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Law & policy innovation for the common good.

 **AMERICAN LUNG ASSOCIATION**  
IN CALIFORNIA

 **THE CENTER**  
for Tobacco Policy & Organizing

**Overcoming Tobacco Industry Opposition:  
Understanding the Veiled Threats**

*Recorded on*  
**March 9, 2016**

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**Speakers**

  
**Lindsey Freitas**  
Senior Director  
American Lung Association in California,  
Center for Tobacco Policy & Organizing

  
**John Yi**  
Advocacy Director  
American Lung Association in California,  
Center for Tobacco Policy & Organizing

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**Speakers**

  
**Raymond Leung, JD**  
Senior Staff Attorney  
ChangeLab Solutions

  
**Sona Kalapura Coffee**  
Environmental Programs Manager  
City of Manhattan Beach, CA

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## Speakers



**Tanya Bustamante**  
Tobacco Prevention Program  
Manager  
City of Berkeley, CA



**Jay Macedo**  
Policy Planning & Evaluation Analyst  
Sonoma County Department of  
Health Services

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## Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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## Agenda

- Overview of Tobacco Industry Opposition
- Panel: What Have Industry Groups Done in Local Communities
- Overcoming the Industry: Legal Arguments & Counterarguments
- Overcoming the Industry: Organizing Strength
- Q&A



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**WHO IS THE OPPOSITION?**



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In the past 10 years, the tobacco industry has spent \$139 million on lobbying and contributions in California

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**SOME FAMILIAR NAMES**



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National Association of Tobacco Outlets is a trade association representing business interest of tobacco retailers.



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The Cigar Association, originally established in 1937, is national trade organization of cigar manufacturers, importers and distributors as well as major suppliers to the industry.

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The Neighborhood Market Association represents family and independently owned grocers and convenience stores, many of whom sell tobacco products.

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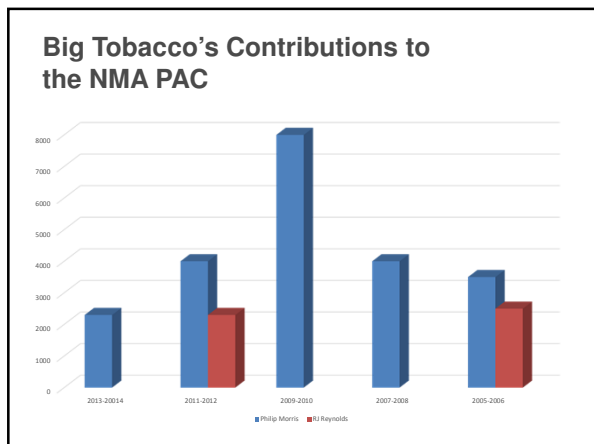
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#### The Neighborhood Market Association and Local Ordinances Relate Tobacco Retailers

**June 2015**

In recent years, the Neighborhood Market Association (NMA) has become active throughout California in opposing local tobacco retailer licensing ordinances and ordinances that restrict tobacco retail from being located within a certain distance of schools based on evidence that parents and youth smokers. These regulations, representing tobacco, have negative effects on the public. NMA's advice also shows a more coordinated effort that includes organized opposition in hearings in local cities and appears against strong that position. The document contains background information on the NMA and the arguments they have made around the state. Additional recent local ordinances related to tobacco retailers are available at [www.centerfortobacco.org/ordinances.html](http://www.centerfortobacco.org/ordinances.html)

**What is the NMA?**

The Neighborhood Market Association is a trade association that represents family and religious-oriented grocery and convenience stores, many of which sell tobacco products and also have other markets. The organization is located in San Diego and has branches in California, Nevada, Oregon & Connecticut States. While the NMA represents various markets, the organization's strong San Diego focus. More than half of the members of the Board of Directors come from that area. The organization was first active in opposing local tobacco control policies in San Diego County.

**What is the NMA's role?**

The NMA's National Tobacco Control Center has been engaged in strategic coordination with local laws lawmakers, as well as candidates for state office. During the 2012-2014 election cycle, NMA's National Tobacco Control Center coordinated with the California Tobacco Control Center (CTCC) to oppose Proposition 53. In 2014, the Neighborhood Market Association was the only ally of the City of San Diego on the issue of cigarette tax increases. Most recently, the National Tobacco Control Center issued a warning letter for state legislators that would restrict the tobacco retailer by forcing it to comply with a large control provision.

