



# Discount Tobacco City/Commonwealth Brands v. United States, 185 L.Ed.2d 865 (2013)

674 F.3d 509 (6th Cir. 2012), 678 F.Supp.2d 512 (W.D. Ky. 2010)

Topics Covered: Anti-tobacco

**Outcome: Favorable**

## **Issue**

The issue in this case was whether the Family Smoking Prevention and Tobacco Control Act (the FSMPTCA) is constitutional.

## **AMA Interest**

The AMA, in keeping with its objective of protecting public health, supports a smoke-free America.

## **Case Summary**

The FSMPTCA empowers the Food and Drug Administration (FDA) to regulate tobacco products and imposes severe restrictions on the marketing of tobacco products. Several tobacco companies sued to have parts of the FSMPTCA declared unconstitutional. The tobacco companies contend that the marketing restrictions violate their right of free speech under the First Amendment and constitute a "taking" and deprivation of due process under the Fifth Amendment.

On cross-motions for summary judgment, the trial court ruled that most of the FSMPTCA is constitutional. However, it struck down certain of the advertising restrictions as unreasonable infringements of the tobacco companies' First Amendment rights. Both sides appealed to the Sixth Circuit.

On March 19, 2012, the Sixth Circuit affirmed most of the trial court rulings that had upheld the majority of the FSMPTCA. However, the Sixth Circuit found that a statutory ban on tobacco companies' "continuity programs" (distribution of non-tobacco items for promotional purposes) was unconstitutional (reversing the trial court on this point). Likewise, the Sixth Circuit found a statutory prohibition on statements by tobacco companies that their products complied with FDA

regulations was unconstitutional (again reversing the trial court on this point). The tobacco companies asked for a rehearing, but that motion was denied.

The tobacco companies petition for *certiorari* was denied on April 22, 2013.

### **Litigation Center Involvement**

The Litigation Center, along with the Kentucky Medical Association and several other public health organizations, filed two *amicus curiae* briefs in support of the FSMPTCA in the trial court. The *amici* also filed a brief in the Sixth Circuit.

Initial United States District Court brief (preliminary injunction)

Second United States District Court brief (summary judgment)

Sixth Circuit Court brief