

United States Court of Appeals Issues

Opinion Rejecting an E-cigarette

Company's Challenge to the Tobacco

Control Act

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The United States Court of Appeals for the D.C. Circuit on Tuesday, December 11, 2019, issued an opinion rejecting an e-cigarette company's challenge to the Tobacco Control Act's constitutionality and determining the FDA has the authority to regulate e-cigarettes as tobacco products under the Tobacco Control Act. A copy of the opinion can be found [here](#).

Interestingly, the opinion seemed to recognize e-cigarettes' widespread benefit as smoking cessation devices when the judges reiterated the district court's comment to "worried vapers" that the "case is not about banning the manufacture or sale of the devices." Nevertheless, the judges appeared to take the position e-cigarettes would be subject to FDA regulation as medical devices if they are marketed as smoking cessation products.

Regulating e-cigarettes as medical devices could severely limit the products' availability because the time and expense associated with the medical device premarket approval process could prove to be prohibitive to many manufacturers. Moreover, there is the possibility e-cigarettes could face a ban if they are at some point treated as medical devices and studies later establish the health risks from e-cigarettes are similar to combustible tobacco products.