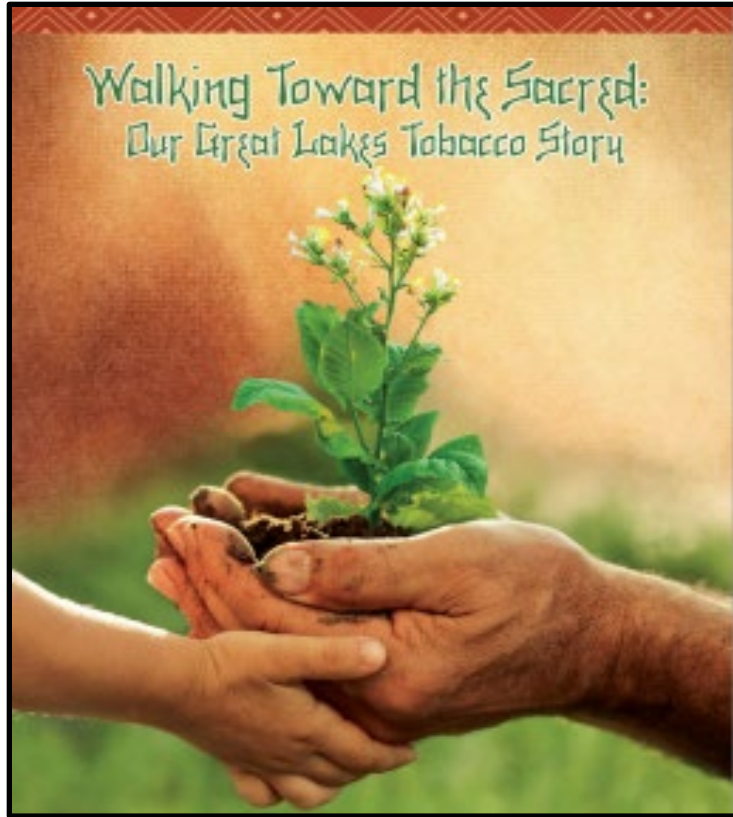




**SHOW AND TELL:
COURT UPHOLDS MANDATE FOR GRAPHIC
WARNINGS ON COMMERCIAL TOBACCO
PRODUCTS**

THE PUBLIC HEALTH LAW CENTER





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.



Copyright 2022 Robert Wood Johnson Foundation

LEGAL TECHNICAL ASSISTANCE

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

GRAPHIC WARNINGS AND THE FIRST AMENDMENT

- Overview
- Recent litigation



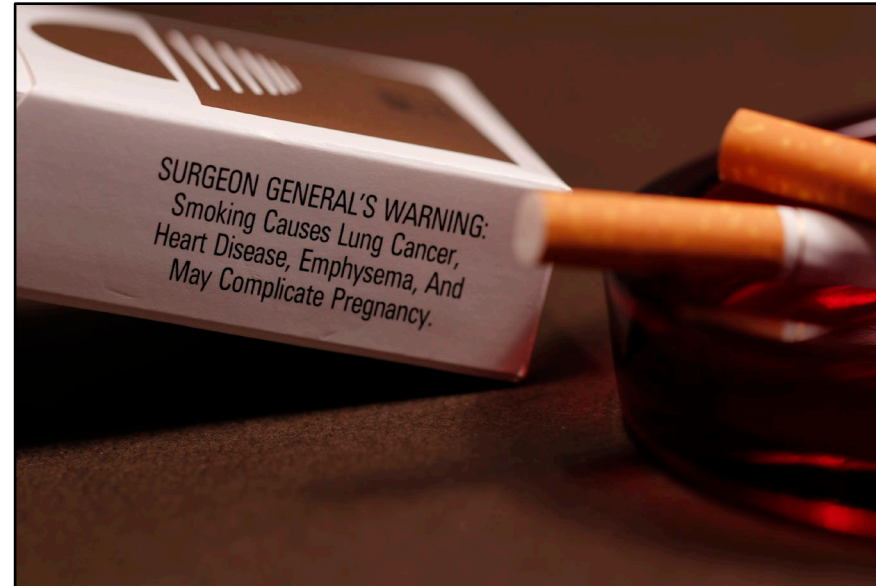
OVERVIEW

- Federal Cigarette Labeling and Advertising Act



OVERVIEW

- Federal Cigarette Labeling and Advertising Act
- Comprehensive Smoking Education Act



