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Sixth Circuit Court of Appeals Upholds Key Provisions of Tobacco Regulation Law

Statement from the American Cancer Society Cancer Action Network

WASHINGTON, DC -- March 19, 2012 – In a significant victory for public health, the Sixth Circuit Court of Appeals today upheld most of the U.S. Food and Drug Administration's (FDA) authority in place to regulate tobacco products.

In the ruling, the appeals court upheld critical provisions of the law that:

- Require large, graphic health warnings on cigarette packs;
- Require tobacco manufacturers reserve significant packaging space for textual health warnings; and
- Ban several forms of tobacco marketing that appeal to children, including brand name sponsorships, tobacco-branded merchandise such as caps and t-shirts, free samples of tobacco products.

Further, the appeals court strengthened the lower court's decision by prohibiting tobacco companies from making health claims implying that FDA authority makes the products safer. We are pleased that the appeals court clearly understood the public health imperative that lies at the heart of this authority, as the law is geared towards saving lives and preventing children from ever starting to use the deadly products.

It is disappointing, however, that the appellate court struck down the requirement that tobacco advertisements appear exclusively in black and white.

We are hopeful the DC Circuit will agree with the 6th Circuit ruling upholding strong graphic warnings on the front and back of cigarette packages. The D.C. Circuit is scheduled to hear oral arguments in the graphic warning label case on April 10.

Tobacco use causes 443,000 deaths in the United States per year – nearly 1 in 5 deaths - and nearly 8.6 million people in the U.S. live with serious illness as a result of tobacco use. In addition, each year, secondhand smoke causes about 50,000 deaths from heart disease and cancer among nonsmokers. The financial cost of tobacco use is staggering with smoking-related health care expenditures totaling an estimated \$96 billion annually between 2000 and 2004.

In passing the Family Smoking Prevention and Tobacco Control Act (FSPTCA), Congress

recognized the devastating impact of tobacco use, and gave the Food and Drug Administration (FDA) authority to regulate the manufacture, sale and marketing of tobacco products. This authority includes specific restrictions on marketing to youth and the advertisement of tobacco products.

Shortly after this groundbreaking public health legislation was signed into law, Big Tobacco began its fight against the law by filing a lawsuit against the FDA challenging the marketing restrictions in the law, claiming they violate their First Amendment rights. The American Cancer Society and American Cancer Society Cancer Action Network, along with their public health partners, filed an amicus brief in the case, siding with the FDA.

ACS CAN will continue to advocate for strong implementation of FDA regulation of tobacco, to ensure that tobacco companies no longer have unfettered access to peddle their deadly products.

The ruling by the Sixth Circuit can be found at: <http://bit.ly/wxrkrz>.

ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN works to encourage elected officials and candidates to make cancer a top national priority. ACS CAN gives ordinary people extraordinary power to fight cancer with the training and tools they need to make their voices heard. For more information, visit www.acscan.org.

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