot of the money is reinvested
5 back into the business.

6 And it's a vehicle for making a
7 living. And that's what we do. We have 50
8 employees altogether, and we're just out there
9 making a living.

10 COUNCILWOMAN FERNANDEZ: So how many
11 cigarette vending machines do you have here in
12 the City of Philadelphia?

13 MR. SAVAR: This would be a guess,
14 but about 300.

15 COUNCILWOMAN FERNANDEZ: You must
16 have a list.

17 MR. SAVAR: Yes, we do.

18 COUNCILWOMAN FERNANDEZ: If you could
19 get us that list since I assume they're all
20 licensed and everything.

21 MR. SAVAR: Yes, they are. They're
22 listened with the State.

23 COUNCILWOMAN FERNANDEZ: And do you
24 operate any other kind of vending machines?
25 Like do you -- you don't do soda pop?

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2 MR. SAVAR: No. We don't do any food
3 service at all.

4 COUNCILWOMAN FERNANDEZ: And is it a
5 surprise to you that these young people were
6 able to illegally purchase cigarettes from
7 vending machines 85 percent of the time?

8 MR. SAVAR: Well, your sample was
9 very small. Am I surprised? No.

10 There are controls that could be put
11 into effect that aren't being used now. They
12 are available, we're starting to use them.

13 Obviously, when you mandate that we
14 use them, we're forced to do it a lot quicker.
15 But we're business people. We only have so
16 much money available. It costs us hundreds of
17 thousands of dollars. It's like any industry
18 having to retool to move into another
19 direction. That's what this requires.

20 And unless we know we're going to
21 survive, we can't make investments that are
22 huge unless we have some assurance that we're
23 going to be here tomorrow to recoup that
24 investment.

25 COUNCILWOMAN FERNANDEZ: Well,

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2 actually, the 85 percent here is very much in
3 line with national figures.

4 MR. SAVAR: I don't think so.

5 COUNCILWOMAN FERNANDEZ: It ranges
6 from 82 to 100 percent of the time, according
7 to national studies.

8 MR. SAVAR: I haven't seen those
9 studies. I know that in New Jersey, we've
10 eliminated minors from machines.

11 COUNCILWOMAN FERNANDEZ: What was
12 that?

13 MR. SAVAR: In New Jersey, we have
14 eliminated minors from using the machines. We
15 have installed lockout devices in New Jersey on
16 100 percent of our equipment.

17 COUNCILWOMAN FERNANDEZ: Well,
18 according to my information -- and let me see
19 if you think this is correct -- my
20 understanding is that (Vern also here now) 87
21 municipalities in New Jersey have a total ban
22 of vending machines. I assume you're not doing
23 business in those 87 counties.

24 MR. SAVAR: Well, yes we are 'cause
25 some of them have amended their ban to allow

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2 for the lockout devices. We've gone back to
3 them -- Haddon Township, Cherry Hill,
4 Gloucester Township, and others, just to name a
5 few. They are some that I'm sure of.

6 COUNCILWOMAN FERNANDEZ: Well, could
7 you present a list to us, then, of counties
8 where you have installed lockout devices in New
9 Jersey?

10 MR. SAVAR: Sure.

11 COUNCILWOMAN FERNANDEZ: And then
12 what about the four municipalities here in the
13 City -- in the Southeastern Pennsylvania
14 region?

15 MR. SAVAR: A number of years ago, we
16 made agreement with Montgomery County.
17 Montgomery County had introduced legislation to
18 ban cigarette machines. And we had a
19 compromise with them, with their health
20 department, where they allowed cigarette
21 machines under certain circumstances.

22 To give you some examples, they
23 weren't allowed in doorways, they weren't
24 allowed in areas where they were untapped.
25 They weren't allowed, as one of the young

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2 children testified here, up by the bathrooms or
3 on the second floor, or they weren't allowed in
4 an area where they couldn't be supervised.

5 And we agree with all of that.

6 COUNCILWOMAN FERNANDEZ: Well, my
7 information says that in Haverford, Radnor,
8 Tredyffrin --

9 MR. SAVAR: Tredyffrin?

10 COUNCILWOMAN FERNANDEZ: -- and
11 Warrington township, there's a total ban. Are
12 you doing business in those four townships?

13 MR. SAVAR: We had very few machines
14 in those townships to start with. And in
15 Warrington, as far as I know, is not enforcing
16 the ban.

17 Haverford -- did you say Haverford?

18 COUNCILWOMAN FERNANDEZ: Yes.

19 MR. SAVAR: Haverford Township,
20 because of the deal that we made with
21 Montgomery County, wasn't enforcing the ban.
22 Radnor, I believe, is.

23 But, again, you can only fight --
24 from our point of view, as businessmen, we can
25 only fight so many battles, we only have so

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2 many resources. And if we only have one
3 location, in Radnor Township, it doesn't pay to
4 fight them.

5 Cheltenham Township did the same
6 thing, and they have since relented and allowed
7 the use of the lockout device.

8 COUNCILWOMAN FERNANDEZ: While noting
9 the suburban counties, what I find very
10 disturbing is that the young people in our city
11 who are at risk for a lot of other reasons have
12 a much easier time illegally getting access to
13 tobacco products here in our city that in the
14 counties.

15 When TEACH started originally doing
16 surveys, like four years ago, the average was
17 like 30, 40 percent of the time, they could
18 purchase out in the counties. And here, it was
19 85 percent of the time.

20 So it's a serious health issue here
21 in our city.

22 MR. SAVAR: Well, when you have --

23 COUNCILWOMAN FERNANDEZ: So I'm
24 noting some of those townships have taken
25 stricter measures than we have. But that's

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2 certainly one of the reasons, I think, we
3 strongly need stricter measures here.

4 MR. SAVAR: Well, the logistics are
5 different in Philadelphia than they are in some
6 of the counties. The shopping patterns are
7 different. You don't have corner stores in the
8 counties, you don't have corner bars. You have
9 shopping centers that people drive to.

10 In Philadelphia, you have
11 neighborhoods. And in the neighborhoods, the
12 people walk out the front door, and they walk
13 to the corner store or the corner bar, or what
14 have you. So that's one reason for the
15 difference.

16 We're not making any argument that
17 says that you shouldn't have some restrictions.
18 We agree. Just like your efforts to curb
19 over-the-counter sales have not been 100
20 percent successful to date, our efforts haven't
21 been 100 percent successful either, but we have
22 made great strides.

23 COUNCILWOMAN FERNANDEZ: Well, we've
24 had --

25 MR. SAVAR: The sample -- the sample

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2 that you're using, okay, the number of children
3 that you have out there and the number of
4 purchases that they've made and the manner in
5 which they are presumably driven in what is
6 really a sting-type operation, the sample is
7 minute compared to the number of cigarettes
8 that are sold.

9 And, you know, we know that we're
10 selling the majority of our cigarettes to adult
11 smokers even now. And with the kind of
12 controls that are --

13 COUNCILWOMAN FERNANDEZ: Well, can
14 you provide evidence of that? Don't make
15 statement that you can't back up.

16 MR. SAVAR: I can't provide evidence
17 of it.

18 COUNCILWOMAN FERNANDEZ: Right.

19 MR. SAVAR: And obviously --

20 COUNCILWOMAN FERNANDEZ: So please
21 don't make them on a public record.

22 MR. SAVAR: Well, no, I am making
23 them on public record.

24 We have put lockout devices out
25 there, we have tried to educate the people

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2 that are selling them. We've sent notices,
3 we've sent our representatives around, we've
4 removed machines. I will go on the record with
5 that.

6 COUNCILWOMAN FERNANDEZ: No, you said
7 -- your statement was that you know that most
8 of your tobacco -- your cigarettes from vending
9 machines are being sold to adults instead of
10 young people.

11 MR. SAVAR: We believe that.

12 COUNCILWOMAN FERNANDEZ: No. Leave
13 that --

14 MR. SAVAR: And we believe there's
15 room for improvement.

16 COUNCILWOMAN FERNANDEZ: I am asking
17 for evidence. You're challenging the evidence
18 of other people with their samples and random
19 samples.

20 I'm saying, if you want to make a
21 statement like that, I'd like to see the
22 evidence for it.

23 MR. SAVAR: Well, you did a study
24 yourself two years ago, when your bill came
25 out. They made 100 purchases. It might have

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2 been a different group of children, but it was
3 the same type of sting operation.

4 Of those hundred purchases, two of
5 them were through vending machines. I was
6 here, I happened to hear that report.

7 COUNCILWOMAN FERNANDEZ: Well, that
8 -- the bill --

9 MR. SAVAR: But again, we're arguing
10 about something that we really agree on. What
11 we're saying is, we have the ability to
12 eliminate teenage access to our machines.

13 COUNCILWOMAN VERNA: Is that by a
14 lockout device?

15 MR. SAVAR: Yes.

16 COUNCILWOMAN VERNA: Can you explain
17 what the lockout device is. I know I got here
18 late, but I'm not quite sure what that is.

19 MR. SAVAR: Okay. The original
20 lockout devices were like an on-off switch.
21 They would have to be turned on, and they would
22 have to be turned off. They allowed for
23 multiple purchases. Obviously, that was no
24 good.

