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### Indian River County County Commission Issues a Proclamation Recognizing the 37th Annual Great American Smokeout

On November 13, 2012, the Indian River County Board of County Commissioners issued a Proclamation recognizing the 37th Annual Great American Smokeout.

The proclamation was read by Joseph E. Flescher, County Commissioner for District 2. "Whereas, 15% of Indian River County's high school students smoked cigarettes or cigars in the past 30 days and 3.7% of Indian River County's middle school students smoked cigarettes or cigars in the past 30 days; and whereas, 50.6% of middle and high school students were exposed to second hand smoke during the past seven days, the Great American Smoke Out saves lives by encouraging smokers to quit. Now, therefore, be it proclaimed by the Indian River County Board of County Commissioners that the Board joins with the Tobacco Free Partnership of Indian River County and The American Cancer Society to encourage all smokers to consider quitting during The Great American Smoke Out on November 15, 2012, encourage employers to promote The Great American Smoke Out... and support employees who attempt to quit smoking, (and) encourage new policies and laws to protect underage use of tobacco."

The Great American Smokeout, sponsored by the American Cancer Society, challenges smokers to plan in advance to quit smoking that day, or to use the day to make a plan to quit. A comprehensive quit plan is an essential part of a successful quit attempt. The event raises awareness about

the dangers of smoking and the many effective resources available to successfully quit.

Leslie Spurlock, speaking on behalf of members of the Tobacco Free Partnership of Indian River County, graciously thanked the Board of County Commissioners for recognizing the importance of the Great American Smokeout. "We know 70% of smokers really want to quit but few succeed without help," said Mrs. Spurlock. "You probably know someone who smokes. If we are compassionate and supportive, and if smokers who choose to quit use cessation services, their success rate doubles."

Mrs. Spurlock went on to encourage business owners to encourage their employees to quit, even offering smoking cessation services to employees if appropriate. "Employers are uniquely positioned to pro-

mote cessation benefits and Florida's free Quitline services, to make the workplace tobacco-free which encourages employees to consider quitting, and to provide cessation treatments as a health benefit. A smoke free workplace reduces tobacco usage and increases overall productivity."

The Florida Department of Health, through the Tobacco Free Florida division, offers residents several tobacco cessation options through its "3 Ways to Quit" Program. Smokers have the ability to get medications and support for a quit attempt by telephone, on-line, or through face-to-face classes. Anyone interested in the state's tobacco cessation services can get more information by calling the Florida Quitline at 877-822-6669, or by visiting [www.tobaccofreeflorida.com](http://www.tobaccofreeflorida.com).



*The Tobacco Free Partnership receives the Proclamation issued by the Indian River County Board of County Commissioners. Pictured from L to R: (Back Row) Joseph E. Flescher, Commissioner, District 2; Wesley S. Davis, Commissioner, District 1; Gary C. Wheeler, Chairman, District 3; Peter D. O'Bryan, Vice-Chairman, District 4; Bob Solari, Commissioner, District 5; (Front Row) Dr. Lillian Torres Martinez, Director of Student Services, IRC School District; Nancy Madsen, American Cancer Society; Officer Megan Dewitt, Vero Beach Police Department; Theresa Woodson, American Cancer Society; Leslie Spurlock, Indian River County Tobacco Prevention Specialist*

# When is a Treat a Trick?

## *When Candy and Fruit Are Used to Flavor Tobacco Products*

SWAT Clubs throughout the state funded by Quit Doc Research and Education Foundation, including several in Indian River County, participated in a Halloween activity designed to draw attention to the issue of flavored tobacco products.

In some counties, such as Indian River County, the SWAT students distributed postcards with information about the issue to their peers on campus.

In other counties, the postcards were handed out to local politicians and decision-makers to make them aware of the use of flavored tobacco to entice and recruit youth to try tobacco.

The postcards took advantage of code-reading technology by including QR code links to two video clips highlighting the issue. Those QR codes can be found below.

“Flavored tobacco is now one of the main gimmicks used by the tobacco industry to target

children and teenagers,” reported Dr. Barry Hummel, a Pediatrician and Co-Founder of Quit Doc Research and Education Foundation. “There have been so many restrictions on tobacco advertising in recent years that the tobacco industry was forced to find new ways to reach out to the middle and high schools students that make up 90% of new tobacco users.”

Dr. Hummel created postcards that used the “Trick or Treat” theme to point out the obvious.