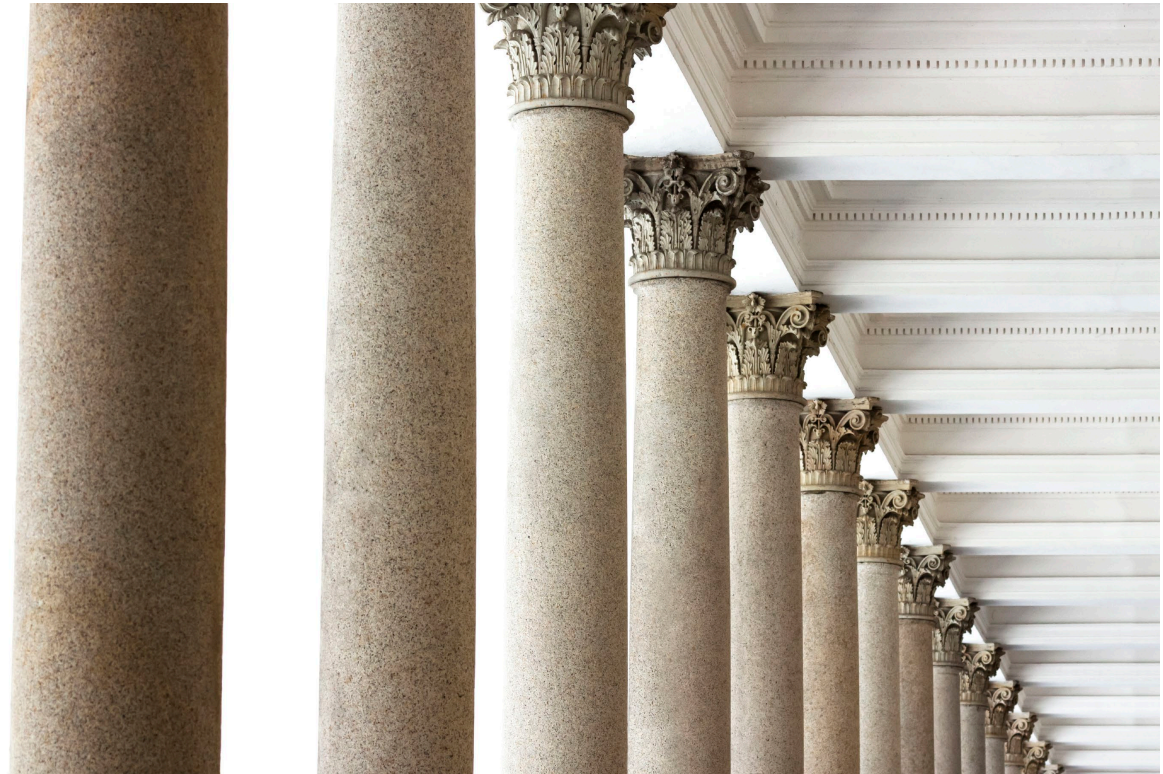
OVERVIEW

- Tobacco Control Act



OVERVIEW

- Tobacco Control Act
- First graphic warning rule



OVERVIEW

- Tobacco Control Act
- First graphic warning rule
- R.J. Reynolds v. FDA (2011)
- Discount Tobacco City and Lottery v. United States (2011)



OVERVIEW

- Tobacco Control Act
- First graphic warning rule
- R.J. Reynolds v. FDA (2011)
- Discount Tobacco City and Lottery v. United States (2011)
- New FDA Rule



THE FIRST AMENDMENT AND GRAPHIC WARNINGS

- Levels of scrutiny and judicial tests for commercial speech cases
- *R.J. Reynolds v. FDA* (2024)
- Key takeaways



THE FIRST AMENDMENT

Congress shall make no law . . . abridging the freedom of speech.

- Protects speech (including commercial speech)
- Protects expressive conduct
- Protects against compelled speech

STANDARDS OF SCRUTINY

Level of Scrutiny	State Interest	Means Used to Achieve the State Interest
Strict	Compelling actual purpose	Necessary/Least restrictive means
Intermediate	Important actual purpose	Substantially related
Rational	Legitimate conceivable purpose	Rationally related

STANDARDS OF SCRUTINY

Level of Scrutiny	State Interest	Means Used to Achieve the State Interest
Strict	Compelling actual purpose	Necessary/Least restrictive means
Intermediate	Important actual purpose	Substantially related
Rational	Legitimate conceivable purpose	Rationally related

STANDARDS OF SCRUTINY



STANDARDS OF SCRUTINY



CENTRAL HUDSON

- Does the law restrict protected speech?
- Is the law justified by a substantial governmental interest?
- Does the law directly advance the governmental interest?
- Is there a reasonable fit between the goal and the means chosen to accomplish the goal?