**What has the NMA been active in opposing local policy efforts?**

In the past couple of years, the NMA has opposed four tobacco retailer licensing ordinances in California in order to protect tobacco, family drug stores, family drug stores and NMA that have recently, took on one additional ordinance in San Diego. In both cases, the NMA sent letters to local officials, organized rallies, wrote and issued fact sheets, and led

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 10000 San Diego Blvd., Suite 1000, San Diego, CA 92121 | Tel: (619) 512-2444  
[www.centerfortobacco.org](http://www.centerfortobacco.org)

#### The National Association of Tobacco Outlets (NATO) and Local Ordinances Related to Tobacco Retailers

**June 2015**

In recent years, an organization known as the National Association of Tobacco Outlets (NATO) has become active in opposing local tobacco retailer licensing ordinances in California. While the organization representing retailers has opposed similar efforts in the past, NATO's recent actions are a reflection of their newfound focus to be a strong presence in local politics across in California. The document contains background information on NATO and the arguments they have made against the state. Additional tobacco retailer local ordinances related to tobacco retailers are available at [www.centerfortobacco.org/ordinances.html](http://www.centerfortobacco.org/ordinances.html)

**What is NATO?**

The National Association of Tobacco Outlets is a national trade association representing tobacco retailers across the country. NATO's headquarters is in Washington, Missouri and has been active in the Northeast, Midwest, and South. NATO's 2012 members are a mix of tobacco retailers, manufacturers, distributors and other interests. Members are located in 15 states and Districts. NATO has a strong concentration in North Carolina, Virginia, and Florida. There are also concentrations of members from Florida, Mississippi, New York and California. NATO works to ensure governmental policy-making decisions that are favorable to its interests. NATO works to ensure governmental policy-making affecting the business interests of its members. NATO also looks for voters, manufacturers and lawmakers to ensure new methods of advertising and other forms of importance in the tobacco industry.

**What has NATO been active in opposing local policy efforts?**

Historically, NATO has been active in the San Diego County in San Diego, California, Nevada, Oregon, Florida, and other states. NATO has been active in opposing local tobacco control policies in California. In February 2012, NATO launched a campaign to oppose the impact of the state on local government, opposing the state's efforts to restrict the tobacco retailer's operations. In part of the initiative, NATO worked to ensure that the state's efforts to restrict the tobacco retailer's operations. Since the launch, it has responded on behalf of hundreds of retail stores to local proposed regulations and is currently working and opposing local and state laws such as tobacco retailer licensing.

In 2012, NATO filed a lawsuit in Federal Court to overturn a local law in the state of Missouri that regulates tobacco products and pricing (discussed separately in Providence, Rhode Island). The judge dismissed NATO's complaint and upheld the constitutionality of the Missouri tobacco and

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## NEW PLAYERS ON THE BLOCK

APCA  
AMERICAN PETROLEUM AND CONVENIENCE STORE ASSOCIATION

SFATA  
STATE FARM TOBACCO ASSOCIATION

AVA  
AMERICAN VAPING ASSOCIATION

AMERICAN LUNG ASSOCIATION

LUNG FORCE

American Petroleum and Convenience Store Association represents business owners at city, county and state agencies.



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### E-CIGARETTE GROUPS

Electronic Cigarettes are tobacco products and should be regulated in the same way tobacco is regulated



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### CONTACT INFORMATION

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[Lindsey.Freitas@Lung.org](mailto:Lindsey.Freitas@Lung.org)



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# Tobacco Retail Permitting in Manhattan Beach

March 9, 2016  
Sona Coffee  
Environmental Programs Manager



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## Manhattan Beach: Just the Facts

**Location:** 3 miles south of LAX

**City Area:** 3.88 sq. mi

**Beach:** 2.1 miles of beach front

**Pier:** Manhattan Beach has a scenic 928-foot-long pier at the end of Manhattan Beach Boulevard



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**BREATHE FREE**

**MB**

**MANHATTAN BEACH**  
SMOKE-FREE PUBLIC PLACES



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### Ordinance 15-0020

- ▶ **Purpose:** To encourage responsible retailing of tobacco products and electronic cigarettes in Manhattan Beach
- ▶ Manhattan Beach Ordinance No. 15-0020:
  - Prohibits sale of all tobacco and electronic cigarette products by retailers that are within 500 feet of a school;
  - Prohibits sale of flavored tobacco and electronic cigarette products by **all** retailers in Manhattan Beach (with the exemption of mint, menthol, spearmint or wintergreen flavors)



