

Nos. 19-2130, -2132, -2198 & -2242

**In the United States Court of Appeals
for the Fourth Circuit**

AMERICAN ACADEMY OF PEDIATRICS, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES FOOD AND DRUG ADMINISTRATION, et al.,
Defendants-Appellants,
E-LIQUID MANUFACTURING STANDARDS ASSOCIATION, et al.,
Intervenors-Appellants

CIGAR ASSOCIATION OF AMERICA, et al.,
Appellants,

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

**MOTION OF PUBLIC HEALTH LAW CENTER, ACTION ON SMOKING
AND HEALTH, AMERICAN ACADEMY OF ALLERGY, ASTHMA AND
IMMUNOLOGY, AMERICAN COLLEGE OF CHEST PHYSICIANS,
AMERICAN COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL
MEDICINE, AMERICANS FOR NONSMOKERS' RIGHTS, AMERICAN
MEDICAL ASSOCIATION, AMERICAN PUBLIC HEALTH
ASSOCIATION, AMERICAN THORACIC SOCIETY, NAATPN, INC.,
NATIONAL ASSOCIATION FOR THE MEDICAL DIRECTION
OF RESPIRATORY CARE, AND NATIONAL MEDICAL
ASSOCIATION TO FILE BRIEF AS AMICI CURIAE
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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The Public Health Law Center, Action on Smoking and Health, American Academy of Allergy, Asthma and Immunology, American College of Chest Physicians, American College of Occupational and Environmental Medicine, Americans for Nonsmokers' Rights, American Medical Association, American Public Health Association, American Thoracic Society, NAATPN, Inc., National Association for the Medical Direction of Respiratory Care, and National Medical Association respectfully request that the Court grant them leave to file an amicus brief under Federal Rule of Appellate Procedure 29(a)(3).

1. Amici are nonprofit organizations that together represent tens of thousands of medical and public health professionals. They include some of the most well-established medical associations in the United States as well as public health advocates who have been working for decades to reduce the incidence of death and disease stemming from nicotine addiction and tobacco use. A full description of each amicus is included in the Addendum to the attached brief.

2. The amici organizations wish to file the attached amicus brief to provide information to the Court about the crisis of e-cigarette and little cigar use, particularly among young people. As longstanding advocates for public health, amici are particularly well-suited to explain to the Court how Congress, with the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776, 1777 (2009), designed a product-by-product review scheme to ensure that no new product entering the market would exacerbate the public health crisis caused by nicotine addiction and tobacco use.

And, as doctors, public health experts, and other medical professionals, amici see the devastating public health impact of these new tobacco products every day, and how the FDA's failure to abide Congress's scheme has exacerbated a public health crisis. Based on their scientific expertise and professional experience, they are particularly well-suited to explain the health dangers of these products and their increasing prevalence among youth. The scientific evidence of their dangers, especially to youth, is overwhelming.

3. Given their expertise as medical practitioners and researchers, amici also wish to submit this brief to correct, clarify, and supplement the medical and scientific assertions made by the e-cigarette and cigar industries in their brief, and by their amici—Consumer Advocates for Smoke-Free Alternatives Association (CASAA) and Dr. Michael Siegel—who have submitted briefs to this Court in support of the industry appellants with their view of the public health impact of the new tobacco products.

4. In accordance with Local Rule 27(a), amici state that they have reached out to the other parties for consent to file this amicus brief. All parties consent, except for the Cigar Industry Appellants, who have not indicated whether they will consent or oppose. Specifically, the Plaintiff-Appellees, the Government, and the E-Cigarette Appellants have all consented to the filing of this brief. Counsel for the Cigar Industry Appellants stated: "Given that our reply brief is also due tomorrow per the Court's expedited scheduling order, and given that we do not know what you intend to say and will not have an opportunity to rebut it in our simultaneously-filed reply brief, we are not presently prepared to consent to your proposed amicus participation. Once we have

reviewed your proposed filing we will be in a position to respond.” Amici do not know if the Cigar Industry Appellants will oppose the submission of their brief.

5. In accordance with Local Rule 27(c), amici’s disclosure statement is contained within its amicus brief attached to this motion.

For these reasons, amici respectfully request leave to file the attached amicus curiae brief for consideration by the Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 587 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in 14- point Garamond font, a proportionally spaced typeface.

/s/ Rachel Bloomekatz
Rachel Bloomekatz

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2020, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Rachel Bloomekatz
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