Cooke’s order granting a preliminary injunction barring enforcement of the law while litigation is pending.¹

To be granted a preliminary injunction, the requesting party must show their case is likely to succeed on the merits. Cooke’s order provides a preview into the approach the court will take in analyzing the merits of the case and suggests the law is unlikely to withstand legal challenge.

After establishing that the law concerns the First Amendment rights of patients and physicians, Cooke explained that because the law’s restrictions are content-based, the court must use “strict scrutiny” to determine whether it is constitutional. For the law to be upheld, the state must show it “constitute[s] the least restrictive means of advancing a compelling state interest.” Cooke suggested that the law is likely to fail on both counts; it neither addresses a compelling state interest, nor is the least restrictive means of addressing such an interest, were one present.

Cooke looked doubtfully at Florida’s arguments that compelling government interests exist in protecting patients from questions about firearm ownership; ensuring privacy regarding firearm ownership from clinicians; or protecting patients from harassment or discrimination due to firearm ownership. Even assuming that the state could show a compelling interest, Cooke suggested the state is likely to fail to prove that the law represents the “least restrictive means to accomplish that end.” Cooke pointed to a proposed (less restrictive) alternative whereby patients could decline answering questions about firearm ownership, and clinicians would be forbidden from recording such refusals.

Cooke stressed the importance of “the free flow of truthful, non-misleading information within the doctor-patient relationship.” We hope the final decision recognizes the value of open communication within that relationship and makes the injunction permanent.

Two weeks after the preliminary injunction was granted, a 2-year-old was accidentally and fatally shot while playing with his 11-year-old brother in their parents’ bedroom.²

Could his death have been prevented if his physician discussed the risks of firearm ownership and proper storage practices with his parents? Perhaps his physician did. Or perhaps his physician chose, because of the law, to avoid the topic of firearm ownership. Patients who look to the medical profession to safeguard their families cannot afford the passage of laws that restrict freedom to communicate openly, even if those laws are later struck down.

Lindsey Murtag, JD, MPH
Matthew Miller, MD, MPH, ScD

Author Affiliations: Hogan Lovells LLP, Washington, DC (Ms Murtag); and Department of Health Policy and Management, Harvard School of Public Health, Boston, Massachusetts (Dr Miller) (mmiller@hsph.harvard.edu).

Conflicts of Interest Disclosures: Both authors have completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest. Ms Murtagh reported her employer does some work for the Brady Center on a pro bono basis, but she has not been involved with this work. Dr Miller reported that he has no disclosures.

Disclaimer: The conclusions in this letter are those of the authors and do not necessarily represent the views of Hogan Lovells LLP or the Harvard School of Public Health.

LETTERS

RESEARCH LETTER

A National Survey of Cigarette Prices at Military Retail Outlets

To the Editor: Smoking among military personnel impedes readiness and results in poorer job performance and substantial costs from smoking-related illness and absenteeism.¹ Smoking rates among junior enlisted personnel remain higher than the general population, leading the Department of Defense to take steps to reduce tobacco use.² In 2005, the Department of Defense Instruction 1330.9 mandated that prices for tobacco products sold in US military retail outlets be “no lower than 5 percent below the most competitive commercial prices in the local community” to “communicate to Service members that tobacco use is detrimental to health and readiness.” The Instruction was intended to equalize the cost to consumers, including taxes. No studies address the Instruction’s effect on tobacco pricing, although military personnel believe cigarettes are sold at deeply discounted prices.³ We investigated cigarette prices at military retail outlets compared with the local market.

Methods. The study was approved by the National Development and Research Institute’s institutional review board. We obtained contact information for all military exchanges in 50 states in 2011 using official Web sites. Because tobacco pricing is consistent across retail outlets at any installation, we only called the main exchange for each. Prices were determined by calling each exchange and its nearest Walmart. Walmart was chosen as the local market to allow consistent comparisons across installations, given their competitive pricing and ease of locating stores. Also, Walmart has been used as a benchmark for military cigarette pricing in congressional testimony.⁴

We collected price data on a single Marlboro Red hard pack and a pack of the lowest-priced brand sold after all taxes to determine the cost to consumers. Marlboro was chosen because it captures approximately 50% of the domestic market and has traditionally been heavily marketed to the military.⁵ We asked stores to identify their least expensive brand and its price to determine the lowest consumer price for cigarettes. Comparisons were based on the equation:

\[
\text{Savings} = \frac{\text{Walmart Price} - \text{Exchange Price}}{\text{Walmart Price}} \times 100
\]

The 95% confidence intervals were computed as mean ± (1.96 × standard error of the mean). Comparisons among service branches were conducted using 2-tailed analysis of variance with SPSS version 19 (SPSS Inc); a P value of less than .05 was considered significant.

1. Wollschlaeger v Farmer, Case No. 11-22026 (September 14, 2011, order granting plaintiffs’ motion for a preliminary injunction).
Results. Of 201 military exchanges, we obtained 145 matched exchanges and Walmart comparisons for Marlboro and 133 for the lowest-priced brand. The mean distance between an exchange and the nearest Walmart was 5.8 miles (SD = 5.9).