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### Concerns raised by retailers

- ▶ Inclusion of parks in the proposed ordinance
- ▶ Distance used to measure which businesses are 1,000 feet from a school; and
- ▶ Grandfathering existing businesses into the proposed ordinance



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### Opposition Group

- ▶ American Petroleum and Convenience Store Association (Milpitas, CA)
  - Submitted 2 letters to the Mayor stating shared goal to keep tobacco products out of the hands of minors, and support for local ordinances
  - Advocating for grandfathering of existing retailers
  - Opposition of flavored tobacco ban, stated that MB ordinance goes far beyond other flavor bans
  - Request for allowance of continued sale of mint and wintergreen products at all retail establishments



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## Results

- ▶ Staff contacted all tobacco retailers in the City (20) to notify them of them proposed requirements, and address concerns
- ▶ City Council discussed requirements and impacts to businesses and made some adjustments to the ordinance (e.g. 500 ft. distance, allowance of some flavors)



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## Questions?

Sona Coffee, [scoffee@citymb.info](mailto:scoffee@citymb.info)  
(310) 802-5341



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## Additional Information



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**Tobacco and Electronic Cigarette Retailers in Manhattan Beach Would be Required to:**

- ▶ Obtain and display a permit from the City;
- ▶ Discontinue sale of flavored products (unless patrons are 18 or older);
- ▶ Post signage stating that the sale of electronic cigarettes to anyone under 18 years of age is illegal;
- ▶ Check the identification of anyone who appears to be under the age of 30;
- ▶ Keep all tobacco products and electronic cigarettes out of public view;
- ▶ Discontinue sale of tobacco products or electronic smoking devices from vending machines; and
- ▶ Discontinue self-service displays unless:
  - the retailer primarily sells tobacco products or electronic cigarettes;
  - generates more than 60% of revenue from annual sale of these products;
  - does not allow anyone under the age of 18 to enter;
  - does not sell alcoholic beverages or food for consumption on the premises; and
  - posts signage stating that those under 18 are not allowed to enter.




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## Tobacco Industry Opposition in Berkeley: The Retail Buffer Zone Story

TANYA BUSTAMANTE, MPH  
TOBACCO PREVENTION PROGRAM MANAGER  
CITY OF BERKELEY PUBLIC HEALTH DIVISION




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## About the City of Berkeley...

- ❖ Fourth largest city in Alameda County, located in the San Francisco Bay Area
- ❖ Ethnically diverse city of more than 116,000 residents
  - 40% of the city's population is Hispanic, African American or Asian
  - Approximately 22% of the population is foreign born\*
- ❖ One of three city health departments in the state of California



\* 2010 U.S. Census

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## Tobacco Retail Buffer Zone Policy

- ❖ TRL in effect since 2003
- ❖ Council had previously considered restrictions on tobacco product access to youth
- ❖ Our recommendation (May 2015):
  - Require a TRL for sale of electronic nicotine delivery systems (ENDS)
  - Prohibit sale of ALL tobacco products within 1000 feet of K-12 schools and public parks
  - 1-2 year grace period for retailers

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## Tobacco Industry Response

- ❖ May 2015 Council meeting: 27 speakers with majority being retailers in opposition to ordinance proposal
  - Financial burden for business owners
  - Allowed to do business; have never been in violation of any ordinance

*"Ordinance will put us out of business and hurt families."*

*"Please consider the people. They are human beings and have families."*

*"This is a free country. This is the American Dream. That is why I come here."*

*"We do not sell tobacco to minors."*

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## What Worked...Lessons Learned

- ❖ Strong Coalition members and local supporters
- ❖ Internal collaboration with City partners
- ❖ Sound statistical findings and images of youth in Powerpoint presentation
- ❖ Ensure that statistical findings and references are sound
- ❖ Early outreach and education to impacted population
- ❖ Address impact on retail early on
- ❖ Propose plan to decrease economic burden on retailers



