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Michael A. Cardozo, *Corporation Counsel*

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For Immediate Release

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

FEDERAL COURT REJECTS PLAYERS CLUB CLAIM THAT HEALTH DEPARTMENT INSPECTIONS VIOLATE CONSTITUTIONAL RIGHTS

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, May 25, 2005 – Judge Victor Marrero of Manhattan Federal court has granted New York City's motion to dismiss all claims raised in *The Players, Inc. v. City of New York* and upheld the constitutionality of the New York City Smoke-Free Air Act. This latest challenge to the law was brought by the Players Club, a venerable private institution formed almost 100 years ago as a social club for actors and members of the theatrical profession. The Players challenged the City's – as well as New York State's – anti-smoking laws, which prohibit smoking in virtually all indoor areas open to the public. Although the plaintiff's club, a licensed food service establishment, was private, the law applied to it as well, since it had employees who were not club members.

The Players alleged that the New York City Smoke-Free Air Act violated the Fourth Amendment's protection against unlawful governmental searches and seizures by authorizing warrantless searches of commercial premises, as well as violated Equal Protection, First Amendment and Due Process guarantees. While the Court rejected all of the plaintiff's arguments, it focused primarily on the plaintiff's illegal search and seizure claim arising out of the inspection of its premises by the Department of Health and Mental Hygiene. In upholding the City's ability to inspect commercial establishments such as The Players Club for compliance with the anti-smoking law, the Court noted that "the City seeks to enforce the law using the full array of inspection powers available to [the City's Department of Health and Mental Hygiene]." The Court stated that: "After reviewing the Smoking Bans, the implementing regulations, and the rules governing the City's authority to secure compliance with health-related laws and regulations, the Court concludes that the statutes and their regulatory schemes do not violate the Fourth Amendment."

In rejecting the plaintiff's Equal Protection challenge based on an alleged difference in the treatment of private clubs such as The Players Club with tobacco bars or cigar bars, the Court referenced an April 2004 prior decision – also a City win – in *NYC CLASH, Inc. v. City of New York*, where a similar Equal Protection claim had been dismissed. The Court reemphasized that "individuals have no 'fundamental' constitutional right to smoke tobacco" and that there is "no evidence on the record of any improper or irrational animus motivating the distinction between tobacco bars and membership organizations with employees," as plaintiff alleged. As for the First Amendment claim, the Court reiterated its conclusion in *CLASH*: "In short, the right of free speech, like the rights of assembly and association, is not inherently accompanied by the unrestricted ability to smoke anywhere." The Court specifically rejected the plaintiff's First Amendment claim that the smoking bans impermissibly bar a traditional "pipe ceremony" performed to honor certain members of The Players Club. The "Court fails to see how the Smoking Bans would prohibit this hallowed ceremony from taking place altogether, rather than simply restricting one aspect of the conduct associated with the ceremony or the location at which the ceremony may take place," it wrote.

Department of Health and Mental Hygiene Commissioner Thomas R. Frieden, MD, MPH said, "We are pleased that the Court has upheld the constitutionality of the procedures employed to enforce the Smoke-Free Air Act. This important law ensures the right of all workers and patrons to breathe safer air, and has proven beneficial to the quality of life and health of all New Yorkers."

Assistant Corporation Counsel Ave Maria Brennan, principal attorney on the case said, "Judge Marrero's decision finding no merit in the Player Club's numerous constitutional arguments is a vindication of the time and effort spent in drafting and implementing this vitally important law."

The case was litigated by Senior Counsel Ave Maria Brennan and Deputy Division Chief Robin Binder, both of the New York City Law Department's Administrative Law Division. The Decision and Order was signed by Judge Marrero on Fri., May 20, 2005, and just received by the Law Department.

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