

Let's set the record straight . . .

Do we really need laws to regulate smoking in public?

California and Florida voters rejected late in 1980, each for the second time in two years, proposals that would have segregated smokers from nonsmokers. California's Proposition 10 and the Dade County initiative also received failing grades from state labor organizations, associations and the states' major news media. Here's what some of them said of the individual proposals:

"It is a foolish attempt to use legal restriction to write social behavior that is best governed by common sense and courtesy."

*California Labor Federation
(AFL-CIO)*

"A regulatory can of worms . . .
"We do not need more regulation by government of the lives of people in California or anywhere else."

"Surely this is a matter for private solution, that does not need the clumsy hand of government in it."

San Francisco Examiner

"In seeking to advance the rights of some, it would inevitably infringe the rights of others. That makes it bad law."

Los Angeles Times

Proposition 10's "desired ends are best achieved in businesses and stores by the exercise of courtesy on the part of employees and customers, and by the exercise of good judgment on the part of employers and owners. . . .

"It strikes us that it's better to leave the solution of such problems to the common sense of the people involved."

Long Beach Independent Press-Telegram

"In this instance we are best governed by common sense and courtesy."

Huntington Park Signal

"To add an unenforceable law like this one to the books would be ridiculous. If this passes, it will also be an infringement on people's rights."

Miami Fraternal Order of Police

"Proposition 10 would have an adverse effect on law enforcement officials in this state."

"Proposition 10 is not good for law enforcement and is not good for the public."

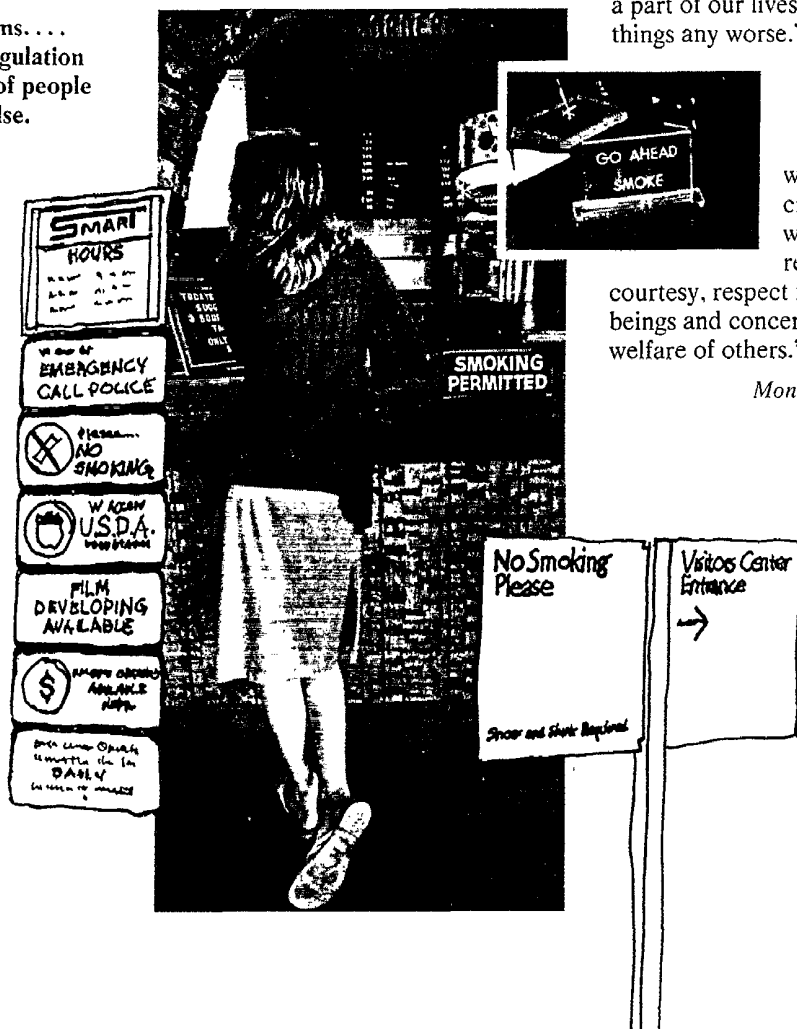
Peace Officers Research Association of California

"Big Brother, in the form of government regulation, is already too much a part of our lives. Let's not make things any worse."

