

# LITIGATION 101:

# HOW THE COURT SYSTEM CAN IMPACT COMMERCIAL TOBACCO CONTROL POLICY



PUBLIC HEALTH  
LAW CENTER  
at Mitchell Hamline School of Law

# TODAY'S PRESENTERS

**Marisa Katz, Staff Attorney**









**Tom Pryor, Staff Attorney**



# THE PUBLIC HEALTH LAW CENTER



# LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

**EQUALITY:**

Everyone gets the same – regardless if it's needed or right for them.



**EQUITY:**

Everyone gets what they need – understanding the barriers, circumstances, and conditions.



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based on work for First Nations Health Authority at Gathering Wisdom VI *Drawing Change*

Image credit: Sam Bradd <https://drawingchange.com/gathering-wisdom-visuals-for-a-healthy-future/>

# LITIGATION 101

## TODAY'S WEBINAR AGENDA

- Brief Overview of Government Branches
- The Court Systems and How They Work
- The Life Cycle of a Lawsuit
- How Litigation Can Impact Commercial Tobacco Control Policy
- Key Takeaways
- Q&A

# BRANCHES OF GOVERNMENT



- Legislative Branch
- Executive Branch
- **Judicial Branch**



# BRANCHES OF GOVERNMENT

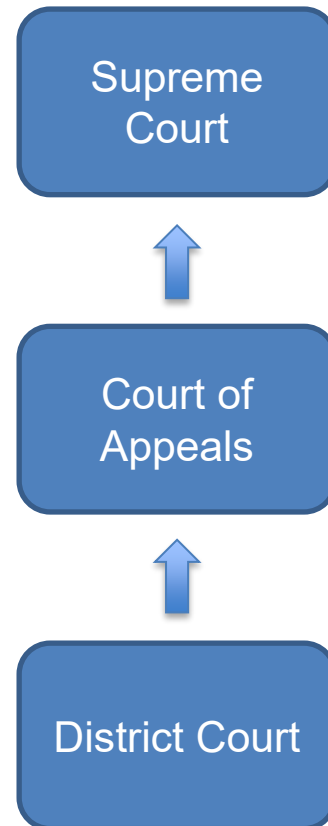
## The Judicial Branch



Photo credit: Hans Pennink | Associated Press file

