

Update on the Wave of CEMA Lawsuits (February 2026)

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Last year, the Washington Supreme Court issued a significant [decision](#) in a class action lawsuit accusing Old Navy of sending emails that included false or misleading information about the duration of sales. The Court determined that including such information in the emails' subject lines violated the state's Commercial Electronic Mail Act (or "CEMA").

After the Supreme Court decision, plaintiffs have filed more than 60 lawsuits alleging that a broad range of retailers across industries sent emails with subject lines that violate the law. My [Law360 article](#) in December summarizes these developments and provides some tips on what companies can do to help reduce their risk of getting dragged into a lawsuit.

Since then, we've seen various retailers file motions to dismiss in which they argued that CEMA is preempted by CAN-SPAM or unconstitutional under the dormant commerce clause. So far, both arguments have failed. (Notably, Washington's Attorney General has intervened in several cases to defend the Act.)

Although CAN-SPAM preempts state laws that explicitly govern commercial email, it exempts laws that prohibit "falsity or deception in any portion of a commercial electronic mail message or information attached thereto." At least three courts have noted that CEMA's prohibition against false or misleading information in an email's subject line "falls squarely within the area that CAN-SPAM reserved to the States."

More recently, a court rejected a retailer's arguments that CEMA is unconstitutional under the dormant commerce clause. Among other things, the court wasn't swayed by the argument that CEMA imposes a significant burden on interstate commerce, noting that the only "burden" asserted by the retailer was determining where a recipient lives. Moreover, if the retailer avoided including false or misleading information in email subject lines, it wouldn't even need to do that.

Two bills pending in the Washington legislature may provide a source of hope for retailers caught in the wave of these suits. The bills would revise CEMA so that a subject line only violates the law if it is likely to mislead a reasonable recipient about a fact material to the transaction, and only if the subject line was material to the recipient's decision to complete the transaction. The bills would also limit the remedies consumers can get under CEMA.

Notably, if the bills pass, the law would apply both prospectively and retroactively to existing claims.