

Former Ohio Attorney General Betty Montgomery and Ohio and National Public Health Leaders File Friend of the Court Briefs in Support

WASHINGTON, Jan. 21 /PRNewswire-USNewswire/ -- Today, Legacy(SM) -- a national public health foundation devoted to tobacco cessation and prevention -- asked the Ohio Supreme Court to hear the appeal in its case seeking to preserve tobacco funds and the life-saving tobacco control programs they support in Ohio.

Former Ohio Attorney General Betty Montgomery, former Ohio Senate President Richard H. Finan and former Director of the Ohio Department of Health, J. Nick Baird MD, and a broad array of Ohio and national public health organizations and leaders filed Friend of the Court briefs in support of Legacy's request that the Court hear the case. General Montgomery, Finan and Baird were instrumental in creating the Ohio Tobacco Use Prevention and Control Endowment Fund and, in their brief, explained that the General Assembly specifically intended that the Endowment Fund be permanently dedicated to tobacco use prevention and cessation programs for the benefit of Ohioans.

The Ohio and national public health organizations that have urged the court to hear the appeal include the Academy of Medicine Of Cleveland & Northern Ohio, the American Heart Association, the American Heart Association Great Rivers Affiliate, the American Lung Association, the American Lung Association Of Ohio, the American Cancer Society Ohio Division, the American Cancer Society Cancer Action Network, the Association Of Ohio Health Commissioners, the Campaign For Tobacco-Free Kids, the Ohio Public Health Association, and the Ohio State Medical Association.

A third brief was filed by the Citizen's Commission to Protect the Truth which is comprised of former Surgeons General, Directors of the Centers for Disease Control and Prevention and U.S. Secretaries of Health and Human Services/ Health, Education and Welfare.

"The fact that our appeal is supported by the Ohio officials responsible for creating the Tobacco Use Prevention and Control Endowment Fund as well as numerous Ohio and national public health organizations and leaders, speaks volumes about the extraordinary importance of this case," said Cheryl G. Heaton, DrPH and president and CEO of Legacy. "We have spent our own funds on this litigation and if successful, are committed to preserving the endowment funds to be spent solely in Ohio on Ohio-based tobacco control programs. I want to reiterate that from the outset of this litigation, we have stated unequivocally that these funds will be spent solely on effective programs in Ohio to save lives from tobacco's deadly toll. Accusations suggesting otherwise are simply false," she said.

Today's action came in response to Legacy's deep disappointment in the New Year's Eve decision of the Ohio Court of Appeals of Franklin County, Tenth Appellate District. In that ruling, the appeals court reversed a lower court's order permanently enjoining the State from dissolving the Tobacco Use Prevention and Control Endowment Fund. That decision represented a major step backward in the effort spearheaded by Legacy and others to safeguard the state's tobacco prevention money for its intended purpose: to save Ohioans' lives. Two Ohioans were also plaintiffs in the case: Robert Miller and David Weinmann, both longtime smokers who relied on services and programs supported by the Ohio Tobacco Use Prevention and Control Endowment Fund to quit smoking, brought claims on behalf of the intended beneficiaries of OTPF - Ohio smokers.

Legacy, a national public health foundation created as a result of the Master Settlement Agreement (MSA), stepped forward in April 2008 to help safeguard the tobacco settlement dollars Ohio had set aside for tobacco control. After the Ohio Tobacco Prevention Foundation (OTPF) signed a contract with Legacy to preserve tobacco prevention and cessation efforts in the state, the legislature voted to abolish both OTPF and its endowment. The News Year's Eve decision by the Tenth Appellate District to reverse the permanent injunction represents a step backward for the health of Ohioans.

The 1998 MSA provided more than \$200 billion to be paid to the states over 26 years in recognition of the lives and money lost to tobacco. To ensure that a substantial portion of its recovery was spent specifically on tobacco control, Ohio established OTPF and created an endowment for it. Most states have spent only a small fraction, if any, of their MSA funds to mitigate the tragic impact of the tobacco epidemic which claims the lives of more than 400,000 Americans each year.

Research shows that tobacco takes an enormous toll on Ohio - both in lives lost and dollars spent. Ohio's smoking rate is 20.1 percent, just below the national average of 20.6 percent, thanks in large measure to the work of OTPF. A report from the Campaign for Tobacco-Free Kids and other leading public health groups in December 2009, "A

Broken Promise to Our Children: The 1998 State Tobacco Settlement 11 Years Later found that Ohio is ranked a disappointing 45th among U.S. states in the amount it spends on tobacco control efforts. The report found Ohio is spending only 5.1 percent of the recommended minimum by the Centers for Disease Control and Prevention -- \$5 for every \$100 recommended.

In a state already feeling the brunt of the national recession, smoking costs Ohio more than \$4 billion in *annual* health care costs and another \$4.7 billion annually in smoking-related productivity loss (in 2004 dollars). A 2007 report by Legacy found that Ohio's Medicaid system could save \$550 million within five years if all Medicaid beneficiaries who smoke, quit. Ohio would reap the third-largest savings of all the states, making the case that despite this economic downturn in Ohio, keeping these funds focused on tobacco control is a wiser long-term investment, ultimately saving Ohioans' lives and money.

