1995 Texas Pre-emption Battle

The Texas health coalition, SmokeLess Texas, defeated two tobacco industry sponsored pre-emptive bills during the 1995 legislative session.

Before the 1995 session, the Texas coalition, SmokeLess Texas, anticipated a major defensive battle with the tobacco industry. The tobacco wars were so bloody during the previous session that most of the members felt we would be fortunate just to be able to beat back pre-emption. Disagreement erupted over whether or not we should wage mostly a defensive campaign or try to also throw in a comprehensive minors access bill.

In the end, one health group and a supportive legislator decided to file the comprehensive legislation on their own. By consensus, the coalition did agree as a whole to pursue defensive action against pre-emption, smoke-free schools, and smoke-free state buildings.

The SmokeLess Texas coalition includes the American Cancer Society, American Heart Association, American Lung Association, Texas Medical Association, and Texas Academy of Family Physicians. Although this is the decision-making core of the coalition, other agencies and individuals frequently assist in SmokeLess Texas initiatives.

Texas legislative sessions run every other year and are from January through May. In March, on the last day to file legislation, the tobacco lobby filed two pre-emptive bills, SB 1237 was a public smoking bill and HB 2460 was a minors access bill. Most distressing was that these two bills were filed by two committee chairmen, the Senate and House State Affairs chairmen. Of course, the bills would immediately be referred to those two committees.

We have faced pre-emption in every past Texas legislative session since 1985, but this was the first time the tobacco lobby had filed their own bills. In the past, they were successful in amending our own legislation and forcing us to withdraw it. We were not going to be able to kill pre-emption that easy this time.

It was clear early on that the public smoking bill was the priority for the tobacco lobby. They had formed a coalition with business groups called the Texas Business Alliance for Free Choice that signed off on their public smoking bill. Members included Philip Morris, the Texas Restaurant Association, Texas Association of Business and Chambers of Commerce, Texas Association of Wholesale Distributors, Texas Hotel and Motel Association, Texas Lessor Association, Small Business United of Texas, Veterans of Foreign Wars, Texas Retailers Association, and Texas Bowling Centers Association.
Besides gathering this impressive list of supporters, the tobacco lobby had already started to make editorial visits at the major Texas newspapers focused on the public smoking bill.

Realizing that this seemed to be their priority, we, too, focused most of our early attention on the public smoking bill. Cities like Austin, Arlington, and Plano that had strong public smoking ordinances all had Capitol lobbyists who were a tremendous help. Particularly, the mayors of Austin and Arlington committed personal time to the cause. Mayor Bruce Todd of Austin spearheaded an effort to get other Texas cities to sign a letter against the pre-emptive bills — 30 cities signed on.

The American Heart Association hired a contract lobbyist specifically for the pre-emption fight. He was a tremendous assistance in procuring inside information and in helping us decide on a day-to-day plan of action.

The American Cancer Society had a telephone list of about 20,000 advocates, and we began to phonebank them and ask them to call their own legislators and the Governor's 800 number. If they knew who their House member was, we routed their call directly to that member's office. If they didn't know, we routed their call to the Chairman of the House State Affairs Committee. Even though the bills had not passed, they were instructed to ask the Governor for a veto based on his local control stance. We hoped that this would place pressure on the Governor's office to get involved in the legislative process before the bills reached his desk. Phone-tree follow-up mailings were sent to all callers who agreed to help that asked them to get five of their friends to call the Governor (who could get five of their friends to call, etc.)

The Senate sponsor refused to visit with us and his staff claimed that there was nothing we could do to change the Senator's mind or to negotiate a better bill. The House sponsor did visit with us and seemed somewhat sensitive regarding our issues. It seemed that inwardly he knew what he was doing and felt bad about it. He even offered a compromise that disturbed the tobacco lobby and was quickly abandoned. It was during this visit with the House sponsor that the tobacco lobby found out for the first time that we had been working on a smoke-free schools bill that had already passed the Senate and was about to pass the House. They were so busy trying to nail down pre-emption that they missed our smoke-free schools effort.

