

Rebuttals to Common Claims by the Opposition

1) Opposition Claim:

There are “negative effects of a smoking ban in restaurants, taverns, and night clubs.”

Rebuttal:

There is no longer any doubt in the scientific community that smoke-free laws have no negative impact on bars and restaurants. Peer reviewed scientific studies show no economic impact and in some cases, a positive impact on bars and restaurants. In order for an economic scientific study to be considered a reliable source of data, the following factors must be accounted for:

- The study measures what actually happened and not just what people feared would happen;
- The study uses hard numbers such as actual revenues or employment statistics collected by an unbiased source;
- The study includes information from a reasonable time before the smoke-free policy went into effect and accounts for underlying trends and random fluctuations in the business cycle;
- The study uses at least one year’s data (usually 4 quarters) to assess the effects of the ordinance;
- The source of funding for the study is disclosed;
- The study is published in a peer reviewed journal;
- The study is financed by an agency that has no ties with the tobacco industry.

The American Beverage Institute (ABI) Study

The opposition may cite a 1999 American Beverage Institute (ABI) study “The Impact of 1998 California Smoking Ban on Bars, Taverns and Night Clubs: A Survey of Owners and Managers,” that was published six months after the California statewide smoke-free law was implemented. The study was performed by KPMG Peat Marwick. The study was not based on sound science, but instead, relied on subjective data. The survey reflects only business owners’ opinions about whether business increased or decreased after January 1, 1998, the date the California bar ban went into effect. The study did not control for any other outside economic influences and did not take actual sales receipts into account. ¹

Although ABI states that its mission is to “promote responsible alcohol consumption,” ABI is a known ally of the tobacco industry and an avid opponent of smoke-free laws. The organization is run by lobbyist Rick Berman. According to a Phillip Morris presentation from May 2000, ABI and Rick Berman are noted as “hospitality allies who were mobilized to help defeat smoking restrictions in a number of locations around the U.S.” ²

New York Smoke-free Ordinance and Economic Effects

Regarding two articles that the opposition may cite on New York City’s smoke-free ordinance, one written on May 12, 2003 is solely based on a survey conducted with bars and restaurants. The employees surveyed were asked to report how they *thought* the smoke-free law affected business, rather than relying on objective data such as tax receipts and employment data. Further, the data collection method used by the *New York Post* (December 9, 2003) is not described. It is impossible to tell if venues were randomly selected, meaning that

the data likely do not accurately represent the economic situation in New York after the law took effect. The article provides one bar owner's opinion of the effects of the smoke-free law, serving as a snapshot of one person's viewpoint rather than an entire municipality's economic status. No receipts from the bar are studied and the reporter neglects to cite other social and economic events that may have contributed to the reported economic downturn of this particular business.

A scientific study on the effect of smoke-free legislation on restaurant employment in New York City (an indicator of a business's economic health) found that smoke-free restaurant ordinances do not harm restaurants' employment levels. The study observed trends in the number of restaurants and restaurant employees two years before and two years after the New York City Smoke-Free Air Act took effect in April 1995. The study concluded that during the study period, New York City increased the number of restaurant jobs by 18% new restaurant jobs, suggesting that New York City's smoke-free ordinance did not result in job losses for the city's restaurant industry.³

A similar study looking at Lexington-Fayette County concluded that there was no significant difference in employment as result of smoke-free laws, even in considering Lexington's status as an important region for tobacco production.⁴

2) Opposition Claim:

No "governmental entity should take action."

Rebuttal:

There is significant legal precedent outlined by the Kentucky Supreme Court that the police powers of Kentucky's local governments include the protection of public health.

*Protecting the public from exposure to environmental tobacco smoke, sometimes known as second-hand smoke, can be the proper object of the police power of local government...This Court has held on several occasions that the protection of public health is uniformly recognized as a most important municipal function.*⁵

With this ruling, The Kentucky Supreme Court notes that it is appropriate for local governments to take action in the protection of public health. Thus local governments can function to protect the health of Kentuckians from secondhand smoke exposure through the implementation of smoke-free laws.

3) Opposition Claim:

"A smoking ban is a restriction on property use requiring submission and approval by a planning commission instead of a local governmental entity."

Rebuttal:

The recent decision by the Kentucky Court of Appeals to hear the oral arguments in the case of Dickie Todd v The City of Paducah claims that the Paducah smoke-free ordinance restricts property use. In the case, Dickie Todd, a business owner, asserts that Paducah's smoke-free ordinance is a zoning ordinance restricting the use of property and requires the approval of the Paducah Planning Commission.

The precedent is clear – the regulation of secondhand smoke exposure is a matter of public health, not an issue related to property rights. Again, the Kentucky Supreme Court speaks:

*The real issue is whether the public health regulation is reasonable. In this case, we must conclude that it is. Both federal and state courts have determined numerous times that where public interest is involved it is to be preferred over property interests even to the extent of destruction if necessary.... The smoking ordinance is not an improper infringement upon property rights.*⁵

Thus the Kentucky Supreme Court has already ruled that smoke-free laws are the jurisdiction of local government and are not an issue of property rights.

References

1. The Impact of 1998 California Smoking Ban on Bars, Taverns and Night Clubs: A Survey of Owners and Managers. American Beverage Institute/KPMG Peat Marwick. August, 1998. Philip Morris Bates No. 2072048017/8033.
2. Legislative & Regulatory update. Philip Morris, USA. May 4, 2000. Report/presentation. 22 pp. Bates No. 2085580138/0159.
3. Hyland, A.; Cummings, K.M., "Restaurant employment before and after the New York City Smoke-free Air Act," *Journal of Public Health Management and Practice* 5(1): 22-27, January 1999.
4. Pyles, M.K.; Mullineaux, D.J.; Okoli, C.T.C.; Hahn, E.J., "Economic effect of a smoke-free law in a tobacco-growing community," *Tobacco Control* 16(1): 66-68, February 1, 2007.
5. Supreme Court of Kentucky. Lexington Food and Beverage Association vs. Lexington Fayette Urban County Government. April 22, 2004. 2003-SC-0978-TG

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