



national coalition for sexual freedom inc.

### Arguments Against Sexually Oriented Business Laws

Sexually Oriented Business (SOB) laws are regulations that govern businesses such as strip clubs, adult bookstores, and other establishments that provide sexually explicit entertainment or materials. These laws are often justified by claims that they reduce crime, prevent negative secondary effects (such as property devaluation or public nuisance), and protect public morality. However, many of these laws are overly restrictive, unconstitutional, and discriminatory. Below are key arguments to fight against SOB laws:

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#### 1. Violation of First Amendment Rights

SOB laws often infringe upon the First Amendment, which protects freedom of expression, including sexually explicit content that is not obscene. The U.S. Supreme Court has repeatedly ruled that sexually explicit material is protected under the First Amendment unless it meets the legal definition of obscenity (as established in *Miller v. California*).

- **Argument:** SOB laws that restrict the operation of adult businesses based on their content are a form of censorship and violate the constitutional right to free expression.
- **Example:** Zoning laws that force adult businesses into remote or inaccessible areas effectively suppress constitutionally protected speech. Courts have struck down such laws when they are found to be overly burdensome or designed to eliminate the expression entirely.

## 2. Lack of Evidence for Negative Secondary Effects

SOB laws are often justified by the claim that adult businesses cause negative secondary effects, such as increased crime, reduced property values, and public nuisance. However, many studies have failed to substantiate these claims.

- **Argument:** The justification for SOB laws is based on anecdotal evidence or outdated studies that do not accurately reflect the impact of adult businesses. Modern research has shown that these businesses do not inherently cause crime or reduce property values.
- **Example:** A 2017 study published in *City & Community* found no significant link between the presence of adult businesses and neighborhood crime rates. Courts have invalidated SOB laws when municipalities fail to provide credible evidence of secondary effects.
- **Efforts to Combat Faulty Claims:** Public health experts and independent researchers can conduct studies to counteract flawed or biased research supporting SOB laws.

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## 3. Overbroad and Vague Regulations

Many SOB laws are written in vague or overly broad terms, making it difficult for businesses to comply or for courts to enforce them fairly. Overbroad laws can criminalize lawful activity or impose unnecessary restrictions on businesses.

- **Argument:** Laws that are vague or overbroad violate the constitutional principle of due process under the Fourteenth Amendment. Business owners and performers have a right to know what conduct is prohibited and to operate without fear of arbitrary enforcement.
- **Example:** Laws that ban "lewd" or "explicit" conduct without clearly defining these terms have been struck down as unconstitutional for being too subjective.

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## 4. Violation of Equal Protection clause of the 14<sup>th</sup> Amendment

SOB laws unfairly target sexually oriented businesses while allowing other businesses with similar impacts (e.g., bars or nightclubs) to operate without restriction.

- **Argument:** SOB laws violate the Equal Protection Clause of the Fourteenth Amendment by singling out adult businesses for harsher treatment without a rational basis.
  - **Example:** If a city allows bars to operate in certain zones but bans adult businesses, it must demonstrate a legitimate reason for the distinction. Courts have invalidated such laws when the government fails to provide a rational justification.
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## 5. Privacy and Autonomy

SOB laws infringe on the privacy and autonomy of individuals who choose to patronize or work in adult businesses. Adults have the right to make their own decisions about what entertainment they consume or provide.

- **Argument:** The government should not interfere with the private choices of consenting adults unless there is a compelling reason to do so. Laws that restrict access to adult entertainment violate personal freedoms.
  - **Example:** In *Lawrence v. Texas* (2003), the Supreme Court recognized the right to personal autonomy in private, consensual activities. Similarly, individuals should have the right to gather in private spaces, such as private membership clubs, to engage in lawful adult entertainment.
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## 6. Overreach of Zoning Laws

Zoning regulations are a common tool used to restrict the location of adult businesses, often confining them to remote or industrial areas. However, these restrictions can amount to a de facto ban, making it impossible for businesses to operate.

- **Argument:** Zoning laws that effectively ban adult businesses violate the First Amendment by suppressing lawful expression.
  - **Example:** The Supreme Court has ruled in cases like *City of Renton v. Playtime Theatres, Inc.* that zoning laws must leave "reasonable alternative avenues of communication." If no viable locations are available, the law is unconstitutional.
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## 7. Overly Expansive Definitions of SOBs

Some SOB laws define sexually oriented businesses so broadly that they encompass establishments that are not primarily engaged in adult entertainment, such as dance clubs or theaters.

- **Argument:** Overly expansive definitions unfairly subject businesses to burdensome regulations and violate their rights. Laws must be narrowly tailored to avoid penalizing lawful activities.
- **Example:** A theater that occasionally shows an R-rated movie with sexual content should not be classified as a sexually oriented business and subjected to the same restrictions as an adult bookstore.

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## 8. Economic Harm to Workers and Communities

SOB laws can devastate local economies by shutting down legitimate businesses that provide jobs and generate tax revenue. These laws also harm workers who depend on adult businesses for their livelihood.

- **Argument:** SOB laws create unnecessary economic harm by targeting legal businesses that contribute to the local economy. Workers in these industries have a right to earn a living without undue interference from the government.
- **Example:** Strip clubs and other adult businesses often generate significant tax revenue for cities. Closing these businesses can lead to job losses and reduced funding for public services.

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## 9. Ineffectiveness of Morality-Based Legislation

Many SOB laws are rooted in moral objections to adult entertainment rather than legitimate public safety concerns. However, morality-based legislation often fails to achieve its intended goals and infringes on personal freedoms.

- **Argument:** The government should not impose moral standards on private businesses or individuals. Laws based on morality are subjective and often unconstitutional when they restrict lawful activities.
- **Example:** Courts have struck down SOB laws that were explicitly designed to enforce "community morality" rather than address specific harms.

## 10. Twenty-First Amendment and Alcohol Regulations

Some SOB laws use the regulation of alcohol sales as a tool to restrict adult businesses, citing the Twenty-First Amendment. However, these laws often go beyond the scope of alcohol regulation and infringe on other rights.

- **Argument:** While the Twenty-First Amendment grants States the authority to regulate alcohol, it does not justify overly broad restrictions on adult businesses.
  - **Example:** Laws that combine alcohol restrictions with bans on adult entertainment must be narrowly tailored to avoid infringing on First Amendment rights.
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## 11. Alternative Solutions to Address Community Concerns

Instead of enacting restrictive SOB laws, municipalities can address community concerns through less intrusive means, such as:

- Increased policing of illegal activities (e.g., trafficking or drug use) without targeting all adult businesses.
- Collaborating with business owners to implement safety measures and community standards.
- Public education campaigns to reduce stigma and promote understanding of adult entertainment.

## Conclusion

SOB laws are often unconstitutional, discriminatory, and ineffective. They infringe on First Amendment rights, perpetuate harmful stereotypes, and harm workers and communities. By challenging these laws with evidence, constitutional arguments, and alternative solutions, it is possible to protect the rights of businesses, workers, and patrons while addressing legitimate community concerns. Laws targeting sexually oriented businesses must be narrowly tailored, evidence-based, and respectful of individual freedoms.