“We teach our children to be careful not to take candy from strangers,” said Dr. Hummel. “Why? Because we are concerned that the candy may have been tampered with, or that the strangers may be predators. Meanwhile, the tobacco industry uses the same predatory strategy to lure our children into trying a deadly product.”

“The great irony here,” added

Dr. Hummel “is that these tobacco products have also been tampered with. In this case, the flavors have been added to imply to our children that they are just as safe as other candy products sold in the same stores.”

Dr. Hummel is hopeful that local politicians will take a look at changing the way that flavored tobacco is sold in local communities. “There is no reason that the sale of these products should not be restricted to adult only stores, such as liquor stores or tobacco-specialty stores. This would allow adults who want to purchase the product the ability to do so, but it would keep it out of the stores in which our school children shop every day.”

“Some communities have already taken a stronger stance,” said Dr. Hummel. “Several communities in Miami-Dade County have already

passed outright bans on these products to keep them out of the hands of children and teens.”

Another strategy that seems to be gaining momentum is for local communities to issue county- or city-specific Retail Tobacco Licenses. Currently, businesses in Florida that sell tobacco need only register with the state at a total cost of \$25.00. However, the current law does not restrict local jurisdictions from requiring additional licenses, and charging an additional fee. These licenses can be contingent on compliance with rules and guidelines set forth by the local jurisdiction, giving communities a way to restrict the sale of certain products. In some circumstances, the right to sell certain products may even be associated with a more expensive license.

For more information on the issue of flavored tobacco products, visit [www.qdref.org](http://www.qdref.org).





# Youth Tobacco Use Down Across Florida

*However, Tobacco Remains a Serious Issue Among Teens*

**TALLAHASSEE** – New data released by the Florida Department of Health (DOH) shows that 23 percent fewer Florida high school students are current cigarette smokers compared to 2010. The results indicate a decline in overall tobacco use among youth.

"The decrease in tobacco use among our state's youth is an encouraging indication of the effectiveness of our tobacco prevention programs, yet our work is not done," said State Surgeon General Dr. John Armstrong. "We in Florida are fortunate to have a comprehensive program that provides county-level community interventions and continued education for all youth. The Department remains committed to preventing smoking in the first place as we help current smokers quit."

The 2012 Florida Youth Tobacco Survey (FYTS) shows: 10.1 percent of high school students reported current cigarette use, meaning they smoked a cigarette at least once during the past 30 days, a 22.6 percent decrease compared to 2010.

11.4 percent of high school students reported current cigar use, a 13.6 decline compared to 2010.

7.7 percent reported current hookah use, a 6.1 percent decrease compared to 2010.

5.6 percent of high school students reported current smokeless tobacco use, a 12.5 percent decrease compared to 2010.

In 2010, DOH re-launched a comprehensive media campaign that demonstrates the severe health and emotional toll of tobacco-related death and disease. Research proves that hard-hitting media campaigns are effective at promoting quit attempts and reducing youth tobacco initiation.

The Florida data comes on the heels of a national report released by the Centers for Disease Control and Prevention (CDC) on Aug. 3 that shows an alarming increase in the use of non-cigarette smoked tobacco products. The flavoring and lower costs of these products make them especially appealing to teens.

