

## DRAFT –DRAFT-DRAFT

October 25, 2006

The Honorable Alberto Gonzales  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Fax:

Dear Attorney General Gonzales:

On August 17, 2006, U.S. District Judge Gladys Kessler ruled in the case of United States of America v. Philip Morris USA, Inc., et al. that the major cigarette manufacturers have violated the civil provisions of the Racketeer Influenced and Corrupt Organizations (RICO) Act. In a ruling that was devastating in its scope and detail, Judge Kessler found that the tobacco companies have lied to the American people for decades – and continue to lie – about the health risks of their products and their marketing to children. As Judge Kessler summarized, the tobacco companies' wrongful actions have caused and continue to cause enormous harm to our nation's health: "[This case] is about an industry, and in particular these Defendants, that survives, and profits, from selling a highly addictive product which causes diseases that lead to a staggering number of deaths per year, an immeasurable amount of human suffering and economic loss, and a profound burden on our national health care system."

Unfortunately, while issuing a very strong ruling on liability and finding overwhelming proof of misconduct by the tobacco companies, Judge Kessler concluded that a prior decision of the U.S. Court of Appeals for the D.C. Circuit prevented her from ordering appropriate remedies commensurate with the enormity of the harm. As public health leaders, our organizations urge the Department of Justice to appeal the remedies portion of Judge Kessler's ruling and seek stronger remedies that would hold the tobacco companies accountable for the enormous harm their wrongdoing has caused and effectively prevent and restrain future wrongdoing. Necessary remedies include:

- A well-funded, sustained, national smoking cessation program to help the nation's 47 million smokers to quit.
- Significant financial penalties if the tobacco companies continue to market to our children and fail to achieve targets for reducing youth smoking rates.
- A national public education and counter-marketing campaign to correct more than 50 years of tobacco industry lies and prevent future deception.
- [An independent, court-appointed monitor charged with supervising the implementation of the remedies ordered by the Court.](#)

In addition to its importance to this case and to protecting our nation's health, an appeal is also important to effective law enforcement. If allowed to stand, the D.C. Circuit's ruling would have a serious impact on future RICO cases and severely limit the government's ability to recover any significant damages from those found to have violated [civil](#) racketeering laws. It is our understanding that the U.S. Supreme Court rejected an interlocutory appeal of the D.C. Circuit's decision primarily for procedural reasons. Now that the trial court has issued a final decision, this issue is ripe for appeal and resolution.

A decision not to appeal would deny justice to the American people, allow the tobacco companies to escape meaningful accountability for their illegal conduct and fail to protect our nation's health. The Justice Department must pursue every avenue for ensuring that the remedies in this case are commensurate with the enormous wrongdoing and harm described in Judge Kessler's opinion. Thank you for your attention to our views.

Sincerely,

Public Health [Community](#)