

Legal Update



Tobacco Control
Legal Consortium



Dear Tobacco Control Professional:

Welcome to the latest issue of the *Legal Update*, the newsletter of the Tobacco Control Legal Consortium. The Consortium is a national network of legal programs supporting tobacco control policy change across the United States. We invite you to visit our website at www.tclconline.org.

Legal Consortium Files Brief in U.S. Supreme Court Internet Law Case

On August 23, 2007, the Tobacco Control Legal Consortium filed a friend-of-the-court (“*amicus curiae*”) brief in the U.S. Supreme Court, supporting the state of Maine in a case involving federal preemption and state regulation of tobacco via the Internet. [*Rowe v. New Hampshire Motor Transport Association*, 06-457](#). The Legal Consortium’s brief argues that Maine’s tobacco delivery law, which regulates the sale and delivery of tobacco products over the Internet, is a legitimate exercise of the state’s public health police powers and is a necessary response to Congress’s call to reduce youth access to tobacco.

As described in our [July 2007 Legal Update](#), the Legal Consortium submitted an earlier *amicus* brief to the Court last fall supporting the state’s petition for *certiorari*. The Court granted *certiorari* in June 2007. Joining the Legal Consortium on this month’s *amicus* brief were the Campaign for Tobacco-Free Kids, American Cancer Society, American Lung Association, American Lung Association of Maine, American Heart Association, American Medical Association, Maine Medical Association, American Legacy Foundation, and Americans for Nonsmokers’ Rights. For a copy of the Legal Consortium’s brief, which was drafted by Kathleen Dacheille, director of the Consortium’s Maryland affiliate, click [here](#). For additional background about this significant Internet tobacco law case, click [here](#).



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Colorado
[Tobacco Advocacy Resource Partnership](#)

Maryland
[Legal Resource Center for Tobacco Regulation, Litigation & Advocacy](#)

Massachusetts
[Public Health Advocacy Institute, Inc.](#)

Michigan
[Smoke-Free Environments Law Project](#)

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New Jersey
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Ohio
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Illinois Supreme Court Rejects \$10.1 Billion Ruling in Price “Light” Cigarette Case

On August 23, in a blow to a high profile “light” cigarette class-action lawsuit, the Illinois Supreme Court effectively ended plaintiffs’ efforts to resurrect their overturned \$10.1 billion win against Philip Morris. The *Price v. Philip Morris USA* class action was brought in 2001 on behalf of Illinois smokers who claimed they were misled into believing that Marlboro Lights and Cambridge Lights cigarettes were less hazardous than Philip Morris’s higher-tar brands. *Price* was the first class-action “lights” case to go to trial. In 2003, Madison County Circuit Judge Nicholas Byron ordered a \$10.1 billion judgment against Philip Morris. Two years later, on appeal, the state Supreme Court rejected the judgment, ruling that the Federal Trade Commission (FTC) had authorized the marketing of cigarettes as “light” and “low tar.”

Plaintiffs appealed to the U.S. Supreme Court, which refused to hear the case. Plaintiffs then returned to Circuit Judge Byron and attempted to pursue an appeal on the ground that new evidence had emerged to invalidate the state Supreme Court’s ruling. This evidence included official government statements put forward in the briefing of the recent *Watson v. Philip Morris* U.S. Supreme Court case, that the Federal Trade Commission had **not** authorized the company’s marketing claims. The circuit court issued a ruling this spring that opened the door to an appeal. By intervening now and ordering the circuit court to vacate its ruling, the Illinois Supreme Court has dealt what is likely a knock-out blow to efforts to resurrect the overturned \$10.1 billion judgment to smokers. To read the Illinois Supreme Court’s decision, click [here](#).

Legal Challenges to Smoke-free Laws

Colorado. On August 15, a district court judge overturned a lower court ruling that Colorado’s statewide smoke-free law was unconstitutional. *People v. Granieri*. Colorado’s state law, which passed in 2006, prohibits smoking in public places, except airport lounges, cigar bars, and (most recently) casinos. The plaintiff, an Adams County cabaret owner, who was cited last year for violating the law, challenged the ordinance, claiming that it violated the due process and equal protection rights of owners who wanted to establish their business as cigar bars and allow smoking. The district court judge found that Adams County officials acted in the county’s public interest in protecting the health of its citizens by enacting the local smoke-free law. *People v. Granieri*.

Mississippi. Several restaurant owners have asked a federal judge to stop the city of Ridgeland, Mississippi from enforcing restrictions on smoking at least 20 feet from entrances and windows of public buildings and workplaces. The outdoor smoking restrictions are part of Ridgeland’s smoke-free ordinance, which went into effect July 19 and covers all public buildings and workplaces. *Ridgeland Restaurant Association v. City of Ridgeland*.

Indiana. Owners of a restaurant-turned-private-club in Franklin, Indiana are seeking an injunction against the city to prevent it from enforcing the city’s smoke-free law, which covers public establishments and workplaces, but exempts private clubs. *D & D Club, Inc. v. City of Franklin*.