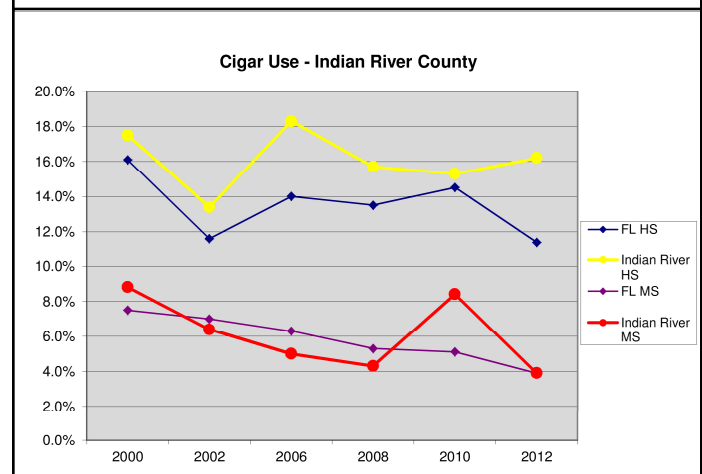
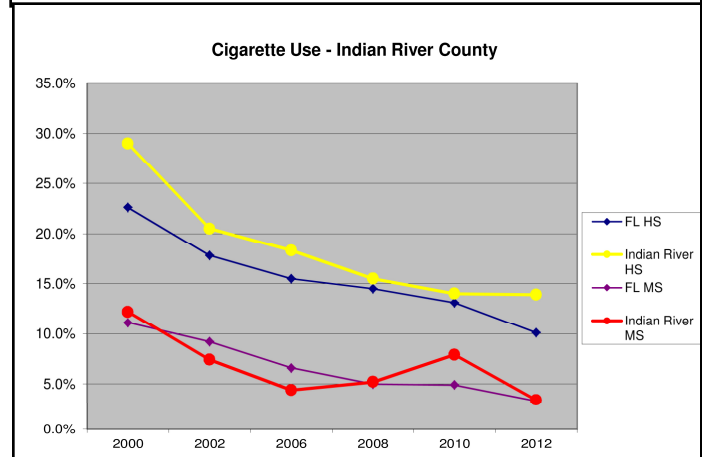
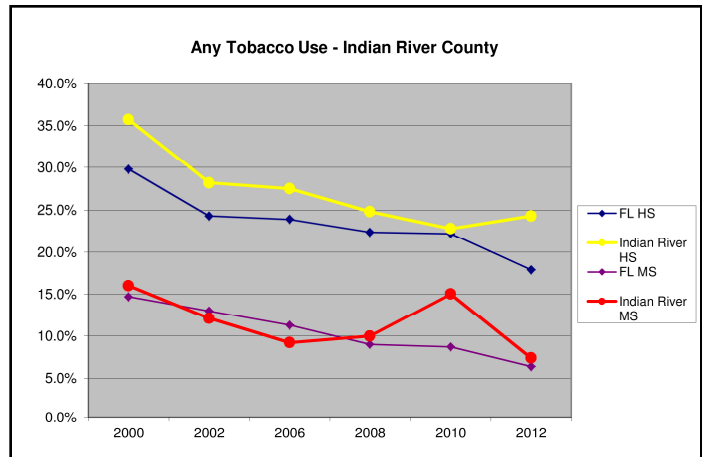
Youth mistakenly believe youth flavored tobacco, widely considered to be starter products, to be less harmful than their non-flavored counterparts.

Preventing tobacco use and encouraging cessation among young people are critical in combating the tobacco epidemic because nearly 9 out of 10 smokers start by age 18. The number of teens who try or habitually use tobacco increases with each increasing grade level. As students go back to school, now is a perfect time for parents to talk with their teens about tobacco issues.

Teens whose parents strongly disapprove of their tobacco use – even if they use tobacco themselves – are less likely to take up tobacco. Parental disapproval has even been found to counteract peer influence.

Yet, the 2012 FYTS shows that only 50.4 percent of high school students had talked with a parent or guardian about the dangers of tobacco in the past year.

A parent's own tobacco use significantly influences their child's decision to use tobacco. One important way Floridians can help prevent tobacco use is by quitting. The Florida Department of Health's Tobacco Free Florida programs offer free and convenient quit resources. For more information on Florida's tobacco prevention program, visit us online at [www.tobaccofreeflorida.com](http://www.tobaccofreeflorida.com).



**Tobacco use trends among Indian River County middle and high school students compared to similar trends throughout the entire state. In 2012, rates of tobacco use among Indian River County high school students remain above state averages and have been on the rise since 2010. Quit Doc Research and Education Foundation, which took over the program in 2012, hopes to reverse this trend over the next three year.**

# Preemption Can Impede Local Tobacco Protection Efforts

*A Report from the Centers for Disease Control and Prevention*

Tobacco use is the cause of one in five deaths annually in the United States—more deaths than HIV, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined. More than 126 million nonsmoking Americans are exposed to the dangers of secondhand smoke in their homes, workplaces, and public places. Nonsmoking adults who are exposed to secondhand smoke increase their risk of heart disease by 25-30 percent, and their risk of lung cancer by 20-30 percent. The U.S. Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure.

States are using various legislative tools to reduce smoking rates and to protect the public from the adverse health effects of smoking. To limit exposure to smoke, states are enacting laws prohibiting or restricting smoking in enclosed places, such as government worksites, private worksites, and restaurants. To reduce tobacco use, states are raising excise taxes on tobacco products and enacting statutes that limit advertising (by restricting the display of tobacco products, tobacco product promotion, or tobacco product samples) and youth access to tobacco (by prohibiting the sale or distribution of tobacco to youth and restricting access to tobacco product vending machines). At the local level, cities and counties have also responded to public health concerns related to smoking and tobacco use by enacting ordinances limiting the access to or use of tobacco. Local ordinances can be more stringent or more comprehensive than state statutes, and

the debate over local laws can help educate communities about the health effects of tobacco use and contribute to changes in social norms about smoking.

