

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R.J. REYNOLDS TOBACCO CO., *et al.*,

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION, *et al.*,

Defendants.

No. 1:11-cv-1482 (RJL)

**UNOPPOSED MOTION OF AMERICAN ACADEMY OF PEDIATRICS, AMERICAN
CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION
NETWORK, AMERICAN HEART ASSOCIATION, AMERICAN LEGACY
FOUNDATION, AMERICAN LUNG ASSOCIATION, AMERICAN MEDICAL
ASSOCIATION, AMERICAN PUBLIC HEALTH ASSOCIATION, CAMPAIGN FOR
TOBACCO-FREE KIDS, AND PUBLIC CITIZEN FOR LEAVE TO FILE
MEMORANDUM AS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Movants American Academy of Pediatrics, American Cancer Society, American Cancer Society Cancer Action Network, American Heart Association, American Legacy Foundation, American Lung Association, American Medical Association, American Public Health Association, Campaign for Tobacco Free Kids, and Public Citizen hereby move for leave to file the accompanying memorandum as amici curiae in opposition to plaintiffs' motion for a preliminary injunction.

Pursuant to Local Civil Rule 7(m), counsel for proposed amici curiae has discussed this motion with counsel for all parties. Counsel for both plaintiff and defendants have consented to the filing of this motion and to the filing of an amicus curiae memorandum by September 16, 2011. A copy of the proposed memorandum and a proposed order granting leave to file are attached to this motion.

Movants are ten non-profit public health organizations, consumer advocacy groups, and physicians' associations that for decades have worked to educate the public about and protect the public from the devastating health and economic consequences of tobacco use. Amici have broad knowledge about the history of tobacco regulation and tobacco industry promotional techniques and are particularly well qualified to assist the Court in understanding the substantial public interest advanced by the restrictions challenged here.

The American Academy of Pediatrics (AAP), founded in 1930, is a national, not-for-profit organization dedicated to furthering the interests of children's health and the pediatric specialty. Since its inception, the membership of AAP has grown from the original group of 60 physicians specializing in children's health to 60,000 primary care physicians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 80 years, AAP has become a powerful voice for children's health through education, research, advocacy, and expert advice and has demonstrated a continuing commitment to working with hospitals and clinics, as well as with state and federal governments to protect the well-being of America's children. AAP has engaged in broad and continuous efforts to prevent harm to the health of children and adolescents caused by the use of tobacco products and exposure to second-hand tobacco smoke.

The American Cancer Society, Inc. (ACS) has more than three million volunteers nationwide, including 50,000 physicians. The organization works to eliminate cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer, through research, education, advocacy, and service. Since its founding in 1913, ACS has conducted groundbreaking research to identify the use of tobacco products as a major cause of cancer and worked to educate the public about its deadly effects. The American Cancer Society Cancer Action Network (ACS CAN) is the advocacy affiliate of ACS, helping to educate

government officials on public policies that affect cancer, including critical tobacco control measures. ACS CAN has nearly half a million grassroots advocates nationwide, many of whom worked to help pass the FSPTCA.

The American Heart Association (AHA) is a voluntary health organization that, since 1924, has helped to protect people of all ages and ethnicities from the ravages of heart disease and stroke. AHA is one of the world's premier health organizations, with local chapters in all 50 states, as well as in Washington, D.C. and Puerto Rico. AHA invests in research, professional and public education, and advocacy so people across America can live stronger, longer lives. AHA has long been active before Congress and regulatory agencies on tobacco and other health-related matters and has petitioned the FDA on several occasions seeking regulation of cigarette and other tobacco products under the Food, Drug, and Cosmetic Act.

The American Legacy Foundation is dedicated to building a world where young people reject tobacco and anyone can quit. The foundation was established in March 1999 as a result of the Master Settlement Agreement reached between the attorneys general in 46 states and five U.S. territories and the tobacco industry. The foundation develops programs that address the health effects of tobacco use through grants, technical assistance and training, youth activism, strategic partnerships, counter-marketing and grass roots marketing campaigns, research, public relations, and outreach to populations disproportionately affected by the toll of tobacco.

The American Lung Association (ALA) is the nation's oldest voluntary health organization, with 120,000 volunteers and affiliates in all 50 states and the District of Columbia. Because cigarette smoking is a major cause of lung cancer and chronic obstructive pulmonary disease, ALA has long been active in research, education, and public policy advocacy on the

adverse health effects of tobacco products. ALA has advocated for the regulation of tobacco products for more than two decades.

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in the AMA's House of Delegates, substantially all U.S. physicians, residents, and medical students are represented in the AMA's policy making process. The AMA seeks to promote the science and art of medicine and the betterment of public health. The AMA has long had an interest in the regulation of tobacco products and the tobacco industry. As an institution, it has developed expertise in the pharmacology of nicotine, the toxic effects of cigarette smoke, and the societal implications of tobacco usage. The AMA seeks to appear as *amicus curiae* in this case on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition of the AMA and the medical societies of each state and the District of Columbia, and was formed to represent the viewpoint of organized medicine in the courts.

The American Public Health Association (APHA) is a national organization devoted to protecting Americans and their communities from preventable serious health threats. Founded in 1872, APHA is the world's oldest and most diverse public health organization. APHA represents a broad array of health providers, educators, environmentalists, policymakers, and health officials at all levels working both within and outside governmental organizations and educational institutions. APHA advocates for national tobacco control measures to protect the public's health from the adverse effects of tobacco products.

Campaign for Tobacco-Free Kids works to raise awareness that cigarette smoking is a public health hazard by advocating public policies to limit the marketing and sales of tobacco to children, and altering the environment in which tobacco use and policy decisions are made. Tobacco-Free Kids has more than 100 member organizations, including health, civic, corporate, youth, and religious groups dedicated to reducing children's use of tobacco products.

Public Citizen is a consumer advocacy organization founded in 1971, with approximately 225,000 members and supporters nationwide. Public Citizen has long been active before Congress, regulatory agencies, and the courts in matters relating to public health in general and regulation by the Food and Drug Administration in particular. In addition, Public Citizen has substantial expertise on commercial speech doctrine, as its lawyers argued, among other cases, *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the first case in which the United States Supreme Court recognized that commercial speech is entitled to some level of First Amendment protection.

WHEREFORE, movants respectfully request that this Court grant leave to file as amici curiae the attached memorandum in opposition to plaintiffs' motion for a preliminary injunction.

September 16, 2011

Respectfully submitted,

/s/Gregory A. Beck

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