

February 10, 2010

**Our Access to Justice Campaign is fighting for consumers in California's Supreme Court. We are challenging an extraordinary appeals court ruling that California's Constitution bars consumers from suing companies for charging them for "sales tax" on tax-exempt items.** The California Supreme Court granted review of the decision at Public Justice's urging and the briefs are now in.



The plaintiffs in *Loeffler v. Target Corporation* allege that Target charged them for "sales tax" on their purchases of hot coffee "to go" from Target stores in California, despite a provision in California's Tax Code that exempts these purchases from taxation. The plaintiffs claim that Target violated California's Unfair Competition Law (UCL) and Consumers Legal Remedies Act (CLRA) -- consistently recognized by courts as among the strongest consumer protection laws in the country.

**Target argued and the Court of Appeal held that the consumers' claims are barred by a provision of the California Constitution that bars courts from hearing lawsuits by taxpayers "against this State or any officer thereof to prevent or enjoin the collection of any tax" and requires them to seek tax refunds after payment instead.** That provision does not apply to this case because Target is not the "State or any officer thereof" and consumers are not taxpayers here. Under California law, retailers are the ones who pay sales tax to the state and consumers pay "sales tax reimbursement" to the retailers. (Technically, while the consumers' receipt says "sales tax," Target charged them for sales tax reimbursement.) That's why California courts have routinely heard consumers' lawsuits against retailers for wrongfully charging sales tax reimbursement in the past.

**Our briefs demonstrate that California's Constitution in no way bars an action by a non-taxpayer against a private, non-governmental party for illegally charging so-called taxes on a tax-exempt item.** In order to extend the Constitution's protections to Target, the Court would essentially have to rewrite the Constitution and the Tax Code. Consumers would then be left without any meaningful remedy for a large category of unfair practices.

"California's Constitution does not give businesses free reign to impose unlawful charges on their customers with impunity just by claiming the charge is related to a tax," said Public Justice Staff Attorney Leslie Bailey, lead counsel on appeal. "We believe the Supreme Court will see through Target's argument and reaffirm that the consumer protection laws were designed to address precisely this kind of conduct."

To read our opening brief in *Loeffler v. Target Corporation*, [click here](#).

To read our reply brief, [click here](#).

To read the appeals court decision we are challenging, [click here](#).

In addition to Bailey, the plaintiffs are represented on appeal by Public Justice's Vicky Ni and me, with assistance from Paul Bland. Co-counsel are Joseph Lange and Jeffrey Koncius of Lange & Koncius in El Segundo, California.

Thanks so much for helping make this important work possible. Together, we must keep fighting for access to justice for all.

Arthur Bryant  
Executive Director  
Public Justice and the  
Public Justice Foundation

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