

PREEMPTION OF SMOKEFREE POLICIES

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WHAT IS PREEMPTION?

Preemption occurs when local legislation is overridden by legislation at a higher level of government. It has emerged as a strategy used by the tobacco industry around the world to undermine strong local tobacco control legislation.

LEARNING OBJECTIVES

- Learn about different countries/jurisdictions in which preemption has arisen
- Understand the tobacco industry's role in pushing preemption
- Learn strategies that advocates around the world are using to fight preemption

UNITED STATES: Illinois State Law vs. Municipal Law

"We could never win at the local level... so the Tobacco Institute and the tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level."

Victor L. Crawford
Former Tobacco Institute Lobbyist

MEXICO: Mexico City Municipal Law vs. Mexican National Law



IAHF Press Conference – From L to R: Alejandro Madrazo (IAHF Mexico), Sonia Meza Vargas (IAHF Mexico), Xiuh Tenorio (DF Legislative Assembly)

ARGENTINA: Santa Fe Provincial Law vs. Argentinean National Law



Situation:
The Illinois Clean Indoor Air Act was passed in 1989. Unfortunately, tobacco industry interests added a "preemption" provision to the bill, stripping communities of their right to pass local smokefree workplace ordinances. For sixteen years, Illinois residents struggled with a weak law that offered little protection from secondhand smoke and no opportunity to enact a stronger law.

Tobacco Control Strategy:
On August 10, 2005, the Illinois Governor signed House Bill 672, which returned control of the issue to the local level by allowing municipalities the option to pursue a smokefree air ordinance without requiring that they do so. This legislation made Illinois only the second state to repeal a tobacco industry law that banned cities from enacting smoking regulations. A handful of communities were exempt from the preemptive 1989 law, and several, including Evanston, Skokie, Highland Park, Chicago and Wilmette, took advantage of their ability to consider or enact strong smokefree policies. The repeal of preemption allowed this momentum to continue throughout the state. One year after preemption was repealed, effectively restoring local control to enact smokefree air laws, 36 communities passed strong 100% smokefree laws in Illinois -- the most laws passed in a single state in a given year in history! With the majority of the population of Illinois covered by a local smokefree law, including those living in the capitol city of Springfield, the Illinois Legislature was ready to take on the issue at the state level.

On January 1, 2008, Illinois went smokefree in all workplaces, including restaurants, bars and casinos. Since then smokefree advocates have successfully defeated numerous attempts by the Illinois Gaming Association to exempt casinos. The law remains strong and protects all workers' right to breathe smokefree air.

To learn more about the Illinois case, please contact: Mike Grady, Director of Public Policy & Government Relations, American Cancer Society -- Illinois Division, Inc. at michael.grady@cancer.org or visit www.smokefreeillinois.net.

To learn more about preemption cases in the United States, please visit: www.protectlocalcontrol.org, which is provided by Americans for Nonsmokers' Rights (ANR) and the American Cancer Society.

Situation:
In 2008 the Legislative Assembly of the Federal District (DF) of Mexico passed the Law for the Protection of Non-Smokers, which requires all indoor public places to be 100% smokefree.

That same year the National Congress passed the General Law for Tobacco Control, which has weaker smokefree provisions than the DF law and allows for smoking areas. Regulations for implementation have not yet been issued.

The tobacco industry, through its allies, brought a case before Mexico's Supreme Court, declaring the Mexico City legislation unconstitutional because it differs from the national law. Tobacco control advocates also fear that states and municipalities in Mexico are likely to abide by the federal legislation as opposed to seek stronger tobacco control legislation.

Tobacco Control Strategy:
The InterAmerican Heart Foundation and its partners conducted press conferences (see photo above) and media interviews, urging states and municipalities to follow the Mexico City model and pass legislation that is stronger than the federal tobacco control law. They have also been lobbying for strong regulations for the federal law, hoping that strong regulations could help offset the weak legislation.

To learn more about the Mexico case, please contact: Beatriz Champagne, Executive Director, InterAmerican Heart Foundation (IAHF) at beatriz.champagne@interamericanheart.org.

Situation:
In 2005 the province of Santa Fe passed a tobacco control law that mandates 100% smokefree enclosed places and completely bans tobacco advertising.

British American Tobacco (BAT) is litigating against the law – specifically the advertising provisions – on the grounds that (a) It conflicts with the 1986 national tobacco control law, which is currently in place (b) It is unconstitutional; tobacco control is beyond the scope of provincial law and belongs under federal jurisdiction.

A national tobacco control law with very weak smokefree provisions is currently under discussion in Congress. Tobacco control advocates fear that if it is passed, BAT will argue for preemption again and litigate against the smokefree provisions of the Santa Fe provincial law.

Tobacco Control Strategy:
The Smokefree Alliance Argentina (ALIAR) has launched a two-fold strategy in which they (a) Highlight other provincial and municipal laws, which conflict with the national tobacco control law and yet are in effect (b) Raise awareness among the public and policymakers of the need for a strong national tobacco control law.

This work was partially supported by a Flight Attendant Medical Research Institute (FAMRI) Award. To learn more about the Argentina case, please contact: Ernesto Sebrie, Research Scientist, Roswell Park Cancer Institute at ernesto.sebrie@roswellpark.org.