

Legislative Talking Points

Regulating Adult Entertainment Exotic Dance Clubs

(including clubs with alcohol, nudity & incidental touch between dancer & patron)

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Background:

Adult entertainment exotic dance, rooted in belly dance seen in America in 1893 and in burlesque thereafter, is a form of dance and theater art that is somewhat "risqué" adult play, a fanciful teasing. More of the body is disclosed than is seen in public. Like a joke's punch line, exotic dance has stripping to nudity. First there is a stage dance for the entire audience, and second, there is usually a dance for a patron who pays a fee for a personal dance to create his own fantasy. This activity, which has changed over time, evokes considerable misunderstanding.

Main Talking Points:

1. Governmental interest and public welfare.

Special regulations for adult entertainment exotic dance clubs serve **no governmental purpose** for these reasons:

No evidence (scientifically reliable and valid) exists that exotic dance clubs cause problems ("adverse secondary") disproportionate to other businesses or institutions, (crime in schools and sexual abuse of priests against children and adults females does not mean schools and churches cause crime and require special government regulations).

E.g., in Prince George's County, Maryland, a comparison of crime-related and public order-related calls for police service between three strip clubs (a total of 27 calls) and three licensed alcohol beverage establishments (a total of 138 calls) found no association between the presence of strip clubs and crime-related secondary effects.

E.g., in Fulton County, Georgia, police reported clubs with alcohol and nudity had fewer problems than clubs without nudity (*Flanigan's Enterprises Inc. v. Fulton County*, 242 F.3d976, 11th Cir. 2001). A subsequent police study revealed the same finding.

E.g., in Charlotte, North Carolina, interviews with residents and business operators within a 1,000 foot radius of three clubs revealed those with first-hand knowledge of what takes place at and around the clubs did not experience problems emanating from them.

No evidence exists that the exotic dance industry exploits women.

Approximately 800 interviews with dancers in 124 strip clubs nationwide and an extensive literature suggest stripping is generally not demeaning. Most dancers feel empowered through financial independence, flexible schedules allowing them to attend school and to care for their children, and self-esteem gained from successfully controlling their own artistic expression, facing strangers and winning their appreciation. Working out of economic necessity, as do most people, dancers placing their bodies within a financial transaction reduces them to a commodity no more than professional models, actors or athletes who earn a livelihood using their bodies. But dancers feel that society's stigmatization of the "stripper" hurts them.

2. Requirement for legislative predicate (reasons for legislation).

The U.S. Supreme Court ruled that a government **must show evidence related to the current situation of its own jurisdiction, and the quality of that evidence can be challenged.**

(City of Erie v. Pap's A.M., 529 U.S. 277, 2000; City of Los Angeles v. Alameda Books Inc., 535 U.S. 425, 2002; Peek-A-Boo Lounge v. Manatee County, 11th Cir., FL, 2003)

3. Constitutionality.

The **First Amendment protects expression** (nudity and spatial distance are expression).

The **First Amendment overrides the Twenty-first Amendment** (*Liquormart v. Rhode Island*, 517 U.S. 484, 1996).

Regulations singling out exotic dance for regulation **violate the Fourteenth Amendment by discriminating against a specific kind of dance.**

Civil liberties, defining our democracy, override tyranny of the majority, personal moral, or NIMBY ("not in my backyard") preferences.

4. Cost to enact, defend and enforce special regulations.

Redundancy: laws against crime (e.g., assault, drugs and prostitution) already exist.

If **unconstitutional** laws are challenged and government loses, it pays **court costs, attorney fees of the challenger and damages** (up to millions of dollars).

Déjà Vu of Kentucky, Inc. et al. v. Lexington Fayette Urban County Government (\$62,426.27 to plaintiff)

Kentucky Restaurant Concepts, Inc., et al. v. City of Louisville (\$144,573.64 to plaintiff)

A settlement, 2004, called for City of Anaheim to pay a club owner \$2 million for having violated his constitutional rights and caused business loss because the city

prevented him from opening Taboo Gentlemen's Club from 1994 to 1999. The city also had to pay court and plaintiff attorney's fees.

In 2005, Judge William Rea of the U.S. District Court in Los Angeles ordered the SimiValley City to pay about \$100,000 in damages and attorney fees to an entrepreneur for violating his right to open a nude dancing club. Simi Valley's 1993 ordinance regulating nude entertainment clubs was unconstitutional.

The Supreme Court has (*Palazzolo v. Rhode Island*) expanded the Fifth Amendment concept that private property may not be "taken" without just compensation to include partial "regulatory" takings. If a regulation deprives the owners of the businesses of their expected return on investment, government must pay compensation.

"Dance police" divert scarce resources from fighting crime that has victims.

5. Cost to economy.

Regulations usually **hurt the economy** by diminishing or driving out of business exotic dance clubs. The clubs contribute local and state property taxes, provide employment, purchase goods and services (napkins to furniture to utilities) as well as attract legitimate business to their neighborhoods.

6. Opposition to regulation of exotic dance clubs.

Clubs in Los Angeles mobilized to obtain 450,000 citizens' signatures to put regulations on the ballot; Los Angeles rescinded the regulations.

Citizens in Glendale, Colorado, voted out of office lawmakers supporting regulations.

A former exotic dancer became mayor in Georgetown, Colorado.

Time magazine reported a forecaster's 3,000-person nationwide survey that found "striptease is cool."

Many citizens of Benton County, MN, expressed outrage at cases against an exotic dance clubs. See, "The First Amendment, Artistic Merit and Nudity in Minnesota: Dance, Criminal Public Indecency and Evidence. *Minnesota Law and Politics Web Magazine* www.lawandpolitics.com (click on MN & then web magazine)

7. Community-Business Relations

Communities upset by exotic dance clubs, e.g., due to building appearance, can work with clubs to address issues of concern.