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Subject: [EXTERNAL] - SJC prods Brookline's 'novel' phase tobacco ban

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SJC prods Brookline's 'novel' phased tobacco ban

November 9, 2023

By Jennifer Smith

Brookline decided to take a creative approach to discouraging tobacco use two years ago, aiming to create a "tobacco-free generation" while acknowledging that current consumers may already be addicted to nicotine in a way that cuts against a total ban on tobacco sales. But the self-described "novel" law, which allows those currently of age to continue to purchase tobacco products while prohibiting their sale to anyone born after the start of 2000, is now at the [center of a debate](#) at the state's highest court.

A handful of businesses that sell tobacco and e-cigarette products in Brookline sued the town, arguing that the law creates an age-restriction on tobacco sales that isn't allowed under current state law.

At a hearing of the Supreme Judicial Court [on Monday](#), justices were wryly complimentary of the approach, but struggled with its implications.

"This new law is raising the minimum age gradually to the point where it renders everybody too

young to buy,” said Justice Scott Kafker. “Very clever. I just don't know if that's legal.”

Patrick Tinsley, representing the sellers, argued that it is not. Drawing from remarks by a few legislators and then-Gov. Charlie Baker about a 2018 bill that raised the state tobacco purchasing age to 21, Tinsley claimed the intent of that law was not merely to raise the age of purchase but to prevent cities and towns from setting their own age restrictions.

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“It sets a floor and a ceiling for the sale of tobacco statewide,” Tinsley told the justices. “And one of the primary intentions of the Legislature in doing so was to overcome the confusing and bewildering patchwork of laws that permeated the Commonwealth.”

The tobacco retailers are arguing this case on appeal, after the Superior Court agreed to dismiss the suit. The court decided the sellers had not sufficiently argued that the Brookline law was clearly disallowed by the 2018 state law.

The SJC justices toyed with an interesting paradox in the Brookline rules. “How is this an age-based restriction?” Justice Dalila Wendlandt wondered. “It’s a restriction based on birth year, so no matter how old these particular people get, they will never be able to purchase tobacco.”

Kafker said that the nature of the regulation is clearly “related to age” because it inherently sets an age at which someone may not be able to buy tobacco, albeit an ever-increasing one.

“There's no doubt,” he said. “It's brilliantly raising the age.”

The town says its law actually divides purchasers in Brookline into two groups – those born before and those born after 2000.

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"This is not a minimum [age]," said Christopher Banthin, of the Public Health Advocacy Institute, who represented Brookline before the court. "This would be the strangest minimum age that anyone, anywhere has heard of. There's a big difference between telling a teenager, 'You need to wait till you're 21 or some other minimum age,' as compared to, 'You're never gonna have the right to purchase this product.'"

The notion of a minimum age rule, where someone becomes old enough to assume a risk, would never happen for this generation, Banthin said.

Brookline would have been allowed under the 2018 law to ban tobacco sales altogether, Banthin said, but they chose not to. Wendlandt suggested that puts a bit of a hole in the town's public health argument to prevent tobacco use, since it would allow everyone born before 2000 to be "expendable" while a new generation would be "protected by the government."

"We have learned in public health recently, and tragically, that we're coming to understand that addiction is a disease," Banthin said. "It's not some source of moral judgment. It's a disease. And so accommodating, not punishing, this group is the appropriate step here. So the hope is that they can be treated through the medical system or quit. But to have someone just stop is problematic, as we know."

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In Other News

BEACON HILL

- House Speaker Ron Mariano [suggested](#) using the Hynes Convention Center in Boston's Back Bay as an overflow emergency shelter. (Boston Globe)
- The House [overrides](#) Gov. Maura Healey's proposed changes to a law providing free phone calls to prison inmates. (Salem News)

MUNICIPAL MATTERS

- One of the side effects of more people working remotely from home? More efforts to ban or limit [the use of gas-powered leaf-blowers](#). Communities with year-round bans include Lexington, Belmont, Arlington, Concord, and Dedham. (GBH News)
- Northampton residents are [raising concerns](#) about a growing homeless encampment as the state's shelter program reaches capacity. (MassLive)

HEALTH/HEALTH CARE

- Mass General Brigham [has struck a deal](#) with Best Buy, which will serve as technology partner in its effort to expand telehealth services. (Boston Herald)

NATIONAL/INTERNATIONAL

- Mark Zuckerberg, the founder of the company that owns Facebook, "[repeatedly dismissed warnings](#) from senior company officials that its flagship social-media platforms were harming young users," the Wall Street Journal reports, citing unsealed allegations in a lawsuit filed by the state of Massachusetts.
- There's a [new way to measure](#) Americans' economic well-being, courtesy of the Cambridge-based American Academy of Arts and Sciences. (GBH News)
- The Hollywood actors union [reached](#) a tentative deal with studios to end a four-month strike. (Associated Press)

ELECTIONS

- The Republican presidential candidates, minus Donald Trump, [debate in Miami](#), mixing it up over Israel, Ukraine, and China, while taking lots of shots at the race's absent front-runner. (Washington Post)
- A recount [may be on the table](#) in a Barnstable town council race that came down to a single vote. (Cape Cod Times)

BUSINESS/ECONOMY

- A new [Boston Foundation report](#) explores the history and consequences of exclusionary zoning policies in Massachusetts. (WBUR)

EDUCATION

- A shortage of substitute teachers [is forcing](#) hundreds of Brockton High School students to be essentially warehoused in the school cafeteria for part of their day, with little or no supervision. (Boston Globe)
- Head Start programs, which provide free child care for infants and toddlers of low-income families, are also [seeing staffing shortages](#). The shortages are causing long waitlists, and several Head Start centers, including ones in Amherst and Boston, have shut down. (WBUR)

TRANSPORTATION

- Sen. Joan Lovely of Salem [is pushing](#) legislation that would upgrade safety at commuter rail crossing to prevent pedestrian deaths. (Salem News)

ENERGY/ENVIRONMENT

- Milford, Amherst, Chicopee, Somerville, South Hadley, and Stoughton are [working with](#) the federal Environmental Protection Agency on stormwater management projects that will likely improve area water quality. (MetroWest Daily News)

CRIMINAL JUSTICE/COURTS

- Federal agents arrested three people in connection with what they say was [an interstate high-end prostitution ring](#), with luxury apartments in Cambridge and Watertown among the brothel sites. (Boston Globe)

MEDIA

- Rhode Island's two public media outlets [plan to merge](#), with supporters saying the move will expand the scale of public media in Rhode Island southeastern Massachusetts. (The Public's Radio)

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