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Water Wars: Interstate Compacts And The Supreme Court's Equitable Apportionment Jurisprudence

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FIRST AMENDMENT

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Time Restrictions on Adult Entertainment: Crime Prevention Lessons from Dallas

High-risk businesses—such as bars, cannabis dispensaries, pawn shops, check-cashing outlets, liquor stores, sexually oriented businesses (SOBs), and other late-night establishments—are often classified as such because of their potential to generate secondary crime effects. In criminological parlance, secondary crime effects include indirect criminal activities that occur in proximity to, but not necessarily directly by or within, such businesses. These are criminal behaviors *facilitated* by the business's presence yet generally not part of its operations. Examples include assaults in parking lots near bars, robberies of patrons leaving late-night establishments, and drug transactions in areas around adult businesses, to name a few.

Decades of rigorous academic studies consistently demonstrate that secondary crime around high-risk businesses is not merely a common occurrence, but a well-established phenomenon supported by sound criminological theory. The popular routine activities theory posits that crime occurs when three elements converge in space and time: motivated offenders, suitable targets, and an absence of guardians. Take the example of SOBs. For starters, they attract ready-made targets (often male clientele with cash) from a wide catchment area. Next, these establishments often attract individuals with criminal inclinations or opportunistic motives, a pattern consistently documented in numerous empirical studies. Finally, limited police presence, late hours, and darkness combine to diminish guardianship.

Municipal attorneys (and municipalities more generally) should be concerned about the effects of secondary crime for a variety of reasons. First, such crime provides the evidence base needed to justify time, place, and manner restrictions on businesses and may thereby mitigate litigation exposure. Likewise, land use and business licensing requirements require rational justifications, crime being just one of many factors to consider. Secondary crimes also affect quality of life, property values, and economic development. Finally, resource allocation should be informed by data indicative of where the problems are. All in all, a sound understanding of secondary crime risks equates with proactive risk management.

The Problem of Sexually Oriented Businesses

Sexually oriented businesses present uniquely challenging regulatory hurdles because they operate at the crossroads of constitutionally protected expression and documented community harms. Municipalities can readily regulate other high-risk businesses through operational requirements, licensing/permitting, dispersal requirements, nuisance abatement, and general law enforcement, but adult entertainment venues enjoy First Amendment protections that many other business types do not. This requires delicately balancing narrowly tailored and evidence-based regulations against reasonable alternative avenues for protected expression.

Further complicating matters is the heightened scrutiny these regulations face in court, requiring municipalities to produce empirical evidence justifying their approach—whether through crime statistics, property valuation studies, or public health impacts. Unlike regulating a liquor store or pawn shop, municipal attorneys must craft ordinances that can withstand intermediate scrutiny while effectively addressing legitimate public safety concerns. This dual mandate to respect constitutional rights while protecting communities from criminal activity and other harms makes SOBs singularly complex to regulate compared to other high-risk establishments.

The Dallas Ordinance

The City of Dallas regulates SOBs through Chapter 41A of its City Code, which aims to "promote the health, safety, morals, and general welfare of the citizens" and "minimize the deleterious secondary effects" both inside and outside these establishments. The code recognizes seven types of SOBs,

but licenses are primarily issued to adult bookstores and adult cabarets (full nude and topless establishments).

On January 26, 2022, the Dallas City Council unanimously approved an hours-of-operation ordinance requiring all SOBs to close between 2:00 a.m. and 6:00 a.m. This regulation sparked immediate legal challenges from affected businesses and their association, the latter of which filed for an injunction claiming First Amendment violations.

The Supreme Court has analyzed SOB regulations under the two-step test adopted in *City of Renton v. Playtime Theatres*.[1] The first step asks whether the regulation "bans" the business in question or merely regulates the "time, place, and manner" of the operation. The second step asks whether the regulation is "designed to combat the undesirable secondary effects" of "businesses that purvey sexually explicit materials" in lieu of limiting their "free expression." A regulation that satisfies both steps is subject to intermediate scrutiny. It will be upheld if it "is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication."

