

Local smoke-free policy development in Santa Fe, Argentina

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ABSTRACT

Objective To describe the process of approval and implementation of a comprehensive smoke-free law in the province of Santa Fe, Argentina, between 2005 and 2009.

Methods Review of the Santa Fe smoke-free legislation, articles published in local newspapers and documentation on two lawsuits filed against the law, and interviews with key individuals in Santa Fe.

Results Efforts to implement smoke-free policies in Santa Fe began during the 1990s without success, and resumed in 2005 when the provincial Legislature approved the first 100% smoke-free subnational law in Argentina. There was no strong opposition during the discussions within the legislature. As in other parts of the world, pro-tobacco industry interests attempted to block the implementation of the law using well known strategies. These efforts included a controversy media campaign set up, the creation of a hospitality industry association and a virtual smokers' rights group, the introduction of a counterproposal seeking modification of the law, the challenge of the law in the Supreme Court, and the proposal of a weak national bill that would 'conflict' with the subnational law. Tobacco control advocates sought media attention as a strategy to protect the law.

Conclusions Santa Fe is the first subnational jurisdiction in Latin America to have enacted a comprehensive smoke-free policy following the recommendations of the World Health Organization (WHO) Framework Convention on Tobacco Control. After 3 years of implementation, pro-tobacco industry forces failed to undermine the law. Other subnational jurisdictions in Argentina, as well as in Mexico and Brazil are following the Santa Fe example.

INTRODUCTION

Secondhand tobacco smoke (SHS) causes myocardial infarction, lung, breast and other cancers and respiratory disease, with no safe level of exposure.^{1–3} As evidence of these effects accumulated, a smoke-free movement emerged at the local level in the USA during the 1970s.⁴ A 1978 tobacco industry study identified SHS as 'the most serious threat to the viability of the tobacco industry that has yet occurred'.^{5,6} The industry's early concerns were well founded; smoke-free workplaces protect non-smokers and help smokers quit or decrease their consumption by around 30%, and discourage youth initiation.^{3,7}

Following the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), four Latin American countries (Uruguay in 2006, Panama and Colombia in 2008, and Guatemala in 2009) enacted strong national smoke-free policies. Efforts to enact smoking restrictions in Argentina

date from 1992, well before the FCTC. In Argentina, as in the US, tobacco companies prevented national smoking restrictions,^{8,9} but there has been important provincial and local progress. During 2005–2008, the provinces of Santa Fe (the third most populated province in Argentina), Tucumán (a northwest tobacco grower province) and Neuquén enacted 100% smoke-free laws (including all public places, workplaces and public transportation).^{10–12} Córdoba and Mendoza provinces also passed strong smoke-free laws (exception for casinos and jails in Mendoza and discos in Córdoba).^{13,14}

This paper reviews the process of approval and implementation of a comprehensive smoke-free law in Santa Fe province between 2005 and 2009. As of October 2009, implementation of the smoke-free law in Santa Fe was well under way, attracting increasing public support with a high level of compliance. Similar to other parts of the world, pro-tobacco forces worked to block implementation of the law and prevent the dissemination of meaningful smoke-free policies to the rest of Argentina. The issues involved in passing and defending smoke-free policies transcend specific cultural and political differences between countries. Tobacco control advocates can learn what to expect and how to deal with opposition from experiences in other parts of the world.

METHODS

We reviewed all legislation on smoking restrictions proposed or approved in the province of Santa Fe and in the city of Rosario (its largest city) from 1992 through 2009. We searched for articles related to approval, regulation and implementation of the law, sanctions for violators, public support and tobacco industry arguments published in local (*El Litoral*, *La Capital* and *Rosario/12*) and national (*Clarín*, *La Nación* and *Página/12*) newspapers between 2004 and 2009 starting with combinations of the following key words in Spanish: 'tobacco', 'law', 'smoking', 'Santa Fe', 'Rosario' and 'cigarettes'. We used the largest newspapers available through the internet and found 245 relevant articles.

