

February 2010

All Parties Ask for Supreme Court Review in Department of Justice Lawsuit Against Tobacco Companies

On February 19, the Department of Justice, tobacco company defendants, and plaintiff-intervenors – which includes the American Lung Association and five other public health organizations – asked the U.S. Supreme Court to review certain parts of the 2006 decision by U.S. District Court Judge Gladys Kessler. Judge Kessler found the tobacco companies had engaged in an ongoing 50-year campaign to defraud the American public about their deadly products. Both the Department of Justice and the plaintiff-intervenors asked that the government be able to seek nearly \$300 billion in penalties from the tobacco industry; the tobacco companies asked for the decision, which branded them as racketeers, to be overturned. A three-judge panel of the U.S. Court of Appeals for the District of Columbia unanimously upheld Judge Kessler's decision in the case in 2009. (Source: *Both Sides Take Tobacco Fight to the Supreme Court*, Mark Sherman, Associated Press, February 19, 2010.)

Report Details Benefits to States of Increasing Tobacco Taxes

On February 10, the Campaign for Tobacco-Free Kids, along with the American Lung Association and several other public health groups, released a report showing that states could raise more than \$9 billion dollars a year if they all increased their cigarette taxes by \$1.00 per pack. The increases would also significantly reduce smoking among adults, and even more importantly, prevent millions of kids from starting to smoke. Finally, the increases are also popular with the public, earning 60 percent support in a poll of registered voters, and much preferred as a solution for fixing state budgets than other tax increases. An online version of the report is available by clicking [here](#). (Source: *U.S. Would Reap Billions From \$1 Cigarette Tax Hike*, Maggie Fox, Reuters, February 10, 2010.)

FDA Appeals Court Ruling Prohibiting Regulation of E-Cigarettes as Drug-Delivery Devices

On February 1, the U.S. Food and Drug Administration (FDA) appealed a decision by U.S. District Judge Richard J. Leon that prevents FDA from regulating electronic cigarettes, or e-cigarettes, as drug-delivery devices. The U.S. Court of Appeals for the District of Columbia then promptly issued a stay of Judge Leon's order pending review of the case, which bars the plaintiff e-cigarette companies from importing additional e-cigarettes into the U.S. (Source: *FDA Appeals Electronic Cigarette Ruling*, Jared A. Favole, Wall Street Journal, February 2, 2010.)

News on Smokefree Air Laws/Ordinances**Kansas**

On February 25, the state House of Representatives approved vital public health legislation that will prohibit smoking in almost all public places and workplaces in Kansas, including restaurants and bars. However, the bill does exempt the gaming floors of casinos, which sadly leaves workers and patrons in casinos unprotected from secondhand smoke. Stronger local laws would be allowed. The bill had been previously approved by the state Senate back in 2009, so will now head to Gov. Mark Parkinson for his

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signature. He is expected to sign the legislation into law. If he does, the legislation would take effect July 1. (Source: Kansas Smoking Ban Passes, on its way to Governor, David Klepper, Kansas City Star, February 25, 2010.)

Missouri

On February 22, a hearing was held in the state Senate on a bill that would prohibit smoking in virtually all public places and workplaces in Missouri, including restaurants, bars and gaming establishments. The bill was not voted on by the committee after the hearing. Identical legislation has been introduced in the state House of Representatives, but has yet to receive a hearing. (Source: Senate Committee Debates Statewide Smoking Ban, Marshall Griffin, KBIA (MO), February 23, 2010.);

Indiana

On February 25, the state House of Representatives approved legislation, 54-44, that had been amended the previous day to include language prohibiting smoking in almost all public places and workplaces in Indiana, including restaurants and bars. The added language would unfortunately exempt casinos, but would continue to allow stronger local ordinances. The bill the smokefree language was added to was already passed by the state Senate, so it will likely go to a conference committee next although the Senate could pass the revised bill as is. (Source: House Rekindles Smoking Ban, Kevin Allen, South Bend Tribune (IN), February 26, 2010.)

To view your state's restrictions on smoking, go to: <http://slati.lungusa.org>, click on a state and then the "Clean Indoor Air" link.

News on Cigarette Tax Increases

New Mexico

On February 18, Gov. Bill Richardson announced a special legislative session starting Wednesday February 24 after the regular session concluded without a budget deal. An increase in the state cigarette tax could be part of the eventual budget deal. The state Senate had approved a \$1.00 per pack cigarette tax increase as part of its version of the budget during the regular legislative session, but the state House of Representatives defeated the increase even after it was scaled back to 75 cents per pack. (Source: New Mexico Gov plans Special Legislative Session Next Week, Bob Massey and Susan Montoya Bryan, Business Week, February 18, 2010 and Cigarette Tax Failed in House Taxation and Revenue, Trip Jennings, The New Mexico Independent, February 18, 2010.)

Washington

On February 23, Democrats who control the state Senate released their budget proposal, which like Gov. Christine Gregoire's proposal released on February 17th includes a \$1.00 increase in the cigarette tax, increasing the total tax to \$3.025 per pack. However, the state's highly successful tobacco prevention and cessation program would lose virtually all of its funding despite the increase. Leaders in the state legislature and the governor hope to reach a compromise on the budget and related tax increases by the time the legislative session concludes on March 11. (Source: Washington State Senate Dems Want Sales Tax Hike, Curt Woodward, Associated Press, February 23, 2010 and Gregoire Unveils Tax Plan, Brad Shannon and Jordan Schrader, The Olympian, February 18, 2010.)

For more information on tobacco taxes in your state, go to: <http://slati.lungusa.org>, click on a state and then the "Tobacco Excise Tax" link.

If you have questions or comments about the content in this e-newsletter, or have questions on tobacco control policy issues, please contact Thomas Carr, Manager, National Policy, American Lung Association National Office, Washington, DC, at tcarr@lungusa.org. To subscribe to this e-newsletter, go to <http://www.lungusa.org/get-involved/sign-up.html>.

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