

A Burning Question: How Will Smoking Bans Affect South Carolina?

Amanda J. Reich

Introduction

On March 31, 2008, the South Carolina Supreme Court ruled that local governments may enact smoking ordinances that are stricter and more comprehensive than current prohibitions at the state level.¹ As of January 2008, ten municipalities and two counties have passed some form of workplace smoking ordinance, either comprehensive or with exemptions for bars. Other municipalities have been awaiting the state's Supreme Court decision to enact similar ordinances. Two opposing court decisions called into question whether such bans can be enacted at the local level. A smoking ban was deemed valid in Sullivan's Island (*Beachfront Entertainment, Inc. v. Town of Sullivan's Island* [2006]) and a similar ban in the City of Greenville was overturned (*Foothills Brewing, Inc., et al. v. City of Greenville* [2008]²).

In anticipation of the South Carolina Supreme Court's ruling on how the state's Clean Indoor Air Act should be interpreted, the General Assembly sent an amendment to the Act—S. 103—back to committee.³ When these important public health policy decisions are made, the primary political, economic, and health implications should be explored. Municipalities in South Carolina are not the first to grapple with these issues. A number of case examples from other states provide insight into how smoking bans affect a population.

Secondhand Smoke

Exposure to secondhand smoke is a serious public health threat. Secondhand smoke has been designated as a known human carcinogen by the U.S. Environmental Protection Agency, and there is no risk-free level of exposure.⁴ It has been shown to cause lung cancer, heart disease, acute respiratory effects, sudden infant death syndrome, and other health consequences in infants and children. The Centers for Disease Control and Prevention estimate that 50,000 deaths per year in the U.S. are attributed to secondhand smoke. Further, the U.S. Surgeon General's report on the health consequences of involuntary exposure to tobacco smoke indicates that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate secondhand smoke exposure. The report goes on to conclude that smoke-free work policies are the only effective way to eliminate secondhand smoke exposure in the workplace.

Individuals who work in the service industry, particularly restaurants and bars, are especially vulnerable to the effects of secondhand smoke. They are less likely than white-collar workers to be protected by worksite secondhand smoke policies.⁵ These employees are also disproportionately represented by teens, women, and racial and ethnic minority groups. Research indicates that implementing a smoke-free workplace policy in hospitality venues such as restaurants and bars can reduce indoor air pollution by 84%.⁶ This substantial reduction can rapidly improve the respiratory health of workers who would otherwise be exposed to secondhand smoke.⁷ Assessments of smoking bans

globally and across the United States reveal that indoor smoking bans are associated with an overall reduction in smoking, and popular support for smoke-free bars and restaurants increases after such legislation is passed.⁸

These data are particularly relevant to South Carolina as the state considers the impact of worksite smoking bans, and whether stricter bans should be implemented at the local level. Discussion on the topic was primarily initiated by the conflicting court decisions of Sullivan's Island and Greenville.

Sullivan's Island Smoking Ordinance

The Town of Sullivan's Island adopted a smoking ordinance on May 16, 2006, based on the need to protect workers from secondhand smoke. Section 14-29(D) of the Ordinance bans smoking in any enclosed area occupied by an employee during the course of his or her employment.⁹ The town was sued by Bert's Bar, which claimed that the town's ordinance preempted that state's Clean Indoor Air Act. Circuit Court Judge Deadra Jefferson found that South Carolina's Home Rule Act specifically authorizes municipalities to enact regulations to preserve health, peace, and good government. She continued by emphasizing that the power to regulate is widely recognized, and "individuals have no 'fundamental' constitutional right to smoke tobacco."¹⁰ The plaintiff's claim of preemption was refuted, with the judge stating that there is no language in the Clean Indoor Air Act that suggests or compels the conclusion that the General Assembly proposed to preclude local regulation in the area of indoor smoking. The interpretation is that the Clean Indoor Air Act applies to only a small selection of locations, and in many places where it does not apply, local regulation is authorized. The Sullivan's Island smoking ban was found to be valid and enforceable.