We obtained two legal complaints filed with the Provincial Court against the provincial and municipal laws. We interviewed five key individuals (a Santa Fe legislator, a councilman of Rosario, the Coordinator of the Santa Fe Tobacco Control Program and two advocates) under protocols approved by the University of California, San Francisco (UCSF) Committee on Human Research.

Information from these sources was cross-referenced to prepare this case study.



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RESULTS

First attempts to restrict smoking in public places (1992–2003)

Efforts to pass smoke-free policies in public places began in 1992 in Santa Fe and Rosario while the tobacco industry was fighting a national tobacco control law. On 13 October 1992, a comprehensive national law that, among other measures, intended to end smoking in most public places, was vetoed by the then President of Argentina. The veto resulted from an aggressive lobbying campaign orchestrated by the subsidiaries of both of the transnational tobacco companies operating in Argentina, Massalin-Particulares (a Philip Morris International affiliate) and Nobleza-Piccardo (a British American Tobacco (BAT) affiliate).^{8,9,15}

Just 5 days before the veto, on 8 October 1992, the Santa Fe provincial legislature approved Law 10 855 to end smoking in all provincial public offices for all three government branches (executive, legislative and judicial). An educational campaign was to be conducted during the first year of implementation to promote the health risks of smoking and SHS.¹⁶ On 3 December 1993, the Santa Fe Governor enacted a decree to regulate the law, establishing minor sanctions for violators included under the Provincial Code of Misdemeanours.¹⁷ Although the law was approved without opposition, the educational campaign was not implemented and the law was never enforced.¹⁸

Similar to the provincial legislature, since the early 1990s, local policymakers have introduced ordinances in the Rosario City Council to restrict smoking in public places (table 1). All were approved without strong opposition; however, they were never enforced.

On 13 August 1998, the City Council passed Ordinance 6631 to restrict smoking in public places including discos, restaurants and bars. The original 1996 draft sought 100% smoke-free enclosed environments²³; the approved ordinance required at least 30% of restaurants and cafeterias be smoking areas.²¹ This ordinance resembled 'accommodation' laws that the tobacco industry first started pushing in the US to maintain the social acceptability of smoking by preventing passage of strong clean indoor air laws,²⁴ which Philip Morris International expanded into Latin America in the 1990s as the 'Courtesy of Choice' programme.²⁵

Smoke-free Santa Fe (2004–2009)**Placing smoking control on the public agenda**

In March 2004, the President of the Lower House Health Committee introduced a bill in the Santa Fe provincial Legislature to end smoking in all enclosed public places and workplaces without exceptions, drafted by the Director of the provincial tobacco control programme.

Table 1 Ordinances on Smoke-free Policies, Rosario (1992–1998)

	Ordinance 5476 (24 September 1992)	Ordinance 6073 (5 October 1995)	Ordinance 6631 and Decree 2911 (13 August and 11 December 1998)
Smoke-free places	All enclosed municipal dependences and public offices	DSA and ventilation systems in restaurants, bars, cafeterias and coffee shops >40 m ²	Public places; 30% DSA in restaurants and cafeterias
Sanctions	No	No	Yes
Educational campaigns	Yes	Yes	Yes
Enforced	No	No	Partially

DSA, designated smoking area.
Source: various Rosario official documents.^{19–22}

That year two important events occurred in Rosario that eventually led to its strong law: the public started demanding that the rights of the non-smokers be protected, and the city launched its municipal plan for smoking prevention.

On 10 June 2004, a 10-year-old asthmatic boy (Kevin Stralla) boarded a public bus and refused to pay for his trip until the driver stopped smoking a cigarette inside the bus, which was prohibited by a 1985 municipal ordinance.²⁶ The driver threatened to take the boy to a police station if he did not pay, but the boy insisted on not paying until the bus driver put out the cigarette. Finally, the boy was taken to the police who made him pay the bus fare and told the driver to take him to school. After returning home, the boy and his mother denounced the incident and the bus company suspended the driver. This incident attracted local²⁷ and national media²⁸ attention, and soon the boy became a champion of non-smokers' rights in Rosario.