The Senate public smoking bill that was proceeding simultaneous to the House bill later grandfathered in existing city ordinances on the Senate floor. This peeled off some of our most significant support from mayors and cities who were previously loud advocates.

The first hearing for all tobacco-related bills was in the House State Affairs Committee. The hearing was a sham. All but two of the 15 committee members had already been strong-armed to support the pre-emptive bills. As in past legislative sessions, most of the Capitol press corps showed up at the beginning of the hearing in early afternoon but started to drift out by 5:00 as the tobacco topic had not come up on the agenda yet. Tobacco is usually taken up on the House State Affairs agenda between 9:00 pm and midnight, after there is certain to be no media present. The bills were assigned to a subcommittee and the public smoking bill was voted out of the House State Affairs Committee three days later.

We knew from the beginning of the session that we were in trouble, but now it
looked like the public smoking bill was being railroaded and probably had the 
support of the legislative leadership. We were beginning to feel panicked and it 
was clear that avoiding pre-emption this session was going to be the biggest 
challenge the coalition had ever faced.

The tobacco lobby and the Texas Restaurant Association (TRA) launched a 
powerful lobby effort. The TRA was a valuable ally, had strong local connec-
tions, and was making compelling economic arguments to legislators. SmokeLess 
Texas held a news conference on the issue of restaurant economics and invited in 
Stan Glantz of the University of California at San Francisco. Dr. Glantz has con-
ducted most of the major research on the economic impact of smoke-free ordi-
nances on restaurants and has found that there is no economic impact.

We invited Victor Crawford, the former Maryland Senator and tobacco 
lobbyist who had contracted cancer and become an ally in exposing the tobacco 
industry. Mr. Crawford was undergoing radiation and could not come to Texas 
at that time, but we sent him an outline and he videotaped his comments about 
pre-emption. The tape was flown to us the night before the news conference. We 
used the tape for the news conference, for the Senate hearing on the public smok-
ing pre-emptive hearing, copied it for our local boards to help them better under-
stand pre-emption, and at every opportunity possible.

The American Cancer Society, American Heart Association, and American 
Lung Association split up the major media markets in Texas and arranged for 
editorial board visits.

Media support for our side of the issue was tremendous. During both pre-
emptive campaigns, numerous editorials and articles were written on the subject 
by all of the major papers and only one supported the tobacco industry's claims. 
This was a Houston Chronicle article supporting the public smoking bill early in 
the session that was a result of the opposition's editorial board visits. It was more 
than offset by the support we received from the other major editors.

It was important for both the media and our own members to understand 
beyond a doubt what the pre-emption battle was really about. It was really about 
the tobacco industry's need to protect themselves from further strong city ordi-
nances. It was not about uniformity or health.

The American Cancer Society flew in 30 volunteer lobbyists to help canvas 
the 151 member House. Almost every House member and their staff had a per-
sonal visit from someone with prepared information about why the pre-emptive 
bills, particularly the public smoking bill at that time, were bad bills.

The national American Cancer Society funded the Victor Crawford video, 
travel expenses for the volunteer lobbyists, and the phonebanking.

At about the same time, the city of Wichita Falls was undergoing the first 
referendum in Texas to repeal a city public smoking ordinance. Several health 
of {organizations gave them funding to help fight the referendum. The Texas Medi-
cal Association was particularly helpful in getting additional funding and in 
designing a strategy. When Wichita Falls won their battle during the May 6 
election, the mayor and coalition leadership came to Austin and participated in a
news conference announcing their win and condemning pre-emption. During
the same news conference, the entire House Public Health Committee also con-
demned pre-emption, led by chairman Hugo Berlanga.

The coalition began sending personal friends of the Governor to meet
with him and ask for his assistance. During one visit he hugged his campaign
contributor and childhood friend several times and asked the health lobbyist
present about House deadlines. He was very attentive regarding all of the dif-
ferent deadlines, i.e., ways to kill a bill.