*KPIX
San Francisco*

"Proposition 10 would resolve with criminal penalties . . . what should be resolved by common courtesy, respect for fellow human beings and concern for the health and welfare of others."

Monterey Peninsula Herald



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"Good intentions do not always make good law and public policy. . . .

"Public awareness, common sense and courtesy are already dealing slowly but surely with the smoking problem in public places and work areas."

South Bay Breeze, Torrance (Cal.)

"A mistake, pure and simple."

KNBC Los Angeles

"It would be unworkable and unenforceable. . . .

"We don't think any law that cannot be enforced should be on the books. Respect for law and law enforcement is undermined by enacting unrealistic laws."

San Diego Tribune

"If Proposition 10 . . . passes, the state will get involved in the same contest of the will that the U.S. tried during Prohibition. . . .

". . . forget flexibility and consideration. It'll mean war."

Los Angeles Herald Examiner

"We don't have enough policemen to handle the crime we have. We don't need a new crime to contend with."

Dade Police Benevolent Association

"We don't need more government. . . ."

Homestead (Fla.) News-Leader

"We've got to quit running to government for the solution to every problem, especially problems that can be alleviated by cooperation and mutual consideration. . . ."

Daily Californian, El Cajon

"Dade voters do not need another pointless referendum on a subject that has been inflated into an unnecessarily controversial issue."

Miami Herald

"Far better, we believe, to depend on the inherent courtesy of most people to deal with the smoking issue than to pass a law that would be unnecessary, almost unenforceable, and inevitably erode individual rights."

Sacramento Union

"It could negate the voluntary cooperation smokers and nonsmokers have worked out."

*Peninsula Times Tribune,
Palo Alto*

Clearly, most Californians and Floridians believe the individual respect, tolerance and accommodation needed to resolve most everyday displeasures cannot be legislated. Mutual consideration is and must be the business of people, not of government. Whether and where their customers should be allowed to smoke must be the business of proprietors, not lawmakers.



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Are public smoking laws enforceable?

Public smoking restrictions vary from local ordinances of limited scope to wide-ranging state laws encompassing all public buildings. But whatever the law or its scope, all have one thing in common: enforcement is time-consuming and expensive and, therefore, often half-hearted at best.

Nowadays, with government being asked to remove itself from people's lives, public smoking restrictions only add more problems to an already overburdened, underfinanced law enforcement system. Laws are only effective if they are enforced fairly. And who will enforce these laws once they are on the books?

Proprietors shouldn't have to

Many public smoking proposals place responsibility for enforcement on the owner or manager of the business. Policing the actions of employees in the private workplace could prove an administrator's nightmare, leading to employee relations problems and decreased productivity.

Separation of people who work well together is inefficient, and creates bad feelings when smoking rules are considered inequitable. Rather

than contributing to greater productivity, such laws only mean someone must take time to referee squabbles that should be settled, person to person, with understanding and consideration.

In a recent position paper opposing restrictive smoking legislation, the Business Council of New York, an organization representing 4,000 small and large companies, called such public smoking laws "virtually unenforceable."

Just as management should not have to enforce public smoking restrictions in the workplace, restaurant owners should not have their patron's preferences dictated by law. Most are aware of the desires of their customers, and will meet them in their own way. Arbitrary

rules and regulations governing smoking can only create bad feelings among patrons, and drive away business.

Police can't

With crime statistics soaring, can we ask our policemen to take time from murder, robbery and accident investigations to arrest smokers for lighting up in "no smoking" zones?

Law enforcement agencies across the country have criticized proposals that ask them to stretch their already limited resources to include enforcement of public smoking laws. For example:

- The Los Angeles County sheriff, criticizing a California public smoking proposal, said, "Police should spend their time patrolling our streets for burglars, not prowling office buildings searching for illegal smokers."
- The New York State Association of Chiefs of Police, opposing a proposed public smoking bill, said it "does not feel that this bill can be properly enforced, nor [will the public] encourage the proper enforcement of this legislation."



