

Supreme Court Rules New York Credit Card Fee Law Infringes on Free Speech

March 30, 2017 - New York is one of ten states with laws that prevent retailers from advertising a cash price for merchandise sold, and then telling consumers that they will have to pay a surcharge if they use a credit card. But, at least in New York, the law's days appear to be numbered. In the case known as Expressions Hair Design v. Schneiderman, the US Supreme Court has now ruled that such restrictions are an infringement on the free speech rights of retailers. The ruling means that laws in the other nine states with similar regulations are now on extremely shaky ground.

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(function() {  
var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];  
s.type = 'text/javascript';  
s.src = 'http://widgets.digg.com/buttons.js';  
s1.parentNode.insertBefore(s, s1);  
})();
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(function() {  
var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;  
po.src = 'https://apis.google.com/js/plusone.js';  
var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(po, s);  
})();
```

Frankly, the New York law seems a little silly. It doesn't prevent merchants from offering discounts for cash purchases. Nor does it prevent them from advertising separate cash and credit prices. What it does do is prevent them from advertising an item at a specific price and then stating that they will impose an additional surcharge for anyone using a credit card. The reason for the surcharge on credit card purchases is because the merchant has to pay "swipe fees" to banks on all credit card purchases. It is difficult to understand how the state government has any legitimate purpose in regulating this type of advertising.

Now you might think a law suit on this issue is equally silly, but merchants have found that advertising the surcharges is a more effective way of reducing credit card usage than offering discounts for cash is. Why that's the case is anyone's guess. But many merchants would prefer cash to credit cards for a variety of legitimate business reasons, not the least of which is that anytime there is a credit card purchase the merchant runs the risk of a chargeback.

The unanimous decision from the court overturned a ruling by the US 2nd Circuit Court of Appeals. That court had upheld the advertising restrictions saying that it was legitimate price regulation by the state government. The case now goes back to the lower for further review.

by Jim Malmberg

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