Greenville Smoking Ordinance

The court case involving the City of Greenville was filed in 2006 by a number of bars and restaurants within the city. According to the court order, Greenville's "Smoking in Public Places and Places of Employment" ordinance was considered invalid and unenforceable.¹¹ The ordinance prohibited smoking in all enclosed public places and areas within places of employment and certain outdoor areas, beginning on January 1, 2007. According to the Greenville County Court of Common Pleas, the City Council determined that neither state nor local law "sufficiently addresses the pressing public health issues and quality of life considerations arising from the harmful effects of secondary smoke" and so legislative action by the city was considered necessary and proper. In his interpretation of the state's Clean Indoor Air Act, Greenville Circuit Court Judge John Few determined that the city preempted state law in passing its local ordinance. He specifically draws from the Act's statement, "Any laws, ordinances, or rules enacted pertaining to tobacco products may not supersede state law or regulation" (South Carolina Code 16-17-504(A)). In the March 8, 2007 decision, the local ordinance was deemed invalid and unenforceable.

Assessing the Climate

Just as disagreement existed between the two court decisions, separate entities within the state represent a spectrum of opinions as well. The Municipal Association of South Carolina (MASC) is tracking the senate smoking bill and has classified it as a “work” bill. The classification is for bills related to issues on MASC’s “Supporting Competitiveness” legislative agenda.¹² The association supports a statewide smoke-free law that does not include preemption language, with the goal of improving quality of life.

The South Carolina Hospitality Association is tracking smoking ban legislation because of the potential ramifications for the lodging and food service industries the association represents. According to *The State* newspaper, South Carolina Hospitality Association president Tom Sponseller “opposes local smoking bans, saying they leave businesses in municipalities with a ban at a competitive disadvantage to businesses in other municipalities.”¹³

As legislators in South Carolina work to resolve the issue of smoking bans, it is important to recognize that many other states and municipalities have implemented bans over the past several years. As of January 2008, 18 states prohibit smoking in restaurants, while 20 others have legislated smoking restrictions.¹⁴ A number of variations on smoking prohibitions exist for private workplaces, public spaces, government buildings, etc. Generally municipalities have led the way in creating momentum for smoke free laws. The American Lung Association tracks such legislation and compares state activity on the issue. The association also ranks and reviews each state, and gave South Carolina a failing grade. To better understand the ramifications of smoking legislation and the effects of a ban, it is helpful to consider the precedent set by other communities.

El Paso, Texas

One of the strongest early smoking bans was implemented in El Paso, Texas, on January 2, 2002. El Paso is a city on the U.S.-Mexican border with a large portion of the population represented by people who are foreign-born and speak Spanish.¹⁵ In addition, a large number of El Paso employees work in the service industry. Despite opposition from restaurant and bar associations, El Paso City Council approved a smoking ordinance by a vote of seven to one on June 26, 2001.¹⁶ Article II, Chapter 9.5 prohibits smoking in enclosed public spaces, and specifically, in all enclosed facilities within places of employment without exception. The ordinance clearly makes employers responsible for providing a smoke-free environment for employees, and mandates that “no smoking” signs be posted conspicuously. The ordinance is enforced by the city-county public health district, building services, and fire and law enforcement agencies.¹⁷

El Paso serves as a valuable example because the early implementation of the ban has provided several years of data to assess the health and economic impacts. The Centers for Disease Control and Prevention (CDC) and the Texas Department of Health examined quarterly sales tax reports and monthly mixed-beverage tax receipts for all sectors of the local restaurant and bar industry.¹⁸ The review indicated that there was no decline in total

restaurant or bar revenues subsequent to passage of the smoking ban. Specific assessment of alcoholic beverage sales showed they were unaffected as well. A survey by the Paso del Norte Health Foundation found that only 10.9% of households opposed the ordinance 11 months after it went into effect, and the city saw a 22% decline in adult smoking.¹⁹ One of the primary explanations for the success of the ordinance was the strong tobacco control coalition formed as a collaborative effort of voluntary health agencies, law enforcement, clinics, churches, university faculty, hospitals, and other important local stakeholders. The Smoke-Free El Paso del Norte Coalition developed a comprehensive public education campaign that is credited with gaining widespread support for the ordinance.