*R.J. Reynolds Tobacco Co. v. City of Edina (8th Cir. 2023)*

# THE COURT SYSTEMS



## STATE COURTS

Supreme Court  
of Virginia

Court of Appeals of Virginia

Fairfax Circuit Court

## FEDERAL COURTS

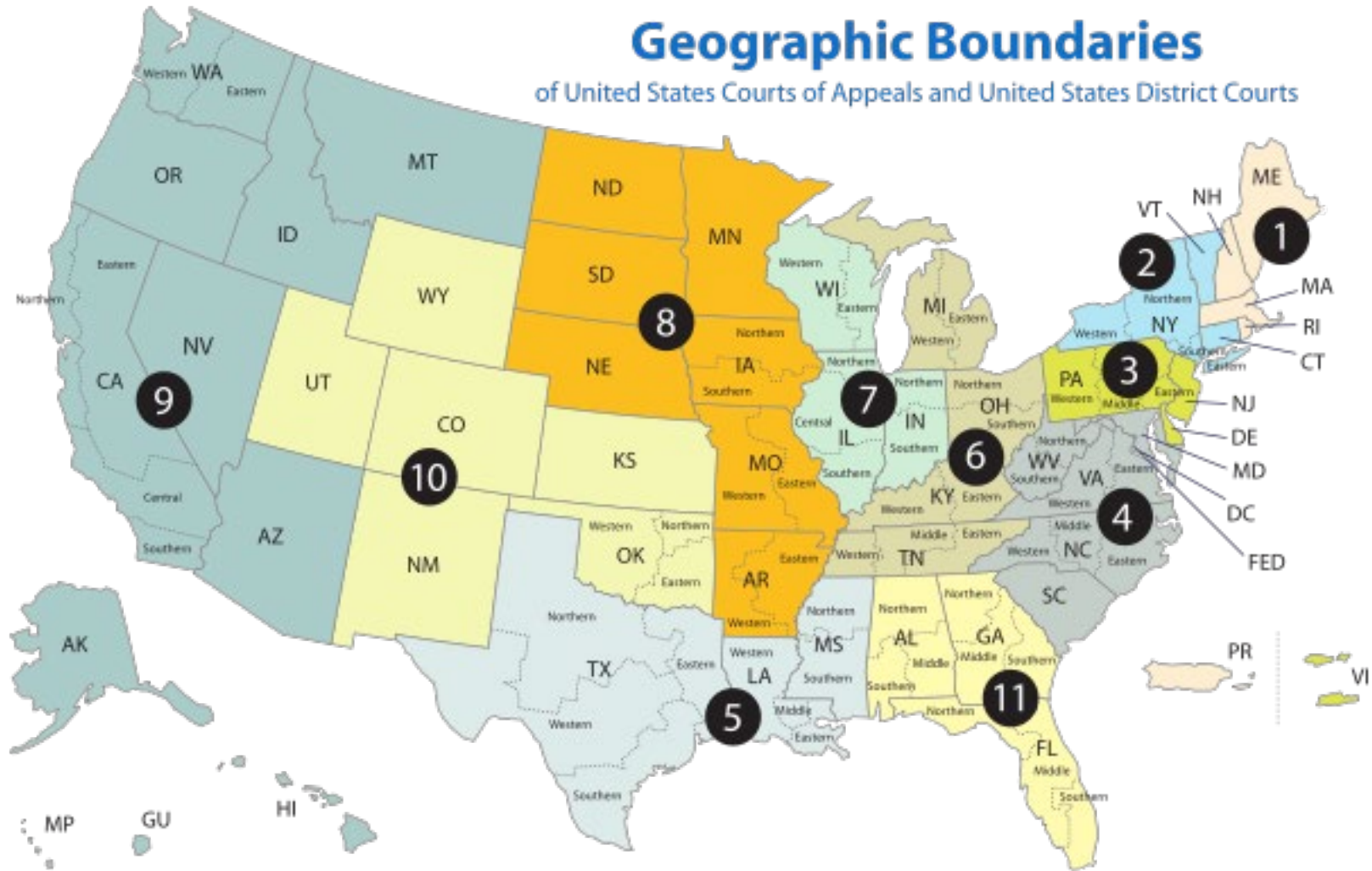
United States Supreme Court

United States Court of Appeals for  
the Fourth Circuit

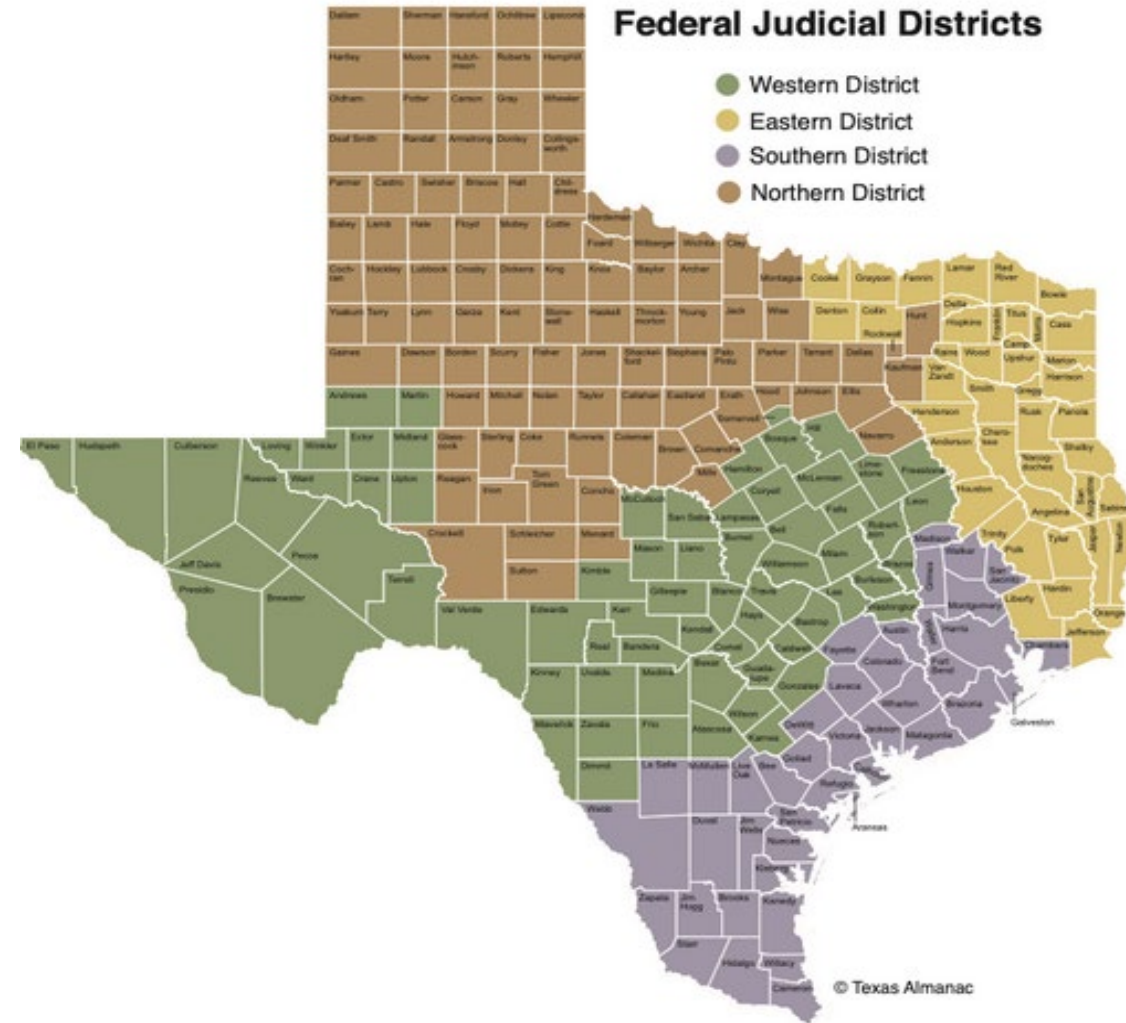
United States District Court for the  
Eastern District of Virginia

# Geographic Boundaries

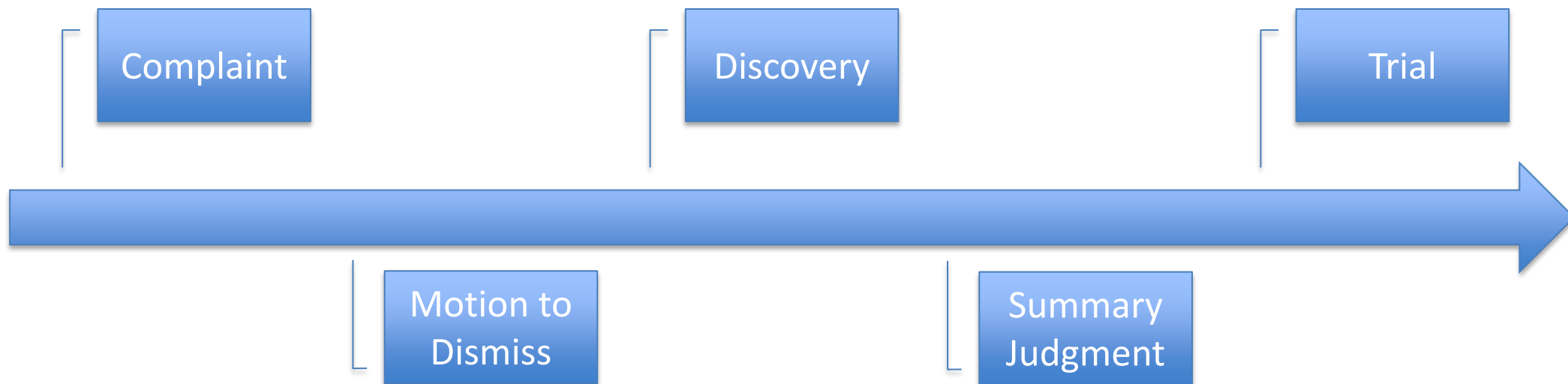
of United States Courts of Appeals and United States District Courts