25 There's a lockout device now that

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2 we're using where the machine -- you can put
3 the money in and pull on the levers all you
4 want, but you can't buy cigarettes unless it's
5 activated by the clerk or the attendant or the
6 person in charge.

7 Once the purchase is made, the
8 machine locks up again. It cannot be used
9 again unless it's activated. And I can say
10 that with this human intervention, that we're a
11 safer system now than the over-the-counter
12 market.

13 It's still possible -- it's still
14 possible to steal cigarettes in a store where
15 they are not locked up. The advantages that we
16 offer with system is that they are locked up.

17 COUNCILMAN MARIANO: Can you bring
18 one of them in?

19 COUNCILWOMAN FERNANDEZ: Excuse me,
20 Councilman, if I could just finish the line of
21 questioning.

22 I was going to ask you, in how many
23 of the places where you have cigarette vending
24 machines, have you, as of today, installed
25 these new sophisticated lockout devices?

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2 MR. SAVAR: About 25 percent of our
3 route. Mostly in New Jersey, but we have them
4 in Philadelphia.

5 COUNCILWOMAN FERNANDEZ: I'm
6 referring to Philadelphia. Have you installed
7 any here in the City of Philadelphia?

8 MR. SAVAR: Yes.

9 COUNCILWOMAN FERNANDEZ: Could you
10 present to us a list of those?

11 MR. SAVAR: Yes.

12 COUNCILWOMAN FERNANDEZ: And what is
13 your estimate of the numbers of establishments
14 -- cigarette vending machines that have the new
15 sophisticated lockout device?

16 MR. SAVAR: In Philadelphia?

17 COUNCILWOMAN FERNANDEZ: Yes.

18 MR. SAVAR: It's probably small, but
19 I think I explained why.

20 COUNCILWOMAN FERNANDEZ: No, no. I'm
21 asking you, do you have an estimate of the
22 numbers?

23 MR. SAVAR: That we currently use?

24 COUNCILWOMAN FERNANDEZ: Where you
25 have this new sophisticated lockout device?

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2 MR. SAVAR: In Philadelphia?

3 COUNCILWOMAN FERNANDEZ: Yes.

4 MR. SAVAR: No, I don't.

5 COUNCILWOMAN FERNANDEZ: Okay. Would
6 you send that to the committee, with a list of
7 the addresses?

8 MR. SAVAR: I think what's more
9 important than that, though, is what I tried to
10 explain earlier.

11 We have these available to us.
12 They're very expensive. We will be glad to
13 install them with if we know that that is what
14 the law is going to be, and that we can be here
15 and recoup our investment.

16 You're talking about an investment of
17 hundreds of thousands of dollars to do our
18 whole route. And it wouldn't be prudent to go
19 out and make that kind of investment if, on
20 January the 1st, 1999, we're going to be out of
21 business. And that is a possibility.

22 The issue is sales of cigarettes to
23 minors. We're offering a solution.

24 COUNCILWOMAN FERNANDEZ: Okay, could
25 I ask you to comment on this: If the young

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2 people that testified here today have gone into
3 bars and been allowed to be there, they have
4 been able to get change from the people
5 allegedly tending and watching out for the
6 cigarette vending machines, what makes you
7 think an attendant would not also push a button
8 and allow the young person to illegally buy?

9 MR. SAVAR: Why would that attendant
10 be any less responsible than the clerk that's
11 in charge?

12 COUNCILWOMAN FERNANDEZ: I'm saying,
13 right now, we find in this city that 50 percent
14 of the time where we have a tough law that is
15 being enforced in stores, with L&I and TEACH
16 working very hard to dramatically lower those
17 numbers, people are getting fined. But, still,
18 50 percent of the time, people are risking a
19 fine and illegally selling.

20 So, again, what makes you think that
21 in an establishment that would have the
22 push-button that you would not have adults push
23 the button and let the kid buy?

24 Just like now they're giving them
25 change even though these little kids could no

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2 more pass for 18 -- I mean, you can't -- you
3 can't convince me that these little kids look
4 18. And it would be a gross mistake to think
5 that these little kids look 18.

6 MR. SAVAR: Why would I want to
7 convince you that they do when, obviously they
8 don't? That's not the issue.

9 COUNCILWOMAN FERNANDEZ: No, the
10 issue is that the person in the bar or the
11 other establishment that now is supposed to be
12 watching out for the cigarette vending machine
13 is not doing it. They're letting these little
14 kids in, they're giving them change.

15 So your lockout device seems to me
16 very fallible because we have people willing to
17 risk a fine, and they're illegally selling
18 tobacco products to minors.

19 MR. SAVAR: It is no more fallible
20 than in any other over-the-counter sale. And
21 why should we be denied the same opportunity as
22 anyone else to sell products to adults?

23 COUNCILWOMAN FERNANDEZ: Could they
24 put the vending machines behind the bar, where
25 only adults are?

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2 MR. SAVAR: If it was that easy, we
3 had have done it already. It's just not that
4 simple. It just doesn't work that way. It's
5 not practice, there isn't room for it.

6 COUNCILWOMAN FERNANDEZ: We heard the
7 same arguments from the store keepers who said
8 they could never get their tobacco products
9 behind the counter -- it wouldn't work.

10 They are doing it. They have found a
11 way to comply to stay in business. And my
12 sense is you could find a way to stay in
13 business also.

14 MR. SAVAR: Well, we have.

15 COUNCILWOMAN FERNANDEZ: Where we
16 agree is --

17 MR. SAVAR: We have found a way.

18 COUNCILWOMAN FERNANDEZ: We don't
19 want to be a party to getting young kids hooked
20 on tobacco products, that's where we do agree.

21 MR. SAVAR: Neither do we.

22 And we have found a way to stay in
23 business, and the lockout device is that way.
24 And the same principle that is involved in any
25 over-the-counter purchase is at work.

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2 And you would be surprised where we
3 use it how seriously they take it. We've
4 educated people, we have specific people that
5 are designated in charge of the machine. And
6 it works quite well. And it's being taken
7 quite seriously by those establishments that
8 use it.

9 COUNCILWOMAN FERNANDEZ: Thank you
10 very much.

11 COUNCILWOMAN TASCO: The Chair
12 recognizes Councilman Mariano.

13 COUNCILMAN MARIANO: Thank you,
14 Madame Chairwoman.

15 Mr. Savar, the lockout device, how
16 much how much does it cost?

17 MR. SAVAR: \$150, plus installation.

18 COUNCILMAN MARIANO: Can you give me
19 a location now where I could go look at a
20 lockout device, give me a bar or something?

21 MR. SAVAR: Yes, I can.

22 COUNCILMAN MARIANO: Can you tell me
23 one?

24 MR. SAVAR: Yeah, Tiffany Diner on
25 Welsh Road and the Boulevard.

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2 COUNCILMAN MARIANO: I know exactly
3 where that is.

4 COUNCILWOMAN FERNANDEZ: And he's
5 sending us a list, so --

6 COUNCILWOMAN MARIANO: That's fine.
7 Tiffany Diner's at the top of my district.
8 I'll have some --

9 MR. SAVAR: Michaels's Restaurant, in
10 Glenside.

11 COUNCILWOMAN FERNANDEZ: We want the
12 list here in the city.

13 MR. SAVAR: That's right outside the
14 city, but --

15 COUNCILMAN MARIANO: That's fine.

16 Back to the point. You told
17 Councilwoman Fernandez something, uh. . .
18 If you also sell cigarettes in bars, where do
19 you sell them, where are the machines?

20 I'm not a cigarette smoker. I smoke
21 cigars. So we can't get them in cigarette
22 machines. My father died of cancer, so we can
23 get all that out in the open, okay?

24 Where do you sell them? I mean, I
25 don't know, I don't pay attention to --

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2 MR. SAVAR: Primarily bars and
3 restaurants. We do still operate in some
4 pizzerias. We've removed a tremendous number
5 of our machines from most of the pizzerias but
6 we still have some.

7 We found them to be a problem. And
8 where the owners couldn't control them, we
9 removed them.

10 COUNCILMAN MARIANO: Bars,
11 restaurants, some pizzerias.

12 MR. SAVAR: Primarily bars, bars and
13 restaurants. We have machines at the race
14 track, we have machines in clubs, VFW posts,
15 but primarily bars.

16 COUNCILMAN MARIANO: How much is a
17 pack of cigarettes in a machine?

18 MR. SAVAR: Between 2.50 and \$3,
19 depending on the location.

20 COUNCILMAN MARIANO: All right, thank
21 you.

22 COUNCILWOMAN TASC0: Why would you --
23 under what circumstances did you choose to
24 select Michael's for a lockout? Had you gotten
25 complaints?

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2 MR. SAVAR: Well, Cheltenham Township
3 banned cigarette machines. And I just happen
4 to think that this is something that was fresh
5 in my mind. And I went there, I showed them
6 the lockout device, I checked with their
7 counsel, and they agreed to let us use it.