CENTRAL HUDSON

- Does the law restrict protected speech?
- Is the law justified by a substantial governmental interest?
- Does the law directly advance the governmental interest?
- Is there a reasonable fit between the goal and the means chosen to accomplish the goal?



STANDARDS OF SCRUTINY

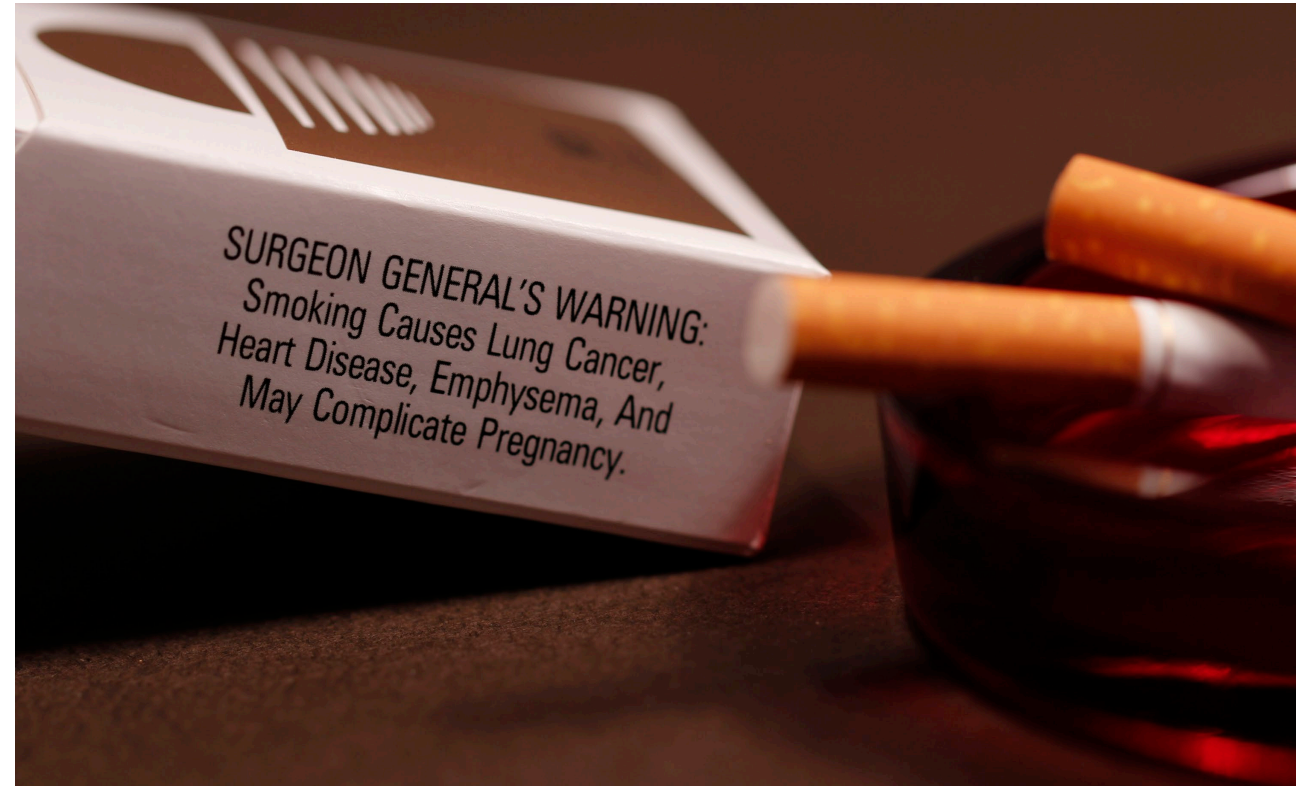


ZAUDERER

Is the disclosure requirement:

- purely factually, accurate, and uncontroversial?
- reasonably related to a legitimate governmental interest?*
- unjustified or unduly burdensome?

