

Plastic Bag Bans in New York State

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In 2019, the New York State Senate passed Bill S1508C banning carryout plastic bags, making New York the third state to enact such a ban. Since then, five additional states have enacted similar legislation (National Conference, 2020). The New York ban was first suggested by a task force created to address plastic bag litter. The task force was headed by the commissioner of the state's Department of Environmental Conservation (DEC), and consisted of several New York state politicians, as well as a representative from the New York League of Conservation Voters (NYLCV) and a representative from the Food Industry Alliance of New York State (New York State, 2020). In a 2018 report, the task force presented eight different legislative approaches to reducing plastic bag waste, one of which outlined a plastic bag ban that would eventually become law (New York State, 2018).

Environmental advocacies welcome the ban, but not all social groups are in favor of the law. Some plastic industry and food industry trade associations fought to add exemptions to the ban, and others tried to overturn the law. Throughout the development of the ban, both proponents and opponents of the ban acted to promote their agendas. Some strategies proved futile, such as pursuing legal action. Other strategies have proved fruitful for both sides. Despite differing goals, both proponents and opponents of the plastic bag ban in New York have been successful in advancing their respective agendas by mobilizing the public and participating in the political process.

Review of Research

Social groups' agendas can be informed by academic research. The New York plastic bag task force's recommendations were influenced by scientific findings on the environmental

impact of single-use plastics (New York State, 2018). Kühn et al. (2015) reported that the number of aquatic species harmed by entanglement with or ingestion of plastic debris has doubled since 1997. Wilcox et al. (2015) studied the threat of plastic pollution to seabirds, and predicted that 95% of individual seabirds will have ingested plastic by 2050.

The New York task force also considered research on the effectiveness of bag bans and fees, which has been conducted in a myriad of countries. He (2012) measured that a bag fee implemented in China led to a 49% reduction in plastic bag use, though individuals' attitudes toward the law determined the extent of their personal behavior changes. Senturk and Dumludag (2021) found similar results in their research on the effects of a bag fee on consumer behavior in Turkey, concluding that the fee successfully reduced plastic bag use. Behuria (2021) explored differing plastic bag ban implementations in African nations, and found that the economic interests of a country are a factor in commitment to implementation. Rwanda and Kenya, which rely on tourism, have enforced their bans in hopes of being seen as environmental leaders by outsiders. Uganda, which has a larger oil industry, has been less committed to implementing a ban.

Research on lobbying tactics is also relevant to this discussion. Tselengidis and Östergren (2019) evaluated the strategies used by six food and drink industry lobbyists fighting against sugar taxation in the European Union. The researchers identified practices the lobbyists commonly used to advance their agendas, including building relationships with trade associations and emphasizing the economic importance of the sugar industry. Victor (2007) studied how factors such as budget and membership size affect lobbying groups' choices of when to engage in direct and indirect lobbying practices. Such research parallels the analysis of how stakeholders in New York's plastic bag ban advance their agendas.

Proponents of the Bag Ban

Several participant groups are in favor of the New York bag ban. These include not only the state agencies that enforce the ban, but also nonprofits and political action committees. These participants promote their agendas by persistently informing the public, as well as by direct and indirect engagement in the legislative process.

One such group is the DEC, which is the governing body responsible for enforcing the law. The DEC (n.d.) justifies the ban by citing the harm bags can inflict on wildlife if littered. The bag ban has been enforced by the DEC (2020b) since October 19, 2020 following a several months delay after a lawsuit was brought against the department. The DEC (2020a) has gone to great lengths to encourage participation, such as creating a large suite of outreach materials and public service announcement translated to a number of languages, ranging from Russian to Haitian Creole. By increasing the reach of its information, it is increasing the number of citizens who will comply with the ban. The Department also promotes participation by providing an online portal through which citizens can report violations by stores or manufacturers (DEC, 2020b).

The DEC (2020a) also provides plentiful resources for the manufacturers and vendors responsible for implementing the bans within its establishments. The DEC has meticulously defined terms to reduce the ambiguity of the law, such as defining reusable bag as having “a minimum lifespan of 125 uses, with a use equal to the ability to carry a minimum of 22 pounds over a distance of at least 175 feet.” Stores are provided with a detailed list of exemptions for which plastic bag use is acceptable, and are advised to donate their existing bag stocks to food banks to ensure they are used. The DEC has provided bountiful information online to ease the

transition into the bag ban for both consumers and producers, improving the chances that it will succeed in enacting its agenda.

