



**FOR IMMEDIATE RELEASE**

**February 29, 2012**

## **COURT INVALIDATES FDA'S EFFORT TO COMPEL COMMERCIAL SPEECH**

***(R.J. Reynolds Tobacco Co. v. FDA)***

**U.S. District Court for the District of Columbia**

The U.S. District Court for the District of Columbia today invalidated the federal government's efforts to force tobacco manufacturers to surrender 50% of the front and back panels of each cigarette package and the top 20% of all printed advertising for the purpose of displaying nine new graphic warnings containing anti-smoking advocacy.

The decision was a major victory for the Washington Legal Foundation (WLF), which filed a brief in support of summary judgment in *R.J. Reynolds Tobacco Co. v. FDA*. The court agreed with WLF that the First Amendment protects not only the right to speak but also the right not to speak, and that forcing a business to convey and associate with speech with which it disagrees violates the free speech protections of the U.S. Constitution.

"Judge Leon's decision today is not merely a victory for commercial speech rights in particular, but for free speech rights in general," said WLF Senior Litigation Counsel Cory Andrews after reviewing the court's decision. "If the government wishes to convey a message, it should do so by using its own property and resources, not by commandeering the private property of others who disagree with that message," Andrews said.

The case arose from a challenge to the Food and Drug Administration's (FDA) Final Rule implementing the Family Smoking Prevention and Tobacco Control Act of 2009. The FDA's new regulatory regime sought to require all tobacco manufactures to include graphic, anti-smoking warnings on all cigarette packages and advertising. Five tobacco manufacturers filed suit challenging the warnings, which urge consumers not to use tobacco products. Each graphic label included warnings about the various adverse effects of tobacco use and the directive "QUIT-NOW," as well as one of nine shocking, color images depicting the potential effects of tobacco use: e.g., decaying teeth and gums, diseased lungs, and even a dead body on an autopsy table.

In its brief urging the Court to grant the Plaintiffs' motion for summary judgment, WLF argued that the First Amendment fully protects the right to refuse to speak, and that forcing someone to convey the government's message using their own private property is

constitutionally suspect. WLF also urged the Court to reject the Government's claim that a relaxed First Amendment standard should apply to the imposed warnings.

The court agreed with WLF that the new graphic warnings the FDA sought to impose in this case were not ordinary disclosure requirements of the kind previously upheld by the Supreme Court. Rather, they are the sort of controversial, nonfactual disclosures of which the Supreme Court very clearly does not approve. Because such ideological messages have nothing to do with protecting consumers from being misled, the district court held that the FDA's new Rule could not survive First Amendment scrutiny.

The court had earlier issued a preliminary injunction that blocked implementation of the FDA's controversial new rule. The district court agreed with WLF that while the government is permitted to mandate warning labels on packaging to ensure that consumers are not misled, it may not require manufacturers to include government speech (including graphics) whose sole purpose is to advocate for the government's own policy views. Having granted preliminary relief, the court today reached the merits of the case by resolving the parties' competing summary judgment motions.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free speech rights, both of individuals and of the business community.

\* \* \*

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).