Mandeville, Louisiana

The City of Mandeville, Louisiana, operates under a charter of home rule. It is a small but growing community on the shores of Lake Pontchartrain. On June 9, 2005, the city adopted Ordinance 05-16 which prohibited smoking in all enclosed areas within public places during the times in which the public is invited or permitted, with specific language pertaining to worksite smoking prohibitions and the need to communicate the ban to all existing and prospective employees (Sec. 11-188). The ordinance itself includes a section (11-194) describing a public education component, in which the City of Mandeville partnered with the American Cancer Society and the Tobacco Free Living Organization to engage in a continuing program to explain and clarify the purposes and requirements of the article to the population of the city. A review of city council minutes indicates that members met with representatives from these organizations prior to passing the ordinance, and supported efforts to reduce exposure to secondhand smoke. The ordinance was modeled after similar policies that had already been adopted in Lafayette and Shreveport, Louisiana.

A number of municipalities around Louisiana adopted similar policies throughout the rest of 2005 and 2006. The State of Louisiana passed the “Louisiana Smoke-Free Air Act” (Act No. 815) which became effective January 1, 2007, and prohibits smoking in most public places and workplaces, including all restaurants with or without attached bars.²⁰ The law was revised to include a specific non-preemption clause, which allows local communities to strengthen the Act with stricter ordinances. Despite some initial concern among the business and hospitality community, including locally in Mandeville, most now support the legislation and have not reported financial losses attributable to the ban.²¹ Survey data indicate that across the state, although one-third of Louisianans report that smoking is allowed in their workplace, two-thirds support restrictions on smoking in the workplace.²²

Athens-Clark County, Georgia

The Athens-Clark County community, home to the University of Georgia, is located 65 miles northeast of Atlanta. The unified government consists of an elected mayor and ten commissioners, who appoint a manager to oversee daily operations. The county adopted Title 4, Chapter 3, Section 3 on July 5, 2005, to prohibit smoking in all enclosed areas

within places of employment. Section 4-3-5 of the ordinance specifies exemptions to the ban, which allows employers to designate “smoking areas” in a non-work area with separate air handling systems; however, the exemption does not apply to restaurants and bars. “No Smoking” signs must be posted and the ordinance must be communicated to all employees. The local ban is stricter than Georgia’s statewide ban, which took effect July 1, 2005. The Georgia Smoke Free Air Act allows smoking in private bars and restaurants, as well as those that deny access or employment to anyone under age 18.²³ The state Act includes specific language that allows local governments to enact stricter prohibitions.

An important finding from an assessment of Athens-Clark County’s smoking ban points to the air quality around bars and restaurants, where smokers may congregate when indoor smoking is prohibited. A University of Georgia study sampled air around bars in Athens on a Friday and Saturday night, and compared results to a separate area away from smokers. They found that the more smokers in a “smoking zone” outside the establishments, the higher the levels of cigarette-linked carbon monoxide and fine particulate matter.²⁴ While this may promote greater consideration of even stricter smoking bans such as the ordinance in Calabasas, California, which prohibits smoking on streets and sidewalks,²⁵ the Georgia study emphasized that indoor smoking prohibitions tend to reduce overall smoking rates once bans are implemented.

Economic, Health, and Political Considerations

As noted by the plaintiffs who wished to overturn existing smoking bans in South Carolina, a major concern of the restaurant industry is that bans will have a negative effect on profits. The economic impact of smoking bans is a complex issue, which may be influenced by variables such as the type of establishment, the proportion of the population who smokes, even the weather or climate in which the ban is implemented.²⁶ While the economic impacts are important to consider, a review of existing research indicates that smoking bans are not harmful to business. In an editorial written by noted smoking researcher and founder of the American Nonsmoker’s Rights Foundation, Stanton Glantz, he remarks that the issue of whether clean indoor air ordinances affect restaurant revenues - adversely or otherwise - should be considered closed. His conclusion is drawn from numerous existing studies and reports on the effect of smoking bans. Interestingly, this editorial was published in January 1999, years before South Carolina began considering such measures.