8 COUNCILWOMAN TASC0: And you said you
9 have put some in Philadelphia? Where is
10 Tiffany's?

11 MR. SAVAR: Welsh Road and the
12 Boulevard.

13 COUNCILWOMAN TASC0: And what gave
14 rise to put a lockout machine there?

15 MR. SAVAR: They requested it.

16 COUNCILWOMAN TASC0: Were they having
17 problems?

18 MR. SAVAR: Yes.

19 COUNCILWOMAN TASC0: With young
20 people?

21 MR. SAVAR: Yes. We might have been
22 the victim of a sting operation there.

23 COUNCILWOMAN TASC0: What about more
24 closely into the areas around schools? Maybe
25 some establishments -- you don't put the

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2 vending machines in take takeouts, most of
3 yours are in bars or restaurants?

4 MR. SAVAR: For the most part -- you
5 know, I wouldn't want to say that we don't have
6 any. But that is not a significant part of our
7 business today. And, you know, we wouldn't
8 miss it if we didn't have it.

9 COUNCILWOMAN TASC0: So as you
10 remember right now, you did Michael's and you
11 did Tiffany's. What about something more close
12 in town?

13 MR. SAVAR: The ones I know of off
14 the top of my head are in the Northeast. I
15 don't have that -- I didn't come prepared with
16 that specific information.

17 COUNCILWOMAN TASC0: Did you read the
18 notes of testimony from the last hearing on
19 this issue, two years ago, when we had --

20 MR. SAVAR: I was here.

21 COUNCILWOMAN TASC0: -- some young
22 people talk about how they had done the same
23 thing, in terms of buying cigarettes from local
24 establishments?

25 MR. SAVAR: Yes. I was here at that

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2 hearing.

3 COUNCILWOMAN TASC0: Did you ever
4 think to move to provide machines with lockouts
5 that would -- knowing that this hearing was
6 recessed and knowing that if you came back and
7 said, Well, as a result of that hearing and the
8 testimony we heard, we want to be cooperative.
9 We believe we have put these lockout devices.

10 It helps, certainly, with the
11 Councilmembers to look at this legislation. I
12 mean, it seems to me you've done absolutely
13 nothing.

14 MR. SAVAR: Well, that's not true.
15 Twenty-five percent of our route now has
16 lockout devices.

17 COUNCILWOMAN TASC0: But you can't
18 tell me --

19 COUNCILWOMAN FERNANDEZ: We're
20 talking about in the City of Philadelphia.

21 COUNCILWOMAN TASC0: In the city,
22 this is what we're dealing with.

23 MR. SAVAR: I tried to address that
24 problem. And the problem is that it's so
25 expensive for us to go out and do it that if we

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2 can't have an assurance that we're going to
3 remain in business, we can't justify making the
4 expense.

5 So we asked for this two years ago.

6 COUNCILWOMAN TASC0: Do you believe
7 that because we might not have the votes to
8 pass this legislation, it's not going to get
9 passed, so you kind of bet that it won't get
10 passed, so you don't have to make the
11 expenditure of the 150, as opposed to saying,
12 We'll spend the 150,1 and saying to City
13 Council, This is what we've done as a result of
14 the hearing, we've put these lockout devices
15 in, and which might cause the Council to look
16 more favorably on maybe not passing this bill?

17 MR. SAVAR: The answer is that we
18 invite the Council to pass a bill that would
19 include lockout devices, and that would solve
20 the issue.

21 And that would give us a reason to
22 justify the expense. That would allow us to
23 know that we're going to be able to continue to
24 sell to adult customers.

25 COUNCILWOMAN TASC0: Well, having

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2 shown good faith might have encouraged Council
3 to say, Well, we would approve the lockout
4 devices, as opposed to pushing to ban them
5 totally.

6 MR. SAVAR: Well, we have shown good
7 faith. We have removed many of our machines.
8 We are a fraction of what we used to be.

9 COUNCILWOMAN TASC0: But you can't
10 remember where.

11 MR. SAVAR: Where I've removed them?

12 COUNCILWOMAN TASC0: Other than
13 Tiffany's and Michael's.

14 COUNCILWOMAN FERNANDEZ: No, they put
15 lockouts there.

16 COUNCILWOMAN TASC0: That you put
17 lockouts there.

18 MR. SAVAR: I have people that do
19 that. I have an organization of 50 people. I
20 didn't come here prepared -- I have a thousand
21 cigarette machines. I didn't come here
22 prepared specifically to say where they were.

23 COUNCILWOMAN TASC0: Out of the
24 thousand, how many have a lockout device, do
25 you remember that?

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2 MR. SAVAR: About 25 percent.

3 Because we have 100 percent lockouts in New
4 Jersey.

5 COUNCILWOMAN TASCO: Councilman
6 Mariano.

7 COUNCILMAN MARIANO: Mr. Savar, if I
8 amend -- do a friendly amendment and amend this
9 bill for lockout machines, it would be okay,
10 then you would put lockout devices in every
11 machine?

12 MR. SAVAR: Yes.

13 COUNCILMAN MARIANO: I mean, am I
14 hearing the same thing my colleagues are
15 hearing? You didn't put the lockout devices in
16 because it's expensive? Is that what you're
17 telling us?

18 MR. SAVAR: Because it's expensive
19 and --

20 COUNCILMAN MARIANO: And you didn't
21 know if we you were going to put 'em in and we
22 were going to ban vending machines anyhow?

23 MR. SAVAR: Right, exactly.

24 COUNCILMAN MARIANO: Okay. I wasn't
25 sure what I was hearing. So you will put the

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2 lockout devices --
3 MR. SAVAR: Absolutely.
4 COUNCILMAN MARIANO: -- if we amend
5 this bill?
6 MR. SAVAR: Absolutely, absolutely.
7 COUNCILMAN MARIANO: You won't put them in if
8 we ban vending machines anyhow, right?
9 MR. SAVAR: We'll continue to as our
10 economics would permit us to.
11 COUNCILMAN MARIANO: How long would
12 it take you to --
13 MR. SAVAR: I buy them all the time.
14 COUNCILMAN MARIANO: How long would
15 it take you to put a lockout device in your
16 machines?.
17 MR. SAVAR: It would probably take us
18 a while. It would probably take us six months
19 to cover the route.
20 COUNCILMAN MARIANO: I mean, do you
21 think all the vendors that -- and I have no
22 idea 'cause I came late and I missed the first
23 gentleman, if he was here.
24 Will the lockout devices push anybody
25 out of business?

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2 MR. SAVAR: No.

3 COUNCILMAN MARIANO: 'Cause it would
4 be cost-prohibitive?

5 MR. SAVAR: We will, we'll lose
6 locations because of the requirements that the
7 lockout demands, where the machine would have
8 to be close by the attendant and it would have
9 to be in a convenient place, what we found is
10 we will lose a lot of locations.

11 That just goes with the territory
12 because there are places that will not be able
13 to comply with the use of a lockout. So, in
14 those cases, we remove machine. We only
15 operate them where they can be used as they're
16 intended to be used.

17 COUNCILMAN MARIANO: So you will get
18 the Chair a copy of all the places in
19 Philadelphia where you have cigarette machines
20 that have lockout devices -- is that what we
21 wanted? -- so we can visit some of them?

22 MR. SAVAR: Yes.

23 COUNCILMAN MARIANO: All right, thank
24 you.

25 COUNCILWOMAN TASCO: You have vending

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2 machines in New Jersey.

3 MR. SAVAR: Yes.

4 COUNCILWOMAN TASC0: They passed a
5 ban on vending machines.

6 MR. SAVAR: New Jersey?

7 COUNCILWOMAN TASC0: New Jersey.
8 Let's talk about Cherry Hill.

9 MR. SAVAR: Okay.

10 COUNCILWOMAN TASC0: All right.

11 Cherry Hill had a ban on vending machines.

12 MR. SAVAR: Yes.

13 COUNCILWOMAN TASC0: So you went back
14 and you renegotiated a lockout process.

15 MR. SAVAR: Yes.

16 COUNCILWOMAN TASC0: How much
17 business did you lose? And how much gain
18 back?

19 If you lost 100 percent as a result
20 of the ban, how much did you gain back with the
21 lockout devices?

22 MR. SAVAR: Well, that happened a
23 number of years ago. So we've been using them
24 in Cherry Hill for a while.

25 Haddon Township was the most recent

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2 place where we've dealt with a situation where
3 they've required a lockout device. And out of
4 about ten locations, we lost two of them.

5 And the reason we lost two of them
6 was that the people in those locations couldn't
7 comply with what it would take to operate the
8 lockout.

9 And, obviously, the main thing is
10 that the machine has to be located in an area
11 where it can be surprised because it takes
12 human intervention in order to operate the
13 machine.

14 So where that wasn't possible, we
15 removed the machines.

16 COUNCILWOMAN TASC0: If you provide
17 mostly to bars and bowling alleys?

18 MR. SAVAR: No, no bowling alleys.

19 COUNCILWOMAN TASC0: Bars? And what
20 did you say?

21 MR. SAVAR: Bars and restaurants.
22 Some pizzerias still, but we've removed most of
23 the pizzerias.

24 COUNCILWOMAN TASC0: Who provides to
25 the takeouts, the stop-and-go's and the other

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2 places?