The DEC's efforts to enforce the plastic bag ban are supported by many organizations advocating for environmental protection. One example is Riverkeeper (2018), a non-profit whose mission is to protect waterways in New York. Before the ban, Riverkeeper organized events to promote and improve the policy, such as 2018 campaign for citizens to call the New York governor's office requesting that a fee on alternative bags be added to the proposed ban. This previous iteration of the legislation would not have imposed fees on paper bags, which Riverkeeper considers "critical to reduce waste and foster a culture of using reusable bags."

Riverkeeper advances its mission by mobilizing private citizens to participate in the legislative process. The organization maintains a log of legislation currently under debate in various categories related to its mission, one of which is plastic pollution (Riverkeeper, 2021). Riverkeeper provides its stance on the proposed policies, as well as information on how constituents can contact their representatives to advocate for their views. Even after the bag ban has passed, Riverkeeper continues to follow up on the topic, posting a blog in February of 2020 encouraging the DEC to "close a loophole in their regulations that will allow for plastic bags if they are 10 mils...or thicker" (Cherson, 2020). Riverkeeper also participated in an event in March 2020 with then-State Senator David Carlucci to distribute free reusable shopping bags in front of a grocery store (Carlucci, 2020). This event allowed them to both educate the public and build a relationship with an influential political figure. Riverkeeper achieves its political goals by regularly informing the public on environmental issues through online forums and in-person events, as well as by encouraging its supporters to voice their opinions to legislators.

The NYLCV (2020), which had a voice in the state task force on plastic bags, shares similar goals to Riverkeeper, but achieves them through different means. The group operates two political action committees aimed at electing state and local officials who will prioritize environmental policy. One PAC, NYLCV Gives Green “offers direct financial support” to candidates “committed to strengthening environmental protections and fighting against legislative rollbacks” (NYLCV, n.d. a). The other, simply named NYLCV PAC, is an independent expenditure political committee that supports environmentally aware candidates, while working to defeat “candidates that stand in the way of passing, watering down, or repealing common-sense environmental policies” (NYLCV, n.d. b.). The group is outspokenly bipartisan, making its goals broadly appealing to anyone with an interest in environmentalism. NYLCV evaluates candidates of all parties through its State Legislative Environmental Scorecard, and in 2018 included support for a previous iteration of the plastic bag ban as one of its 13 indicators of environmental stewardship. The NYLCV (2018) says that report card scores factor significantly into its endorsement decisions. The NYLCV promotes its agenda by funding legislators rather than through community activism and mobilization.

Many proponents of the bag ban, including Riverkeeper and the DEC, used similar tactics to promote their agendas, such as providing legislative resources and mobilizing the public to participate in the legislative process. Some, like the NYLCV, took a more direct lobbying approach, such as donating to political campaigns. The collective efforts of these groups proved effective when the state of New York passed its bag ban in 2019.

Opponents of the Bag Ban

Trade associations representing the plastics and grocery industries vehemently oppose New York's plastic bag ban. These groups advance their goals through publicity campaigns and direct communication with legislators, and at times through aggressive tactics such as lawsuits.

The American Recyclable Plastic Bag Alliance (ARPBA, 2018), which represents the plastic bag manufacturing and recycling industry, outspokenly fights plastics bans, claiming that plastic bags are sustainable. The ARPBA maintains two separate publicity campaigns about plastic bags called Bag the Ban and A Bag's Life. Each campaign is housed on its own website. Bag the Ban was created directly in response to the proposition of the bag ban in New York. Bag the Ban's website contains numerous factsheets that counter information provided by DEC about the benefits of the ban. The factsheets espouse the benefits of plastic bags, noting that "plastic bags require 70% less energy to manufacture and consume 96% less water than what's used to make paper bags." They also assert the negative aspects of alternatives, noting that "reusable bags take up to 9.3% more space than plastic bags in landfills" (Bag the Ban, n.d. b). The website takes on the issue from economic and health perspectives as well, claiming that plastic bag bans have a "negative impact on working families," and that "reusable bags can harbor dangerous bacteria" (Bag the Ban, n.d. a).

