

**FOR IMMEDIATE RELEASE****September 14, 2005**

COURT URGED TO BAR TORT CLAIMS AIMED AGAINST TRUTHFUL ADVERTISING

(In re Tobacco Cases II)

The Washington Legal Foundation (WLF) this week urged the California Supreme Court to uphold the dismissal of tort claims filed against tobacco companies for having run truthful advertising that allegedly overglamorized smoking. In a brief filed in *In re Tobacco Cases II*, WLF argued that such claims are barred both by the First Amendment and by federal law -- regardless of the plaintiffs' claim that glamorous advertisements induce minors to buy cigarettes in violation of California law.

WLF argued that cigarette advertising is already heavily regulated at the federal level (by the Federal Cigarette Labeling and Advertising Act (FCLAA)) and by oversight conducted by the Federal Trade Commission (FTC), and at the State level by State regulators (by virtue of the Master Settlement Agreement (MSA) entered into between tobacco companies and State attorneys general). WLF argued that there is no reason to permit an additional level of advertising regulation, in the form of tort suits filed under State law.

"The plaintiffs in this lawsuit are all admitted lawbreakers -- they regularly purchased cigarettes before they turned 18, knowing full well that such purchases were illegal. It takes tremendous chutzpah for those lawbreakers now to come into court and seek a refund of all the money they spent to buy cigarettes from third parties," said WLF Chief Counsel Richard Samp after filing WLF's brief. "In the absence of any evidence that the advertisements were false or directly solicited purchases from minors, there can be no basis for imposing liability on the defendants," Samp said.

The suit was filed by five California residents who regularly purchased cigarettes prior to turning 18. They named four major cigarette manufacturers as defendants. They alleged that the defendants' glamorous advertising enticed them to start smoking. They alleged that although the advertising contained no language directly soliciting purchases by minors, the defendants designed their advertising campaigns for the specific purpose of enticing minors to start smoking. The plaintiffs alleged that by running such advertisements, the defendants violated California's Unfair Competition Law ("UCL"), because the advertisements induced minors to purchase cigarettes illegally.

The trial court dismissed the complaint on two grounds. First, the court ruled that the UCL claims were preempted by the FCLAA, which bars States from imposing any

"requirements" or "prohibitions" on cigarette advertising "on the basis of smoking and health." Second, the trial court held that the plaintiffs claims were barred by the First Amendment. The Court of Appeal affirmed on the basis of FCLAA preemption, without reaching the merits of the First Amendment issue. The plaintiffs have asked the California Supreme Court to review that decision.

In its brief, WLF argued that the FCLAA broadly preempts State regulation of cigarette advertising, including regulation that takes the form of tort lawsuits. WLF noted that the plaintiffs' claims are designed to protect those under 18 from cigarette smoking; WLF argued that such claims are preempted by the FCLAA because the FCLAA bars all State advertising restrictions "based on smoking and health," and the U.S. Supreme Court has determined that all laws that seek to prevent smoking by minors must be deemed to be laws "based on smoking and health." WLF argued that FCLAA preemption serves the important purpose of maintaining nationwide uniformity in cigarette advertising requirements.

WLF also argued that the First Amendment does not permit the types of restrictions on truthful commercial speech that the plaintiffs seek to impose. In particular, WLF argued that the First Amendment prohibits restrictions on commercial speech unless the government can demonstrate that the restrictions directly advance some governmental interest. WLF argued that enriching admitted lawbreakers would have the opposite effect; by allowing juveniles to recover the amount they spent to buy cigarettes illegally, the courts would encourage additional juvenile smoking, WLF argued.

WLF is a public interest law and policy center with supporters in all 50 states, including many in California. WLF devotes a substantial portion of its resources to protecting the right of commercial free speech.

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.