3 MR. SAVAR: They them sell over the
4 counter. I don't have any of them. I'm not
5 aware of any cigarette --

6 COUNCILWOMAN TASC0: Are you the only
7 cigarette machine operator in Philadelphia?

8 MR. SAVAR: Am I the only one? No.

9 COUNCILWOMAN TASC0: Is this the
10 Apple group?

11 MR. SAVAR: We're among the larger
12 ones. There are many others.

13 COUNCILWOMAN TASC0: Mm-hmm, okay.

14 COUNCILWOMAN FERNANDEZ: I had two
15 questions.

16 You started your testimony talking
17 about Senator McKean's bill in the U.S. Senate.

18 MR. SAVAR: Yes.

19 COUNCILWOMAN FERNANDEZ: What are the
20 provisions in that bill regarding vending
21 machines?

22 MR. SAVAR: That if the FDA decides,
23 in their wisdom, that they want to take the
24 vending machines, that they will provide
25 compensation to the industry.

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2 That means purchasing our contracts,
3 buying out our equipment, and reimbursing us
4 for profits that we would have earned in the
5 future.

6 COUNCILWOMAN FERNANDEZ: That would
7 -- that would be quite a deal.

8 Well, one of the issues that I --

9 MR. SAVAR: It's actually a
10 Constitutional question. The fifth amendment
11 provides that when government, for its own use,
12 takes private property for its own use, that
13 those people should be compensated for the
14 property that's taken.

15 And the -- one of the big issues here
16 that we've been fighting over is what they're
17 talking about on the federal level is the
18 taking of an entire industry.

19 COUNCILWOMAN FERNANDEZ: But in some
20 ways, you see the handwriting on the wall,
21 right?

22 To be honest with you, I would never
23 have dreamed, considering where we were ten,
24 fifteen years ago, that there would be such
25 strong legislation before Council -- I mean,

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2 excuse me, before Congress, and the settlement.

3 So things are moving fast. And I'm

4 -- I guess I would just say it's a friendly

5 comment 'cause you said we have common

6 concerns. It may be time to diversify your

7 business even more.

8 MR. SAVAR: We're doing the best that

9 we --

10 COUNCILWOMAN FERNANDEZ: And, you

11 know, going into other kinds of vending.

12 MR. SAVAR: We're doing the best we

13 can. However, we do have a large business

14 where we sell a legal product, and we do sell

15 to adults.

16 COUNCILWOMAN FERNANDEZ: One other

17 comment I want to make for the record, Madame

18 Chair.

19 I've heard you several times refer to

20 the actions of TEACH and other groups as

21 "stings."

22 MR. SAVAR: Yes.

23 COUNCILWOMAN FERNANDEZ: I think

24 another way to state what they do is a

25 "test-buy" to see if illegal action is going

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2 on.

3 And I'd like to note for the record,
4 those are funded and required by the State. So
5 they are test-buys; they are not some kind of
6 illegal sting.

7 They are seeing if shop keepers are
8 illegal -- in clear violation of the law,
9 illegally selling to minors.

10 COUNCILWOMAN TASC0: Thank you very
11 much. Do you have anything else you'd like to
12 say?

13 MR. SAVAR: No, thank you, ma'am.

14 COUNCILWOMAN TASC0: Thank you very
15 much for your testimony.

16 Our next panel representatives from
17 the Department of License and inspections; and
18 Dr. Larry Robinson, from the Philadelphia
19 Department of Health.

20 (Next panel comes forward.)

21 COUNCILWOMAN TASC0: Mr. Campbell, I
22 believe you're representing the Department of
23 Licenses and Inspections?

24 MR. CAMPBELL: That is correct,
25 Madame Chairperson.

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2 First of all, I'm John P. Campbell,
3 Legislative Regulatory Affairs Manager for the
4 Department of L&I.

5 At my left is Rudy Paliaga, the
6 Director of our Business Regulatory Enforcement
7 Program.

8 I'd like to begin by first offering
9 the apology of Commissioner Egan and Deputy
10 Commissioner McLaughlin, who are unable to
11 attend this morning. And I am here in their
12 place.

13 I would just like to make a few
14 comments. We're the enforcement arm of this
15 program. And enforcement is as successful as
16 our commitment or as we make the program. And
17 I think actions speak louder than words.

18 If you look at what we have done in
19 working with organizations like TEACH,
20 Councilwoman Fernandez's staff, and we take
21 pride in that we are successful -- or have, you
22 know greatly contributed to the success of
23 reducing teenage youth access to tobacco from
24 84 percent, I believe the statistic today was
25 52 percent, which is about a 35, 40 percent

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2 drop overall.

3 Two other comments. If Council
4 decides to enact this legislation, we will fold
5 the enforcement program into our successful
6 program.

7 And the only other comment that I
8 really have is that, you know, it's ironic that
9 you're successful in a program and there is
10 this gap where anybody can walk into a machine,
11 or to a machine, stick money in, and buy the
12 pack of cigarettes that the clerk or the store
13 keeper will not sell to individual. And if you
14 enact this legislation, it's just paving over
15 or hole.

16 And, again, our commitment is that if
17 you will enforce its provisions. I can answer
18 any questions.

19 COUNCILWOMAN TASCO: The Chair
20 recognizes Councilwoman Fernandez.

21 COUNCILWOMAN FERNANDEZ: Mr.
22 Campbell, could you tell us how many stores or
23 business establishments have been fined to
24 enforced the youth access to tobacco products
25 law that we passed several years ago, which is

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2 different from the vending machines? It's
3 selling over the counter.

4 MR. CAMPBELL: Right. I would like
5 to turn that over to Rudy Paliaga, who's the
6 Director of the program. And Rudy has run this
7 program very well.

8 MR. PALIAGA: Yes. Good morning,
9 Councilpeople.

10 The tickets that were issued by L&I,
11 total as of last week were 80. And 444 tickets
12 were issued by TEACH through the third-party
13 program that we operate.

14 COUNCILWOMAN FERNANDEZ: So that's a
15 total of. . . ?

16 MR. PALIAGA: That's 524. The number
17 of inspections we actually conducted
18 independent of the TEACH youth were 3,490,
19 almost 3500 inspections.

20 COUNCILWOMAN FERNANDEZ: Were those
21 like routine inspections to make sure the
22 establishments knew what the law was?.

23 MR. PALIAGA: Well, it was a
24 combination of -- we took the opportunity to
25 hand out the educational package. And while we

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2 there doing that throughout the city, we took
3 the opportunity to determine if other licenses
4 were in place because we didn't want to waste
5 that inspection by just doing tobacco
6 enforcement.

7 And in addition to being there for
8 license inspections, we did zoning inspections
9 as well because certain licenses are a
10 prerequisite to zoning, and zoning is the
11 that's basis for everything that do in L&I.

12 COUNCILWOMAN FERNANDEZ: And also on
13 the record, in enforcing this other law, did
14 you have many repeat violations? And do you
15 have any numbers on that?

16 MR. PALIAGA: We have some statistics
17 here. Actually, we have a printout that we
18 brought with us. I think Mr. Campbell has it.
19 And that indicates that -- we've highlighted
20 some repeat violators of those code violation
21 notices or tickets that we've issued.

22 And we'll be able to share that with
23 you.

24 COUNCILWOMAN FERNANDEZ: But for this
25 record, do you have what were the numbers of

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2 repeat violators? In other words, the stores
3 where they've been fined once and they
4 continued to do it so you had to fine them
5 again.

6 MR. PALIAGA: I haven't totaled those
7 up, but your staff member there has it
8 highlighted.

9 COUNCILWOMAN FERNANDEZ: I want to
10 thank you for working hand-in-hand with TEACH
11 to really try to get this law enforced. 'Cause
12 it's very, very disappointing when there's laws
13 on the book and they actually don't get
14 enforced, particularly when it's around an
15 issue as important as children's health.

16 MR. PALIAGA: Well, we want to thank
17 you for supporting L&I. It's really been a
18 pleasure.

19 And as talked to the inspectors in
20 business compliance -- as a matter of fact, Mr.
21 Campbell was gracious enough to give us a copy
22 of testimony at one of these Council hearings,
23 in hard copy, and we made sure that every
24 clerk, inspector, and supervisor in business
25 compliance reviewed that, and initial it that

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2 they reviewed it.

3 It's very much appreciated at L&I.

4 COUNCILWOMAN FERNANDEZ: My last
5 question would be to Mr. Campbell or Mr.
6 Paliaga.

7 If this bill passes and there's a
8 total ban on cigarette vending machines, what
9 would that mean in terms of enforcement for
10 L&I?

11 MR. CAMPBELL: Councilwoman, Rudy and
12 I were discussing that during the process of
13 the hearing.

14 I think initially we would start
15 basically what we did with the youth access and
16 put a package together and start with the
17 licensed vendors. We'd get the list from the
18 Commonwealth of vending machine operators, copy
19 the ordinance, copy the letter, the package,
20 similar to what we did before, telling them in
21 fact that cigarette machines are now illegal in
22 Philadelphia.

23 We would also, again, deal with the
24 tobacco distributors who, of course, provide
25 the tobacco products to the vending machine

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2 businesses. And then, possibly, we would see
3 how far we get at that level.