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- In Dade County, Fla., the Police Benevolent Association spoke out against a county-wide public smoking initiative: "We don't have enough police to handle the crime we have. We don't need a new crime to contend with."
- *The Law Officer*, journal of the International Conference of Police Associations, editorialized against public smoking legislation: "If there was ever an occasion when a law officer could agree with an 'offender' who declares, 'You should be out catching criminals,' this must certainly be it."
- The National Black Police Association warned that public smoking legislation "would be a waste of law enforcement time and effort." The group added, "The limited amount of personnel that we do have could better spend their time in making our neighborhoods safe."

Courts won't

Communities that have public smoking restrictions on the books find that enforcement by police, local health authorities and the courts is uneven at best.

"A driver isn't going to hold up a whole busload of people while he waits for a patrol car to arrive to take care of one

smoker," said a New York City Transit Authority spokesman. "Even when a summons is handed out, it gets low priority in the courts because they're just as overburdened as the police force."

Minnesota, which enacted one of the nation's first "clean indoor air" laws, charges the state health department with enforcement. However, the state has never appropriated funds to that end. The threat of an injunction sometimes brings compliance, but to obtain an injunction takes too much time and manpower, one health official admits.

Similar time and manpower restraints recently caused the Danbury, Conn., state's attorney's office to announce that it would not prosecute violators of that state's public smoking law.

And in Naples, Fla., a judge named to hear the case of a man arrested for smoking a nontobacco cigarette in a bank line removed himself from the case, questioning whether there was a "valid public purpose" in prosecuting the smoker. (A second judge ultimately dropped charges in the case because he found the public smoking law unconstitutionally vague.)

"Smokers' Court" did

Minority newspapers in New York City have carried articles on some "selectively enforced" smoking laws,

noting a "growing black opposition to anti-smoking legislation in several states." The National Black Police Association expresses a similar concern that "nuisance legislation of this type generally affects minorities and poor people to a further degree than others."

Indeed, Branch 95 of the Circuit Court of Cook County, "Smokers' Court," was a short-lived attempt to enforce laws prohibiting smoking on public transportation. Between 1975 and 1977, dozens of Chicagoans spent a night in jail because they were unable to post a \$25 bond after their arrest.

The experiment ended when the city began mixing those charged with smoking offenses with other misdemeanor cases, but not before critics noted that the vast majority of individuals charged with smoking violations were from minority and low-income groups.

Respect for law and law enforcement is undermined by enacting unrealistic laws. Police, anticipating the day they are unable to assist an accident victim because they are arresting a smoker in a grocery store, echo the words of a Minnesota fire marshal . . .

"Enforcement? I'd say it's impossible."



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Workplace smoking laws won't work!

Imagine you're the boss. You have one employee who doesn't like the temperature you maintain in your plant or office in light of your costs, your layout, the needs and comfort of all your employees. He says he'll go to City Hall about it and you're going to have to pay a stiff fine if you don't adjust the thermostats to his liking.

Crazy, right? Couldn't happen. But it can. Change just one detail and it's happening right now in San Francisco.

There a lone employee can cause an entire office to be declared a no-smoking area, no matter what arrangements the boss—or the other workers—may want.

The San Francisco ordinance says all private employers must establish smoking rules. If a single *nonsmoking* employee disagrees with the policy, smoking must be prohibited. An employer who fails to toe the line faces up to \$500 a day in fines.

This new law *could* be a blueprint of things to come, a new sort of government intrusion into the private sphere that gives a tiny, vocal minority the right to set workplace policy.

Or, it can serve as a perfect example of what both management and workers must dedicate themselves to prevent in the future.

One-man veto?

Similar measures are being introduced in city councils across the country and, in some places, adopted.

Never mind that smokers and non-smokers have worked in harmony for generations. Forget that occasional disputes at work are best settled individually. What if a one-man veto *can* overrule the boss?

No matter, say the anti-smokers, we need a law.

