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In WLF Victory, Fifth Circuit Keeps Unlawful FDA Disclaimers Off Tobacco Ads and Cigarette Packs (*R.J. Reynolds v. FDA*)

“Congress required nine labels. FDA wrote eleven—only two of which use Congress’s words. Since neither eleven nor two is nine, the Fifth Circuit rightly affirmed.”

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Today, the U.S. Court of Appeals for the Fifth Circuit upheld a lower court decision preventing the Food and Drug Administration (FDA) from imposing eleven graphic warning labels on cigarette packaging and advertisements under a statute that authorizes only nine. The outcome was a victory for WLF, whose amicus brief in the case emphasized that FDA had no power to deviate from Congress’s carefully selected number of labels.

The case arises from the Tobacco Control Act, which provided text for nine new tobacco warning labels and told FDA to create accompanying graphics. FDA created graphics, but for a totally different set of eleven warnings. Only two of FDA’s warnings use Congress’s actual words. The district court issued a preliminary injunction, which the Fifth Circuit unanimously upheld. The Court’s decision emphasized the importance of hewing to Congress’s clear command: “Congress specified nine warnings” and so there’s “only nine . . . that the FDA may require.”

WLF’s amicus brief explained why the district court’s judgment should be affirmed. If Congress provides nine specifically scripted disclaimers, FDA has no power to change that number of warnings or alter their wording. As the brief says, “Congress wrote nine required labels that cigarette packs and cigarette advertising must ‘bear.’ . . . Not eight, not ten, not eleven. Nine.”

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