

### Ninth Circuit Upholds Los Angeles County's Ban On The Sale Of Flavored Tobacco Products

03.21.2022

Sheppard Mullin, representing the County of Los Angeles, obtained a significant victory before the Ninth Circuit when the Court affirmed the dismissal of a suit by Big Tobacco challenging the County's 2019 ordinance banning the sale of all flavored tobacco products due to their threat to public health. Such products include menthol cigarettes and e-vaping products. The County enacted the ordinance to protect public health and to counter efforts by tobacco companies targeting Black communities with addictive menthol-flavored tobacco products and youth with flavored tobacco products, such as cotton candy and bubble gum-flavored vaping products, more broadly. R.J. Reynolds Tobacco Company challenged the ordinance arguing that, while the federal Family Smoking Prevention and Tobacco Control Act of 2009 expressly preserves control over the sale of tobacco products to the States and municipalities, the County's ordinance nevertheless is preempted by the Act and FDA regulations because it is an impermissible tobacco product standard instead of a permitted sales restriction. The District Court in Los Angeles disagreed and granted the County's motion to dismiss the case, finding that the ordinance was not preempted and that the Act expressly preserves the States' and municipalities' historic power to ban tobacco sales. R.J. Reynolds appealed to the Ninth Circuit. On March 18, the Ninth Circuit affirmed the District Court's ruling in a decision authored by Judge Lawrence VanDyke, joined by District Judge (South Dakota) Karen E. Schreier sitting by designation. Judge Ryan D. Nelson dissented.

The County stated, "We are very pleased that our efforts to protect the public health, particularly among our youth, through our ban on the sale of flavored tobacco products has been upheld by the Ninth Circuit Court of Appeals."

The Sheppard Mullin team representing the County was led by partner Kent Raygor, appellate expert Valerie Alter and associate Bryan Wittlin.

[Click here to read more.](#)

#### Attorneys

Valerie E. Alter

Kent R. Raygor

Bryan M. Wittlin

#### Practice Areas

Litigation