



# Smoking Everywhere v. Food and Drug Administration, 617 F.3d 891 (D.C. Cir. 2010)

680 F.Supp.2d 62 (D.D.C. 2010)

Topics Covered: Anti-tobacco

**Outcome: Very Unfavorable**

## **Issue**

The issue in this case was whether the Food and Drug Administration (FDA) has jurisdiction to regulate electronic cigarettes (e-cigarettes).

## **AMA Interest**

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

## **Case Summary**

The trial court held that the FDA lacks jurisdiction to regulate e-cigarettes under the “drug and device” provisions of the Federal Food, Drug, and Cosmetic Act. It entered a preliminary injunction prohibiting such regulation. The trial court noted that the FDA might have authority to regulate e-cigarettes as tobacco products, but this would invoke a different regulatory standard than that pertaining to drugs and medical devices, and the FDA had not claimed such power. The FDA appealed this ruling to the Court of Appeals.

The Court of Appeals affirmed the trial court's holding that the FDA lacked jurisdiction under the drug and device provisions of the Food, Drug, and Cosmetic Act. The FDA petitioned for hearing *en banc*, but that motion was denied.

## **AMA Involvement**

The AMA, along with several other anti-smoking organizations, filed an *amicus curiae* brief in the District of Columbia Circuit Court of Appeals.

United States Court of Appeals for the District of Columbia Circuit brief