



ChangeLab Solutions

Law & policy innovation for the common good.

Challenged Law	Provisions	Industry Claims	Latest Decision	Status
Local ordinance enacted in Providence, RI	Bans the sale of flavored tobacco products.	Descriptions of flavors and tastes are protected by the First Amendment.	No decision to date.	Pending in federal district court. (District of Rhode Island)
	Bans tobacco product coupon redemption and multi-pack discounts.	Coupons and discounts are protected by the First Amendment either because they communicate pricing information or are “expressive conduct.”	No decision to date.	Pending in federal district court. (District of Rhode Island)
Local ordinance enacted in Worcester, MA	Bans 1) all outdoor tobacco advertisements; and 2) indoor advertisements visible from streets, parks, and schools.	Indoor and outdoor advertisements are protected by the First Amendment.	Federal district court agreed that the law violates the First Amendment because it bans a great deal of advertising that is not directed to children.	Final judgment entered on May 3, 2012. (District of Massachusetts)
Local ordinance enacted in New York City	Requires retailers selling tobacco to display city health department signs carrying images of the health effects of smoking, written warnings, and the number of a cessation hotline.	The law 1) is preempted; and 2) unconstitutionally compels retailers to speak the city’s anti-tobacco message,	Federal district court agreed that the law is preempted by federal cigarette labeling law because the signs restrict cigarette promotion. Court did not decide the free speech issue.	Pending in the United States Court of Appeals for the Second Circuit.
Federal law regulating tobacco marketing (Family Smoking Prevention and Tobacco Control Act)	Requires 1) cigarette packages and ads to display large graphic and text warnings; and 2) smokeless tobacco packages and ads to display prominent text warnings.	Large graphic and text warnings violate the First Amendment by compelling companies to speak the government’s anti-tobacco message.	Court of Appeals held that the warnings are constitutional under the First Amendment as reasonable factual disclosures to prevent consumer deception.	Rehearing denied by the United States Court of Appeals for the Sixth Circuit.
	“Tombstone” law limits tobacco advertisements to black text on a white background.	Images and colors are entitled to First Amendment protection.	Court of Appeals held that the ban on color and graphics barred too much protected speech.	Rehearing denied by the United States Court of Appeals for the Sixth Circuit.
	Prohibits tobacco companies from 1) giving out free samples; 2) giving out free gifts with purchase; 3) sponsoring events; and 4) distributing branded merchandise.	Event sponsorship, branded merchandise, free samples of tobacco products, and free gifts are speech entitled to First Amendment protection.	Court of Appeals agreed that the banned activities constitute protected speech — not routine conduct or “expressive conduct.” But court still upheld all but the restrictions on loyalty programs.	Rehearing denied by the United States Court of Appeals for the Sixth Circuit.
FDA regulations implementing Family Smoking Prevention and Tobacco Control Act	Creates specific graphic warnings to be displayed on cigarette packages and advertisements.	These warnings, and all similar warnings, unconstitutionally “commandeer” package space and force the companies to speak the government’s anti-tobacco message.	Federal district court agreed that the regulations forced the companies to speak the government’s anti-smoking message in violation of the First Amendment.	Pending in the United States Court of Appeals for the DC Circuit.