Texas. On August 27, a federal judge upheld Houston’s comprehensive smoke-free ordinance, rejecting a challenge from a coalition of Houston bars and nightclubs that the ordinance was preempted by a state law that regulates alcohol license and permits. *Houston Association of Alcoholic Beverage Permit Holders v. City of Houston*. The judge rejected this claim, finding that the city can regulate alcohol-selling businesses to protect the public health and welfare. A friend-of-the-court legal brief submitted by leading Texas health organizations was particularly influential in the case, and was cited in the court’s ruling. The Tobacco Control Legal Consortium provided informal assistance to the city’s legal counsel. Houston’s smoke-free law goes into effect September 1.

Leading Women’s and Public Health Organizations Call for Camel No. 9 to be Removed from Market

The American Legacy Foundation is leading more than 45 national groups dedicated to protecting and improving public health, including the Tobacco Control Legal Consortium, in calling for R.J. Reynolds Tobacco Company to remove its Camel No. 9 cigarettes from stores. The groups contend that Camel No. 9 is directly targeted to teenage girls and young women because its packaging and advertising features bright, sleek, and feminine colors, and a design motif and name evocative of women’s fashion icons. Several weeks ago, following the launch of Camel No. 9, more than 40 members of Congress called on women’s magazines to reject Camel No. 9 and other cigarette advertising aimed at girls and young women. To read the letter from the public health groups, click [here](#).

The Global Perspective



New smoke-free laws recently went into effect in Denmark and Slovenia that allow the creation of smoking rooms (Slovenia) or the retention of smoking areas as long as they are small (Denmark). The use of designated smoking areas is in conflict with the new global guidelines for smoking regulation adopted at last month's Second Meeting of the Conference of the Parties to the Framework Convention on Tobacco Control. (See our [July 2007 Legal Update](#).) The

implementation of these new laws in Slovenia and Denmark highlight the challenge in enacting comprehensive smoke-free policies around the world.

- Slovenia's law, which went into effect August 5, prohibits smoking in public places, including hotels and restaurants, except where special isolated smoking rooms have been installed. Under the new legislation, if a restaurant or pub does not have a proper smoking room, customers will have to go outside to light up or will face a fine of 125 Euros (approximately \$170.00) for smoking indoors. Ventilated glass cabins can also be installed in workplaces and in some public institutions, but like smoking rooms they are to be reserved for smoking, with no eating or drinking allowed inside. The new law also increased the minimum legal age for buying cigarettes and other tobacco products to 18 (from the current age of 15).
- Denmark's law, which prohibits smoking in all workplaces, including restaurants, pubs, and other places accessible to the public, went into effect on August 15, 2007. The law contains several exemptions, and allows smoking in one-person secluded offices, separate smoking rooms, and bar rooms that are smaller than 40 square meters. Many venues have artificially reduced or rearranged the size of their premises to comply with the law.

Resource Roundup

- Three of the nation's leading organizations of state and local health officials and boards of health have united to identify policy action steps that public health professionals can take to prevent tobacco use, promote tobacco use cessation, protect the public from secondhand smoke, and eliminate tobacco-related health disparities. The Association of State and Territorial Health Officials (ASTHO), the National Association of County and City Health Officials (NACCHO), and the National Association of Local Boards of Health (NALBOH) have released a document identifying goals and specific steps their organizations can take in protecting public health through tobacco control. Interestingly, three-fourths of the over fifty Policy Action Steps Toward Tobacco Use Prevention and Control are rooted in the law. For a copy of the Joint Policy Action Steps, click [here](#).
- The Legal Consortium's California affiliate, the Technical Legal Center (TALC), and the Center for Tobacco Policy and Organizing have introduced a new series of Model Ordinance Checklists to help communities in the planning stages of developing a tobacco control ordinance. The 2-page checklists outline a five-phase campaign model that takes communities from the initial steps of identifying local issues to the planning, implementation and evaluation of a new ordinance, and include policy choices a community should consider when designing a local ordinance.

Checklists are now available at [TALC's website](#) for model ordinances on two issues: [licensing tobacco retailers](#) and [creating smokefree recreational areas](#). Checklists for other TALC model ordinances will be available in the coming months.

Smokin' Links

The Smoke-Free Environments Law Project's SmokeFreeApartment website has expanded its smoke-free apartment listing service by partnering with RentLinx, an online Rental Housing Multi-list service. RentLinx offers an Internet search feature that allows users to search for all smoke-free rental properties in Michigan cities. To access the Smoke-Free Apartment Listing, click [here](#).

Upcoming Events

- Register now for the 2007 National Conference on Tobacco or Health, which will be held in Minneapolis, Minnesota, from October 24-26, 2007. For more information about the conference or to register online, click [here](#). If you have any questions about the conference, click [here](#).
- The Tobacco Public Policy Center at Capital University Law School will host its third annual conference on Monday, October 1, 2007 at the Crowne Plaza Hotel in Dublin, Ohio. The title of the conference is Building Bridges: Tobacco Control in a Broader Context. To register for the conference online, click [here](#). For a copy of the conference brochure (PDF), click [here](#).

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Note: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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