4 And then, if necessary, the next
5 level would be just to send a notice out to all
6 businesses, with the water bills, with the --
7 their annual tax bills -- their tax packages
8 telling them in fact that this is illegal.

9 And, again, we always give people the
10 opportunity to comply first, then we would go
11 into our enforcement code which is, under
12 9-105, the code violation notices, possibly
13 some kind of a nuisance, and maybe even have to
14 go after the business itself and close their
15 business for a while.

16 I mean, if we have to go to that
17 ultimate degree. We would hope that we would
18 have cooperation in the first stage, and. . .

19 COUNCILWOMAN FERNANDEZ: My other
20 question was, you heard the industry
21 representative proposing that we allow lockout
22 devices instead of a total ban. What is your
23 sense of the enforcement issues if we have
24 these lockout devices?

25 MR. CAMPBELL: Well, I have a couple

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2 comments.

3 Number one, I believe that the
4 ordinance title talks about banning or
5 prohibiting the machines altogether. And I
6 would bow to the Law Department, but there may
7 be an ordinance construction problem with the
8 bill.

9 But as far as amending the ban, and
10 looking from a systems angle, when you start
11 building exceptions into a program, that's when
12 you start to have failures in the program. I
13 mean it's the old "KISS" -- keep it simple and
14 stupid. It just works.

15 I mean, if you start saying, It's
16 prohibited here and maybe here, the potential
17 is dramatic. I mean, it's a geometric
18 progression for the possibly of error. And
19 there have been numerous studies done over the
20 last hundred years, you know, in systems.

21 COUNCILWOMAN FERNANDEZ: And is it
22 correct that the lockout devices still depend
23 on compliance by the human being who's supposed
24 to push the button to activate the lockout
25 device?

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2 MR. CAMPBELL: Everything I've read
3 on lockout devices or giving people special
4 coins would require that an individual would be
5 the person, who, you know -- obviously, if I
6 draw the comparison, it would be the same
7 person who would sell the tobacco product the
8 loose tobacco product to the individual.

9 COUNCILWOMAN FERNANDEZ: Or give the
10 kids the change.

11 MR. CAMPBELL: Exactly.

12 COUNCILWOMAN FERNANDEZ: Thank you.

13 COUNCILWOMAN TASC0: Thank you very
14 much.

15 MR. CAMPBELL: Thank you
16 Councilwoman.

17 COUNCILWOMAN TASC0: Next witness.
18 Identify yourself for the record, please.

19 DR. ROBINSON: My name is Dr.
20 Lawrence Robinson, and I'm Deputy Health
21 Commissioner for the City of Philadelphia. I'm
22 very pleased to be here to speak to you to
23 support this ban on vending machines.

24 I'd just like to address the issue of
25 lockout devices because I do happen to have

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2 some information here specifically on that
3 issue. In Minnesota, Utah, and Washington,
4 studies were done in which analyzed the use of
5 locking devices.

6 One of those studies, which I have,
7 was done in Minnesota, where they studied over
8 100 machines using locking devices. And from
9 that study, they concluded that children were
10 sold cigarettes 38 percent of the time through
11 machines with locking devices. So there is
12 evidence that shows that even with locking
13 devices, it's not 100 percent effective.

14 There are some other issues that we
15 have to deal with here as well. As Deputy
16 Health Commissioner and as a medical doctor, we
17 face the problems that are associated with
18 tobacco smoking all the time.

19 As you know, we are the number-one
20 provider of ambulatory health care here in
21 Philadelphia. We have over 125,000 patients in
22 City-supported clinics, and a large portion of
23 the illness that's associated with people in
24 Philadelphia is due to cigarette-smoking. In
25 fact, cigarette-smoking is the number-one cause

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2 of preventable death and illness in
3 Philadelphia, and it results in about 425,000
4 deaths nationwide.

5 We're looking specifically at the
6 issue of children here, and I would like for
7 people to realize it's not just the illness and
8 disease, but there are other issues that are
9 associated with cigarette-smoking as well. And
10 this is very interesting when I did some
11 research on this issue.

12 There's a relationship between
13 smoking and academic performance. Those
14 children who have an A average, only 47 percent
15 of them were found to be daily smokers.
16 Whereas those with D average, 46 percent were
17 found to be daily smokers.

18 Not only does cigarette-smoking have
19 an impact on academic performance, but it also
20 has an impact on lost days from school, where
21 children have more colds, asthma, and
22 respiratory diseases, which are associated with
23 not only the issue of them smoking themselves
24 but also the issue of secondhand smoke, which
25 is also something else we should look at.

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2 Now, there's another issue that I'd
3 like to point out which was brought up, and
4 that is the issue of vending machines and who
5 uses the vending machines.

6 There's been a lot of data that's
7 been done on that issue. And what we find is
8 that while most children get their cigarettes
9 from a range of sources, it's also true that a
10 significant percentage get them from vending
11 machines. The younger the child, the more
12 likely they are to depend on vending machines
13 to make their purchase.

14 For example, only 2 percent, it's
15 true, of 17-year-old smokers use vending
16 machines; but 22 percent of 13-year-olds rely
17 on them. So you can see that the younger the
18 child is, the easier it is for them to get
19 cigarettes from vending machines.

20 And, in fact, in Bergen County, 31
21 percent of high school students bought their
22 cigarettes from the vending machines.

23 The issue is that every year, over
24 300,000 start smoking. Unfortunately, 1,000 of
25 those children will die as a result of

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2 smoking.

3 And not only that, but the initiation
4 of daily smokers most often occurs around the
5 age of 11 to 14, in the 6th to the 9th grade.
6 About half of all people who become daily
7 smokers began when they were much younger.

8 So one of the things that we have to
9 do if we want to have an impact on smoking is
10 prevention, to prevent children from getting
11 cigarettes and becoming addicted to it. And
12 this is one way we can break the cycle of death
13 and destruction due to cigarettes.

14 Thank you.

15 COUNCILWOMAN TASC0: Thank you. Do
16 you have any questions?

17 (No questions.)

18 COUNCILWOMAN TASC0: Thank you very
19 much.

20 The next panel: Dr. Steven
21 Gambescia, American Heart Association; Dr. Bob
22 Sklaroff, President of the Pennsylvania Society
23 of Internal Medicine, the America Cancer
24 Society. And Jeff Barg, from TEACH.

25 (Panel come forward.)

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2 COUNCILWOMAN TASC0: Good morning.

3 DR. GAMBESCIA: Good afternoon or
4 whatever.

5 COUNCILWOMAN TASC0: I think we're
6 now, at 12 noon, so it's "good afternoon."

7 DR. GAMBESCIA: Thank you.

8 COUNCILWOMAN TASC0: And thank you
9 for coming. And would you please state your
10 name for the record.

11 DR. GAMBESCIA: My name is Steven
12 Gambescia. I'm Vice President for Educational
13 Programs and Research, at the American Heart
14 Association.

15 COUNCILWOMAN TASC0: Would you like
16 to proceed.

17 DR. GAMBESCIA: Sure. I appreciate
18 the opportunity to address Council on this
19 issue.

20 I've been studying this issue for the
21 past decade because it was in 1988 that the
22 public health community began to study the
23 study of youth access to tobacco, so I'm going
24 to talk about research that was done right
25 here, in the City of Philadelphia and the State

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2 of Pennsylvania. So I think I have some useful
3 information to help the Council deliberate on
4 the issue.

5 This is my fifth appearance here on
6 this issue before Council. It goes back to
7 1991, when David Cohen introduced the bill, so
8 I'll be very brief on this.

9 I'll start out by admitting that a
10 large volume of tobacco products are not bought
11 in cigarette vending machines by youth, but
12 that's not the issue here, so I'm going to
13 bring out three points that are significant to
14 show that there are some problems related to
15 cigarette vending machines and why we should
16 consider banning them.

17 First, we just know, and we've
18 already heard testimony on this, that children
19 can easily go to a cigarette vending machine
20 and buy them, regardless of what type of
21 establishment; whether it's a bar, a gas
22 station, a pizzeria. Regardless of what
23 establishment it is, teens can easily buy
24 cigarettes from vending machines. We've heard
25 testimony and proof of that.

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2 The second is a statewide survey that
3 I have before you that was conducted across the
4 State where we surveyed 7th, 9th, and 12
5 graders. And we asked the teens, How easy do
6 you think it is to buy cigarettes? Generally,
7 they said that it's very easy.

8 And then we asked them what places
9 are real easy to get cigarettes. And vending
10 machines come out on the top as the easiest
11 place to buy cigarettes.

12 We also took a look at the data in
13 interpret of the age groups. And Dr. Robinson
14 has already mentioned this, that when you start
15 looking at the younger groups, there's a
16 relationship between the younger you are, the
17 more likely you are to use a cigarette vending
18 machines.

19 I think that's intuitive anyway, but
20 I bring survey up and I have it before you
21 because it tests statistically. And we've
22 published this in peer-review journals that's
23 the case. The younger you are, the more likely
24 you are to use a cigarette vending machine.