On 24 June 2004, the Mayor launched the newly created Municipal Plan on Smoking Prevention to promote public policies on smoking prevention and cessation under the Rosario Department of Public Health (DPH).²⁹ The plan's specific objectives were to generate smoke-free environments in municipal public places, to enforce the ordinances regulating smoking in public places, to raise public awareness of the health consequences of SHS and to provide smoking cessation for smokers coordinated by the DPH working with community-based organisations.³⁰

Strong governmental political will

After the Lower House passed the bill on 25 November 2004 it was sent to the Senate, where it was passed 7 months later, on 30 June 2005, as Law 12 432.¹⁰

The law was supported by provincial Minister of Health and Governor, who on 10 November 2005, signed Decree 2759³¹ to regulate the law's implementation. The regulation, among other measures, included the mandatory placement of signs inside all public and private places indicating they were smoke free (figure 1). The regulation, however, did not establish specific sanctions for violators, simply referring to the Provincial Code of Misdemeanours, which made the law difficult to enforce.

No local non-governmental organisations (NGOs) mobilised to support the law before it passed.

Rosario takes the lead in the full implementation of the law

On 16 March 2006, the Rosario City Council passed Ordinance 7970 to adhere to provincial law 12 432 and revoke all previous ordinances that contradicted the provincial law. The ordinance established a toll-free telephone line for complaints,³² but health authorities failed to act against violators. Smoking legislation in Rosario moved one step forward in 13 July 2006, when the City Council approved Ordinance 8021, which the Mayor had introduced, to fully implement the provincial law by establishing sanctions for violators. Penalties included fines for smokers and owners or managers of the locations where violations took place, and the closure of facilities if there were repeated violators.³³

Santa Fe: establishing sanctions

On 24 August 2006, the Santa Fe Legislature passed Complementary Law 12 605 to establish specific sanctions for smokers and owners of the locations (eg, fines and closure of the establishment) and a mechanism for enforcing the law.³⁴

Figure 1 No smoking sign.



NO SMOKING

Art.9- Law 12.432- Santa Fe Province

SMOKERS ARE WELCOMED
SMOKE IS NOT
Nonsmoker Area
[Map of Santa Fe]

400 nonsmokers Santa Fe citizens die per year for secondhand tobacco smoke. We work for preventing it
Government of Santa Fe

Pro-tobacco industry response

As in the US and elsewhere in the world, with encouragement from the tobacco industry,^{35–37} soon after the Legislature approved the law pro-tobacco forces began a campaign to challenge it (table 2 and figure 2).

Creating controversy through the hospitality industry

Between the times the two laws were passed (June 2005 and August 2006) when sanctions and the compliance mechanism were not well defined, the owner of El Cairo, a well known Rosario cafeteria and bar, openly ignored the law by allowing customers to smoke. He appeared on local television stating that there was a controversy regarding whether SHS caused disease,

highlighting a 2003 industry-funded³⁸ *British Medical Journal* paper that concluded that SHS did not cause lung cancer or heart disease.³⁹ Once his health argument was successfully countered by a representative of the Rosario DPH, he shifted to other arguments commonly used by the tobacco industry and its allies: claiming that the law would have a negative economic impact, that it violated smokers' rights, that it discriminated against smokers and that it was 'inconsistent with the local culture'.^{24 25 35 36 40–42}

Seeking an amendment to weaken the law

On 6 July 2006, five provincial legislators from different parties introduced a bill to amend Law 12 432 to reintroduce designated

Table 2 Summary of pro-tobacco industry attempts to subvert the smoke-free law in the province of Santa Fe, Argentina (2005–2009)

