



Written by [Bruce Walker](#) on January 3, 2011

Federal Judge Stops NYC From Requiring Grisly Pictures Where Tobacco Sold

This sounds like a victory for individual liberty and limited, constitutional government. Is it the business, really, of the city of New York when its citizens engage in conduct that city politicians feel is dangerous to those citizens? Even the medical evidence that tobacco causes cancer can hardly be judged reason for an official hostility to smoking. Devout Christians believe that atheists are doomed in the hereafter, yet the use of state power to compel people to embrace Christianity is rightly held to offend both political and spiritual liberty.



Moreover, statistics are based upon averages and not absolutes. How many very old people are still smoking regularly? Medical research has demonstrated the [therapeutic value of tobacco](#) in curing illnesses, preventing some maladies, and ameliorating some medical problems. It is undeniable that tobacco has effects upon the human body, but it is impossible to know in each situation whether that effect is harmful or not. Soldiers in combat in the Second World War were issued cigarettes, and if the nicotine calmed those men, it may well have saved their lives.

So, if Judge Rakoff had simply held that government has no business telling us how to live our lives — provided that our conduct did not harm others — then his judgment would be reason to cheer. But perversely, his ruling was that the *federal government* pre-empted, through the Labeling Act, state or local regulation of the labeling of products. There is, of course, nothing in Article I of the Constitution which would grant Congress any power, in the first place, to regulate the labeling of products. States, by contrast, do have residual power to regulate a great deal of private behavior, depending on their state constitutions.

The Constitution and the Bill of Rights were intended to preserve individual liberty from federal control, not state control. When the Bill of Rights was adopted, for example, about half of the states had established religions. No one ever imagined that the First Amendment limited state, rather than federal, support for religion. Prior to *Roe v. Wade*, [abortion was legal](#) in several of the 50 states. The Supreme Court decision did not create a right to abortion; it rather took an issue which had been a matter of state legislative criminal law and transformed it into a federal judicial constitutional matter.

So Judge Rakoff really stood up for the power of the federal government to lord over sovereign states, rather than for the rights of individuals to be free of government regulation. Implicitly, the judge affirmed the right of federal agencies to tell us how to live our lives. New Yorkers can always leave the state, remain Americans, and move to states more friendly to individual liberty. That is, in fact, much of the reason why states such as New York have become progressively smaller as a percentage of the national population.



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When the federal government is nanny, however, Americans cannot remain in the nation without losing freedom.



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