# Federal District Court Texas



# THE LIFE OF A CASE



# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
  - Short statement of facts
  - Describes claims
  - Requests relief
- Motion to Dismiss
- Discovery
- Summary Judgment
- Trial



# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
- Motion to Dismiss
  - Asking court to dismiss because claims are deficient
- Discovery
- Summary Judgment
- Trial





# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
- Motion to Dismiss
- **Discovery**
- Summary Judgment
- Trial



# THE LIFE OF A CASE: DISTRICT COURT

## SCOPE OF PARTY DISCOVERY

- Available to both sides
- Scope:
  - All nonprivileged\* relevant information
  - Includes electronic (email, saved files, texts, etc.) and physical documents
  - Balance against burden and expense
- Types:
  - Written discovery
  - Requests for documents
  - Depositions



# THE LIFE OF A CASE: DISTRICT COURT

## SCOPE OF NON-PARTY DISCOVERY

- What forms of discovery available?
  - Depositions
  - Production of Documents
  - NOT Interrogatories, Requests for Admission, Initial Disclosures
- How?
  - Subpoena
  - Special protections and costs for burden to non-party
  - Objection by non-party may be made– shifts burden to party seeking discovery to obtain court order

AO 88 (Rev. 02/14) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

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UNITED STATES DISTRICT COURT  
for the

\_\_\_\_\_  
*Plaintiff* )  
v. ) Civil Action No.  
\_\_\_\_\_  
*Defendant* )

**SUBPOENA TO APPEAR AND TESTIFY  
AT A HEARING OR TRIAL IN A CIVIL ACTION**

To: \_\_\_\_\_  
*(Name of person to whom this subpoena is directed)*

**YOU ARE COMMANDED** to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place:	Courtroom No.:
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
- Motion to Dismiss
- **Discovery**
  - Expensive
  - Time consuming
  - Potential PR impacts
- Summary Judgment
- Trial



# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
- Motion to Dismiss
- Discovery
- Summary Judgment
  - Asking court to dismiss because there's not enough factual evidence to support legal claims
- Trial



Photo Credit: Wesley Tingey

**7/25/2023**

# THE LIFE OF A CASE: DISTRICT COURT

- Complaint
- Motion to Dismiss
- Discovery
- Summary Judgment
- Trial
  - Judge or jury
  - Expensive to prep.