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## Ultimate Buffer Zone Outcome

- ❖ Unanimous Council decision (Sept. 15, 2015):
  - Require a Tobacco Retail License (TRL) to sell Electronic Nicotine Delivery Systems (ENDS) and e-liquids;
  - Implement a buffer zone around schools only, with a grace period of three years to minimize economic hardship for qualifying retailers, that would: **Prohibit the sale of ENDS, e-liquids, and flavored (including menthol) tobacco products within 600 feet of schools only**, effective January 1, 2017;
  - Add a provision to prohibit the issuance of new TRLs within the 600 foot buffer zone.
- ❖ Impact on 26 retailers (31%)

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## Licensure of Tobacco Retailers

Proposed ordinance adding Chapter 32A to the Sonoma County Code



**sonoma county**  
DEPARTMENT OF HEALTH SERVICES

Jay Macedo  
Policy Planning and Evaluation Analyst  
Division of Health Policy, Planning and Evaluation  
County of Sonoma, Department of Health Services

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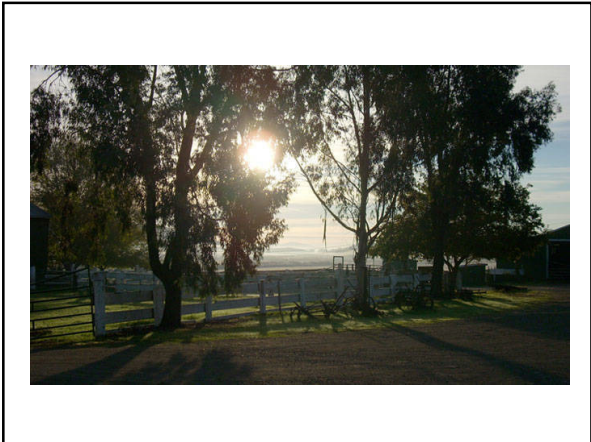
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### Proposed TRL Provisions

- E-cigarettes and new nicotine products
- Violation of any tobacco law
- Pharmacies
- Restrict number of new retailers through density limits
- Limit new retailers near schools
- Limit new significant tobacco retailers
- Drug paraphernalia
- Mobile vending
- Compliance support
- Minimum price
- Discount prohibition
- Minimum pack sizes

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### Tactics

- Calls, emails, and letters to staff and to policy makers
- Posters and community education
- Grassroots organizing of retailers
- Ordinance public comment
- Letters related to legal action from NATO
- Public Information Requests
- Counter-point PowerPoints and Fact sheets



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**KEY TO EFFECTIVE TRL: CONCLUSION**

- Sonoma County staff's assertion that a TRL Ordinance will reduce underage access to tobacco with the hoped for outcome of reducing incidence of smoking by minors has not been proven.
- Results from San Luis Obispo County demonstrate need for strong enforcement and adequate funding for TRL Ordinance compliance checks--Youth Tobacco Purchase Surveys (decoy stings)
  - Without consistent YTPS and appropriate penalties a TRL ordinance by itself does not reduce youth access to tobacco products
- Funding for Sonoma County TRL Ordinance needs to adequately cover the cost of 138 YTPS per year.
- Current distribution of funds suggested by DHS will likely prevent Sheriff's Office from effectively carrying out necessary compliance checks.
- Cooperation between the county and cities will go far to establish a uniform smoking ordinance

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**Summary of TRL Changes**

- After two first readings, Board majority votes to adopt with minor change
- Second reading postponed due to a retailer trade association conference
- New ordinance revisions → a new first reading on March 29, 2016
- Delay implementation date for minimum price, discount ban, and pack size
- Reduce settlement in lieu of appeal penalties
- Include a voluntary Healthy Retail Certification for retailers in ordinance
- Allow full license transferability for most grandfathered retailers
- Allow retailers within 1,000 feet of schools and tobacco-only retailers to transfer to family members
- Allows all retailers to transfer if retailer achieves and maintains healthy retail certification
- Decrease TRL fees temporarily with Master Settlement Agreement funding

