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OHIO JUDGE'S RULING REPRESENTS AN IMPORTANT STEP TOWARD PRESERVING TOBACCO FUNDS, PROTECTING THE HEALTH OF OHIOANS

American Legacy Foundation® Proud to Help Maintain Ohio's Tobacco Prevention Efforts

WASHINGTON, D.C. – Today in Columbus, Ohio, Judge David Fais of the Franklin County Court of Common Pleas preliminarily enjoined the State from dissolving the endowment of the Ohio Tobacco Prevention Foundation (OTPF). This decision is a major step forward in the American Legacy Foundation's effort to safeguard the state's tobacco prevention money for its intended purpose: to save Ohioans' lives.

During the course of the months-long battle to save the state's tobacco prevention and cessation funding, the American Legacy Foundation, a national public health foundation created as a result of the Master Settlement Agreement, stepped forward to fight for and safeguard the tobacco settlement dollars Ohio had set aside for tobacco control. After 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. Today, the Franklin County Court of Common Pleas took an important step in protecting these funds for tobacco control use by issuing the preliminary injunction requested by Legacy. While it is an interim decision, the judge's order signals that he believes that permitting the dissolution of the funds would cause irreparable injury and it is in the public interest to protect these funds. The case will now move forward to a decision on whether to make the ruling permanent.

"We did not ask for these funds, but we have been proud to fight to secure them for the citizens of Ohio," said Cheryl G. Heaton, Dr. P.H., president and chief executive officer of the American Legacy Foundation. "The court ruling today is a victory for Ohioans and a victory for public health. It would have been a terrible blow to the people of Ohio to dismantle the decade of progress that OTPF had made in preventing smoking among young people and helping smokers quit. Today, we look toward the future as tobacco use remains a vital public health issue with a deadly cost, both in Ohio and across our country," she said.

"This is very good news for smokers in Ohio who are desperate for help as they struggle to quit," said Robert G. Miller of Toledo, Ohio, a plaintiff in this case. "I know from my own efforts to quit that relapse is common so services and programs were critical to helping me. Continued funding for smoking cessation programs and to keep young kids from starting is essential and I'm thrilled that the judge's decision today will keep these funds focused on exactly that."

Research shows that tobacco takes an enormous toll on Ohio – both in lives lost and dollars spent. Ohio's smoking rate is 23.1 percent, above the national average of 19.7 percent. Smoking costs Ohio more than \$4 billion in annual health care costs and another \$4.7 billion annually in smoking-related productivity loss. A 2007 report by the American Legacy Foundation found that Ohio's Medicaid system could save nearly \$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.

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The 1998 Master Settlement Agreement 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. Ohio has come dangerously close to reversing that course and joining a growing number of states to deplete these monies for purposes for which they were never intended, squandering precious opportunities to, literally, save lives.

Timeline of activity related to the Ohio tobacco funding dispute:

April 2: Governor Strickland announced plans to fund an economic stimulus package in part by diverting the OTPF's endowment.

April 4: 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: 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: OTPF filed a lawsuit asserting that the legislation liquidating its endowment violated Ohio constitutional and other legal requirements.

April 10: 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: OTPF's Board purported to withdraw its request that the state treasurer transfer the funds to the American Legacy Foundation.

April 21: 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: Governor Strickland signed into law a second bill, again diverting the OTPF's endowment and, this time, abolishing OTPF.

May 8: 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: Two Ohio smokers, David Weinmann and Robert Miller, who had taken advantage of OTPF funded programs to try 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: 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: 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.

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June 23: 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: 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 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.

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*The American Legacy Foundation® is dedicated to building a world where young people reject tobacco and anyone can quit. Located in Washington, D.C., the foundation 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**®, a national youth smoking prevention campaign that has been cited as contributing to significant declines in youth smoking; **EX**®, an innovative public health program designed to speak to smokers in their own language and change the way they approach quitting; research initiatives exploring the causes, consequences and approaches to reducing tobacco use; and a nationally-renowned program of outreach to priority populations. 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.americanlegacy.org.*

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