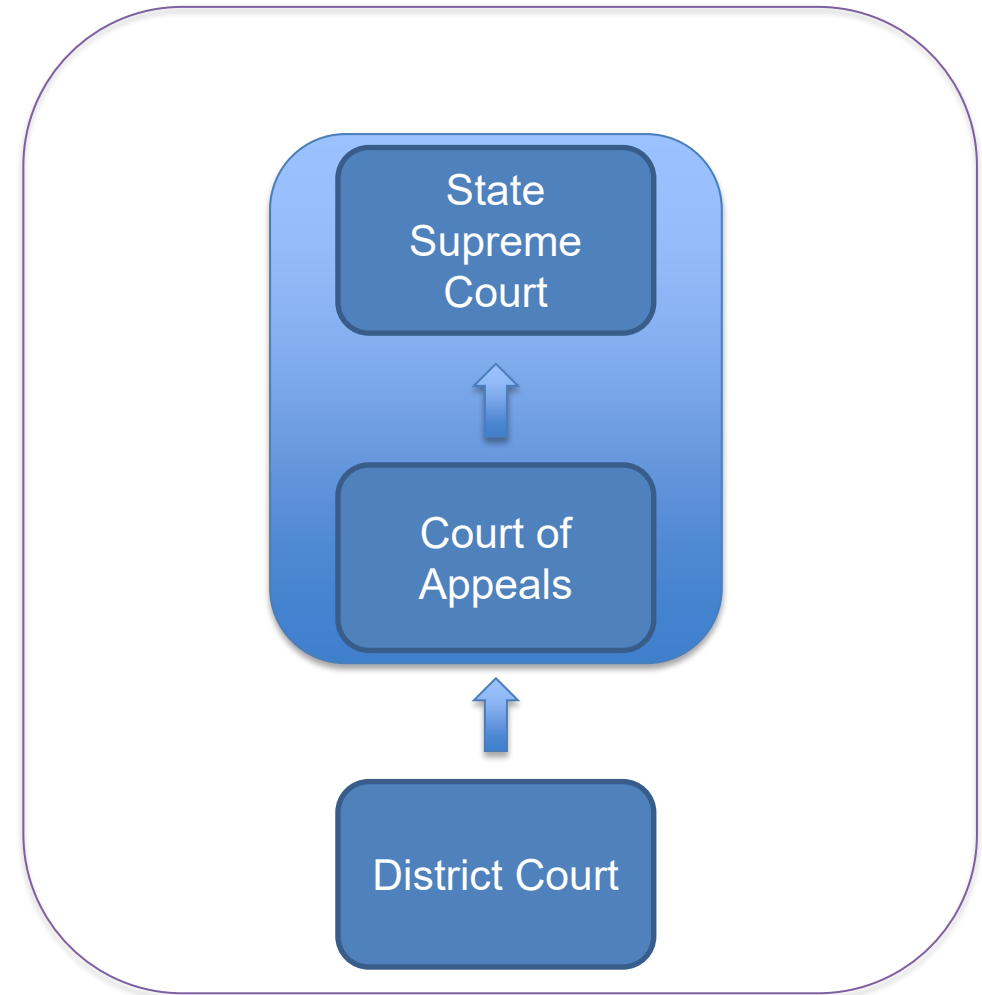


Photo Credit: Robert Linder

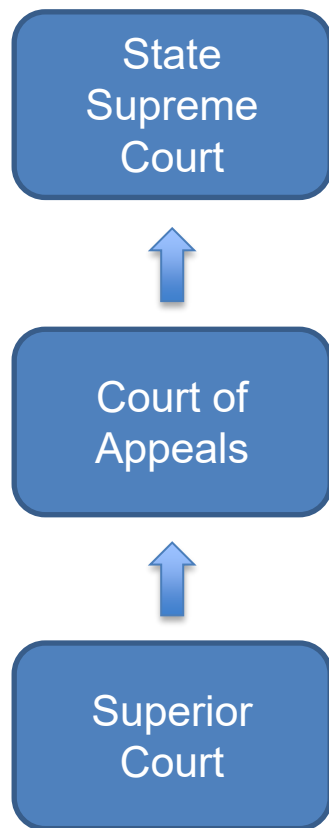
**7/25/2023**

# THE LIFE OF A CASE: APPELLATE COURT

- Guaranteed one appeal
- Discretionary review by Supreme Court
- Limited to legal questions
- Lengthy



# THE LIFE OF A CASE





# SETTLEMENT AND PREDICTING OUTCOMES

- Whether to settle and for how much is a judgment call
- Chance of success includes:
  - Strength of legal argument
  - Assessment of facts and evidence
  - Disposition and tendencies of judge and juries
- Value of the case includes:
  - Potential money damages
  - Value you attach to intangible things (like being able to enforce an ordinance)
  - Strategic value beyond the case



# WHO MAKES POLICY?

- Legislative Branch
- Executive Branch



# WHO MAKES POLICY?

- Legislative Branch
- Executive Branch

...and the Courts.



