

Several US States Weigh in on Cigarette Label Suit

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Several states and U.S. territories are weighing in on a lawsuit over proposed graphic cigarette warning labels that include a sewn-up corpse of a smoker and a picture of diseased lungs, saying the federal government should be allowed to require the labels for the "lethal and addictive" products.

The 24 attorneys general filed a friend of the court brief on Friday in the U.S. Court of Appeals in Washington in support of the Food and Drug Administration's challenge of a lower court ruling in the case.

Last month, a U.S. District Court judge granted a request by some of the nation's largest tobacco companies, including R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co., to block the labels while deciding whether the labels violate their free speech rights. The judge ruled it is likely the cigarette makers would succeed in a lawsuit to block the requirement that the labels be placed on cigarette packs next year.

Representatives for R.J. Reynolds declined to comment. Officials with Lorillard did not immediately respond to an email seeking comment Saturday.

The tobacco companies have questioned the constitutionality of the labels, saying the warnings don't simply convey facts to inform people's decision whether to smoke but instead force the cigarette makers to display government anti-smoking advocacy more prominently than their own branding. They also say that changing cigarette packaging will cost millions of dollars.

Meanwhile, the FDA has said that the public interest in conveying the dangers of smoking outweighs the companies' free speech rights.

In the filing Friday, the attorneys general said that the First Amendment does not prevent the government from requiring that "lethal and addictive products carry warning labels that effectively inform consumers of the risks those products entail."

"Over forty years' experience with small, obscurely placed text-only warning labels on cigarette packs has demonstrated that they simply do not work," they wrote. "The warning labels reflect the unique magnitude of the problem they address, the deadly and addictive nature of the product, and the unparalleled threat this product and its marketing pose to America's youth."

The brief was filed by attorneys general from Alaska, Arizona, Arkansas, California, Connecticut, the District of Columbia, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Mississippi, Montana, New Hampshire, New Mexico, Ohio, Rhode Island, South Dakota, Utah, Vermont, the Virgin Islands, Washington and West Virginia.

In June, the FDA approved nine new warning labels that companies are to print on the entire top half of cigarette packs, front and back. The new warnings, each of which includes a number for a stop-smoking hotline, must constitute 20 percent of cigarette advertising, and marketers are to rotate use of the images.

One label depicts a corpse with its chest sewn up and the words "Smoking can kill you." Another shows a healthy pair of lungs beside a yellow and black pair with a warning that smoking causes fatal lung disease.

Joining North Carolina-based R.J. Reynolds and Lorillard in the lawsuit are Commonwealth Brands Inc., Liggett Group LLC and Santa Fe Natural Tobacco Company Inc.

Richmond-based Altria Group Inc., parent company of the nation's largest cigarette maker, Philip Morris USA, which makes top-selling Marlboros, is not a part of the lawsuit.

The free speech lawsuit is separate from a lawsuit by several of the same companies over the Family Smoking Prevention and Tobacco Control Act. That law, which took effect two years ago, cleared the way for the more graphic warning labels. But it also allowed the FDA to limit nicotine and banned tobacco companies from sponsoring athletic or social events or giving away free samples or branded merchandise.

A federal judge upheld many parts of the law, but the case is now pending before the U.S. 6th Circuit Court of Appeals in Cincinnati.

While the tobacco industry's latest legal challenge may not hold up, it could delay the new warning labels for years. And that is likely to save cigarette makers millions of dollars in lost sales and increased packaging costs.

Tobacco companies are increasingly relying on their packaging to build brand loyalty and grab consumers. It's one of few advertising levers left to them after the government curbed their presence in magazines, billboards and TV.

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