



# Philip Morris v. City and County of San Francisco, 345 Fed.Appx. 276 (9th Cir. 2009)

Topics Covered: Anti-tobacco

**Outcome: Very Favorable**

## **Issue**

The issue in this case is whether a city and county ordinance prohibiting the sale of tobacco products in stand-alone pharmacies is valid.

## **AMA Interest**

The AMA, in keeping with its objective of protecting public health, supports a smoke-free America.

## **Case Summary**

The City and County of San Francisco enacted an ordinance that prohibits the sale of tobacco products in stand-alone pharmacies. Philip Morris sued to have the ordinance declared invalid, asserting that (1) the ordinance violated its First Amendment right to communicate information about its products and (2) the ordinance violated the Federal Cigarette Labeling and Advertising Act, which preempts state and local laws that regulate cigarette advertising.

Philip Morris moved for a preliminary injunction, but the United States District Court denied that motion, finding that Philip Morris did not have a substantial likelihood of success on the merits. It observed that the ordinance regulated the sale of tobacco products, but it did not prohibit advertising. Thus, the ordinance did not substantially affect Philip Morris' communication rights.

Philip Morris appealed the denial of the preliminary injunction to the Ninth Circuit. However, the court affirmed, finding that the San Francisco ordinance did not unduly burden "expressive activity."

## **Litigation Center Involvement**

The Litigation Center, along with the Tobacco Control Legal Consortium and other anti-smoking organizations, submitted an *amicus* brief arguing that tobacco products should not be sold in pharmacies and that such sales conflict with pharmacists' code of ethics.

United States Court of Appeals for the Ninth Circuit brief