# WHAT CAN COURTS DO?

- Force a party to do (or not to do) a certain thing
- Force a party to pay money
- Applies to private parties *and* all levels of the government



# COMMON TYPES OF LAWSUITS

- Individual and class action litigation
- Public-interest litigation
- Industry-led litigation



## LITIGATION TRACKER

Litigation is an important tool to defend and advance public health policy. This tracker provides information and official court documents from select lawsuits within the focus areas of the Public Health Law Center, including commercial tobacco control and healthy eating. Some cases are relevant to cross-cutting issues that affect public health, such as preemption and First Amendment considerations. The Public Health Law Center has supported public health goals as an amicus curiae, or friend-of-the-court, by filing briefs (included here) with relevant information that the court may choose to consider. You can read more about the [Function and Role of Amicus Briefs in Public Health Litigation](#).

Search

Public Health Topics + Legal Issues + State ↓ SEARCH

Status ↓ CLEAR

Displaying 1-10 of 83

### STATE OF MINNESOTA V. JUUL LABS, INC. (2019)

December 4, 2019, Minnesota Attorney General Keith Ellison filed a lawsuit suing e-cigarette manufacturer JUUL Labs, Inc. The lawsuit, filed in Hennepin County District Court, allege that JUUL violated multiple state consumer-protection laws, breached its duty of reasonable care, and created a public nuisance.

State **Minnesota** Most Recent Activity **2023** Status **Closed**

### R.J. REYNOLDS V. CITY OF EDINA (2020)

Industry challenges a local flavored tobacco product ordinance adopted by the City of Edina, Minnesota, arguing that the ordinance is preempted by the Tobacco Control Act.

State **Minnesota** Most Recent Activity **2023** Status **Open**

# COMMON TYPES OF LAWSUITS

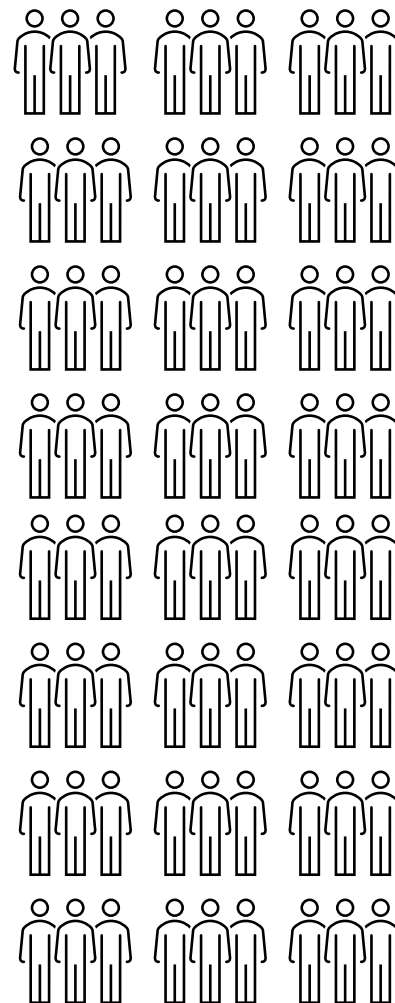
- Individual and class action litigation
- Public-interest litigation
- Industry-led litigation

# INDIVIDUAL AND CLASS ACTION LITIGATION



Vs.

Defendant



Vs.