## What is preemption?

Some states, however, preempt, or prevent local communities from enacting local ordinances that are more stringent than or differ from a state's tobacco control policies related to advertising, smoke-free indoor air, and youth access. A state may preempt local tobacco control laws in all or only in some categories. The tobacco industry has historically supported state preemption laws as a way to reverse existing local tobacco control ordinances and prevent future enactment of such ordinances. In an effort to protect nonsmokers by allowing local communities to pass comprehensive tobacco control measures, a Healthy People 2010 objective calls for eliminating state laws that preempt stronger local tobacco control laws, including local smoke-free ordinances.

## Court decisions can determine preemption

However, even if a state does not have "express preemption" (i.e., even if state law does not contain explicit preemptive language), a state court may find that the state has "implied preemption" (i.e., that state law is implicitly preemptive). If a local ordinance is legally challenged, a court has the responsibility to interpret state statutes, as well as the state legislature's intent when the law was debated and passed. As a result, statutes must be read together with case law decisions to get a full

understanding of a state's preemption status. In particular, court decisions related to smoke-free indoor air have determined whether a state preempts the enactment of local ordinances restricting smoking.

In several states, courts have weighed in and decisively influenced interpretations of whether states preempt local smoking restrictions. For example, a court in California ruled that the 1995 state smoke-free law did not preempt local ordinances from making enclosed public places and places of employment smoke-free. The court ruled that the state law explicitly disclaimed any intent to preempt local governments from regulating smoking, and, in fact, expressly authorized local governments to prohibit smoking in any manner not inconsistent with the state law. In 2008, a South Carolina court found that the state statute, including the Clean Indoor Air Act, did not preempt a city from enacting a local ordinance regulating smoking in public places. Similarly, courts in New Hampshire and in Washington ruled that state laws establishing smoking restrictions preempted local smoking restrictions in certain settings, even though the statutes in question did not contain explicit preemption language.

## Enabling local communities to pass tobacco control measures

The only way for states to ensure that local tobacco control ordinances are not preempted is to include enabling clauses in state laws. These clauses explicitly allow local jurisdictions to enact ordinances that differ from the state law. This can have the

effect of making the state law the floor for tobacco control regulations, rather than preemption provisions that establish state law as the ceiling.

## State efforts to restore or preserve local smoke-free indoor air control since 2004

Once enacted, state preemptive laws have traditionally proven difficult to repeal. However, since 2004, seven states have repealed provisions that preempted local smoking restrictions in some or all settings. The seven states that have repealed smoke-free indoor air preemption are Illinois, Louisiana, Mississippi, Montana, Nevada, New Jersey, and Oregon. In addition, there appears to be a trend for states that enact new smoking restrictions to include explicit enabling language, even if the previous state smoking restrictions had not been explicitly preemptive.

## Current status of state preemption related to smoke-free indoor air

As of December 31, 2009, 12 states have laws or court decisions in effect that explicitly preempt local ordinances from restricting smoking in government worksites, private worksites, and/or restaurants. Eight of these 12 states preempt local action in all three of these settings. Two states (Michigan and New Hampshire) preempt local smoking restrictions in restaurants but not in the other two settings, one state (North Carolina) preempts local smoking restrictions in private worksites and restaurants but enables local smoke-free indoor air restrictions in government work-sites, and





## Roll-Your-Own Shops Classified as Cigarette Manufacturers *Businesses Will Need to Obtain New Permits or Face Closure*

Hundreds of small tobacco shops designed to exploit a tax loophole by allowing smokers to roll their own cigarettes soon could be out of business under federal legislation classifying them as manufacturers. The new law closes the loophole, subjecting them to the same taxes and regulations as the rest of the cigarette industry.

Such stores have spread rapidly over the past few years by capitalizing on technology and loopholes that let them offer cigarettes often at half the price of ready-made brands.

An amendment tucked inside the \$27 billion federal highway bill approved by Congress last July expands the definition of a tobacco manufacturer to include businesses operating roll-your-own machines, making them responsible for federal excise taxes.

