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### WLF files brief in support of tobacco companies

BY JOHN O'BRIEN

BOWLING GREEN, Ky. (Legal Newsline) - Tobacco companies recently received some help in their challenge of a new federal law that they say violates their right to free speech.

The Washington Legal Foundation filed an amicus brief Dec. 2 in support of six companies that filed the challenge in Kentucky federal court. They are opposing a law that puts restrictions on their ability to advertise and promote their products.

"Rather than imposing direct restrictions on sale and use of tobacco products, Congress has chosen to focus its restrictions on speech-related activities," WLF Chief Counsel Richard Samp said after filing WLF's brief.

"The Supreme Court has stated unequivocally that such an approach to sales regulation is constitutionally impermissible; the Constitution requires government to turn to restrictions on truthful speech as a last resort, not - as here - as a first resort."

The companies are not challenging any of the provisions that limit speech to minors, but have problems with the several restrictions placed on information to adults.

The act prohibits them from using color lettering, trademarks, logos or any other imagery in most advertisements. Also, a government-drafted anti-tobacco message on packaging leaves the companies with a small portion of the bottom half of cigarette packages "to communicate with adult consumers," the plaintiffs say.

"The obvious purpose of this is to force Plaintiffs to stigmatize their own products through their own packaging," the complaint says.

The legislation in question is the Family Smoking Prevention and Tobacco Control Act. The lawsuit was filed by R.J. Reynolds, National Tobacco, Lorillard, Discount Tobacco City & Lottery, Conwood Company and Commonwealth Brands.

WLF says that if the government has reason to believe consumers may be misled by truthful information, it has the right to insist that the speaker add disclaimers to minimize that possibility, not limit the speaker's speech.

Also, tobacco companies are not allowed to advertise that smokeless tobacco has significantly lower risks than smoking tobacco.

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