

ORAL ARGUMENT NOT YET SCHEDULED
No. 14-5226

United States Court of Appeals
for the District of Columbia Circuit

Lorillard, Inc., *et al.*

Plaintiffs-Appellees.

v.

United States Food and Drug Administration, *et al.*

Defendants-Appellants.

On Appeal from the United States District Court for the District of Columbia

**REPRESENTATION OF CONSENT TO FILE *AMICI CURIAE* BRIEF IN
SUPPORT OF DEFENDANTS-APPELLANTS**

Pursuant to D.C. Circuit Local Rule 29, the American Academy of Otolaryngology-Head and Neck Surgery; the American Academy of Pediatrics; the American Association for Respiratory Care; the American Cancer Society Cancer Action Network; the American College of Cardiology; the American Heart Association; the American Legacy Foundation; the American Lung Association; the American Medical Association; the American Thoracic Society; the Campaign for Tobacco-Free Kids; the General Board of Church and Society of the United Methodist Church; the National African American Tobacco Prevention Network;

the National Association of County and City Health Officials; the National Latino Alliance for Health Equity; Partnership for Prevention; the Society for Research on Nicotine and Tobacco; and the Tobacco Control Legal Consortium (collectively, “the *amici*”) hereby represent that all parties to the above-captioned litigation have consented to their filing a brief *amici curiae* in support of the Defendants-Appellants in this case. Pursuant to Fed. R. App. P. 29(e), and this Court’s Circuit Rule 29(e), the *amici* intend to file their brief on March 26, 2015, one week after the due date for the filing of Defendants’-Appellants’ brief.

CORPORATE AND FINANCIAL DISCLOSURE STATEMENT

Pursuant to D.C. Circuit Local Rule 26.1, the undersigned counsel for *amici* certifies that there are no parents, trusts, subsidiaries, and/or affiliates of any of the *amici* that have issued shares or debt securities to the public.

Amici curiae are all non-profit organizations committed to advancing the public health. Descriptions of each of the *amici* appear in the attached Appendix A. None of the *amici* has a parent corporation or issues stock. No publicly held corporation has a direct financial interest in the outcome of this litigation due to the *amici*’s involvement in this case.

Respectfully submitted,

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APPENDIX A – ORGANIZATIONAL DESCRIPTIONS OF AMICI

American Academy of Otolaryngology – Head and Neck Surgery: The American Academy of Otolaryngology – Head and Neck Surgery (AAO-HNS) is the world's largest organization representing specialists who treat the ear, nose, throat, and related structures of the head and neck. The Academy represents approximately 12,000 otolaryngologist—head and neck surgeons who diagnose and treat disorders of those areas. We help our members achieve excellence in providing the best ear, nose, and throat care through professional and public education, research, and health policy advocacy.

American Academy of Pediatrics: 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 the AAP has grown from the original group of 60 physicians specializing in children's health to 62,000 primary care physicians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 85 years, the AAP has become a powerful voice for children's health through education, research, advocacy, and expert advice and has demonstrated a continuing commitment to protect the well-being of America's children. The 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 secondhand tobacco smoke.

American Association for Respiratory Care: The American Association for Respiratory Care (AARC) is a national professional organization representing 50,000 respiratory therapists. It is dedicated to the protection of health through public education and the provision of the highest standards of respiratory care. By virtue of their education and health care experience, respiratory therapists are professionals who have a clear understanding of the nature of cardiopulmonary disease and are in a position to act as advocates for healthy lungs and hearts. The AARC is an advocate for both tobacco cessation and tobacco prevention programs.

American Cancer Society Cancer Action Network: The American Cancer Society Cancer Action Network (ACS CAN) is the nation's leading cancer advocacy organization dedicated to making cancer issues a priority. Created in 2001 as the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, ACS CAN educates the public, government officials, and candidates about cancer's devastating impact on public health and encourages them to make fighting cancer a

top priority. ACS CAN has more than one million volunteers nationwide, many of whom advocate for effective tobacco control at the federal, state, and local levels. In 2015, an estimated 221,000 people in the US will be diagnosed with lung and bronchus cancer, the vast majority of which is attributable to tobacco use. This devastating impact makes regulation of tobacco products critical to our mission.

American College of Cardiology: The American College of Cardiology is a 49,000-member medical society that is the professional home for the entire cardiovascular care team. The mission of the College is to transform cardiovascular care and to improve heart health. The ACC leads in the formation of health policy, standards and guidelines. The College operates national registries to measure and improve care, provides professional medical education, disseminates cardiovascular research and bestows credentials upon cardiovascular specialists who meet stringent qualifications. The ACC also produces the Journal of the American College of Cardiology, ranked number one among cardiovascular journals worldwide for its scientific impact.

American Heart Association: The American Heart Association ("AHA") is a voluntary health organization that, since 1924, has helped 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. The association invests in research, professional and public education, and advocacy so people across American 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 Food and Drug Administration ("FDA") on several occasions seeking regulation of cigarette and other tobacco products under the Federal Food, Drug, and Cosmetic Act.

American Legacy Foundation: The American Legacy Foundation envisions an America where tobacco is a thing of the past and where all youth and young adults reject tobacco use. Legacy's proven -effective and nationally recognized public education programs include truth®, the national youth smoking prevention campaign that has been cited as contributing to significant declines in youth smoking; EX®, an innovative smoking cessation program; and research initiatives exploring the causes, consequences and approaches to reducing tobacco use. Legacy also develops programs to address the health effects of tobacco use –with a focus on priority populations disproportionately affected by the toll of tobacco – through alliances, youth activism, training and technical assistance. Located in Washington, D.C., the foundation was created as a result of the November 1998

Master Settlement Agreement (MSA) between attorneys general from 46 states, five U.S. territories and the tobacco industry.

