

# O'Neill Institute

for National and Global Health Law

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## Peruvian Constitutional Tribunal Upholds Constitutionality of Reformed Smoke Free Law

*Washington, DC - August 15, 2011* – On July 19, 2011 the [Constitutional Tribunal of Peru rejected the unconstitutionality challenge presented by Jaime Barco Roda on behalf of 5,000 Peruvian citizens](#). The Court upheld the constitutionality of the country's reformed Law 28705 - Law for the Prevention and Control of Tobacco Consumption Risks ("Law 28705"). The decision extensively cited the [amicus brief](#) in support of Law 28705 submitted by the O'Neill Institute for National and Global Health Law ("O'Neill Institute") in collaboration with the Campaign for Tobacco Free Kids ("CTFK"), and the Framework Convention Alliance ("FCA").

The unconstitutionality claim focused on Article 3 of the law, which prohibits smoking in all health and educational establishments, public institutions, indoor work spaces, enclosed public spaces and any means of public transport, effectively making these areas 100% smoke free environments. The failed claim argued that the clause, by imposing an absolute ban on tobacco consumption in certain areas, violated smokers' right to personal autonomy, as well as the rights to commerce, economic freedom, and freedom from discrimination.

In its decision, the Court found that the measures imposed by Law 28705 constituted a legitimate limitation on smokers' right to personal autonomy because allowing smoking would interfere with other individuals' liberty and personal autonomy. While the Court found that the rights to commerce and economic freedom were limited by the measure, it stated that the limitation is permissible because it passes the proportionality principle test and the rights themselves are not absolute. In referring to the suitability and proportionality of the law's measures, the Court writes (quoting from the O'Neill Institute's *amicus*), "the legislative measure in question is 'not only constitutionally valid, but also necessary from an International Human Rights Law perspective due to the obligation to protect the right to health of the citizens of the Republic of Peru.'" Additionally, rather than using purely legal analysis, much of the reasoning used to support the Peruvian Court's decision in this case was based on scientific data from the World Health Organization, outlined in the *amicus*.

This *amicus* was submitted as part of the O'Neill Institute's project on [Global Tobacco Control](#).

### For More Information:

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