

Smoke-free Air in Switzerland: A campaign case study¹

Summary

Switzerland has been working toward smoke-free public places for many years. Because of the federal system in the country, local laws were passed long before the national law. Although Switzerland has strong smoke-free laws in several cantons, the country is still lagging behind other European countries in national legislation.

The initial Swiss smoke-free laws targeted hospitality venues in the canton of Geneva. Civil society members collected signatures to propose an initiative (similar to a referendum) to adopt the new law into the cantonal constitution. Advocates also launched a campaign to promote smoke-free laws, which included public education and press coverage. Initially skeptical, thanks to public education campaigns today approximately 60% of Swiss citizens support comprehensive smoke-free laws.²

Smoke-free legislation in Switzerland has been subject to several legal challenges by tobacco companies. Due to the slow legislative process at the cantonal level, weak national legislation, and opposition from the tobacco industry, Switzerland has a substantial amount of work left to do. Only 8 of 26 cantons have comprehensive smoke-free workplace laws, and the national law is quite weak. Public health organizations have been engaged continue to advocate for laws that completely protect citizens from secondhand smoke.

National Context

Switzerland is divided into 26 cantons within a federal system, similar to states within the U.S. system. Public health issues, including smoke-free air laws, are often legislated locally, by canton, rather than at the federal level. Several cantons have passed strong local smoke-free laws, but as a whole, Switzerland lags behind many other European countries – including neighbors France and Italy - in protecting its citizens from secondhand smoke.³

Over the last 15 years, smoking prevalence among men in Switzerland has decreased from 26.9% to 23.4% and from 24% to 19.3% for women.⁴ While Swiss men are less likely to smoke relative to other developed countries, prevalence among Swiss women and children is relatively higher.

¹ We are indebted to Pascal Diethelm, President of OxyRomanie, for providing background and data for this case study.

² According to a 2012 poll from the Swiss Heart Foundation.

³ For a comprehensive list, see <http://www.smokefreepartnership.eu/map/index.html>.

⁴ Ericksen et al, Tobacco Atlas, 5th Edition, American Cancer Society (2015).

The WHO recommends that taxes make up 75% of the retail price of tobacco products, although few countries have attained this goal. Switzerland's tax (taxation is a federal issue and therefore the same tax applies nationwide) is relatively high at 55%, but cigarettes are still very affordable due to Switzerland's high per capita income. Switzerland has implemented graphic warning labels for tobacco products and has instituted a comprehensive public education media campaign. Switzerland has few national restrictions on tobacco advertising,⁵ and is a signatory to the WHO Framework Convention on Tobacco Control, but it has not yet ratified the FCTC.

The tobacco market in Switzerland is dominated by subsidiaries of the three leading multi-national tobacco corporations: Philip Morris International, British American Tobacco and Japan Tobacco International. Philip Morris International is headquartered in Lausanne, Switzerland and employs more than 3,000 people.⁶ Japan Tobacco recently built its new international headquarters in Geneva, the home of the World Health Organization as well as the World Trade Organization.

Background

In 2005, OxyGeneve and other public health organizations began a movement toward smoke-free hospitality venues in the canton of Geneva. Civil society gathered the necessary 20,000 signatures to enable a "popular initiative" (similar to a referendum in the U.S.) to incorporate a smoke-free law, based on Article 8 of the FCTC, into the cantonal constitution. Before the initiative could be put on the ballot, however, the text of the initiative had to be endorsed by the cantonal parliament.

At this point, Japan Tobacco challenged the initiative in court, claiming that the change to the cantonal constitution was an infringement of the Swiss national constitution. The case went to the Swiss Supreme Court, which found no violation of the national constitution. . After the case, the initiative was brought to a popular vote and passed with 80% of the vote. Because of the popular support, the Geneva government immediately implemented the law by decree, and Geneva became the pioneer of smoke-free air laws in Switzerland.