Strategies/arguments	Examples
Creation of 'controversy' in the media	
1. Lack of scientific evidence	1. On a television show, the owner of a cafeteria who self-identified as a doctor claimed that there was 'no scientific evidence' on SHS and disease
2. Economic loss for restaurants and bars	2. A newspaper article compared the government of Santa Fe and its smoke-free law public health policy with the Nazism
3. Difficulty in enforcing the law	
4. Discrimination of smokers	
5. Excessive governmental interference in the private life	
6. Authoritarianism/Nazism	
Use of possible tobacco industry allies	
1. Economic loss for restaurants and bars	1. A new bars and restaurants' association was formed and requested a meeting with legislators to modify the law
2. Discrimination against smokers	2. A smokers' rights-like group was organised through the internet circulating emails calling for non-compliance with the law
Modification of the law	
Spanish, Chilean and Buenos Aires City Law models ('accommodation language')	An amendment bill was introduced in the Santa Fe legislature to allow DSAs in all public places and the owners of workplaces the possibility of choosing their own policies voluntarily
Litigation	
1. Unconstitutionality of the law	1. BAT filed a lawsuit against the Santa Fe law
2. Discrimination against smokers	2. A bar owner in the city of Rosario filed a lawsuit against the Santa Fe law and the Rosario ordinance
Pre-emption	
	A weak national bill supported by Senators from tobacco grower provinces, which would turn back the strong provincial laws, was introduced in the Senate

DSAs, designated smoking areas; SHS, secondhand tobacco smoke.

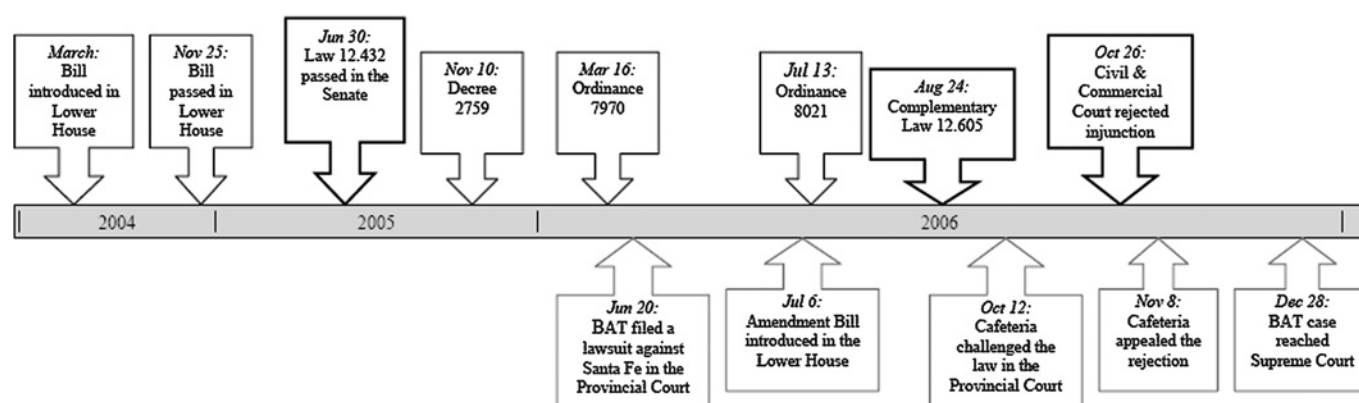


Figure 2 Timeline of Santa Fe smoke-free law.

smoking areas (DSAs) in bars, restaurants, discos, mini markets, convenience stores and hotels that were 'physically separated from the rest of the room, (with) ventilation to the exterior'.⁴³ Arguments used to support this amendment mirrored tobacco industry claims of personal freedom, generation of social conflicts and difficulty of implementing the law due to 'Argentinean culture'. The legislators cited the 2005 Spanish and 2006 Chilean laws that allowed for DSAs, consistent with the tobacco industry accommodation programme.⁴³ This bill died without the Legislature discussing it.