Smokers who purchase cigarettes at exchanges would realize a mean of 25.4% (95% CI, 23.7%–27.1%) in savings vs the nearest Walmart for a pack of Marlboro ($4.99 vs $6.73) and a mean of 14.5% (95% CI, 11.5%–17.5%) in savings on the lowest-priced brand ($3.98 vs $4.77) (Table). Only 4.8% (7/145) of exchanges had savings of 5% or less vs Walmart for Marlboro, while 15.8% (21/133) were within 5% of the lowest-priced brand. In 3.4% (5/145) of the comparisons for Marlboro and 6.8% (9/133) for the lowest-priced brand, the price was higher at the exchange. There was no statistically significant difference in savings among the military service branches (Marlboro: \( F = 2.28, P = .08 \); lowest-priced brand: \( F = 2.44, P = .07 \)). For Marlboro, the savings at exchanges were large across most locations, reaching 73% at 1 Navy exchange.

Comment. With few exceptions, prices of cigarettes at military exchanges were lower than at the nearest Walmart. A limitation of the study is that the Instruction does not define “the most competitive commercial prices in the local community.” It is possible that lower prices than those found at Walmart may be available, but conducting a comprehensive pricing search for all retail outlets in every community with a military exchange would be prohibitive. When prices were investigated in a limited number of locations, prices at exchanges remained considerably lower. The military’s policy on tobacco pricing should be strengthened and enforced if the goal is to communicate the message that tobacco is harmful to personnel.

Sara A. Jahnke, PhD  
Christopher K. Haddock, PhD  
W. S. Carlos Poston, PhD, MPH  
Melissa L. Hyde, PhD  
Harry Lando, PhD

©2011 American Medical Association. All rights reserved.

### Table. Cost Per Cigarette Pack and Percentage of Savings at Military Exchange Compared With Nearest Walmart for Marlboro Red and Lowest-Priced Brand

<table>
<thead>
<tr>
<th></th>
<th>Air Force</th>
<th>Army</th>
<th>Marines</th>
<th>Navy</th>
<th>National Guard</th>
<th>Joint Base</th>
<th>All Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marlboro Red comparison</td>
<td>(n = 46)</td>
<td>(n = 43)</td>
<td>(n = 10)</td>
<td>(n = 42)</td>
<td>(n = 1)</td>
<td>(n = 3)</td>
<td>(n = 145)</td>
</tr>
<tr>
<td>Walmart pack cost(^a)</td>
<td>6.69 (0.13)</td>
<td>6.86 (0.20)</td>
<td>6.15 (0.22)</td>
<td>6.85 (0.19)</td>
<td>7.63 (NA)</td>
<td>5.75 (0.10)</td>
<td>6.73 (0.09)</td>
</tr>
<tr>
<td>Military exchange pack cost(^a)</td>
<td>4.82 (0.12)</td>
<td>5.18 (0.17)</td>
<td>4.90 (0.15)</td>
<td>5.03 (0.12)</td>
<td>4.53 (NA)</td>
<td>4.75 (0.92)</td>
<td>4.99 (0.07)</td>
</tr>
<tr>
<td>Difference</td>
<td>1.87</td>
<td>1.68</td>
<td>1.25</td>
<td>1.82</td>
<td>3.10</td>
<td>1.00</td>
<td>1.74</td>
</tr>
<tr>
<td>Military savings, % (95% CI)(^b)</td>
<td>27.7 (25.1 to 30.3)</td>
<td>24.0 (20.7 to 27.3)</td>
<td>20.1 (16.8 to 23.4)</td>
<td>25.8 (23.1 to 28.5)</td>
<td>40.6 (NA)</td>
<td>(16.0 to 60.0)</td>
<td>(23.7 to 27.1)</td>
</tr>
</tbody>
</table>

| Lowest-priced brand comparison | (n = 44) | (n = 40) | (n = 9) | (n = 36) | (n = 1) | (n = 3) | (n = 133) |
| Walmart pack cost\(^a\) | 4.57 (0.16) | 4.96 (0.18) | 4.30 (0.25) | 4.96 (0.19) | 6.05 (NA) | 3.94 (0.16) | 4.77 (0.10) |
| Exchange pack cost\(^a\) | 3.89 (0.11) | 4.23 (0.15) | 3.98 (0.17) | 3.79 (0.14) | 4.50 (NA) | 3.95 (0.93) | 3.98 (0.07) |
| Difference | 0.68 | 0.73 | 0.32 | 1.17 | 1.55 | −0.01 | 0.79 |
| Military savings, % (95% CI)\(^b\) | 12.3 (6.79 to 17.8) | 13.7 (10.1 to 17.3) | 6.7 (2.6 to 10.8) | 20.6 (13.7 to 27.5) | 25.6 (NA) | (−38.4 to 40.2) | (11.5 to 17.5) |

Abbreviation: NA, not able to calculate because only 1 installation in the category.  
\(^a\) Indicates mean (SE) in US $.  
\(^b\) Walmart compared with the corresponding military exchange.

Author Affiliations: Institute for Biobehavioral Health Research, National Development and Research Institutes Inc, New York, New York (Drs Jahnke, Haddock, Poston, and Hyder); and Division of Epidemiology and Community Health, University of Minnesota, St Paul (Dr Lando).

Critical revision of the manuscript for important intellectual content: Hyder, Lando.

Conflict of Interest Disclosures: All authors have completed and submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest and none were reported.

Funding/support: This research was supported by National Cancer Institute grant 2R01CA109153.

Role of the Sponsors: The National Cancer Institute had no role in the design and conduct of the study; in the collection, analysis, and interpretation of the data; or in the preparation, review, or approval of the manuscript.

Additional Contributions: Jennifer E. Taylor, PhD (Vanderbilt Medical School) provided assistance in project development and Chris Kajpust and Brianne Tuley, BA (National Development and Research Institutes Inc) provided research assistance. Dr Haddock and Ruth Malone, PhD, were principal investigators of this study. Compensation was provided to Ms Tuley but no one else received compensation.