The tobacco industry countered with a second legal challenge, this time from a pro-smoking front group.⁷ This second case, based on the idea of separation of powers, argued that the government couldn't implement a law before the local parliament enacts a constitutional principle, i.e., essentially that the regulations cannot come before the law. The pro-smoking group won the case, so the Geneva Parliament enacted a smoke-free law. The Parliament allowed for dedicated smoking rooms, which was not the original intent of the referendum. To this day, there are still some dedicated smoking rooms in Geneva, but they are few and dwindling due to the added expense and inconvenience of maintaining the separation, as well as reduced smoking prevalence.

Spurred by Geneva's example and advocacy from public health groups, other cantons, some in the French speaking area and some in the German speaking area, began passing smoke-free legislation,

⁵ Tobacco Atlas. A number of cantons restrict tobacco advertising.

⁶ PMI website- http://www.pmi.com/marketpages/pages/market_en_ch.aspx.

⁷ Slatkine, et al. v. Grand Conseil of the Canton of Geneva.

often much weaker than the legislation in Geneva. In an attempt at a unifying law, the federal government passed a national smoke-free law which included workplaces, because, as a labor issue, they fall under federal jurisdiction in Switzerland. However, the national law was significantly weaker than the local legislation, but did not preempt the cantons from enacting stronger smoke-free laws.

Civil Society Strategy

Civil society has been actively involved in the push for smoke-free air laws in Switzerland since the beginning. One of the central figures in rallying the public to take action has been Pascal Diethelm, a former World Health Organization official turned advocate. It is perhaps no accident that the Swiss smoke-free movement began in Geneva, as it is not only the home of the World Health Organization but also the host of the negotiations for the Framework Convention on Tobacco Control, which concluded in 2003.

Organizations have taken a multi-faceted approach to their advocacy, beginning with seeking allies and establishing a core group of advocates to work towards a common goal. Advocates launched media campaigns to increase public awareness, expose tobacco industry tactics, de-normalize smoking, and espouse the benefits of smoke-free air.

Non-governmental organizations were responsible for encouraging legislation at both the local and federal level. After Geneva instituted their smoke-free law, OxyRomandie, an organization that works in the French-speaking region of Switzerland, launched cantonal constitutional initiatives in those four cantons. In 2012, Lung League, a national organization, drafted a constitutional amendment at the federal level.

Civil society has also been fighting big tobacco in Switzerland's courtrooms. For example, after the Geneva Parliament included dedicated smoking rooms in the smoke-free air law, OxyGeneve, a Geneva-based NGO, took the issue to the Supreme Court. They lost and dedicated smoking rooms were included in the law. However, civil litigation is a crucial tool to protect the implementation of comprehensive smoke-free air laws.

Passage of new smoke-free rules

While there have been several laws passed at the local and national levels, many are fairly weak in protecting the public against secondhand smoke, and dedicated smoking rooms – which expose workers to secondhand smoke and allow smoke to seep into other areas - are permitted in most jurisdictions. Most Swiss support smoke-free public buildings. Following global travel trends but perhaps catalyzing the nascent smoke-free movement, Swiss Federal Railways made all of its trains smoke-free in December 2005.

Geneva workers, residents, and visitors are among the most protected from secondhand smoke in Switzerland. Geneva's law, which came into effect in 2008, prevents smoking in most enclosed public places including bars and restaurants.

In May 2010, the new federal Swiss smoke-free air law came into effect. The law requires bars, restaurants, schools, hospitals, and shopping malls to be smoke-free, but there are exceptions for

catering outlets and small venues of up to 80 square meters. Many protested that the law was not strict enough to adequately protect public health, but the law did allow for cantons to enact stronger smoke-free policies.

In 2012, the Swiss Lung League drafted a national constitutional amendment that was fully compliant with FCTC best practices for smoke-free air and closed gaps in current legislation. The organization collected the 130,000 signatures necessary to get the amendment on the ballot for a national referendum. It was rejected by a 2/3 majority, largely because most Swiss felt that they were effectively protected and that the new law was only a marginal benefit over the existing law.

Failed referenda have a chilling effect in Swiss politics, and it is often many years before the same issue can be brought up again. In 1993, a referendum to ban tobacco and alcohol advertising failed, and it has not been tried again since. Parliament can still act on the issue of smoke-free air, but it would require a change in political will. Public health advocates efforts' have switched back to the cantonal level to achieve greater protection from secondhand smoke.