Renton's evidentiary standard was clarified in *City of Los Angeles v. Alameda Books, Inc.*[2] A regulation is "designed to serve a substantial government interest" when the city can "provid[e] evidence that supports a link" between the business and specific secondary effects, including crime. The evidence must be reasonably relied upon and not premised on "shoddy data or reasoning." For a regulation to survive this intermediate scrutiny, officials must reasonably believe the secondary effects evidence is linked to the activities targeted by the regulation.

On May 24, 2022, the United States District Court for the Northern District of Texas granted the Dallas clubs' preliminary injunction, concluding that "the data relied on by the City Council does not fairly support the city's stated rationale for the ordinance of reducing crime" and that the data "artificially enhances crime data associated with SOBs."[3]

The City appealed to the Fifth Circuit, which on October 12, 2023, reversed the injunction, holding that "the City's evidence reasonably showed a link between SOBs' late-night operations and an increase in 'noxious side effects,' such as crime" and that the ordinance "left the SOBs ample opportunity to purvey their speech at other times."[4]

The Dallas Police Department began enforcing the ordinance on November 29, 2023, and continues to do so to this day, but at the time of this writing the fate of the ordinance is again in the hands of the District Court.

Measuring Secondary Crime Effects

Numerous studies have examined the criminogenic effects of high-risk businesses. The lion's share of the evidence involves bars and nightclubs, where there is consistent evidence linking local crime with places that serve alcohol. Areas with many alcohol outlets have higher violent crime rates, including assaults and homicides.[5] This pattern appears across various urban settings, suggesting that alcohol availability through bars, liquor stores, and nightclubs correlates with increased criminal activity.

Both individual drinking and the overall concentration of alcohol outlets in an area contribute to higher violence and property crime risks.[6] Nightlife districts with concentrated alcohol establishments often become crime "hotspots,"[7] with criminal activity spreading outward from them.

Comparatively fewer studies have examined the connections between SOBs and secondary crime. The more rigorous of these consistently demonstrate that "sexually oriented businesses are associated with much higher rates of all types of offenses in the immediate vicinity of the business[es]…"[8] Unfortunately, some studies give the false impression that SOBs can safely operate without negative spillover effects, but these studies make comparisons that are misleading and even nonsensical.

A study of 20 topless nightclubs in Charlotte, North Carolina, reported there was no significant increase in crime near the clubs relative to "control" businesses.[9] The "controls," however, were two fast food restaurants and a gas station—clearly apples and oranges. Similar findings were reported in a San Diego study where researchers sought to determine whether criminal activity was acute at peep show establishments compared to surrounding control locations—and whether it was disproportionately greater between the hours of 2 a.m. and 6 a.m.[10] Instead of including control businesses, it included control "locations."

Both studies were roundly criticized and largely debunked, mainly because it is nearly impossible to identify proper control businesses or areas against which to compare SOBs.[11] For example, while nightclubs may generate more than their share of secondary crime, they are only comparable to SOBs if the same clientele patronize them. In the absence of customer details (i.e., knowing the exact demographics of customers), there is no suitable comparison business or area that can be used to test the secondary ef-

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fects argument. To use a rough analogy, racial profiling researchers have largely abandoned the practice of using local demographics as a basis of comparison when examining the racial and ethnic composition of drivers who police stop for moving violations. As a benchmark, the local demographic composition falls short; it is preferable to know the demographics of the driving population, just as it is necessary in the case of SOB secondary effects to know the clientele.

This leads us toward hours-of-operation considerations. If suitable comparison businesses do not exist, then suitable *times* are the next logical comparison. Indeed, it is on this basis that Dallas premised its ordinance, and it is what prompted my colleagues and I to publish the first study of its kind to answer the question, "Do hours-of-operation restrictions for SOBs reduce crime?" [12]

Hours-of-Operation Restrictions

Dozens of studies have examined whether extensions to or restrictions on alcohol trading hours on and off premises affect crime. On the one hand, researchers have found that trading hour extensions were associated with alcohol-related harm and hazardous drinking.[13] On the other hand, restricting hours yielded decreases in these and related outcomes.[14] A relatively recent systematic review of past research in this area concluded that longer alcohol trading hours lead to increases in assaults and unintentional injuries, while restricted trading hours have the opposite effect.[15] Building on this empirical foundation for trading hour restrictions in alcohol establishments, our research team sought to determine whether similar regulatory approaches would yield comparable crime reduction benefits when applied to sexually oriented businesses in Dallas.