Defendant



# INDIVIDUAL AND CLASS ACTION LITIGATION

## Example:

- In Re: Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation (2019)



# COMMON TYPES OF LAWSUITS

- Individual and class action litigation
- **Public-interest litigation**
- Industry-led litigation

# PUBLIC INTEREST LITIGATION

## Example

- Baltimore v. Philip Morris (2022)



# COMMON TYPES OF LAWSUITS

- Individual and class action litigation
- Public-interest litigation
- **Industry-led litigation**

# INDUSTRY-LED LITIGATION


- Preemption
- First Amendment
- Takings
- Procedural

**THE FIRST AMENDMENT AND COMMERCIAL SPEECH – HAZARDOUS TO PUBLIC HEALTH?**

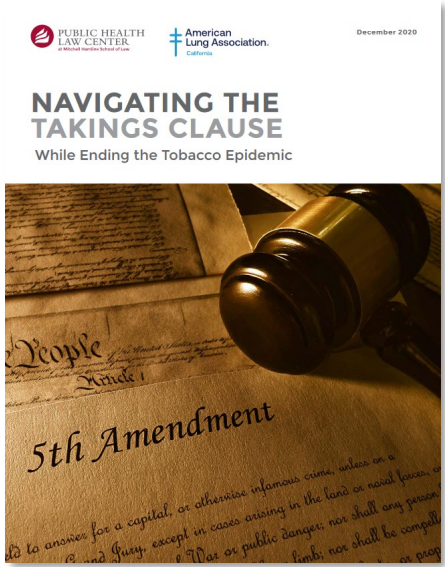
**MAY 31, 2018**



*Moderator:*  
Mark Meaney, Public Health Law Center

*Presenters:*  
Julie Ralston Aoki, Public Health Law Center  
Ted Mermin, Berkeley Center for Consumer Law & Economic Justice  
Rachel Bloomekatz, Gupta Wessler PLLC

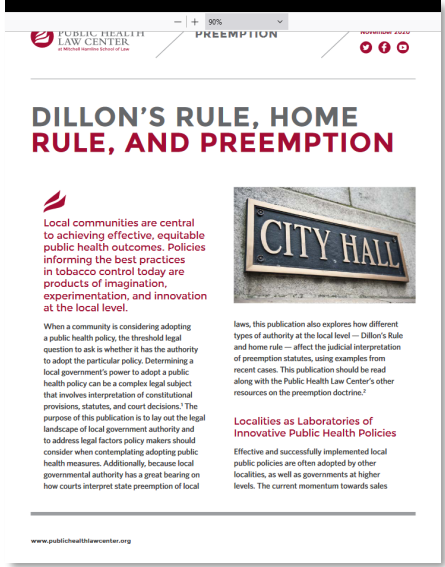




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  December 2020

**NAVIGATING THE TAKINGS CLAUSE**  
While Ending the Tobacco Epidemic



 **PREEMPTION** 

**DILLON'S RULE, HOME RULE, AND PREEMPTION**

Local communities are central to achieving effective, equitable public health outcomes. Policies informing the best practices in tobacco control today are products of imagination, experimentation, and innovation at the local level.

When a community is considering adopting a public health policy, the threshold legal question to ask is whether it has the authority to adopt the particular policy. Determining a local government's power to adopt a public health policy can be a complex legal subject that involves interpretation of constitutional provisions, statutes, and court decisions. The purpose of this publication is to lay out the legal landscape of local government authority and to address legal factors policy makers should consider when contemplating adopting public health measures. Additionally, because local governmental authority has a great bearing on how courts interpret state preemption of local laws, this publication also explores how different types of authority at the local level — Dillon's Rule and home rule — affect the judicial interpretation of preemption statutes, using examples from recent cases. This publication should be read along with the Public Health Law Center's other resources on the preemption doctrine.