Research provided by the tobacco industry to support claims that smoking bans adversely affect hospitality revenues has been characterized as biased and methodologically weak.²⁷ One of the largest studies of occupational exposure to secondhand smoke, the 16 Cities Study, was funded by the tobacco industry, and it was structured so that the study conclusions would stall regulation of workplace smoking. A number of other factors should be considered when assessing the economic impact of smoking bans. By eliminating cigarettes, bars and restaurants can reduce costs associated with maintenance and cleaning of heating and cooling systems which filter the air.²⁸ More importantly, costs associated with employee healthcare can also be reduced. From an employer’s

perspective, smoke-free policies can substantially reduce the legal risks of failing to provide a safe workplace and leading to workers compensation claims.²⁹

Smoking has also been found to increase the annual number of days of absence among employees.³⁰ Not only does this represent a loss of productivity for employers, but it is indicative of the negative health effects for employees. While consideration of economic issues is appropriate, one must not lose sight of the important measure of human health. Ultimately, improved health is the primary purpose of smoking bans. Research indicates 5% to 20% lower per capita cigarette consumption in states with comprehensive smoking prohibitions.³¹ Perhaps even more striking, a study of Pueblo, Colorado's smoking ban was found to reduce the local heart attack rate by 27%.³² In Helena, Montana, a study found a 40% reduction in heart attack admissions to a local hospital during implementation of a smoke-free ordinance.³³ The cardiac, respiratory, and environmental improvements have a substantial influence on health. Smoke-free local ordinances as well as state legislation represent a significant opportunity for policymakers to protect and promote the health of their communities.

Conclusion

The successful passage and implementation of smoking bans require political will and popular support. The early passage of strict smoking ordinances in states like California may not, at first, seem relevant to the State of South Carolina. However, one need not look far past our borders to Kentucky, a major producer of tobacco whose 2004 smoking rates were substantially higher than national averages. Lexington-Fayette County passed regulations in 2003 that banned smoking in all public buildings, including bars and restaurants, as a result of a year-long study by a Smoke Free Task Force which linked secondhand smoke to health problems.³⁴ The presence of this task force, much as in the case of El Paso, described above, mobilized a movement to promote passage of smoke-free bans in a typically tobacco-friendly environment.

Such synergistic advocacy exists in our state as well. The South Carolina Tobacco Collaborative, established in 2001, describes itself as "a statewide assembly of leading health organizations, community coalitions, and businesses committed to reducing the toll of tobacco use in South Carolina by providing resources and information on tobacco related policies to advocates, lawmakers, and concerned citizens."³⁵ The group is responsible for organizing grassroots advocacy similar to the activity seen in other states where smoking bans were successfully implemented. The broad reach and diverse membership of the South Carolina Tobacco Collaborative indicate that the state climate may be shifting towards a greater acceptance of anti-smoking legislation.

The central challenge faced by local governments, such as Greenville, is ensuring that smoking ordinances do not preempt state law. The March 31, 2008 Supreme Court decision found that Greenville's ordinance did not supersede state law, and the Greenville Circuit Court Judge erred in his interpretation of the Clean Indoor Air Act regarding regulation of indoor smoking. To that end, opponents of smoking bans push for weaker state laws that do not allow for stricter local ordinances. Tobacco companies prefer weak

statewide legislation, since at the state level they typically have more influence.³⁶ Public health advocates recognize that real change has occurred at the local level, where tobacco companies simply do not have the resources to fight every ban. Effective smoking legislation is free of exemptions and strongly enforced. As a state, South Carolina ranks poorly on a number of important health indicators.³⁷ Smoke-free legislation can help the state to take steps towards improved population health. The science is available, as are the experiences of early-adopting states and municipalities, as legislators in South Carolina consider policies that will shape the future of the state on the important issue of secondhand smoke.

About the Author

Amanda Reich earned a Bachelor's degree from Clemson University and a Master of Public Health from Emory University. Her primary responsibility at the Institute for Public Service and Policy Research is to provide training and research services for state and local government. This includes development of targeted training, team building, and analysis and presentation of relevant data. Prior to joining the Institute, Ms. Reich worked with Emory University and the Centers for Disease Control and Prevention to improve and develop program evaluations. She has also worked in South Carolina state government, and provided evaluation expertise locally in South Carolina on a Department of Education grant. Her research interests focus on health and environmental policy.

ENDNOTES

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³ See http://www.scstatehouse.net/cgi-bin/web_bh10.exe.

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