Did the Dallas Ordinance Work?

Our study used various techniques to determine whether the Dallas ordinance was associated with calls for service, arrests, and offenses at and around SOBs. For the area around Dallas' 27 operating SOBs, we chose a 500' radius, consistent with other studies. Our data consisted of weekly totals from January 1, 2021, to June 30, 2024, which ensured that ordinance enforcement fell roughly in the middle. We also distinguished cabarets from other adult business types, and we conducted separate analyses for the 24-hour day and the 2:00 a.m. – 6:00 a.m. timeframe.

We began with a simple pre-post comparison: Were there changes in calls, arrests, and offenses before and after enforcement? The answer was yes. For example, there was an average of 6.3 weekly calls in the 500' radius around all clubs between 2:00 a.m. to 6:00 a.m. after enforcement started, compared to 10.3 beforehand. To ensure the drop was not attributable to chance, we also conducted statistical significance testing. Using this approach, we detected significant reductions in calls and offenses, but not arrests. The absence of a significant decline in arrests despite reduced calls for service can be explained by considering the nature of police-citizen interactions after the ordinance: While overall call volume decreased, the remaining interactions likely represented more serious incidents or higher-priority situations that maintained a consistent arrest threshold.

Next, we estimated a series of more sophisticated time series models that accounted for trends over time (an improvement over basic pre-post comparisons). These models, too, consistently demonstrated that the Dallas ordinance reduced secondary crime effects. The most rigorous models, which accounted for the fact that the data came from 27 separate clubs over 182 weeks, revealed that there were immediate and significant reductions in calls and offenses between 2:00 a.m. and 6:00 a.m. after enforcement commenced.

As is the case with most social science research, our study was not without its limitations. First, the Dallas experience may not be easily replicate elsewhere. Second, we did not make formal comparisons to other time periods (e.g., 10:00 p.m. to 2:00 a.m.). However, we are currently working on a study that does so. Finally, while the models indirectly accounted for confounding factors, we cannot expressly rule out the prospect that other intervening events could have driven the outcomes of interest.

CONCLUSION

Our study's findings offer municipal attorneys a sound, evidence-based tool when crafting, implementing, and defending regulations in their jurisdictions that are similar to the Dallas hours-of-operation ordinance. Rather than relying on theoretical arguments, simple counts, or questionable comparisons, the study provides some concrete empirical support for the argument that SOBs and secondary crime go hand in hand.

From a legal perspective, the study strengthens the defensibility of such ordinances against potential challenges. Courts consistently require municipalities to provide rational explanations for regulations that might raise First Amendment concerns for affected businesses. Our study provides exactly that—quantifiable evidence that hours-of-operation restrictions advance legitimate governmental interests in reducing crime and preserving public resources. By incorporating this research into your work, you can establish stronger justifications for similar regulations, potentially avoiding costly litigation while more effectively addressing community concerns.

NOTES

1. City of Renton v. Playtime Theatres, 475 U.S. 41 (1986).
2. City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002);
3. Association of Club Executives of Dallas v. City of Dallas, 604 F.Supp. 3d 414 (N.D. Tex 2022).

4. Association of Club Executives v. City of Dallas, No. 22-10556 (5th Cir. 2023).
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13. *E.g.,* Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., . . . Rossow, I. (2010). *Alcohol: No ordinary commodity: Research and public policy* (2nd ed.). Oxford, England: Oxford University Press; Hahn, R. A., Kuzara, J. L., Elder, R., Brewer, R., Chattopadhyay, S., Fielding, J., . . . Lawrence, B., & the Task Force on Community Preventive Services. (2010). *Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms*, Am. J. Prev. Med. *39,* 590–604; Stockwell, T., & Chikritzhs, T. (2009). *Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking.* Crime Prev. And Comm. Safety, *11*, 153-170.
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16. Worrall et al., *supra* note *12*.

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