

**FOR IMMEDIATE RELEASE**  
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## **KENNEDY, COLLEAGUES URGE GONZALES TO APPEAL TOBACCO DECISION**

Washington, DC: Today Senator Kennedy and fourteen other senators wrote a letter to Attorney General Gonzales urging him to pursue every available avenue of appeal to overturn the misguided Court of Appeals decision in the United States of America v. Philip Morris USA Inc. Last month, the U.S. District Court for DC found overwhelming proof of misconduct by the tobacco companies, however the trial judge concluded that a prior decision of the Court of Appeals prevented her from ordering appropriate remedies to address the enormous harm caused by the industry's misconduct. The Senators appealed to Gonzales to "put the health of the American people and the interests of justice first in the final resolution of this case."

The letter was sent by Senators Kennedy, Leahy, Durbin, Lautenberg, Feinstein, Reid, Harkin, Cantwell, Boxer, Sarbanes, Levin, Wyden, Jeffords, Dodd and Kerry. Below is a text of the letter and a PDF version with signatures of the letter is available on request.

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

We write to express our serious concerns regarding the latest developments in the matter of *United States of America v. Philip Morris USA Inc. et al.* Last month, the U.S. District Court for the District of Columbia issued the long awaited decision in the government's case against the tobacco industry. While the Court issued a very strong decision on liability, the remedies imposed were clearly inadequate to address the enormous harm caused by the industry's misconduct.

The lengthy decision exposed, in striking detail, the egregious history of misconduct that tobacco companies have engaged in for decades. In her opinion, Judge Kessler wrote:

"Over the course of more than 150 years, Defendants lied, misrepresented and deceived the American public, including smokers and the young people they avidly sought as 'replacement smokers,' about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low-tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system in order to achieve their goal- to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system."

The findings of the Court prove what many of us have long suspected --that the tobacco industry has conspired for decades to deceive the citizens of our nation about the extraordinary health danger posed by their products and to entrap generations of children into a lifetime of addiction and premature death. It is important to note that the Court found that industry misconduct is ongoing. The opinion states, "[e]ven after the Complaint in this action was filed in September 1999, Defendants continued to engage in conduct that is materially indistinguishable from their previous actions, activity that continues to this day." The evidence supporting these findings is truly overwhelming and we are

confident it will withstand any further legal challenges.

However, despite the overwhelming proof of misconduct by the tobacco companies violating the RICO law, the trial judge concluded that a prior decision of the Court of Appeals for the D.C. Circuit prevented her from ordering appropriate remedies commensurate with the enormity of the harm. That decision, rendered last year by a divided panel, reversed an earlier ruling by Judge Kessler in the tobacco case. The Court of Appeals decision drastically limited the ability of the trial court to impose effective remedies for the tobacco industry's gross violation of the racketeering statute. It is imperative that the Justice Department pursue every available avenue of appeal to overturn this misguided Court of Appeals decision.

We wrote to you last year when the original decision was handed down to urge that the Department file an interlocutory appeal of the D.C. Circuit opinion to the Supreme Court. We understand that the interlocutory appeal was rejected for primarily procedural reasons. Now that a final decision in the trial proceedings has been rendered, we urge the Department to appeal the portions of the District Court's ruling that severely limit the remedies to be imposed on the tobacco industry. If allowed to stand, the decision on remedies in this case will have the effect of allowing the major tobacco companies to escape any meaningful accountability for the enormous injury their misconduct has caused.

Furthermore, if allowed to stand, the D.C. Circuit's erroneous ruling in this case could have devastating impact on future RICO cases where the government would be severely limited from recovering any significant damages from those who are found to violate our nation's racketeering laws. By prohibiting the government from disgorging the profits of proven unlawful conduct, the D.C. Circuit's decision is inconsistent with the law of other Circuits and it would strip federal prosecutors of an essential enforcement tool needed to root out illegal activity in criminal conspiracies and in corporate board rooms. That result would do fundamental harm to our government's ability to battle corporate misconduct and corruption.

As you consider our request, we ask that you also take into consideration the real life impact of the tobacco litigation on the future of our nation. Every dollar spent on smoking cessation and prevention, which would go toward curing addicted smokers and stopping our children from beginning to smoke, would save lives. As elected officials, we represent the interests of these people whose health is at grave risk from continued exposure to the tobacco industry's products. On their behalf, and especially on behalf of our nation's children, we urge you to put the health of the American people and the interests of justice first in the final resolution of this case.

Sincerely,

Senators Kennedy, Leahy, Durbin, Lautenberg, Feinstein, Reid, Harkin, Cantwell, Boxer, Sarbanes, Levin, Wyden, Jeffords, Dodd and Kerry

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