

Appeals court blocks cigarette warning labels

By Kyle Cheney

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A U.S. appeals court struck down Friday a law requiring cigarette makers to brand their products with graphic warnings, and anti-smoking advocates are incensed.

A three-judge panel of the Washington, D.C.-based court ruled that a 2009 law requiring new, graphic warnings on packs of cigarettes violated the free speech rights of cigarette companies.

“FDA has not provided a shred of evidence … showing that the graphic warnings will ‘directly advance’ its interest in reducing the number of Americans who smoke,” Judge Janice Rogers Brown wrote in a majority opinion.

Although the FDA had argued that it has been outgunned for years by deep-pocketed tobacco companies seeking to deceive people into smoking, Brown ruled that the agency’s argument doesn’t excuse efforts to constrain speech.

“The graphic warnings represent FDA’s attempt to level the playing field, not only by limiting the companies’ ability to advertise, but also by forcing the companies to bear the cost of disseminating an anti-smoking message,” she wrote. “But as the Supreme Court recently reminded us, ‘[t]hat the [government] finds expression too persuasive does not permit it to quiet the speech or to burden its messengers.’”

The ruling drew a dissent from Judge Judith Rogers, who argued that the graphic images proposed by the FDA — including a picture of a man smoking through a tracheotomy hole in his neck — could be tied factually to the consequences of smoking.

The Campaign for Tobacco-Free Kids quickly slammed the ruling, calling it “wrong on the science and law” and predicting it would be resolved by the Supreme Court.

“In requiring the graphic warnings, Congress relied on an extensive scientific record demonstrating both the need for the new warnings and their effectiveness,” the group said in a statement. “That record shows that the current, text-only warnings — which are printed on the side of cigarette packs and haven’t been updated since 1984 — are stale and unnoticed.”

John R. Seffrin, chief executive officer of the American Cancer Society, said in a statement that he was “deeply disappointed” with the ruling. “We hope the government can identify ways that the FDA can move forward with the new cigarette warning labels,” he said. “Every delay in implementation serves the interests of Big Tobacco at the expense of human lives.”