Lawmakers passed the amendment after the U.S. Government Accountability Office estimated in April 2012 that changes in the market for roll-your-own cigarettes had reduced federal revenue by as much as \$492 million between April 2009 and September 2011. It also followed heavy lobbying by major cigarette companies such as Altria Group Inc. and the National Association of Convenience Stores, which argued such shops weren't playing under the same rules.

"This new law will place roll-your-own shops on a level playing field with retailers that sell traditionally manufactured cigarettes," said Thomas Briant, executive director with the National Association of Tobacco Outlets. "Before this change in the law was enacted Friday, roll-your-own machine operators were operating under a competitive advantage."

Owners of roll-your-own shops have accused the cigarette industry and major retail chains of trying to extinguish



lower-priced competition.

Customers at roll-your-own shops buy loose tobacco and pour it into ATM-sized machines that can make 200 cigarettes in less than 10 minutes. RYO Machines of Ohio, the largest maker of the machines, has sold roughly 2,000 of them to hundreds of shop owners since it began making them in 2008. The cigarettes typically

are made with leaves labeled "pipe tobacco."

Critics say the shops have taken advantage of changes in tobacco taxes enacted in 2009, when the federal excise tax on a carton of cigarettes rose to \$10.066 from \$3.90 and the tax on a pound of roll-your-own tobacco increased to \$24.78 from \$1.0969.

The tax for a pound of pipe

tobacco, traditionally intended for pipes, only rose to \$2.8311 from \$1.0969.

The Alcohol and Tobacco Tax and Trade Bureau declared in 2010 that retailers using roll-your-own machines were manufacturers, but RYO Machines secured a court injunction putting the ruling on hold. The company also hired lobbyists to try to slow attempts by state lawmakers to slap restrictions on the retailers.

Earlier this year, Senator Max Baucus (D-Montana) sponsored a federal amendment that would classify the stores as manufacturers, arguing owners of such machines were taking "advantage of an unintended tax loophole."

But owners of roll-your-own shops say they shouldn't be treated the same as major cigarette manufacturers, whose machines can roll cigarettes roughly 1,000 times faster. They also note their shops are zoned for retail use, not manufacturing.

In order for roll-your-own shops to continue using the machines, owners must obtain a manufacturer's permit, file a bond, pay the applicable federal cigarette tax rate, keep records, print required markings on packages used for manufactured cigarettes, affix the U.S. Surgeon General's warning labels to packages and comply with the U.S. Food and Drug Administration's minimum cigarette package size.

The new law had an immediate impact in Florida. David Fiore, owner of Double D's Tobacco, which has locations in Palm Beach, Martin, St. Lucie, and Orange Counties, stopped using his rolling machines shortly after the law took effect.

If you have a roll-your-own shop operating illegally in your community, you can report the violations to the Florida Division of Alcoholic Beverages and Tobacco at 850-487-1395.

# Judge Rules Tobacco Companies Must Take Out Ads Saying They Lied About the Dangers of Smoking

WASHINGTON D.C. — On November 27, 2012, a federal judge ordered tobacco companies to publish corrective statements that say they lied about the dangers of smoking and that disclose smoking's health effects, including the death on average of 1,200 people a day.

U.S. District Judge Gladys Kessler previously had said she wanted the industry to pay for corrective statements in various types of advertisements. But Tuesday's ruling is the first time she's laid out what the statements will say.

Each corrective ad is to be prefaced by a statement that a federal court has concluded that the defendant tobacco companies "deliberately deceived the American public about the health effects of smoking." Among the required statements are that smoking kills more people than murder, AIDS, suicide, drugs, car crashes and alcohol combined, and that "secondhand smoke kills over 3,000 Americans a year."

The corrective statements are part of a case the government brought in 1999 under the Racketeer Influenced and Corrupt Organizations (RICO) Law. Kessler ruled in that case in 2006 that the nation's largest cigarette makers concealed the dangers of smoking for decades,

and said she wanted the industry to pay for "corrective statements" in various types of ads, both broadcast and print. The Justice Department proposed corrective statements, which Kessler used as the basis for some of the ones she ordered Tuesday.

Tobacco companies had urged Kessler to reject the government's proposed industry-financed corrective statements; the companies called them "forced public confessions." They also said the statements were designed to "shame and humiliate" them. They had argued for statements that include the health effects and addictive qualities of smoking.

Kessler wrote that all of the corrective statements are based on specific findings of fact made by the court.

"This court made a number of explicit findings that the tobacco companies perpetuated fraud and deceived the public regarding the addictiveness of cigarettes and nicotine," she said.