* Preventing deception

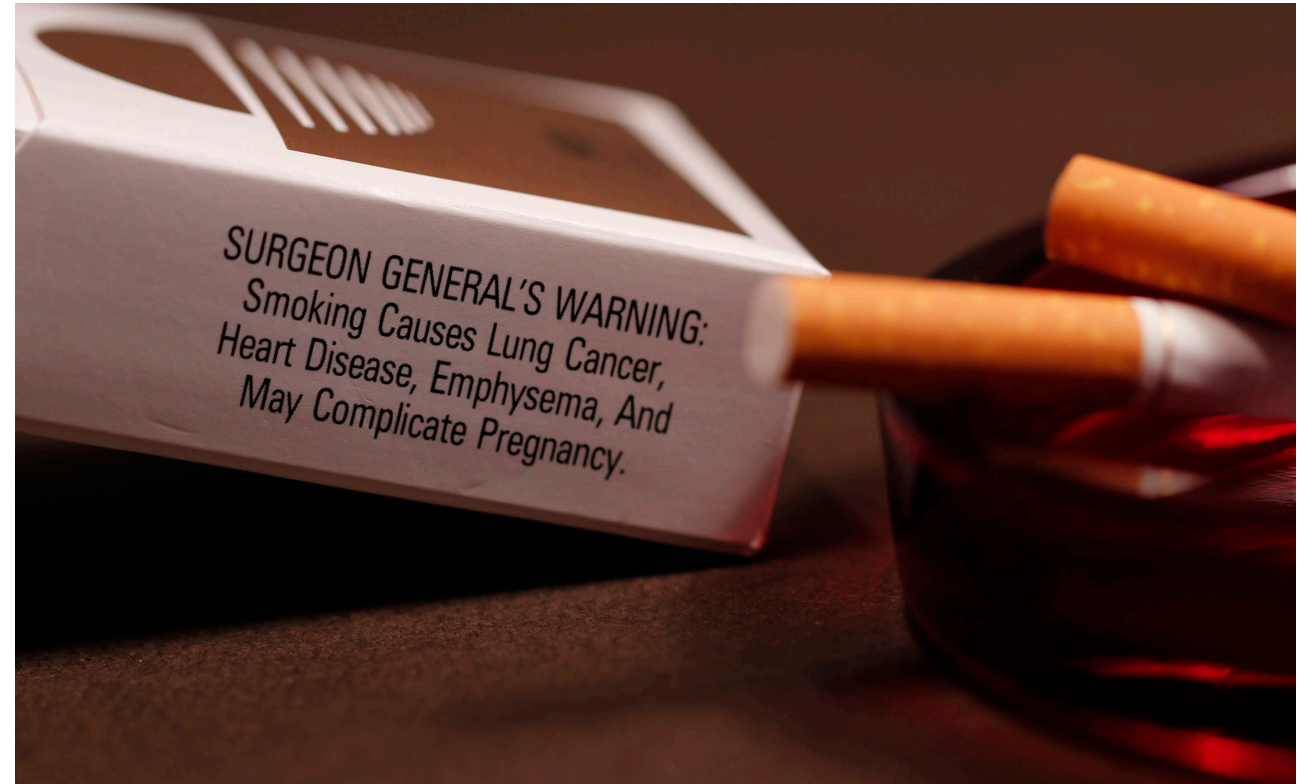


ZAUDERER

Is the disclosure requirement:

- purely factually, accurate, and uncontroversial?
- reasonably related to a legitimate governmental interest?*
- unjustified or unduly burdensome?

* Preventing deception



STANDARDS OF SCRUTINY



GRAPHIC WARNINGS



STANDARDS OF SCRUTINY



R.J. REYNOLDS V. FDA (2024)

- 5th Circuit Case
- Whether FDA's graphic warning labels violate the First Amendment



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- Were warnings purely factual and uncontroversial?
- Do the warnings advance a legitimate interest?
- Are the warnings unduly burdensome?



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- **Were warnings purely factual and uncontroversial?**
- Do the warnings advance a legitimate interest?
- Are the warnings unduly burdensome?



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- **Were warnings purely factual and uncontroversial?**
 - Yes
- Do the warnings advance a legitimate interest?
- Are the warnings unduly burdensome?



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- Were warnings purely factual and uncontroversial?
- **Do the warnings advance a legitimate interest?**
- Are the warnings unduly burdensome?



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- Were warnings purely factual and uncontroversial?
- **Do the warnings advance a legitimate interest?**
 - Yes
- Are the warnings unduly burdensome?



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- Were warnings purely factual and uncontroversial?
- Do the warnings advance a legitimate interest?
- **Are the warnings unduly burdensome?**



R.J. REYNOLDS V. FDA (2024)

Does *Zauderer* apply?

- Were warnings purely factual and uncontroversial?
- Do the warnings advance a legitimate interest?
- **Are the warnings unduly burdensome?**
 - No



R.J. REYNOLDS V. FDA (2024)

Takeaways

- Illustrations are not inherently inaccurate or controversial
- Upsetting facts are still facts
- Disclosures aren't limited to preventing deception



CONTACT US



651.290.7506



publichealthlawcenter@mitchellhamline.edu



www.publichealthlawcenter.org



[@phealthlawctr](https://twitter.com/phealthlawctr)



facebook.com/publichealthlawcenter



[@publichealthlawcenter](https://instagram.com/publichealthlawcenter)