Regulating Alcohol Point-of-Sale Advertising in Light of the First Amendment: A Legal Analysis

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Alcohol Policy 18 (2018)
As required by the Alcohol Policy 18 Conference, I/we have signed a disclosure statement and note the following conflict(s) of interest:

NONE
Funding

- This research was supported in part by a grant from the National Institute on Drug Abuse (T-32DA007292, awarded to C. Debra M. Furr-Holden)

- The contents of this talk are the responsibility of the authors and do not necessarily represent the views of the National Institute on Drug Abuse
Questions to Address

→ Has the Supreme Court extended commercial speech protections to the detriment of public health?

→ How might state and local governments place restrictions on point-of-sale alcohol advertising?
Alcohol Marketing: Types, Trends, & Expenditures

- Money spent by industry
- Marketing strategies
- Traditional vs. non-traditional advertising
- Point-of-sale marketing
What Aspects of Alcohol Ads Appeal to Youth?

- Youth observe & remember ads for different alcoholic products
- Are especially attracted to alcohol ads that contain:
  - Humor
  - Animated animals
  - Popular music
Harms Suffered by Youth from Exposure to Alcohol Ads

- Youth exposed to more alcohol ads more likely to:
  - Positively consider alcohol
  - Currently consume more alcohol
  - Predict they will consume more alcohol in future

- More alcohol a person consumes → more alcohol-related consequences he/she experiences
First Amendment Case Law: Definitions

- The First Amendment
- Commercial Speech
- Regulating Commercial Speech
  - Content-Based Regulations
  - Content-Neutral Regulations
Supreme Court’s Early Views On Commercial Speech

“Central Hudson”

Central Hudson Gas & Electric Corporation
v.
Public Service Commission of New York (1980)
“Now, now,” said the court to the cantankerous Hudson. “We’ll establish a test to see if the order’s a dud-son.”

https://www.youtube.com/watch?v=BmPhDJFClao
“Central Hudson” 4-Pronged Test for Commercial Speech

1. Does the speech at issue concern legal activity or is it misleading?

2. Is the government interest substantial?

3. Does the regulation directly advance the government’s interest?

4. Is it more extensive than necessary?
Supreme Court Cases Illustrating Principles from “Central Hudson”

- Six relevant cases dealt with First Amendment challenges to regulations on the advertising of “Vice Activity”

- “Vice Activity” = activity relating to almost any legal product that poses some threat to public health or public morals
Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico (1986)
44 Liquormart v. Rhode Island (1995)
Greater New Orleans Broad Assn.
v.
United States
(1999)
Supreme Court Cases Post-Lorillard

- Sorrell v. IMS Health Inc.
- Reed v. Town of Gilbert
Conclusions & Implications

- Supreme Court has extended the protections on commercial speech to the detriment of public health.

- Breadth of protections fails to take into account the constant innovations in the alcohol industry and the harms they cause.

- These regulations may have the most pushback, but environmental strategies like these are also the most effective at changing the drinking culture.
Moving Forward

- Two potential strategies for how states & local governments can regulate POS ads:

  1. Content-Neutral Regulations
     - e.g. Lee Law in CA
Actions for Moving Forward

- Two potential strategies for how states & local governments can regulate POS ads:
  1. Content-Neutral Regulations
     - e.g. Lee Law in CA
  2. More specific, well-defined & tailored laws
Questions?

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