But are such laws necessary? Many people do not think so. "Has common courtesy become so rare that society needs laws to regulate smoking in busi-

ness offices? We hope not." declared a *Dallas Times Herald* editorial.

"To use the police power of government to dictate such action," commented an editor of the *Tallahassee Democrat*, "is to trade individual responsibility for trivial gain. It is a poor exchange."

We agree.

Nannies and New Prohibitionists

Proponents of strict workplace smoking laws say they have the health of nonsmoking workers in mind. They don't want them exposed even remotely to cigarette smoke. The issue, though, is more properly labeled one of occasional annoyance, not health.

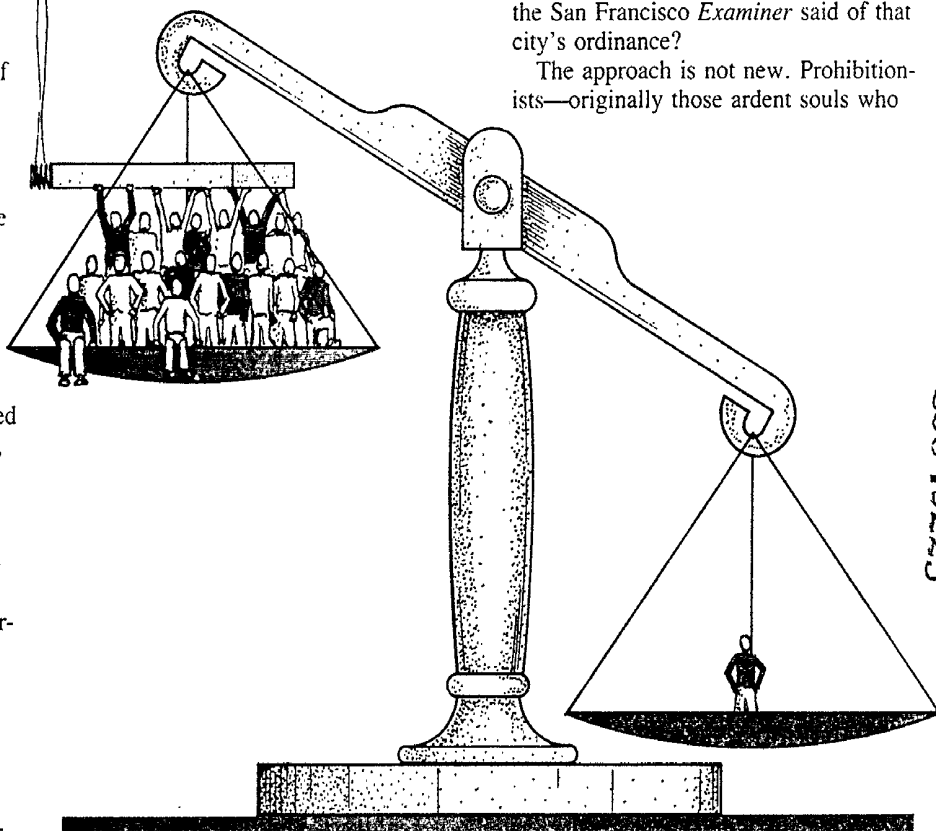
Even Elizabeth Whelan, executive director of the American Council on Science and Health and an outspoken critic of smoking, has said the issue has been "overstated" and, overall, is a "very minor problem."

Twenty-one scientists called together recently by the U.S. Public Health Service to examine available research on environmental tobacco smoke concluded its effects on the respiratory system were "negligible to quite small."

If these researchers, selected by PHS for their expertise, and such staunch opponents of smoking as Whelan can acknowledge that the issue and the possible health effects are minor, why are some lawmakers so eager to restrict smoking in the workplace?

Could it be an interest in behavior control or government "nannyism," as the *San Francisco Examiner* said of that city's ordinance?

The approach is not new. Prohibitionists—originally those ardent souls who



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"I am against fixing something that doesn't need fixing," Fremont City Manager Kent McClain said. "I still don't feel [a smoking policy] is necessary," said Union City Manager Karen Smith. . . . "I think we can accommodate everyone by working out problems among ourselves."