Organising a smokers' rights-like group

In August 2006, a chain of emails circulated in Rosario calling for civil disobedience against the law. We were unable to identify tobacco industry financing of this 'smokers' rights group', but this is a common industry strategy elsewhere.^{55 41 42 44} One of the emails requested the 'Amigo Fumador' ('Smoker's Friend') not to patronise bars, cafeterias, or restaurants where smokers 'suffer discrimination'.⁴⁵ The email continued, "If we act like this [avoiding such places], the anti-tobacco law will drop soon," and ended requesting that they forward the email on to all their acquaintances.⁴⁵ The same month the 'Club Social El Humo' ('The Smoke Social Club') was formed in Córdoba province to sidestep its new smoke-free law.^{46 47} This activity created some confusion, but did not affect implementation of the laws.

Challenging the law in court

As commonly happened in the US, particularly when the first strong law passed in a state,⁴⁸ on 20 June 2006, Nobleza-Piccardo (the BAT affiliate) sued the Province of Santa Fe in the Federal Court of First Instance claiming that the law was unconstitutional. The company claimed that the province should be pre-empted from acting because of a federal law in place since 1986 that regulated some aspects of tobacco advertising. On 28 December 2006, the case was sent to the Supreme Court of Justice. The Santa Fe attorney general actively defended the law.^{49–53} Advocates from the Alianza Libre de Humo Argentina (Smokefree Alliance of Argentina), a coalition of NGOs promoting effective smoke-free policies, collaborated with the attorney general to file an *amicus curiae* (friend of the court) supporting the law. (V Schoj, personal communication, Buenos Aires, 2009.) As of October 2009, the Supreme Court had not ruled.⁵⁴

On 12 October 2006, the owners of the cafeteria El Cairo, through local well known law firm Estudio Cullen, sued provincial and municipal authorities in Provincial Court,

claiming that both legislations were unconstitutional.⁵⁵ The former Minister of Health linked the El Cairo lawsuit 'with the interests of the tobacco companies'.⁵⁵ Then, 2 weeks later, on 26 October the court rejected the injunction the cafeteria requested⁵⁶ and the law firm appealed. As of October 2009, the Court had not ruled on the unconstitutionality of the legislation and the law remained in effect. In the meantime, El Cairo started to comply with the law.

Creating a new hospitality industry's association

On 14 November 2006, the Asociación Empresaria Gastronómica y Afines (ASEMGAS, hospitality venues association) that had been created in March 2006 (6 months after the provincial law passed) in Rosario, requested a meeting with the President of the Santa Fe Legislature to discuss the Law 12.432.⁵⁷ This association appeared after the established hospitality association (formed in 1938), Asociación Empresaria Hotelero Gastronómica y Afines Rosario,⁵⁸ supported the law. Echoing statements made by pro-tobacco forces around the world since the 1980s,^{24 41 42 59} ASEMGAS claimed that the law reduced restaurant sales by 25% to 35%, forced layoffs, stressed the remaining waiters because of enforcing the law and reduced tips. El Cairo appeared among its signatories.⁵⁷ We did not find evidence that the tobacco industry funded or partnered with ASEMGAS. Finally, ASEMGAS offered to work with the legislators to find 'a solution', and attached a copy of the weak Buenos Aires city law. In September 2005, while Santa Fe was passing its 100% smoke-free law, the Buenos Aires Legislature approved Law 1799.⁶⁰ Although the original proposal was for 100% smoke-free workplaces and public places, the approved law allowed for physically separated DSAs up to 30% and with ventilation systems in some venues larger than 100 m². This effort failed to modify the Santa Fe law.

Lobbying for a weak national law through allies in the Senate

In March 2006, while pro-tobacco efforts were being made at the local and provincial levels, a national Senator from Jujuy (Argentina's main tobacco growing province) introduced a 'tobacco control' bill.⁶¹ While it nominally restricted smoking in public places, it allowed DSAs in most places, including workplaces. The bill was sent to the Senate Health Committee to compete with another proposal, which sought to implement most of the FCTC provisions that had been drafted by the Minister of Health in August 2005.⁶² Both bills died in committee.