American Lung Association: The American Lung Association is the nation's oldest voluntary health organization, with over 429,000 volunteers in all 50 states and the District of Columbia. Because cigarette smoking is a major cause of lung cancer and chronic obstructive pulmonary disease (COPD), the American Lung Association has long been active in research, education and public policy advocacy regarding the adverse health effects caused by tobacco use, as well as efforts to regulate the marketing, manufacture and sale of tobacco products.

American Medical Association: The American Medical Association ("AMA"), an Illinois non-profit corporation founded in 1847, is the largest association of physicians and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all US physicians, residents and medical students are represented in the AMA's policy making process. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health. The AMA has developed expertise in the pharmacology of nicotine, the toxic effects of cigarette smoke, and the societal implications of tobacco usage. For many years, the AMA has been one of the leading anti-smoking organizations in the United States.

American Thoracic Society: The American Thoracic Society ("ATS") is an international educational and scientific organization founded in 1905 that represents more than 15,000 health care professionals. ATS works to prevent and fight respiratory disease around the globe through research, education, patient care, and advocacy. ATS publishes three peer-reviewed scientific journals that disseminate groundbreaking research, including studies on the adverse pulmonary health effects of tobacco use.

Campaign for Tobacco-Free Kids: The Campaign for Tobacco-Free Kids is a leading force in the fight to reduce tobacco use and its deadly toll in the United States and around the world. The Campaign envisions a future free of the death and disease caused by tobacco, and it works to save lives by advocating for public policies that prevent kids from smoking, help smokers quit and protect everyone from secondhand smoke.

General Board of Church and Society of the United Methodist Church: The General Board of Church and Society (GBCS) is the social justice agency/arm of

the United Methodist Church, which has a denomination of 8.1 million members in the United States. GBCS is charged with implementation of the Social Principles/Positions of the United Methodist Church.

National African American Tobacco Prevention Network: The National African American Tobacco Prevention Network (NAATPN) is a private non-profit, 501(c)(3) organization whose mission is to “facilitate public health programs to benefit communities and people of African descent”. NAATPN is one of eight CDC/OSH and DCPC national networks funded to address tobacco and cancer health disparities. NAATPN was founded in June 2000 in Raleigh, NC in response to tobacco-related health disparities that existed in national tobacco control efforts for African Americans and the organization was established to address those gaps. Since its inception, NAATPN has facilitated and implemented numerous tobacco control activities that are based on the recommendations of CDC’s Best Practices for Tobacco Control Programs, and the Guide to Community Preventive Services.

National Association of County and City Health Officials: The National Association of County and City Health Officials (NACCHO) is the voice of the 2,800 local health departments across the country. Local health departments develop policies and create environments that make it easier for people to be healthy and safe, including informing the public of the hazards of tobacco use, reducing youth access to tobacco, and limiting exposure to secondhand smoke.

National Latino Alliance for Health Equity: The mission of the National Latino Alliance for Health Equity is to advocate for policies, regulations and programs that promote health equity and reduce health disparities for Latino communities in the US and Puerto Rico. The Alliance works with thousands of organizations and constituents to mobilize, educate and advocate to improve health for all.

Partnership for Prevention: Partnership for Prevention was founded in 1991 by leaders dedicated to making disease prevention and health promotion a national priority and America a healthier nation. Partnership seeks to increase understanding and use of clinical preventive services and population-based prevention to improve health. We seek to create a “prevention culture” in America where prevention, based on the best scientific evidence, is the first priority for policy makers, decision-makers and practitioners.

Society for Research on Nicotine and Tobacco: The Society for Research on Nicotine and Tobacco (SRNT) is a 501(c)(3) membership association made up of more than 1000 researchers from 40 countries around the world, dedicated to education and dissemination of information related to nicotine and tobacco.

Founded in 1994, SRNT is the preeminent international association devoted exclusively to the study of nicotine and tobacco in all its manifestations, from cell to society. Members include global leaders in subjects such as smokeless tobacco products and Electronic Nicotine Delivery Systems (ENDS or e-cigarettes); public health policy; smoking in disparate communities; epidemiology; treatment of nicotine addiction; youth/adolescent smoking; and issues affecting legislation and the regulation of tobacco products globally.

Tobacco Control Legal Consortium: The Tobacco Control Legal Consortium is a national network of nonprofit legal centers working to protect the public from the devastating health consequences of tobacco use. The Consortium's activities are coordinated by the Public Health Law Center, Inc., of the William Mitchell College of Law in St. Paul, Minnesota. Affiliated legal centers include: ChangeLab Solutions, Oakland, California; Legal Resource Center for Tobacco Regulation, Litigation & Advocacy, at University of Maryland School of Law, Baltimore, Maryland; Public Health Advocacy Institute and the Center for Public Health and Tobacco Policy, at Northeastern University School of Law, Boston, Massachusetts; Smoke-Free Environments Law Project, at Center for Social Gerontology, Ann Arbor, Michigan; Tobacco Control Policy and Legal Resource Center at New Jersey GASP, Summit, New Jersey.

CERTIFICATE OF SERVICE

Pursuant to D.C. Circuit Local Rule 25(c), I hereby certify that on this 24th day of March, 2015, I electronically filed the foregoing **REPRESENTATION OF CONSENT TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS** with the Court by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

/s/ Carlos T. Angulo

Carlos T. Angulo