San Jose (Cal.) Mercury
Jan. 18, 1984

wished to stop consumption of alcoholic beverages—managed a constitutional ban earlier in the century. The chief results of that Great Experiment? Bathtub gin and the growth of organized crime.

Today's New Prohibitionists are a vocal, well-organized group. But do they, should they, speak for the majority of Americans? Is it impossible for smokers and nonsmokers to get along without what the San Francisco *Chronicle* called Big Mama looking over their shoulders?

No, on all counts.

Big Mama, step out!

Americans love to express opinions on anything and everything. And our free society, fortunately, allows such exchanges.

On the issue of smoking in the workplace, a substantial majority prefers to let *people*, not government, decide the question of when and where an employee may smoke.

In 1983, the Business Council of the State of New York surveyed its members and found 83 percent preferred *voluntary* workplace smoking policies.

And a 1983 *Nation's Business* poll showed that a big majority of respondents rejected the notion that employers should be forced to prohibit smoking.

Anti-smoking law "is a *prima facie* case of government intrusion into a realm where government doesn't belong," says the Joplin (Mo.) *Globe*.

Americans are not naive. We realize that when we step outside of our own homes we no longer have complete, personal control of our environment.

Often we encounter things that annoy us—noisy humming or continuous nail-biting at the next desk, the smell of a

salami brown-bag lunch on the bus first thing in the morning, over-done after shave. But imagine the mess if we encouraged everyone who found something annoying about another's behavior or taste to seek relief from government, especially when those annoyances could be readily resolved without government intervention.

As the San Francisco Labor Council AFL-CIO pointed out, such laws undermine labor-management relations and present "opportunities for job discrimination and mischief." They create conflict and intrude into personal behavior and internal office procedures.

San Francisco's Chamber of Commerce emphasized intrusion and cost in opposing the law. Government is already over-extended, said the chamber. Our lives are cluttered with unnecessary government regulations.

"To channel our tax dollars away from vital services and into government programs to segregate smokers from nonsmokers is a gross waste of limited resources," the chamber said.

Many believe small business is the chief victim of workplace smoking laws. Smaller companies can't easily afford the extra time, costs and diversions of smoking policy administration.

San Francisco's KGO-TV mentioned another problem. "Blowing the whistle

Couldn't a law be passed against sourpusses? Why should normally cheerful workers have to associate with pinch-faced, crab-appled gloom merchants whose very breath is redolent of vinegaring negativity?

Altus (Okla.) Times
Dec. 15, 1983

on your boss," it said in an editorial, "doesn't make for the best of relationships."

Broccoli instead of beef?

Will the New Prohibitionists be satisfied if they succeed in banning all cigarette smoking? That's their goal today, but "What next?" asked the Seattle *Post-Intelligencer*, "a requirement that restaurants serve health foods in place

of what people like, broccoli instead of beef?"

If the anti-smokers prevail, the precedent is set for government to be drawn intrusively into private sector matters better handled by management, labor and employee consensus.

If an official company smoking policy *must* be designed—if individuals cannot work out their differences—the New Jersey State Chamber of Commerce has some advice.

Even if I were not [a smoker], I would feel uneasy about restricting tobacco by government mandate. . . . If personal freedom is allowed to falter, it will be only a matter of time before special interests everywhere cash in on the precedent and blot it out completely, like an ink stain.

Columnist Paul Salters,
Brockton (Mass.) *Enterprise*
Feb. 18, 1984


Any rule that affects the workforce, and is as dramatic as a new smoking restriction, must be approached systematically, the state chamber suggests. "The first step obviously is to make employees aware by providing good information, asking for their opinions and suggestions."

Then, says the Chamber, "whatever the rule might be, it comes as a result of efforts by management and employees and not a dictatorial directive."

There are dozens of daily annoyances and inconveniences we *could* ask government to correct. The New Prohibitionists favor that. Yet, when government takes over what is better left to people, a little bit of freedom disappears.

Cooperation, not unnecessary law, is the superior choice. It helps ensure freedom of choice.

For further information on the controversies surrounding tobacco and the use of its products, call or write:

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