**Localities as Laboratories of Innovative Public Health Policies**

Effective and successfully implemented local public policies are often adopted by other localities, as well as governments at higher levels. The current momentum towards sales

[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)

7/25/2023

# INDUSTRY-LED LITIGATION

- Litigation can derail legislation
- And litigation is expensive and unpredictable
- So litigation risk can stop a policy before it starts



r Sadkov

# INDUSTRY-LED LITIGATION

## TOBACCO

# Is This a New Route to Cigarette Prohibition?

City mulls 'tobacco-free generation' ordinance

By **Brian Carr** on Mar. 27, 2018

...The ordinance in Winterville was recently rejected by the city council on a 3-1 vote. Prior to the vote, [the National Association of Tobacco Outlets] submitted a letter to the council informing them that their proposed ordinance conflicted with Georgia state law. That communication likely had an influence in the final city council vote to not pass the ordinance.

<https://www.cspdailynews.com/tobacco/new-route-cigarette-prohibition>

# KEY TAKEAWAYS

## THE INTERSECTION OF POLICY & LITIGATION

- Understanding litigation risk
- Evaluating litigation risk
- Minimizing litigation risk



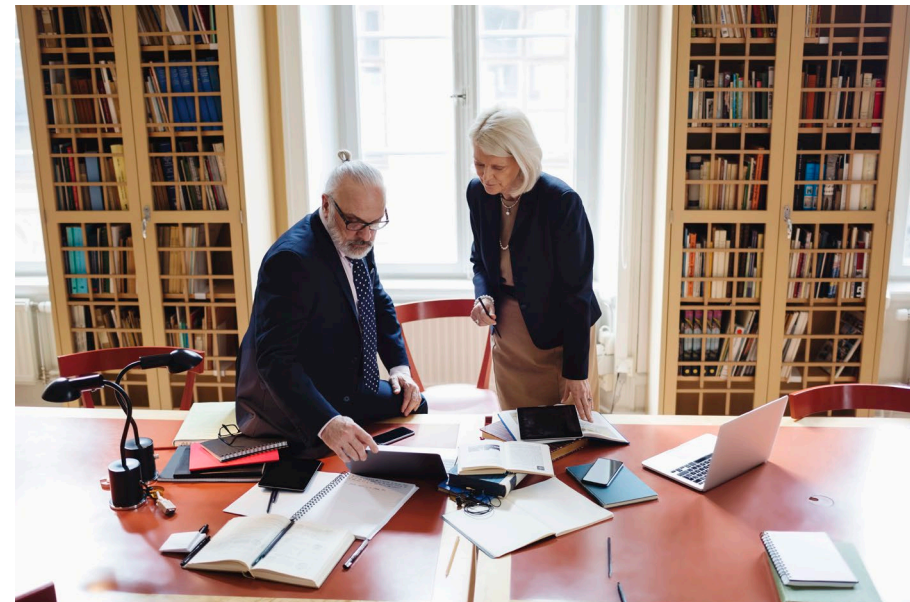
Photo Credit: Christin Hume



# KEY TAKEAWAYS

## ADDRESSING LEGAL RISK

- Work with your attorneys
  - AGs; Tribal Counsel; City/County Attorney; In-House
  - Form a relationship
- Assess risk tolerance and factor that risk into decision making
- Protect privilege



# KEY TAKEAWAYS

## ADDRESSING LEGAL RISK

- Work with your attorneys
- Protect attorney-client privilege
  - Confidential communications between atty and client
  - Beware of waiving the privilege
- Assess risk tolerance and factor that risk into decision making



# KEY TAKEAWAYS

## ADDRESSING LEGAL RISK

- Work with your attorneys
- Assess risk tolerance and factor that risk into decision making
  - Industry is litigious
  - Is this policy still worth it?
  - Familiarity with legal theories  
(preemption, First Amendment, etc.)
- Protect privilege



# Questions?

# KEY TAKEAWAYS



- Policies passed and enforced can change through the judiciary system.
- Proactive, positive change can also impact commercial tobacco control through litigation.

# CONTACT US



651.290.7506



[publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu)



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