Timeline of activity related to the Ohio tobacco funding dispute:

- April 2, 2008: Governor Strickland announced plans to fund an economic stimulus package in part by diverting the OTPF's endowment.
- April 4, 2008: OTPF's Board responded by authorizing contracts for \$190 million with up to three named organizations in order to assure that the work of tobacco control in Ohio would continue to benefit Ohioans.
- April 8, 2008: OTPF entered into a contract for this amount (\$190 million) with the American Legacy Foundation and provided the state treasurer with instructions to transfer the funds. Later that day, the governor signed into law legislation purporting to liquidate OTPF's endowment. The treasurer did not make the requested payment.
- April 9, 2008: OTPF filed a lawsuit asserting that the legislation liquidating its endowment violated Ohio constitutional and other legal requirements.
- April 10, 2008: Judge Fais of the Court of Common Pleas ordered the maintenance of the status quo and froze the endowment funds until a preliminary injunction hearing, originally scheduled for April 24, could be held.
- April 15, 2008: OTPF's Board purported to withdraw its request that the state treasurer transfer the funds to the American Legacy Foundation.
- April 21, 2008: The American Legacy Foundation's filed papers to intervene in the case, asking the court to declare that its contract was valid and that the state funds, wisely dedicated by the State to tobacco prevention and control, could not now be diverted for other purposes. Legacy's motion was granted and the April 24 hearing was postponed until May 8.
- May 6, 2008: Governor Strickland signed into law a second bill, again diverting the OTPF's endowment and, this time, abolishing OTPF.
- May 8, 2008: Judge Fais met with lawyers from the state and The American Legacy Foundation about the fate of the state's remaining tobacco settlement dollars. He scheduled the next hearing for early June and ordered that the freeze on the funds remain in effect.
- May 27, 2008: Two Ohio smokers, David Weinmann and Robert Miller, who had taken advantage of OTPF funded programs to quit smoking, filed a second lawsuit, claiming that the state's decision to dissolve the endowment violated their rights as trust beneficiaries. Their case was consolidated with Legacy's case.
- June 2-4, 2008: Judge Fais heard testimony and legal arguments on Legacy's motion for a preliminary injunction. He asked the parties to submit proposed findings of fact and conclusions of law by June 27, later extended to July 3.

- Week of June 2, 2008: Ohio Department of Health sent notices to OTPF grant recipients informing them that their grants would be cancelled as of July 1, 2008, claiming that the department was taking this action because of the litigation and the freeze. Legacy notified ODH that Legacy had joined with OTPF in late April to successfully ask the court for permission to spend \$5 million to satisfy outstanding obligations, and would like to join now with ODH to seek permission to spend additional funds on tobacco control in Ohio.
- June 23, 2008: The American Legacy Foundation and the Ohio Department of Health (ODH) as well as the other state defendants filed a joint motion asking that \$10 million be freed up to maintain basic tobacco control programs in Ohio.
- June 24, 2008: Judge Fais signed an order designating \$4 million to pay OTPF's obligations through June 30 and \$6 million to fund tobacco control programs starting on July 1. This was a major decrease from the \$40 million OTPF had spent in FY 2008 but it will keep some tobacco control programs alive in Ohio.
- February 10, 2009: Judge Fais granted Legacy's and the individual plaintiffs' motion for a preliminary injunction, holding that the State lacked the authority to dissolve the irrevocable trust it created to ensure the state's tobacco settlement funds are used for the important mission of tobacco control and prevention in the State of Ohio. The court rejected Legacy's request to enforce the contract it had entered into with the OTPF.
- June 2, 2009: Judge Fais heard testimony and legal arguments on Legacy's and the individual plaintiffs' motion for a permanent injunction. August 11, 2009: Judge Fais granted the individual plaintiffs' motion for a permanent injunction on the basis that the State lacked the authority to dissolve the trust. The court continued its denial of Legacy's contract-based claim.
- August 11, 2009: Judge Fais granted the individual plaintiffs' motion for a permanent injunction on the basis that the State lacked the authority to dissolve the trust. The court continued its denial of Legacy's contract-based claim.
- October 14, 2009: The case was argued before the Ohio Court of Appeals of Franklin County Ohio, Tenth Appellate District.
- December 31, 2009: The Ohio Court of Appeals of Franklin County, Tenth Appellate District, reverses a lower court's order permanently enjoining the State from dissolving the endowment of the Ohio Tobacco Prevention Foundation (OTPF).

Legacy(SM) is dedicated to building a world where young people reject tobacco and anyone can quit. Located in Washington, D.C., the national public health organization helps American live longer, healthier lives. Legacy develops programs that address the health effects of tobacco use, especially among vulnerable populations disproportionately affected by the toll of tobacco, through grants, technical assistance and training, partnerships, youth activism, and counter-marketing and grassroots marketing campaigns. The foundation's programs include truth(R), a national youth smoking prevention campaign that has been cited as having contributed to significant declines in youth smoking; EX(R), an innovative public health program designed to speak to smokers in their own language and change the way they approach quitting; and research initiatives exploring the causes, consequences and approaches to reducing tobacco use. The American Legacy Foundation was created as a result of the November 1998 Master Settlement Agreement (MSA) reached between attorneys general from 46 states, five U.S. territories and the tobacco industry. Visit www.legacyforhealth.org.

Legacy is equipped with a VideoLink ReadyCam(TM) television studio system, providing journalists with faster, easier access to the nation's leading tobacco prevention and cessation experts. From this in-house broadcast studio, Legacy can offer immediate access to its experts to comment on breaking news, new research publications, or any news related to youth smoking prevention, adult quit smoking programs, or any issue related to smoking. The studio is connected directly to the Vyvx fiber network and is always available for live or pre-taped interviews.

SOURCE Legacy

RELATED LINKS <http://www.legacyforhealth.org>