At about this same time, Alan Berg, a Capitol television reporter for
WFAA in Dallas, did an excellent two-part expose on Texas tobacco lobbyists,
the funding of the pre-emption campaign, and what they were really after.
These segments were also aired in Austin and Houston. His timing within the
last few days of the session couldn't have possibly been better.

In the meantime, to our surprise, the pre-emptive children's bill was voted
out of the House Committee and scheduled for House floor debate with light-
ning speed. Despite the valiant efforts of our supportive legislators, including
the entire public health committee, the bill passed out of the House. On the
House floor, the Public Health Chair tried and failed to substitute an almost
identical bill (without pre-emption). In hindsight, he should have just offered an
amendment to remove pre-emption and called for a record vote. As it was, all
the House sponsor had to do was get up and point out all the similarities to his
bill, which he did with remarkable clarity and effectiveness. The bill passed the
House and flew like a bullet over to the Senate.

We don't really know for sure which of our activities killed the public
smoking bill, but technically, it was killed by the House sponsor by not reporting
it out of his committee before the deadline had passed. Later, at a Republican
function, the Governor said to one of our supporters that he had helped to kill
that bad public smoking bill. A local political publication gave the Speaker
credit for killing the bill.

The children's bill now gained our full attention but rocketed through the
Senate State Affairs Committee and on to the Senate floor. The entire coalition
worked the Senate. In Texas, 11 votes in the Senate can keep a bill from coming
to the Senate floor. The bill came up on the last Saturday of the session and we
stood outside the Senate chamber and called as many Senators out to talk to us as
we could. When the vote came, the tobacco lobby was stunned. We had
achieved a 12-vote block. We had a brief celebration and everybody went home.
Fifteen minutes later, we were all called back to the Capitol. The bill was going
to the Senate floor AGAIN.

We stood outside the Senate chamber again, and it looked like our block
was a firm one. That is, until the Lieutenant Governor decided to intervene. We
knew that when he personally started working the Senate floor that it was all
over for the children's bill. It was. We retained few of our original 12 votes and
the bill was passed by the Texas legislature. We learned later that the Lieutenant
Governor's stated reason for intervening was that he thought the state would lose
millions in Synar Amendment funding if the bill did not pass.
The session ended May 29. Smoke-free public schools had passed within the
giant education code revision. The pre-emptive public smoking bill had been
defeated. The coalition was tired. But one more effort had to made to produce a
veto for the pre-emptive children's bill.

The national American Cancer Society funded phonebanking to the
Governor's 800 number and also a full-page ad that was published in the Austin
newspaper on June 14. Several events that the Governor attended incidentally had
advocates there who had received phonebank calls and mentioned to the Governor
that it sure would be nice if he would veto that bad tobacco bill.

The Governor has several policy teams and at the end of the session these
teams would analyze and make recommendations to him regarding whether or not
a bill should be signed or vetoed. We visited with the head of the health policy
team, but the bill had been given to the general government team. Members of the
coalition visited with this team. They were primarily confused about whether or
not the bill had merit as a tobacco control bill and also whether or not the state
would lose Synar money if the Gov vetoed it. It was a tough and quite technical
meeting. When our meeting ended, they were noncommittal, but we were rela-
tively sure they knew who was telling the truth and that if they recommended that
the Gov sign the bill, it would be based on political fallout, not the truth.

The tobacco lobby kept spewing that the state would lose millions of dollars
if this bill was passed as Texas would not be able to meet the requirements of the
Synar Amendment, which had no final regs at that time.

We chose the simplest-to-explain reasons why this was false. The “super-
vised” vending machine provision of the bill and the fact that cities could not have
stronger ordinances meant that the bill defeated the intent of the Synar Amend-
ment, which was a continual decrease in access by minors.

On June 16, 1995, Governor George W. Bush vetoed HB 2460, the pre-
emptive children's bill.

In retrospect, we really cannot say if any one thing the coalition did pushed
the magic buttons, but these things seemed important:

1. Media support
2. Phonebank support
3. Personal visits to lawmakers by influential people
4. A clear message to all regarding why pre-emption is bad