



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**COURT REJECTS CONSTITUTIONAL CHALLENGES TO
CITY'S AND STATE'S SMOKING LAWS**

FEDERAL COURT FINDS NO MERIT TO ANY OF THE PLAINTIFF'S CLAIMS

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New York, April 8, 2004 – Judge Victor Marrero of the United States District Court for the Southern District of New York has granted the City of New York summary judgment on all claims raised in *NYC C.L.A.S.H., Inc. v. City of New York et al.*, and upheld the constitutionality of the New York City Smoke-Free Air Act. In *CLASH* (Citizens Lobbying Against Smoker Harassment), the plaintiff challenged the City's – as well as New York State's – non-smoking laws which, among other things, prohibit smoking in bars and restaurants. *CLASH* is a group comprised of smokers and others who had disagreed with the laws.

The plaintiff alleged that the Smoke-Free Air Act violated smokers' rights to freedom of association, assembly, speech and travel, and unlawfully discriminated against smokers. The Court rejected all of the plaintiff's arguments. The Court noted that "smokers remain free to associate and assemble as they please, to smoke or not, whether it be in a bar, a restaurant, a city street or any other place where it is otherwise permissible to do so." As to the plaintiff's free speech claim, the Court stated that it "is not persuaded by the general proposition that a smoker's prevailing motivation for smoking a cigarette, whether it is done in a bar, restaurant or on a city street, is to convey a message with some profound expressive content to those around him."

In rejecting the plaintiff's Equal Protection challenge, the Court noted that the New York City Council considered the "mounting evidence against ETS (Environmental Tobacco Smoke) as a basis" for the law. The Court also quoted from the testimony of Thomas R. Frieden, Commissioner of the Department of Health and Mental Hygiene, before the City Council regarding the dangers to workers of second-hand smoke. The Court found that the Smoke-Free Air Act was a "classic exercise of the well-recognized and far-reaching police power of the state over the health and welfare of its citizens."

"The Smoke-Free Air Act was enacted to protect workers from the adverse health impact of second-hand smoke, and we are pleased with the Federal District Court's decision upholding its constitutionality," said DOHMH Commissioner Thomas R. Frieden. "The SFAA ensures the right of all employees to breathe safer air and as a result, 150,000 fewer workers are now subjected to second-hand smoke."

Ave Maria Brennan, the chief lawyer on the case, noted: "We feel the Court reached the correct decision. The Court recognized the City's important interest in protecting the health of workers and citizens from second-hand smoke." The case was litigated by Brennan, an Assistant Corporation Counsel with the New York City Law Department's Administrative Law Division. The decision was dated Wed., April 7, 2004 and received by the Law Department today.

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world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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