



Voluntary or Regulated? The Trans Fat Campaign in New York City Epilogue

At the September 26, 2006 meeting of the Board of Health, Silver and her team proposed that Article 81 of the New York City Health Code be amended to limit the use of artificial trans fat in New York City food service establishments. The proposal for phasing out trans fat in restaurants was made public three days later. "New Yorkers are consuming a hazardous, artificial substance without their knowledge or consent," Commissioner Thomas R. Frieden said in a press release. "Trans fat causes heart disease. Like lead in paint, artificial trans fat in food is invisible and dangerous, and it can be replaced. While it may take some effort, restaurants can replace trans fat without changing the taste or cost of food. No one will miss it when it's gone."

A month later, there was a public hearing. Fifty people came to testify and the department also received nearly 2,300 public comments, with supporters outnumbering opponents 31 to 1. People also gathered for a "ban trans fat" rally in a park across the street from the Health Department.

But not everyone was in favor of the restriction. The restaurant association said that replacing products would be too costly for them, and that it would affect the taste of food. New York newspapers ran stories with headlines like "Big Brother in the Kitchen? New Yorkers Balk," and "Have a Heart on Fat Ban, Eateries Urge Board." The Center for Consumer Freedom spent \$125,000 to air an ad opposing the ban on CNN and Fox News. In the opening scene, an unseen person snatched an ice cream cone from a child's hand. Then a man getting ready to enjoy a hot dog looked crestfallen as a hand grabbed it away. "Everywhere you turn, someone's telling us what we can't eat," the narrator said.¹ On ABC TV's news magazine 20/20, John Stossel talked about the "never-ending intrusions of the nanny state." He commented: "Gee, I'm all for good health, but shouldn't it be a matter of individual choice?"²

Assistant Commissioner Dr. Lynn Silver, who headed the Bureau of Chronic Disease Prevention and Control at the New York City Department of Health and Mental Hygiene, felt the main concern was that the department was overstepping the bounds of

¹ Lisa L. Colangelo, "Food Group Bares Fangs Over City Trans Fat Plan," *New York Daily News*, October 3, 2006

² John Stossel, "Trans Fat Ban is 'Nanny State' Intrusion," *ABC 20/20*, December 6, 2006.

government, and that it shouldn't be going so far as to tell New Yorkers what they could and could not eat. "Our basic response was: the government has been regulating food for 100 years to prevent death and disease from food," says Silver.³

The burden of death and disease that's being generated by trans fat and certain other nutritional risks is today much, much, much greater than the death and disease that's generated by infectious disease... [T]here are hundreds of thousands of deaths from cardiovascular disease, so it simply made perfect sense to continue the tradition of government and to use those powers to address the main killers that we have today.

While the American Heart Association had initially partnered with the department to educate people about trans fat, it did not submit a comment in favor of restriction. "They were concerned that the alternative to trans fat was going to be saturated fat, and that the saturated fat in the food supply would go up as a result," says Gail Goldstein, then-deputy director of the Cardiovascular Disease Prevention and Control Program. "So they submitted a comment of concern. But when you look at the science, trans fat is worse than saturated fat. So we thought, well, it's still better to have saturated fat than trans fat. And what subsequently happened was that both the trans and the saturated fat have gone down in products across the board."⁴

In November 2006, Goldstein and her team wrote a response to the public comments and resubmitted the proposal to the Board of Health. There were some important changes. For example, instead of setting the same deadline for restaurants to phase out fry oils *and* baking shortenings, the new version took into consideration concerns they had heard from restaurants that prepared baked goods. "Dunkin' Donuts™ came to talk to us and they showed us their research and what they had been doing and what they had been testing and the problems they were having," says Silver.

And they said... we need x amount of time to fix the problem. And so we changed the criteria for the final version of the law, because they were showing us clear evidence of what they were doing and how long it would take them to do it.

The new proposal included the original six-month phase-out period for artificial trans fat in fry oils and spreads, but gave 18 months for all other items in order to give restaurants time to identify alternatives and reformulate their recipes. It also made it clearer that restaurants owners would be responsible only for trans fat content in foods prepared on the premises—but not for packaged goods, such as bags of potato chips. On December 5, 2006, the Board of Health voted to

³ Author's interview with Dr. Lynn Silver in New York City, on November 4, 2011. All further quotations from Dr. Silver, unless otherwise attributed, are from this interview.

⁴ Author's interview with Gail Goldstein in New York City, on November 2, 2011. All further quotations from Goldstein, unless otherwise attributed, are from this interview.

restrict the use of trans fats in restaurants, making New York City the first community in the country to do so.

Despite the extended deadlines and resources that the department put in place, such as the Trans Fat Help Center website, the National Restaurant Association continued to oppose the restriction. The association responded in a December 2006 press release: "Today's decision by the Board of Health shows an ignorance of the challenges New York's 24,000 restaurants will face in trying to eliminate trans fat and may well take a step backward for public health."

This is a farm----to----table issue. It takes time to develop, plant, grow, harvest and process new alternative crops and to test new oils. Because of this supply problem, with such a limited timetable, many of the city's restaurateurs will have no choice but to switch to oils high in unhealthful saturated fats, a move opposed by health advocacy groups.

But ultimately, the restaurants complied. By June 2008, inspection reports showed that 99 percent of New York's restaurants had successfully adapted to the fry oil and spread restriction. Silver says the push to restrict trans fat in New Yorkers' food supply was successful in part because of Mayor Michael Bloomberg's commitment to public health: "He really is deeply, personally committed to public health, and we're in a very privileged situation with a politician who has that personal commitment. His personal foundation works on tobacco, and he doesn't need campaign donations from anybody. All those things created a climate where... he was willing to take on interests that not all politicians are willing or able to take on."

Despite the fact that attempts to get restaurants to stop using trans fat voluntarily were not successful, Silver says that ultimately she is happy with the decisions her division made:

I think, given that we wanted to use the power of government to address the chronic disease burden, that starting with an educational and voluntary approach was probably a good thing. It strengthened our position to be able to defend what we were doing, to say, no, we're not using the power of government lightly, we tried to do it other ways. The industry was not responsive and we then proceeded to use [the law]. So I think in the end it conferred greater legitimacy on the use of regulatory power.