A spokesman for Altria Group Inc., owner of the nation's biggest tobacco company, Philip Morris USA, said the company was studying the court's decision and did not provide any further comment. A spokesman for Reynolds American Inc., parent company of No. 2 cigarette mak-

er, R.J. Reynolds Tobacco Co., said the company was reviewing the ruling and considering its next steps.

The statements Kessler chose included 5 categories: adverse health effects of smoking; addictiveness of smoking and nicotine; lack of significant health benefit from smoking cigarettes marked as "low tar," "light," etc.; manipulation of cigarette design and composition to ensure optimum nicotine delivery; and adverse health effects of exposure to secondhand smoke.

Justice Department spokesman Charles Miller said the department was pleased with the order.

Matt Myers, President of the Campaign for Tobacco-Free Kids, called it an important ruling. "The most critical part of the ruling is that it requires the tobacco companies to state clearly that the court found that they deceived the American public and that they are telling the truth now only because the court is ordering them to do so," Myers said in an interview. "This isn't the last word, but this is a vitally important step because this should resolve exactly what the tobacco companies are required to say." You can read his entire statement on Page 8 of this newsletter.

In July, a federal appeals court rejected efforts by the tobacco companies to overrule Kessler's ruling requiring corrective statements. The companies had argued that a 2009 law that gave the Food and Drug Administration authority over the industry eliminated "any reasonable likelihood" that they would commit future RICO violations.

In her ruling Tuesday, Kessler ordered the tobacco companies and Justice Department to meet beginning next month to address how to implement the corrective statements, including whether they will be put in inserts with cigarette packs and on websites, TV and newspaper ads. Those discussions are to conclude by March.

Several corrective statements were proposed by US District Court Judge Gladys Kessler for use in national advertising, including:

"Smoking kills, on average, 1,200 Americans every day."

"Defendant tobacco companies intentionally designed cigarettes to make them more addictive."

"When you smoke, the nicotine actually changes the brain – that's why quitting is so hard."

"All cigarettes cause cancer, lung disease, heart attacks and premature death – lights, low tar, ultra lights and naturals. There is no safe cigarette."

"Secondhand smoke causes lung cancer and coronary heart disease in adults who do not smoke."

"Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, severe asthma and reduced lung function."

"There is no safe level of exposure to secondhand smoke."



*From the 1920s through the 1950s, the tobacco industry used trustworthy figures to suggest that smoking was harmless.*



# U.S. Judge Orders Tobacco Companies to Admit Deception and Tell the Truth to the American People

Statement of Matthew L. Myers, President, Campaign for Tobacco-Free Kids  
November 27, 2012



WASHINGTON, DC – A federal judge today ordered tobacco companies to admit that they have deliberately deceived the American public and finally tell the truth about their deadly and addictive products and fraudulent marketing. Today's ruling is a critical step toward ending decades of tobacco industry deception that has resulted in millions of premature deaths, untold suffering and billions in health care costs. Requiring the tobacco companies to finally tell the truth is a small price to pay for the devastating consequences of their wrongdoing.

Today's ruling spells out the corrective statements U.S. District Court Judge Gladys Kessler first ordered tobacco companies to make in 2006 when she found them guilty of violating civil racketeering laws and engaging in a decades-long fraud to deceive the American people.

It is particularly important that Judge Kessler ordered the tobacco companies to admit in each corrective statement that "a Federal court has ruled that the Defendant tobacco companies deliberately deceived the American public." Judge Kessler ordered the corrective statements to prevent future deception by the tobacco companies. To achieve this goal, the tobacco companies must be required to tell the public the truth not

only about their products, but also about their prior deceptions consumers will not be misled in the future. Without such an admission, the tobacco companies could turn the court's requirement that they tell the truth into an opportunity to appear trustworthy, enabling them to continue deceiving the public.

Implementing Judge Kessler's 2006 judgment, today's order requires tobacco companies to make corrective statements about the adverse health effects of smoking and secondhand smoke; the addictiveness of nicotine; the lack of health benefits from smoking "light" and "low-tar" cigarettes; and the companies' manipulation of cigarette design and composition to ensure optimum nicotine delivery. The corrective statements will be made through newspaper and television advertising, on the companies' web sites and on cigarette packaging.

The Tobacco-Free Kids Action Fund (a 501c4 affiliate of the Campaign for Tobacco-Free Kids) is one of six public health groups that Judge Kessler allowed to intervene in the case, along with the American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights and National African American Tobacco Prevention Network.



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Online help quitting tobacco is only a few clicks away.  
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