25 And the final point that I'll make,

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2 the third one here, is that when we started
3 this day process in townships across the state,
4 and we were going and testifying in Radnor, in
5 Lower Merion, and here in the City.

6 We kept hearing as a problem, the
7 cigarette vending machines would say 75 -- or
8 85 percent of my machines where kids don't
9 frequent. So we looked at that question and
10 said to ourselves, Well, let's test that, let's
11 answer to see whether that's true.

12 Well, one of the problems that we
13 have in order to test, that Dr. Fernandez
14 already mentioned that, we have no idea where
15 these cigarette vending machines because the
16 State-licensed cigarette owner, not the
17 machine, not the machine, the State -- the
18 owner can get a license to run machines, so
19 there's no accountability of where these
20 machines are.

21 So just using good "shoe-leather
22 research," as we call it, we conducted a study
23 in two Philadelphia neighborhoods. You've
24 heard them before. We did them in Roxborough
25 and Manyunk. And said to ourselves, Let's

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2 identify every cigarette vending machine in
3 these two neighborhoods.

4 I happen to live in one of the
5 neighborhoods. I thought I knew my
6 neighborhood real well -- do this type of
7 research and you're really going to know your
8 neighborhood. Because you get the easy ones on
9 the main arteries.

10 But it's interesting in a city this
11 big where, first of all you, have
12 establishments that don't even have signs
13 outside.

14 So we identified 56 machines. And
15 then we asked that question, Well, are they
16 where kids don't frequent? Well, that's not
17 easily answered because we have to say that
18 it's three variables, short of sending teens
19 in, which we already heard. It's an
20 establishment where many teens would frequent,
21 such as a pizzeria, or what have you.

22 The second thing is, is it monitored
23 in ways that we can examine that? And the
24 third is, where is it in the establishment? Is
25 it right at the front door, or is it way back

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2 in the establishment or upstairs?

3 And we heard the young gentleman
4 here, if you remember from testimony, who said
5 that he went through this labyrinth in the
6 establishment and very successfully captured
7 the machine.

8 So we went through that process, and
9 we had a standardized method to assess youth
10 access to the vending machines. And we learned
11 that it's the exact opposite of what the
12 industry said. The industry testifies 85
13 percent of where kids don't frequent, but it's
14 the exact opposite -- 75 percent of these
15 machines in the study said that there was a
16 problem with them.

17 So I think surely something needs to
18 be done to further regulate cigarette vending
19 machines. And, again, as we heard, that now
20 we've become more watchful of over the
21 counter. It just makes sense that the children
22 are going to go to where they can get them
23 easily.

24 You need an intimate encounter to
25 sell cigarettes. And this is a question I have

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2 been asking them. And because I'm not a
3 lawyer, I can't quite figure this out.

4 But I don't think theoretically
5 there's any way you can fine an establishment
6 owner when a kid buys cigarettes at a vending
7 machine. I don't know how that happens.
8 Because the way the law is written, it says
9 that it's a crime if I give or I sell.

10 Well, if the machine's giving it and
11 selling it, the store owner has no relationship
12 there, so I don't know how you fine that
13 establishment owner.

14 Now, the law does say that a crime's
15 committed by the youth if he or she lies about
16 his or her age. So the encounter could be
17 possibly that you ask the kid's age, and they
18 said, you know, Well, I'm 19, and then the kid
19 would lie. The law doesn't allow for that.

20 So this intimate encounter is very
21 important. And I think that's really the crux
22 of the argument here.

23 Why we have to ban the vending
24 machines is because I don't know how you're
25 ever going to fine somebody for a vending

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2 machine because the machine's beyond reproach.

3 And the owner could always use an excuse to get
4 out of this and say, I didn't know, I didn't
5 have this encounter, therefore, I wouldn't be
6 able to, you know, to ask the age, so I can't
7 commit the crime.

8 So I think the banning of them and
9 the research that I've seen over a ten-year
10 period is it's a reasonable thing to do and
11 it's a very responsible public policy.

12 Thank you for again allowing me to
13 testify. And I'd be more than happy to answer
14 any questions on the research here.

15 COUNCILWOMAN TASCO: Thank you very
16 much.

17 I know this is not an issue relative
18 to the vending machines, but we have received a
19 lot of complaint about the selling of Blunts
20 cigars. They are little short cigars that
21 young people take the tobacco out of and then
22 put cocaine in them and smoke them.

23 Have you all done any research on
24 that, the effect of those Blunt cigars? Have
25 you heard about that?

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2 DR. GAMBESCIA: I'm going to have to
3 defer that question and only give an experience
4 that I've had, because I -- that's not an area
5 of -- it's a substance-abuse-related area.

6 In my CVS up in Roxborough, I was
7 standing in line one night, and there was a
8 teen who came up to the counter. And now the
9 Blunts are finding their way on the counter
10 too.

11 And the teen asked for Blunts, a
12 whole pack of them. And he easily got them.
13 And I just sort of quietly questioned the clerk
14 there. It was a young girl. And I said, You
15 just sold cigars, you know, to a 14-year-old.
16 She said yeah. I said, Isn't that a little
17 peculiar? I said, Do you think they're going
18 to be smoking cigars?

19 And from my colleagues who work in
20 that area, the answer is that's exactly what's
21 happening. They're taking the tobacco out of
22 the Blunts and using them to smoke abusive
23 substances.

24 COUNCILWOMAN FERNANDEZ: But could I
25 note for the record, under the earlier law

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2 passed, and now the enforcement mechanisms, if
3 you witnessed that, you could call
4 1-888-99-SMOKE, and that would then go into
5 L&I, and that establishment would be checked
6 out.

7 COUNCILMAN MARIANO: And, Doctor, I
8 think if you witness it and didn't do nothing,
9 you go to jail. I think that's part it. If
10 you witnessed it and you didn't do anything
11 about it, you go to jail.

12 Just kidding, just kidding.

13 DR. GAMBESCIA: Well, actually, I did
14 -- and, again, this is the early days.

15 I did witness it and I approached --
16 and this is why this issue of community
17 policing and community participation really
18 comes alive when you do it in your own
19 neighborhood.

20 And I was up at the 7-Eleven on Ridge
21 Avenue one night. And, again, I'm prefacing
22 this by saying that this was early on, before a
23 lot of people got involved, which is great.

24 COUNCILWOMAN FERNANDEZ: Oh, so you
25 were saying this happened a long time ago, not

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2 within the last year.

3 DR. GAMBESCIA: Well, this story that
4 I'm going to tell happened probably in the
5 early nineties, and I witnessed this. And I
6 very diplomatically said to the store owner,
7 That fellow was not 18 years old. I waited for
8 the fellow to leave because I didn't want to
9 cause a scene, I'm not into the scene thing.

10 But -- this is true story. What the
11 shop owner did was take two step backwards,
12 reach for the phone, called 9-1-1, the police,
13 and said I have a mentally disturbed individual
14 here.

15 Within minutes, the police cars were
16 there. They jumped out of their car. And I
17 waited outside. I figured, Well, I'll present
18 myself and, hopefully, I'll get off of this and
19 not present as someone who's all that
20 disturbed. I just wanted to community-police
21 and say, Don't sell cigarettes to kids.

22 They questioned me, they had their
23 clubs drawn, took my license. They didn't even
24 go in and talk to the shop owner. And they
25 said, Well, what's the problem? I said, Well,

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2 the store owner sold tobacco to kids.

3 And the officer said, Well, who's
4 complaining? And I thought -- and this is
5 where the academic side isn't real cute, it got
6 me into trouble.

7 I said, Well, the attorney general's
8 complaining. And the officer just said, Well,
9 doesn't he have the warning on the cigarette
10 packs?

11 And I realized my mistake there. I
12 said, No, no, that's the surgeon general, but
13 that's all right, you know, there's a problem
14 this.

15 So they just dismissed me, and that's
16 my experience in community-policing. So I
17 tried to --

18 COUNCILMAN MARIANO: But that was the
19 early nineties, right? Now, thanks to the
20 effort of my colleagues here, everybody's, you
21 know, educated, and we know that cigarettes are
22 bad now. Even cops don't smoke cigarettes
23 anymore, they're even learning.

24 So, I'm not saying anything about
25 you, but that was the nineties. Things have

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2 certainly changed.

3 COUNCILWOMAN TASC0: Was this the
4 nineties when you witnessed the selling of the
5 Blunts to the minor?

6 COUNCILMAN MARIANO: That was lately.

7 DR. GAMBESCIA: That was this year.

8 COUNCILWOMAN TASC0: That was just
9 recently, okay.

10 COUNCILMAN MARIANO: And that was in
11 Roxborough, right?

12 DR. GAMBESCIA: Yeah, it was
13 Roxborough.

14 COUNCILWOMAN TASC0: We'd like to
15 know the name of the store so we can follow up
16 on that.

17 DR. GAMBESCIA: Sure. Well, what
18 we're finding in the smaller stores, again, the
19 Blunts are now coming right onto the counter
20 there.

