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WLF Asks Eleventh Circuit to Reject Unlawful FDA Disclaimers for Tobacco Ads and Cigarette Packs *(Philip Morris v. FDA)*

**“The Constitution requires the federal government to show its work.
When it doesn’t, there’s no partial credit.”**

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Eleventh Circuit to uphold a lower court decision that bars the Food and Drug Administration (FDA) from imposing graphic warning labels on cigarette packaging and advertisements.

The case arises from the Tobacco Control Act, which supplied text for new tobacco warning labels and told FDA to create accompanying graphics. FDA did so by regulation—but failed to disclose vital data that cast doubt that the agency’s choice of graphic labels advanced the agency’s professed interest in educating Americans about the health risks of cigarette smoking. Citing that failure, the district court vacated the new rule.

WLF’s amicus brief explains why that was the right call. FDA’s failure exposed that several graphic warnings would fail First Amendment review on the federal government’s own terms. And the government is hardly a reliable narrator on the dubious constitutionality of its own laws. Under the Constitution’s standards, all the labels would fail proper scrutiny. So the district court’s decision safeguarded vital First Amendment values.

Celebrating its 49th 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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