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**ChangeLabSolutions**

**Overcoming Industry Opposition:  
Legal Arguments and Counterarguments**



Presented by  
Raymond Leung, JD  
Senior Staff Attorney

March 9, 2016

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**ChangeLab Solutions**

Healthier communities for all through better  
*laws and policies.*



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*Overcoming Industry Arguments*

**Legal vs. Policy**



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**Overcoming Industry Arguments**  
*Legal (themes)*

Legal liability for city/county	6
Taking	5
No legal authority	3
Preemption	2

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"...[M]ay expose the City to litigation and liability fir [sic] diminishing the value of businesses and real property without just compensation."  
– NATO letter to City of Berkeley (April 2, 2015)

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"By what legal authority does the City set the retail price of any legal product, including cigars? We would be pleased to see any statutory cite that you are relying on to justify mandating minimum package sizes and product prices."  
– NATO letter to City of Hermosa Beach (August 21, 2015)

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ChangeLab Solutions



**Contact us!**  
[ChangeLabSolutions.Org/tobacco-control-ask-us](http://ChangeLabSolutions.Org/tobacco-control-ask-us)

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## Overcoming Industry Arguments

*Policy (themes)*

Legal liability for city/county	6
Revenue loss for retailers	6
No effect on youth deterrence	6
Disguised prohibition	6
Loss of competitive advantage for retailers	5
No FDA action	4
No/little scientific evidence of policy effectiveness	4
City/county should grandfather existing retailers	4
Exempt adult-only establishment	4

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## ORGANIZING AGAINST OPPOSITION





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### Three Strategic Tips

1. Stay on Message, Don't Stray
2. Make Strange Bed Fellows
3. Arm Your Champions

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**BUILDING POWER**

"Successful organizing is based on the recognition that people get organized because they, too, have a vision."

Former Senator Paul Wellstone



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**Stay on Message, Don't Stray**

From the beginning, figure out what your **MESSAGE** is and **KISS**.

All questions and statements should point back to this



*"I'm awfully sorry, but I forgot to bring my talking points."*

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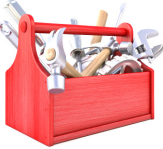
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**Stay on Message, Don't Stray**

Tools to help you stay on **MESSAGE**:

- Youth Purchase Surveys
- Stories and Testimonies
- Community Surveys
- Coalition Members and Allied Organizations



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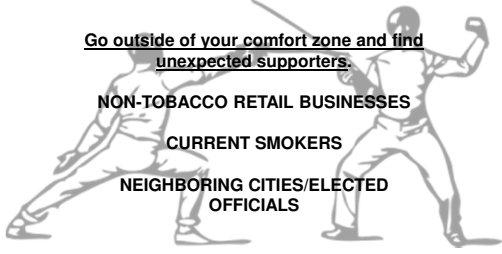
### Make Strange Bed Fellows

Go outside of your comfort zone and find unexpected supporters.

**NON-TOBACCO RETAIL BUSINESSES**

**CURRENT SMOKERS**

**NEIGHBORING CITIES/ELECTED OFFICIALS**



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### Arm Your Champions

**YOU** are responsible for **THEIR** success.

1. Let them feel supported.
2. Walk through all stats and talking points with them (multiple times).
3. Offer to do all the leg work and more.



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### FINAL TIP: REACH OUT TO US!

John Yi  
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310-735-09859



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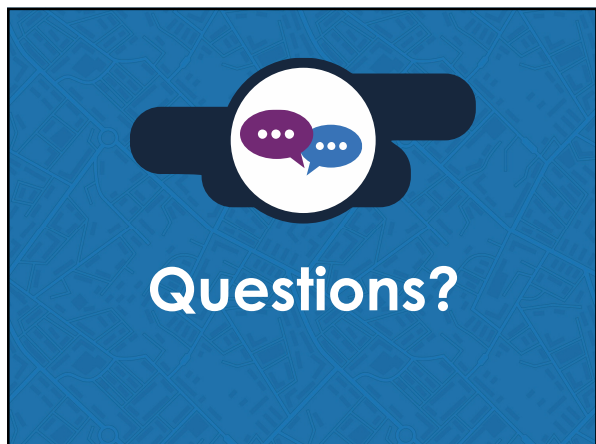
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 **THE CENTER**  
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**Thank you!**

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	<b>John Yi</b> John.Yi@lung.org

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