21 COUNCILWOMAN TASC0: Right. Well,
22 don't they fall under the whole ban on selling
23 cigarettes across the counter?

24 DR. GAMBESCIA: Those are tobacco
25 products and --yes.

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2 COUNCILWOMAN FERNANDEZ: For the
3 record, the law we passed in Council says that
4 all tobacco products must be behind the counter
5 or in a locked case. And if they are on a
6 counter, they have to be within arm's reach of
7 the clerk, who is still responsible for not
8 allowing a young person to illegally take them.

9 COUNCILWOMAN TASC0: I didn't know
10 that. Thank you very much.

11 Don't forget before you leave let us
12 know so we can follow up.

13 DR. GAMBESCIA: Sure.

14 COUNCILWOMAN TASC0: Next is Dr.
15 Sklaroff.

16 (Dr. Sklaroff and son, Michael, come
17 forward.)

18 DR. SKLAROFF: And son. I have an
19 intro here.

20 COUNCILWOMAN TASC0: All right. He
21 has to identify him for the record.

22 MICHAEL SKLAROFF: Hi. I'm Michael
23 Sklaroff. I'm almost 8 years old, and I think
24 cigarette vending machines are a waste of
25 money, and it's not good for your health.

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2 And every time I see one, I ask my
3 father, How soon will they be banned?

4 COUNCILWOMAN TASC0: Thank you very
5 much for your testimony. We appreciate it very
6 much.

7 The Chair recognizes Councilman
8 Mariano.

9 COUNCILMAN MARIANO: Can I ask you a
10 question? You don't smoke, right?

11 MICHAEL SKLAROFF: Right.

12 COUNCILMAN MARIANO: How come you
13 don't smoke?

14 MICHAEL SKLAROFF: It's bad.

15 COUNCILMAN MARIANO: But why is it
16 bad, who told you that? Did your dad have
17 anything to do with that? I mean, he's a
18 smart-looking guy.

19 MICHAEL SKLAROFF: No.

20 COUNCILMAN MARIANO: No?

21 MICHAEL SKLAROFF: It gives you
22 cancer.

23 COUNCILMAN MARIANO: But who told you
24 all that? Did Councilwoman Fernandez TEACH you
25 that?

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2 MICHAEL SKLAROFF: Since I go to the
3 hospital, I --

4 COUNCILMAN MARIANO: Listen, work
5 with me here. I'm trying to make your father
6 look good.

7 MICHAEL SKLAROFF: He sometimes has
8 to cure cancer.

9 COUNCILMAN MARIANO: Your dad?

10 MICHAEL SKLAROFF: Mm-hmm.

11 COUNCILMAN MARIANO: See, well, what
12 I'm getting at is that it has to start at home,
13 too.

14 MICHAEL SKLAROFF: Mm-hmm.

15 COUNCILMAN MARIANO: There's a lot of
16 kids out there where it's not starting at home,
17 and that's why we're having this debate today.

18 MICHAEL SKLAROFF: Right.

19 COUNCILMAN MARIANO: Thank you.

20 MICHAEL SKLAROFF: Thank you.

21 COUNCILWOMAN TASC0: Thank you very
22 much.

23 DR. SKLAROFF: I'm a cancer doctor,
24 and he's made rounds with me and he's seen the
25 devastation caused by tobacco.

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2 First of all, I want to thank
3 Councilwoman Fernandez and her staff for the
4 quick invitation. Specifically, her staff
5 member Nicole Seitz heard me out. Very often
6 when I call on the telephone and try to empty
7 out my brain, we get terse, and I've got to
8 make another phone call. And she very polite
9 in absorbing some of the information that I had
10 for her, and I very much appreciate that.

11 I speak on behalf of the Pennsylvania
12 Society of Internal Medicine, of which I'm the
13 President, and the American Cancer Society
14 Commonwealth Division, of which I'm President
15 of the Lower Northeast Philadelphia Division.
16 And, of course, I favor the bill.

17 I want to give you a little bit of a
18 telegraphic history of what I've observed over
19 the past two decades in City Council, and each
20 will lead to a mini conclusion.

21 Fifteen years ago, I testified on
22 behalf of the Philadelphia County Medical
23 Society for City Council, favoring a ban on the
24 free distribution of cigarettes on our City
25 streets. You passed that bill, but then-Mayor

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2 Bill Green was persuaded not to sign that
3 legislation, I think, on day nine of a ten-day
4 period of time. And then it was rescinded by
5 Council.

6 Our arguments were obvious. How
7 could tobacco promoters possibly differentiate
8 among the hands that are grabbing for
9 freebies? I recall that tobacco companies
10 showed a video, right over here, of what they
11 had done at the corner of 48th and Market
12 Streets, a video which Councilman Cohen then
13 used to point out that children too were
14 recipients of that largess. He put it on
15 freeze-frame, and he said to the person who was
16 speaking, Look at that kid, you had that kid
17 given free cigarettes.

18 How far have we come during the past
19 decade and a half? While public awareness of
20 the dangers of smoking has risen, so too has
21 youth access to cigarettes. We win the battle
22 for the minds, but we lose the battle for the
23 hearts.

24 Smoking remains the epidemic that
25 constitutes the greatest public health

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2 catastrophe of this century. Even now, after
3 the release of 39,000 damning documents, Big
4 Tobacco tries to steer the argument away from
5 its deceit, spinning arguments against
6 so-called new taxes and overtly threatening the
7 creation of a black market.

8 Public health advocates seethe, but
9 all we can do is plug along, awaiting any
10 invitation to help government attack this
11 scourge on our society.

12 And I would add that, as I said
13 earlier, my son making rounds with me has seen
14 the death, disability, and devastation and
15 diseases caused by tobacco.

16 Another such chance occurred a decade
17 ago, again, in this chamber when I again
18 testified on behalf of the Medical Society to
19 promote the Clean Indoor Air Act, an effort
20 which was successfully opposed by the City's
21 restaurateurs working in conjunction with the
22 tobacco companies and cigarette distributors.

23 I recall that David Menk (ph.) from
24 the Sansom Street Oyster House was prominent in
25 that effort, and various voluntary efforts were

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2 supposed to have occurred, but I can't say that
3 I noticed them afterwards.

4 And I recall having held a candid
5 conversation with one of the Councilman
6 following the hearing. I sort of escorted him
7 back to his office. And he said that we had
8 not yet convinced him to act because we had no
9 one testifying who, quote/unquote, looks like
10 me.

11 The most recent report of the Surgeon
12 General, which was cited earlier, I think,
13 addresses that directly because it documents
14 the dramatic rise in smoking amount minority
15 youth, illustrating the fact that smoking
16 remains an equal-opportunity killer.

17 Thus, while smoking has since been
18 banned from many public and private spaces,
19 anti-tobacco activists now must contend with
20 the dramatic increase in cigar bars frequented
21 primarily by those in Generation X.

22 Today's cancer control advocate
23 resembles a sorcerer's apprentice, confronted
24 with ever-increasing demands for action, even
25 as incremental victories are achieved.

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2 Of national significance, of course,
3 was our having driven Uptown out of town,
4 symbolized by this pin and cigarette package,
5 which I've saved as souvenirs. But the problem
6 festers, while some even call for cigarette
7 sales to be confined to State stores.

8 These hearings occur amid great
9 national ferment. And I would add that I
10 totally disagreed with the political assessment
11 provided to you earlier by the industry
12 spokesperson because, from my understanding, it
13 is not at all assured that we're going to have
14 national legislation.

15 And, also, he was in error when he
16 said that the, quote/unquote, FDA regulations
17 were in effect. They are being challenged in
18 federal court. And my understanding is that
19 two of the three judges -- one died and one
20 retired or something -- on a three-judge panel
21 hearing the protest. Now because that panel is
22 defunct, a new panel, about a week ago, was
23 appointed to hear the tobacco industry's
24 appeal. So the FDA regs are not in effect.

25 These hearings occur amid great

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2 national ferment. Appended to the testimony is
3 the testimony that I submitted to the House
4 Commerce Committee regarding the strategy that
5 should be followed while trying to detoxify
6 America from addiction to tobacco.

7 And what I mean by detoxifying
8 America is not just the people in America, but
9 also the governments that are living off of
10 tobacco tax money, and that may very well be
11 one of the major driving forces right now and
12 Congress, that has to be very closely
13 monitored.

14 But while the politicians posture,
15 American kids continue to get addicted -- 3,000
16 daily -- you've heard the stats. And you know
17 that monitoring youth access, work successfully
18 coordinated through the Department of L&I, has
19 enjoyed only limited success.

20 The issues facing you here today are
21 not as Constitutional as the claim that
22 cigarettes should be available on City corners
23 and are not as entrepreneurial as the claim
24 that ownership control their stores. And
25 they're not as transcendent as the claim that

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2 comprehensive legislation could bankrupt those
3 innocent multinational corporations.

4 The issues are transparent. Such a
5 ban on vending machines should be a "gimme," as
6 I wrote in my testimony six months ago. An
7 inanimate object simply cannot discern the age
8 of its user, and no lockout device has ever
9 been shown to correct this problem because
10 they're easily disabled.

11 If kids do not start smoking by using
12 cigarettes from vending machines, they
13 certainly are able to transform sporadic
14 behavior to early addiction through
15 readily-available cigarettes in the unmonitored
16 vestibules of buildings all over the City.

