

Congress of the United States

Washington, DC 20510

June 15, 2005

Honorable Alberto Gonzales
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

We are writing to express our serious concern over the direction of the government's case in *United States of America vs. Philip Morris USA Inc. et al.* currently before the United States District Court for the District of Columbia. Because of the extraordinary importance of this case for the health of the American people, we believe it is essential that we, as Members of Congress who have followed this issue closely, communicate these concerns directly to you.

Every dollar spent on smoking cessation and prevention -- to cure addicted smokers and to stop our children from beginning to smoke -- saves lives. The Department of Justice's last-minute decision to abandon evidence and testimony and sharply reduce its demand in the case from a \$130 billion program that would have substantially advanced the public health to a \$10 billion program is inexplicable. The decision to suddenly reduce the government's demand in this case by more than 90 percent cannot credibly be blamed on the D.C. Circuit's ruling regarding the unrelated remedy of disgorgement, as some in the Justice Department have attempted to claim. In fact, the Department's trial team presented evidence supporting a \$130 billion smoking cessation program three months after the Court of Appeals decision was issued.

As you know, the Department of Justice has been asked to investigate the circumstances surrounding this complete reversal. Whatever the ultimate findings as to the reasons behind your Department's surprising actions, it is imperative that the Department not cause further damage by settling the case for insufficient relief. It is our understanding that settlement discussions may be pursued in the coming weeks.

We strongly urge you not to enter into a settlement at this time based on the unreasonably weak demands made by the government last week. Such a settlement would be contrary to the goal of exposing the tobacco companies' past misconduct and preventing future misconduct by the industry.

We also urge you to file a petition for certiorari to the United States Supreme Court regarding the D.C. Circuit's February 4, 2005 decision on interlocutory appeal on this case. If allowed to stand, that D.C. Circuit decision will greatly undermine the ability of the government to battle corporate misconduct and corruption. 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 strips prosecutors of an essential enforcement tool needed to root out illegal activity in criminal conspiracies and corporate board rooms.

As Senators and Representatives in Congress, we represent the interests of the people of the United States. On their behalf, on behalf of the 45 million Americans who deserve smoking cessation assistance, and especially on behalf of our nation's children, we urge you to put the health of the American people ahead of other interests in this case.

Sincerely,

Frank R. Lautenberg

Ed Kennedy

Dan Aykroyd

Mark Shul

Dick Durbin

Patrick Leahy

Tom Harkin

Jack Reed

Barack Pomeroy

Robert A. Menendez

John F. Kerry

Hillary Rodham Clinton

J. Biden

Herb Kohl

Chris Dodd

John Edwards

Don Wyden

Bill Nelson

Paul L. Sarbanes

Maria Cantwell

Mary L. Landrau

Jim Moran

Peter McFyri

John E. Kildee

Murray Kaptur

Lois Capps

W. L. Gray

Danny K. Davis

Chris Van Hollen

Hyd Doggett

Jim Cooper

Daniel Lipinski

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Jim McDermott

John Lewis

Rud Holt

Fritz Pallone, Jr

John Longenecker

Bob L. Hess

Joseph H. Kerner

Rosa L. J. Linn

Nita M. Lourey

Ken Linn

Donald Miller

Elipha E. Tompkins

Bob Smith

Walter S. Tompkins

Edward G. Mankin

John F. Tierney

Barney Frank