While Bag the Ban is explicitly disclosed to be a campaign of the ARPBA, A Bag's Life is not. No mention of the trade association is made on its website. The campaign takes a positive approach to educating on how to reduce, reuse, and recycle plastic bags (A Bag's Life, n.d. a). The tone is persuasive, with most of the information presented in first person from the perspective of the campaign mascot, a smiling plastic bag with the slogan "Gimme a second chance!" On the website's recycling information page, the bag proclaims "I can't do this on my

own...if I'm not reused or recycled, it's because you chose not to take that one extra step by either finding another use for other bags like me or bringing me back to just about any retailer that originally gave me away" (A Bag's Life, n.d. c). This statement demonstrates an attempt by the ARPBA to shift the responsibility for handling plastic bag waste away from the plastics industry toward consumers.

The website appeals to children with both tone and content, such as with instructions on how to organize plastic bag recycling drives at school (A Bag's Life, n.d. d). While the campaign is primarily focused on promoting plastic bag recycling, the site recommends to "bring your reusable bags with you" despite the clear stance the ARPBA takes against reusable bags on the Bag the Ban website (A Bag's Life, n.d. b). This campaign by the ARPBA is an example of astroturfing. To an uninformed reader, this website appears to be a grassroots campaign promoting sustainable methods for disposing of plastic bags. But the latent function of the website is to increase the reach of the ARPBA beyond the plastics industry and to persuade the public that plastic bags are harmless for the environment when recycled. The ARPBA advances its agenda by providing bountiful information to the public and posing as a grassroots advocacy.

A Bag's Life has garnered support in the food and retail industries. Its partners in the state of New York include industry giants Walmart, Target, and Wegmans, among many others. One such partner is the Food Industry Alliance of New York State (FIA), which is a trade association representing the grocery industry (A Bag's Life, n.d. b). Many store owners and grocers are prominent opponents of the New York bag ban. In 2019, Mike Durant, the president and CEO of the FIA, testified about the association's concerns with the ban at a New York State Senate budget hearing. Durant argued that the bag ban will fail to achieve the desired environmental results while increasing grocery stores' expenses, which may inhibit grocers'

efforts to open new stores in underserved communities. The FIA favors implementing fees on paper and plastic bags rather than banning plastic bags (Durant, 2019). A per-bag fee was among the eight solutions proposed by the 2018 plastic bag task force, on which the FIA had a representative member. The idea of a state-wide mandatory fee was ultimately dismissed over concern about negative impacts on low-income communities, although any establishment may levy a fee on paper bag if desired (New York State, 2018).

The FIA has an established history of opposing plastic bag bans. Prior to the proposition of a statewide ban, the FIA sued the village of Hastings-On-Hudson, New York over its local plastic bag ban. The lawsuit was later dropped. This lawsuit caused concern within the state plastic bag taskforce, who note in their report that “single-use plastic bag bans that do not include fees on single-use alternatives have been met with lawsuits.” The taskforce report also contained an appendix with survey results from municipalities that enacted their own plastic bag bans prior to the state’s law. Several respondents mentioned the FIA in response to the question “Did you hear from any lobbying groups during this process? If so, which ones?” For Patchogue Village, New York, which implemented a bag ban in 2015, the “FIA was [the] only pushback” and “threatened with [a] lawsuit.” Another response from Long Beach, New York, which implemented a bag fee in 2017, recalled that the town “heard from FIA,” and that the FIA was “okay with the charge [but] don’t like the ban.” In total, six of the eleven municipalities surveyed reported being lobbied by the FIA in some capacity (New York State, 2018). The FIA promotes its agenda by directly lobbying legislators.

The FIA is not the lone actor in the food and grocery industry. The New York Association of Convenience Stores (2020) strongly opposes the ban. The president of NYACS was quoted in a 2019 news article saying the law “would be a lose-lose-lose scenario for New

York convenience stores” (CSD Staff, 2019). Unlike the FIA, the NYASC is even opposed to fees levied on bags, worrying about the “administrative burdens of collecting the fee, explaining why to the customer, printing it on the receipt, keeping records of the fee revenue, and periodically remitting portions of the revenue to the state” that would be placed on stores (CSD Staff, 2019).

