

The Empire State Restaurant and Tavern Association

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The Empire State Restaurant and Tavern Association (ESRTA) is a well-known player in New York tobacco control. Over the years, this organization fought against local smokefree air laws, lobbied for preemption,¹ filed lawsuits against communities that enact smokefree laws, promoted flawed economic impact studies, and supported weak, ineffective legislation.

ESRTA has been known by different names over the years, changing its name as suits the occasion, but its purpose of undermining smokefree laws has remained the same. The organization's aliases include: the United Restaurant, Hotel and Tavern Association, and the New York Tavern and Restaurant Association.

Changing names to hide its identity has not hidden ESRTA's strong ties to the tobacco industry. In 1994, ESRTA Executive Director Scott Wexler, noted as a "strong ally of PM [Philip Morris]," admitted that the group took money from the Tobacco Institute, which was created and funded by the tobacco industry.^{2,3} Tobacco Institute money was used to pay for ads against the proposed New York City smokefree air law, including a full-page ad in the New York Times.⁴ The Tobacco Institute also funneled over \$400,000 through ESRTA to help its 1995 state preemption campaign.^{5,6}

Fighting New York's State Law

In March 2003, the New York State Legislature strengthened its state's Clean Indoor Air Act to include all workplaces, including restaurants and bars. Just days before going into effect on July 24, 2003, ESRTA filed a lawsuit to prevent the implementation of the law, arguing that the state law was preempted by federal Occupational Safety and Health Administration (OSHA) regulations.⁷ ESRTA's argument was frivolous and illogical, as the question of whether OSHA preempts state and local smokefree indoor air activity has already been addressed.

In 1998, a tobacco control advocate in Wisconsin received a letter from Frank Frodyma, the acting director of policy for OSHA stating:

"[S]ince OSHA has not promulgated a rule on Indoor Air Quality, Wisconsin's promulgation and enforcement of State laws and local ordinances addressing the issue of occupational exposure to tobacco smoke would not be subject to claims of preemption until such time as Federal OSHA adopts such a standard."⁸

In December 2001, OSHA decided not to pursue a federal clean indoor air regulation because local and state authorities around the country have taken, and continue to take, effective action to protect the public from the death and disease of secondhand smoke exposure. ESRTA's efforts to overturn New York's Clean Indoor Air Act did not stop at the OSHA lawsuit.

Blowing Smoke

As part of Philip Morris's "Accommodation Connection Team" project, ESRTA and the New York State Bowling Proprietors' Association joined forces to form the New York State Hospitality Industry

Coalition on Indoor Air Quality to tout Philip Morris's message that ventilation was a viable solution to secondhand smoke exposure in 1999.⁹

In February 2004, ESRTA voiced support for several legislative bill to weaken New York's effective and popular smokefree law to allow smoking in establishments with air-filtration systems; this time joined by two air-filtration companies, FailSafe Air Safety Systems and Airistar Inc. Wexler asserted:

"...I'm happy to see that we have healthier workplaces. However, it's a shame that instead of using (filtering or air cleaning) technology, which could achieve perhaps better healthier workplaces, there's the economic harm this law is causing."¹⁰

In February 2005, ESRTA continued its fight to weaken the state law by filing a lawsuit on the grounds that economic hardship exemptions, which are permitted by the state law, were granted irregularly and thus bars were being treated unequally. The lawsuit, which did not succeed, aimed to chip away at the enforcement of the law.¹¹

Inevitability of Smokefree Status Quo

ESRTA's efforts to overturn New York's law are just more attempts on behalf of the tobacco industry to undermine smokefree air laws that protect people from secondhand smoke exposure in order to protect the tobacco industry's interests. New York's smokefree law has proven to be popular with New Yorkers and is beneficial both for their health and for New York businesses.¹²

In 2007, ESRTA attorney Jim Linnan wrote to ESRTA's director that, "As smoking bans gather more and more momentum across the country, I do not believe there is opportunity to turn back the tide or roll back the law." He added that a recent court decision had placed the responsibility for enforcing the smokefree law on bar owners and that, "The net result of this decision is that a licensee would be putting themselves in great peril if they merely post signs and give warnings to their customers but tacitly approve smoking."¹³

Despite this admission, it is important for advocates to keep an eye on ESRTA to help ensure that they do not resume their long-standing, active opposition to smokefree air in New York.

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