Public Education

The public education campaigns in the country included posters with varied content on the right to smoke-free air and the health implications of exposure to tobacco smoke. The posters were placed on buses and trams within the cities. A guide was also released for the hospitality industry on how to protect against passive smoking. Numerous press releases and news stories were promoted to educate the public about the initiative and to solicit signatures for the petition. The messaging included:

- Endorsements from sports stars, such as formula one drivers and world cup sailors;
- An appeal to “freedom from exposure to tobacco smoke,” in order to counteract the opposition’s arguments for the freedom to smoke; and
- A focus on the rights of hospitality workers

Conclusion and lessons learned

Every jurisdiction is unique, and the most successful smoke-free air campaigns are run by organizations who fully understand local culture and politics. While Switzerland is significantly behind many of its European counterparts with respect to national smoke-free laws, civil society organizations have pushed their local jurisdictions to make major steps toward smoke-free air. By implementing change at the local level, these organizations are not only protecting their constituents, but also creating an example for the rest of the country to follow. Local laws in Switzerland have been and will continue to be a catalyst for change at the national level.

While there can be no “script” for a successful smoke-free air campaign, the Swiss experience included a number of tactics that may be universally employed:

Use the democratic system to your advantage

In Switzerland, as in many other countries, localities have the right to pass their own laws. By passing local smoke-free air laws, individual cantons drove the national government to create a

federal law on the topic. While that law is not as comprehensive as some cantonal restrictions, it covers a broader population. Each aspect of the federal system has its strengths, and by molding a smoke-free air strategy to those strengths, advocates have had better results than if they had focused purely on a national law.

Of course, using public referendums can only be successful if individual voters understand the issue and agree. Public education on the harms of exposure to secondhand smoke – both to patrons and workers - is a vital precursor, especially since a defeat at the ballot box may set back efforts toward smoke-free air by years.

Once there is a model in a jurisdiction, target new jurisdictions view themselves as similar

In a country with multiple jurisdictions, each jurisdiction is necessarily going to view itself as more similar to some of the other jurisdictions. In the U.S., Nebraska is more likely to look to Kansas than to New York. In Switzerland, OxyRomandie pushed for smoke-free air laws in all of the French-speaking cantons. The laws passed, some with slight modifications. The fact that the model came from another French-speaking canton - Geneva - made a significant difference.

The first step sets the standard

Another lesson learned from Switzerland is that it is important to fight for a strong local law from the beginning. It is hoped that a local law will spread, laterally to other jurisdictions and vertically to the national level. A weak law will have to be strengthened later, and will likely meet with resistance from those who think that the weak law is doing enough. The failed 2012 referendum provides a compelling example of this lesson at work.

Preemption is never good

Preemption goes hand in hand with the previous three conclusions. If the Swiss national law had preempted cantons from taking more stringent legal action, Swiss smoke-free air laws would look very different today. Because of the Swiss cantonal system, many Swiss citizens, particularly those in Geneva, have a higher level of protection from the harms of second-hand smoke than that afforded by the national law. It is an essential take-away that civil society organizations should do everything in their power to prevent preemption in smoke-free laws.

Try to get hospitality groups on your side or neutral

Hospitality groups, including restaurant and hotel organizations, can make or break a new smoke-free initiative. It is extremely important to illustrate to them the benefits of smoke-free air for themselves, their employees and their customers. When the federal smoke-free air law was being written, the tobacco industry had a hospitality trade association, Gastro-Suisse, on its side. The law eventually included much less stringent regulations for hospitality venues than for other types of workplaces.

Identify messaging that speaks to the local public

There are a variety of messages possible to educate and motivate the public, and it is important to focus on those most motivating. For example, protection from tobacco smoke varies widely throughout Switzerland. Citizens in some cantons, such as Geneva, may feel that they are fully protected from second-hand smoke. In that case, it was important to encourage people to think of the health of others, such as workers at exempted establishments: “Even if you are protected, your fellow citizens are not.” This argument resonated with many Genevans and provided the necessary push for those who are protected to get more involved in the fight for smoke-free air for all.