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March 8, 2021

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WLF Urges Ninth Circuit to Head Off Hodgepodge Local Regulation of Tobacco Products

(R.J. Reynolds Tobacco Co. v. Los Angeles)

“Leaving the County’s flavor ban in place would defeat Congress’s stated intent that the FDA sets uniform standards for tobacco products.”

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Court of Appeals for the Ninth Circuit to declare that the federal Tobacco Control Act (TCA) blocks Los Angeles County from banning the sale of certain FDA-authorized tobacco products.

In 2020 Los Angeles County enacted a sweeping ban prohibiting the sale of all flavored tobacco products, including menthol cigarettes. That flavor ban clashes with the TCA’s preemption clause, which prohibits state and local governments from banning the sale of tobacco products for failure to conform to state or local standards that differ from the FDA’s. Concerned about becoming subject to countless state and local tobacco-standard regimes, a group of tobacco manufacturers sued to block the ban’s enforcement.

The trial court acknowledged that the County’s flavor ban “is more restrictive than [other] ordinances previously held not to be preempted.” Construing the TCA’s preemption clause narrowly, however, the trial court rejected the plaintiffs’ preemption claim. The court found that the ban does not regulate “product standards,” and thus is not preempted, because it does not regulate the manufacturing process.

WLF’s brief argues that the County cannot escape preemption simply by recasting its flavor ban as a regulation of tobacco “sales” rather than tobacco “manufacturing.” Under the TCA, a standard is a standard for preemption purposes no matter how it is enforced or described. Contrary to the view of the trial court, Congress’s ability to safeguard the federal interest at stake in the TCA does not turn on such wordplay.

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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