

Scalia's pro-tobacco order tossed by high court

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FILE - In this Sept. 8, 2010 file photo, Supreme Court Justice Antonin Scalia speaks in Milwaukee. (AP Photo/Morry Gash, File)

(AP) -- Supreme Court Justice Antonin Scalia exercised a rarely used power last fall to let Philip Morris USA and three other big tobacco companies delay making multimillion-dollar payments for a program to help people quit smoking.

Scalia, a cigarette smoker himself, justified acting on his own by predicting that at least three other justices would see things his way and want to hear the case, and that the high court then would probably strike down the expensive judgment against the companies.

This week, the court said he was wrong about that.

On a court that almost always acts as a group, Scalia singlehandedly blocked a state court order requiring the tobacco companies to pay \$270 million to start a smoking cessation program in Louisiana. The payment was ordered as part of a class-action lawsuit that Louisiana smokers filed in 1996. They won a jury verdict seven years ago.

Scalia said in September that the companies met a tough standard to justify the Supreme Court's intervention.

"I think it reasonably probable that four justices will vote to grant certiorari," Scalia said, using the legal term to describe the way the court decides to hear most appeals, "and significantly possible that the judgment below will be reversed."

Not only did the justices say Monday they were leaving the state court order in place, there were not even four votes to hear the companies' full appeal. And the court provided no explanation of its action.

Scalia said through a court spokeswoman that he also had no comment on the matter.

Robert Peck, the Washington-based lawyer representing the Louisiana smokers at the Supreme Court, recalled thinking Scalia had made unwarranted assumptions about the case.

"I was really rather surprised he would issue the stay," Peck said of Scalia's order blocking the judgment from taking effect.

The case went to Scalia because he oversees the 5th Circuit, which includes Louisiana.

Justices have the authority to act on their own to issue an order that blocks another court's decision from taking effect, often in cases that are being appealed to the high court.

But in recent years they rarely have done so. The last time a justice acted alone in similar circumstances was in 2006, when Justice Anthony Kennedy blocked a court order to remove a giant cross from a public park in San Diego while the matter remained under appeal. The cross case still is working its way through the courts.

Thomas Goldstein, a Washington lawyer and close observer of the court, said: "This was a very rare and unusually assertive ruling by a single justice. The later briefing in the case seems to have persuaded the court, and maybe even Scalia himself, not to get involved."

In issuing his order, Scalia noted national concern over the abuse of class-action lawsuits in state courts and raised concerns about the companies' legal rights.

He said that without delaying payment, the companies might not be able to recover all their money if they ended up winning in the Supreme Court. The other companies in the case are Brown and Williamson Holdings Inc., R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co.

A Louisiana appeals court had a different take on the subject of delay, noting that the plaintiffs are aging and dying at a significant rate.

One of the two named plaintiffs, Gloria Scott, was diagnosed with lung cancer in 2000 and died in 2006.

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