

Policy Options Beyond Legislation

(Adapted from *Making Policy Making Change: How Communities Are Taking Law Into Their Own Hands* by Makani Themba)

Before undertaking any initiative, it is important ascertain which policy approach is best to address the issue at hand. Policy isn't always legislation. Sometimes, it just isn't practical to get legislation enacted. It may be too soon to try to address the problem directly so other actions are needed to set the groundwork for regulation down the line. Advocates have a number of tools they can choose from that can be used instead of legislation -- or as a complement to legislative strategies. The four most common policy actions (in addition to legislation) are voluntary agreements, lawsuits, moratoriums and mandated studies.

Voluntary Agreements

Voluntary agreements are pacts between a community and institutions that outline conditions, expectations, or obligations without the force of law. This is a good option in places where there isn't support for more formal regulations. Voluntary agreements need not be limited to cordial words and a handshake. Communities can still negotiate written memoranda of understanding that clearly spells out the conditions of the agreement.

Getting a solid agreement still requires research and organizing. It helps to start by identifying all of the institutional actors that have an impact on the issue. Once these actors are identified, research their role in, and possible actions they could take to reduce harm in the community. Then, develop a "wish list" of actions you'd like the institution(s) to undertake. It's especially important (since this agreement will not have the force of law) to identify both "sticks" and "carrots" for institutional participation as well as any community power to back up any agreement. Of course, it will take some negotiating and community pressure to actually reach an agreement. Make sure no one ever negotiates alone. At least two members of your coalition should be present at all times.

Lawsuits and Other Complaints

Lawsuits and other court actions can be tedious and expensive. Therefore, groups should carefully consider all options before deciding to take on a lawsuit. If an organization has the resources (in staff, money or pro bono legal support), a well-framed legal intervention can accomplish much in both the short term and long term -- even if it simply gets the other side to the table. The framing of any action is important. Care should be taken to name the right defendants including parent companies and others who profit from the action that the group wants stopped.

Activists can also learn much from the skillful use of interrogatories -- requests for information and documents from the opponents. In some cases, groups will consult with other activists to identify useful information for regulation beyond the current legal action. For example, one group engaged in a lawsuit against an alcohol company for copyright infringement solicited items for their interrogatory from alcohol policy activists nationwide. The documents yielded from that single lawsuit provided the foundation for years of policymaking -- even though the case was eventually settled out of court.

Other legal actions commonly pursued by groups include injunctions against the implementation of laws before they have had a chance to take effect; organizing victims with standing to sue polluters or other institutions causing damage to a community; and civil suits when an institutional action has a pattern of discrimination or damage to certain populations (i.e., people of color, women, people with disabilities).

Sometimes, an organization has no choice but to get into the legal fray. It's simply a matter of defending their legal rights. Also, companies are increasingly suing local governments, groups and individual activists for their efforts to hold industries accountable.

Lawsuits can be scary and distracting if not properly integrated into the organization's overall organizing strategy. The first, most important rule is to never keep a lawsuit or a company's threat of one a secret. Make sure to publicize the company's action widely. If the target of the lawsuit is the local jurisdiction that enacted the policy, your organization may be able to intervene with an attorney to ensure community interests are addressed. Intervenor status enables a community group to participate in a lawsuit and argue its case almost as if it were a defendant. This kind of participation can make a real difference when a local jurisdiction is not strongly committed to defending an ordinance in court.

In addition to lawsuits, it also helps to simply file complaints about bad or illegal practices with the appropriate regulatory agencies. For example, alcohol ads that appeal to children are violations in many states. Pollution, labor practices and fair trade are other areas of regulation that can be pursued. If one regulatory agency is notoriously slow to act, try redefining the issue so it fits under the purview of a more active regulator. For example, redefining a violation from a bad business practice to a health concern often brings a whole new set of actors into play. In any case, find out who enforces what relevant regulations and work accordingly.

Moratoriums

Sometimes you just need to stop policy activity until there can be further study of its impact and any possible alternatives. Common moratoriums include bans on new alcohol outlets, billboards, dumpsites or office construction. It isn't enough to enact a time-limited ban, any moratorium policy should use the time to gather more information and assess policy options.

Mandated Study

Research can be costly and time consuming. If time and support allows, why not get local government to do the research? Through policy that mandates a study or data collection, resources can be set aside to do a thorough job of information gathering. The policy can set parameters for the kind of group or institution that can conduct the study; key questions framing the study; resident involvement and monitoring of the study; and the plan for dissemination and use of the results. A Los Angeles, California coalition got the city to conduct its study on living wage. The resulting data was hard to dispute when it came time to discuss the need for the living wage law. It was the city's own.