17 By the way, Michael's favorite
18 restaurant is Michael's, in Glenside. I can't
19 imagine why. And we've been there, and I had
20 noticed the cigarette vending machine; I
21 believe it's in the vestibule as you go into
22 the restaurant, around the corner, through
23 another glass-paned door, from the person who
24 is behind the counter.

25 So, therefore -- and my parents are

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2 very much plugged into the government in
3 Cheltenham, and we're going to check out his
4 allegation that a, quote/unquote, deal was
5 struck. Because I believe we monitor the
6 situation in Cheltenham very carefully. And,
7 to my knowledge, there has been no deal struck
8 to allow any kind of violations of the law.

9 Such supply lines must be cut. This
10 ordinance would be consistent with pending FDA
11 regulations as well as the published views of
12 the Institute of Medicine, the Public Health
13 Service, the Office of the Inspector General of
14 the U.S. Department of HHS, and a working group
15 of state attorneys general.

16 Even tobacco manufacturers proposed
17 this approach, starting two years ago, not just
18 more recently. Although they now use it as
19 bait in order to receive and return
20 indemnification from their past civil and
21 criminal acts.

22 Congressman John David Fox and State
23 Representative Helen R. Bard have introduced
24 bills and amendments favoring such bans on both
25 the national and the State levels. This is a

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2 bipartisan effort. And another effort, I
3 believe, is going to be issued tomorrow by the
4 House, and a group individuals headed by Meehan
5 and Hanson. And this is bipartisan, despite
6 how others are trying to recast it.

7 There have been many rhetorical
8 exchanges that reveal the underlying motives,
9 but none so dramatic as that triggered by the
10 set of full-page ads published recently by Big
11 Tobacco, such as this one from the April 9th
12 issue of the Wall Street Journal.

13 They say, We agree to change the way
14 we do business, not to go out of business. We
15 say, as did the President, we only want you to
16 go out of the business of pushing cigarettes to
17 minors.

18 Now, initially, I had faxed to
19 Councilwoman Fernandez's office an
20 informational item which now has greater
21 significance. This is one of a three-volume
22 set called, "Implementing the Sinar (ph.)
23 Regulations Strategies for Reducing Sales of
24 Tobacco Products to Minors," published by the
25 Center for Substance Abuse Prevention of

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2 SAMHSA, the Substance Abuse Mental Health
3 Services Administration.

4 And this section is the entire
5 section on regulating vending machines. And it
6 is of interest relative to some of the comments
7 that were made by the industry spokesperson and
8 critiqued partially by Dr. Robinson.

9 You should know that the Sinar
10 amendment was adopted a half decade ago as an
11 early effort to mandate that each state enforce
12 limits above which youth access to tobacco
13 would be prohibited lest federal monies would
14 be forfeited its author was the late Michael
15 Sinar, of Oklahoma.

16 In any case, technology was developed
17 to monitor underage cigarette purchases, which
18 is now being applied nationally. In this
19 monograph, a section entitled "Regulate Vending
20 Machines" details various alternative
21 approaches.

22 This legislation would create a total
23 ban on vending machines. And this approach is
24 viewed as, quote, the most effective way of
25 preventing illegal sales to minors through this

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2 source. Not only does a ban completely resolve
3 the access issue, but it also provides easy
4 evidence of violations. The mere presence of a
5 machine is a violation. The reference is from
6 a 1989 article by Drs. Faldman (ph.) et al.'s
7 documentation of these conclusions.

8 Now, I would emphasize, the ability
9 that you now have to read the extensive
10 discussion in here of the locking devices and
11 how the data that was cited from Minnesota were
12 corroborated from those -- in particular
13 Massachusetts -- where there was a
14 noncompliance rate that rose after time
15 evolved.

16 So, for example, in Minnesota, the
17 rate of noncompliance with the law was 34
18 percent after three months, 30 percent after
19 one year. And then the next sentence is that
20 the ability of minors to purchase cigarettes
21 decreased from a base line of 86 percent to 30
22 percent at three months, but then rose to 48
23 percent after one year. And then the
24 Massachusetts corroborated it, and this is all
25 published.

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2 So I would again challenge that
3 industry spokesperson to give us some data
4 instead of his feelings. You may recall that
5 the tobacco representatives, a couple of years
6 ago, gave their feelings to Congress about the
7 fact that tobacco was not addictive, and we all
8 know the truth.

9 I close by reading a letter, which
10 each of you will have received upon return to
11 your offices, from the Philadelphia County
12 Medical Society. In recommending support for
13 this bill, Society President Katz notes,
14 quote:

15 The evidence supporting the need for
16 this action is overwhelming. Please vote to
17 protect the health of children and young men
18 and women in our city.

19 So when you hear the tired arguments
20 from the vending machine industry, which warn
21 of job loss and diminished tax revenues, know
22 that these are unproven and are dwarfed in
23 comparison with the disease, disability, and
24 death caused by smoking.

25 When you hear the Constitutional

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2 threats from the tobacco corporations, which
3 warn of tarnished freedom of speech and
4 overbearing governmental interventions, know
5 that these are absurd and extreme corruptions
6 of what, actually, are pragmatic and reasonable
7 public health protections.

8 If further documentation is needed,
9 please do not hesitate to request it.

10 Now, I want to critique -- I
11 understand that Jeff Barg is going to be
12 critiquing. I'm going to give you some
13 questions to ask this representative of the
14 industry because some of the things he said
15 were unbelievable.

16 He said sometimes what they were
17 doing was 100 percent effective and foolproof.
18 Other times, he said, Our efforts have not been
19 100 percent effective. The latter, of course
20 is the case.

21 He claimed that in New Jersey, they
22 are very successful. And I was talking with
23 somebody earlier today who said that in
24 Haddonfield, they hadn't yet tested the lockout
25 devices.

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2 In terms of what happened in
3 Montgomery County, you should know that the
4 only reason we didn't get full bans is because
5 they threatened to sue the people in Lower
6 Merion.

7 The bottom-line point is that when he
8 says that this is a vehicle for making a
9 living, it's also a vehicle for making people
10 lose the ability to live.

11 And I would suggest that when you get
12 the data from him that you've requested, that
13 you provide to some of us so that we can help
14 sort of critique what he says.

15 When he says that TEACH, that the E
16 for education word is what's needed, I would
17 say that the A-word, the action-word is what's
18 needed.

19 And I would suggest also that when
20 you look at what's going on with this bill and
21 the need for it urgently, that you continue to
22 enjoy the ability of various public health and
23 medical societies to corroborate and to
24 supplement whatever you're doing.

25 Thank you.

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2 COUNCILWOMAN TASC0: Thank you very
3 much for your testimony.

4 Are there any questions?

5 (No questions.)

6 COUNCILWOMAN TASC0: Thank you.

7 DR. SKLAROFF: Okay, thank you.

8 COUNCILWOMAN TASC0: Thank you very
9 much. I appreciate the information.

10 And, I can tell you, I have a greater
11 appreciation for the ban on smoking in public
12 places and restaurants, having just left
13 Europe. We could not enjoy a restaurant
14 because of the cigarette smoke.

15 Is there anyone else here to
16 testify?

17 (No response.)

18 COUNCILWOMAN TASC0: Excuse me for a
19 moment.

20 Thank you very much for your
21 testimony. And thank you, young man, for
22 coming in today to testify. We appreciate your
23 participation in our democratic process, and
24 you may be in Council one day.

25 Thank you.

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3 COUNCILWOMAN TASCO: There being no
4 further witnesses, we will now move to our
5 public meeting.

6 The Chair calls on Councilwoman
7 Fernandez regarding Bill No. 960367.

8 COUNCILWOMAN FERNANDEZ: Thank you,
9 Madame Chair.

10 I move that we recommend with a
11 favorable recommendation Bill No. 960367, that
12 this bill be reported out of committee, with a
13 favorable recommendation.

14 (Duly seconded.)

15 COUNCILWOMAN TASCO: It has been
16 properly moved and seconded that Bill No.
17 960367 be reported out of committee, with a
18 favorable recommendation.

19 And before I call for a vote, for the
20 record, I would like to state that I spoke
21 personally to Councilman Street, who has
22 appointed Councilman Nutter to this committee
23 for this hearing.

24 And I also note the presence of
25 Council Ortiz, and I did not ask about your

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2 appointment, but he is a member of City

3 Council.

4 (Laughter.)

5 COUNCILWOMAN TASC0: All in favor of

6 reporting Bill 960367 out of committee, with a

7 favorable recommendation, will say.

8 Any opposition?

9 COUNCILMAN MARIANO: For the record,

10 I oppose.

11 COUNCILWOMAN TASC0: Oh, okay, well,

12 the motion is carried. You're opposing so we

13 have a vote of 3.

14 Thank you very much. This meeting is

15 adjourned.

16 (Applause.)

17 (Adjourned at 12:33 p.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Tuesday, May 12, 1998 were reported
and accurately by me, and that this is a correct
transcript of same.

RE: COUNCIL COMMITTEE ON
PUBLIC HEALTH & HUMAN SERVICES
BILL NO. 960367

_____,
JOSEPHINE CARDILLO, RPR