Similar to the tactics used by the FIA, NYACS has promoted its beliefs by requesting that the DEC increase exceptions for plastic bags use to benefit food vendors. An informational briefing sent to NYACS members in February of 2020 reports that the DEC has allowed stores with food service to continue providing bags for takeout food “after revisiting the takeout food exemption at NYACS’ request.” The briefing also reports that the NYACS made “DEC and state legislators aware of the paper bag shortage and the difficulties it will pose for retailers.” The memo mentions that stores may want to impose additional fees on single-use paper bags to “recoup some of their higher cost” and to “protect their limited supply of paper bags” (NYACS, 2020). The information provided by the association shows that its primary concern is the business success of its members rather than the environmental effects of the law.

Food industry representatives and plastic industry representatives joined forces in 2020 to pursue a forceful method for advancing their complementary agendas: legal action. Plaintiffs Poly-Pak Industries, The Bodega and Small Business Association, and Green Earth Food Corp. sued the governor of New York and the DEC over the proposed bag ban (Poly-Pak, 2020).

Each plaintiff voiced a different concern about the law. The Bodega and Small Business Association, a grocery industry trade association, worried about loss of sales due to a lack of adequate paper bag supply and inability to provide plastic bags. Poly-Pak Industries, a plastic bag manufacturer, was frustrated with the 10-mil thickness requirement for plastic bags to be

considered reusable. The company argued that the law granted “a boon to manufacturers of cloth, fabric, and paper bags, while denying similar treatment to makers of reusable plastic bags,” thus violating another New York law that prohibits “bestowing a special benefit or business advantage on private corporations.” Green Earth Food Corporation, which operates a corner market in New York City, was troubled by the vagueness of the definition of reusable bag in the law. The corporation feared “being forced to speculate what types of reusable bags they may distribute” and being subject to a fine if they inadvertently broke the law (Poly-Pak, 2020).

The lawsuit was unsuccessful on all fronts. The court dismissed several of the causes of action on account of a “lack of standing” and did not find any of the claims legally viable. In fact, the court declared the “exemption to the plastic carryout bag distribution ban...for reusable bags made of non-film plastic...invalid as a matter of law.” Rather than expanding the definition of reusable bag as requested by Poly-Pak Industries, the court further narrowed the definition to exclude all plastic products (Poly-Pak, 2020). The lawsuit did, however, delay the enforcement of the law from March 2020 until October 2020 (DEC, n.d.).

The opponents of the plastic bag ban used both indirect tactics, such as the ARPBA providing environmental information on plastic bags, and direct tactics, such as the FIA testifying at a state budget hearing, to advance their agendas. While New York state ultimately passed the ban on plastic bags, the opponents of the bill still achieved some of their goals. The bill mandates that store owners may impose fees on paper bags, as desired by the FIA, and includes exemptions from the bill to provide flexibility for convenience stores, as requested by the NYACS. But some more forceful efforts, such as legal action by Poly-Pak Industries and the Bodega Association, were unsuccessful.

Conclusion

Both proponents and opponents of plastic bag bans in New York have advanced their agendas through indirect tactics, like publishing factsheets on legislative issues, and direct tactics, such as lobbying lawmakers. Voters and legislators respond favorably to certain strategies regardless of the position of the social group. They react poorly to aggressive tactics, such as the lawsuit brought by Poly-Pak Industries against New York State and legal threats made by the FIA against various municipalities.

The implications of this case are relevant during the development of any controversial legislation. This research could be expanded through a quantitative analysis of how bag ban participant groups choose to lobby based on factors like budget and membership size, similar to research by Victor (2007). One could also compare the lobbying strategies used by the plastics and grocery industries to the practices of other industries, such as the sugar and tobacco industries evaluated by Tselengidis and Östergren (2019). Social groups of all kinds hoping to advance their agendas may learn from the successes and failures of the proponents and opponents of plastic bag bans.

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