In December 2008, the national executive branch introduced another 'tobacco control' bill in the Lower House to permit DSAs in most public venues. As of October 2009, the bill was under discussion in different committees. If a weak national law passes, it might create a 'conflict' between federal and provincial jurisdictions. Although not formal legal pre-emption^{48 63 64} as it is known in the US, it could represent effective pre-emption, if the locality bows to pressure to 'harmonise' its law with the federal law. As of October 2009, a similar situation existed in Mexico, where Mexico City was being pressed to harmonise its strong local law by watering it down to match the weak federal law.⁶⁵

Tobacco control advocates' reaction to protect the law **Publicising public support and international recognition**

Local and regional NGOs used international recognition to publicise the law, gain media presence and pressure public authorities to keep and enforce the law. On 23 August 2006, the InterAmerican Heart Foundation (a regional NGO working on tobacco control), the Union Anti Tabáquica Argentina (Argentinean Anti-Tobacco Union), with the support of the Framework Convention Alliance (an international consortium of NGOs) held a press conference in Buenos Aires to give an award to public authorities from Santa Fe, Córdoba and Tucumán provinces and Rosario city to recognise their commitment to protect their citizens' health.⁶⁶ The press conference sought to publicly recognise these policies, and to protect them from pro-tobacco forces and stimulate similar policies elsewhere. Tobacco control advocates also presented the results of a national public opinion poll conducted in August 2006 that showed strong public support for smoke-free policies among non-smokers and smokers.^{67 68}

On 31 May 2007, commemorating World No Tobacco Day, the Pan American Health Organisation 'recognised the province of Santa Fe for its actions in the fight against tobacco'.⁶⁹ The Provincial Minister of Health received the award highlighting that 'Santa Fe was the first province of Argentina that began to legislate with the approval of the anti-tobacco law in the pursuit of the health of their inhabitants, since (this law) allows prevention of diseases and even death due to this cause'.⁶⁹ On 5 September 2007, the Global Smokefree Partnership, an NGO initiative, awarded Rosario 'for exceptional leadership and commitment to further smoke-free policies by a governmental agency'.^{70 71} at the First Latin American Conference on Tobacco Control in Rio de Janeiro, Brazil.

Monitoring compliance

During May to July 2007, an air monitoring study led by Roswell Park Cancer Institute (Buffalo, New York) in collaboration with the InterAmerican Heart Foundation and the Rosario Institute of Health 'Juan Lazarte' funded by the American Cancer Society, collected air samples in Rosario (34 public places: bars, restaurants, cafeterias and the national university) and the city of Santa Fe (33 public places: bars, restaurants, discotheques and gambling places). Tobacco control advocates presented the results during press conferences in both cities showing similar conclusions: the law had a high level of compliance except in pubs and discos, especially late at night.^{72 73} As of October 2009, no systematic measures had been implemented by the local authorities to improve compliance in these places that continued ignoring the law. (I Amato, personal communication, Rosario, 2009.)

Measuring economic impact

An economic impact study was carried out in May 2008 led by researchers from the School of Economy of the University of El

Litoral in Santa Fe, with the support of Alianza Libre de Humo Argentina. They used data from 2003–2007 on sales in bars and restaurants of Rosario and Santa Fe, 2 years before and 2 years after the implementation of the law; consistent with studies elsewhere,⁵⁹ and in contrast to arguments used by pro-tobacco forces, they found that the law had no effect on the hospitality business.^{74 75}

DISCUSSION

Argentina is one of the few countries in Latin America that as of October 2009 had not become a party to the FCTC.⁷⁶ The tobacco industry in Argentina has been very effective at the national level in preventing meaningful tobacco control legislation.⁸ As in the US and elsewhere, where tobacco interests dominate national policymaking, public health advocates have successfully worked at municipal and provincial levels to pass 100% smoke-free policies with strong public support. Although compliance with the law in some specific venues such as bars and discos is lower than during the first period of implementation, the adoption of this public policy has had a big impact on the social acceptability of smoking among the people in Santa Fe.

Santa Fe is the first subnational jurisdiction in Latin America to have enacted a comprehensive smoke-free policy following the recommendations of the WHO.⁷⁷ Other subnational jurisdictions in Argentina, as well as in Mexico and Brazil, are following the Santa Fe example. Mexico City in April 2008⁶⁵ and the State of Sao Paulo in April 2009⁷⁸ became the most populous jurisdictions in Mexico and Brazil, respectively, to adopt similar policies.

As elsewhere, pro-tobacco interests conducted a campaign to undermine the implementation of the Santa Fe law and tried to get it modified. The strategy included litigating against the law directly by the tobacco industry and by the hospitality industry, a probable industry ally. Opponents of the law repeated misinformation directly or indirectly used by the tobacco industry to create 'controversy' on the effects of SHS, accommodation and ventilation solutions, smokers' rights and discrimination, loss of business in hospitality venues, excessive governmental interference and difficulty of law enforcement. However, as of October 2009, none of these actions and arguments had succeeded.

A 2006 BAT report expressed concern that the Santa Fe Law could set a 'bad' precedent that could be copied in the rest of Argentina and through Latin America.⁷⁹ In March 2006, Uruguay became the first country in Latin America to implement a 100% smoke-free policy at the national level.⁶⁸ In an effort to prevent the replication of similar strong laws, tobacco interests are promoting the 'good' examples as the models to follow in Latin America: the Buenos Aires (2005), Spain and Chile (2006) laws. These three laws allow DSAs and promote ventilation as a 'solution' consistent with the tobacco industry's 'Courtesy of Choice' programme²⁵ with the ultimate goal of protecting tobacco industry profits.

As in other countries, despite pro-tobacco efforts to claim that smoke-free laws are unpopular, actual public opinion polls show strong support among non-smokers and smokers for smoke-free policies.⁶⁸ A national poll conducted in December 2008 obtained similar results showing that public support for the adoption of smoke-free environments has been maintained at a high level almost 3 years after implementation.⁸⁰

Despite language, political and cultural differences with North America, the strategies and tactics that the pro-tobacco industry

interests pursued in Argentina were virtually identical to those used in the US^{4 24 36 37 40–42 48 63} and Canada,³⁵ as were the strategies for countering pro-tobacco efforts.

While compliance is high in most venues, the failure of public authorities to maintain a systematic monitoring and enforcement has created a situation in which pro-tobacco forces could erode the progress made to date. Long-term success in other places^{35 36 77 81} has indicated that early education and enforcement efforts are important to establish a strong long-term foundation for compliance, as is dealing with occasional high profile violators after the law is established. Public health advocates and authorities should anticipate continuing opposition, through public relations and litigation, after passage of strong smoke-free legislation. These forces can be overcome by strong public action on the part of authorities to mobilise public opinion and enforcement during the early stages of implementation. The experience in Argentina reinforces the experience from North America that local and provincial venues can be effective venues for implementing smoke-free policies.

What is already known on this topic

- ▶ Implementing smoke-free policies at the national level is a challenge in several countries due to the successful lobbying efforts of the tobacco industry at this level.
- ▶ However, tobacco companies are less influential at the subnational level and developed countries such as Canada, Australia and the USA have made substantial progress at the local level.
- ▶ Local legislation can be easier to implement and enforce than national legislation.

What this paper adds

- ▶ This is the first paper describing the process of implementation of a subnational 100% smoke-free policy in a Latin American country.
- ▶ The experience in Argentina reinforces that of North America and Australia that local and provincial venues can be effective venues for implementing smoke-free policies.

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Contributors EMS collected the data. Both authors drafted the article, prepared the response to reviewers and revised the article.

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