

**BRIEF AMICUS CURIAE OF ACTION ON SMOKING AND  
HEALTH (ASH)  
IN SUPPORT OF THE F.D.A.'s JURISDICTION OVER E-  
CIGARETTES**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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SMOKING EVERYWHERE, INC. )  
)  
Plaintiff, )  
)  
and )  
)  
SOTTERA, INC. d/b/a/ NJOY, )  
)  
Intervenor-Plaintiff, )  
)  
v. )  
)  
U.S. FOOD AND DRUG )  
ADMINISTRATION, et al., )  
)  
Defendants )

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**COMBINED  
MOTION FOR LEAVE TO SUBMIT A BRIEF AMICUS CURIAE,  
AND BRIEF AMICUS CURIAE IN SUPPORT OF DEFENDANT F.D.A.,  
BY ACTION ON SMOKING AND HEALTH (ASH)**

Action on Smoking and Health (ASH) is a national scientific and educational tax-exempt antismoking organization which has been involved for more than thirty years with the legal issues of nicotine, FDA regulation of nicotine and nicotine-delivery devices, and related topics.

ASH seeks by this motion to file a brief amicus curiae (contained herein) to respectfully bring to the Court's attention important information about the potential consequences of any ruling to the effect that the FDA does not have jurisdiction over e-cigarettes (because they are either "tobacco products" or "modified risk tobacco products"), including new information which has just come to light. This information includes:

1. E-cigarettes are now being advertised for use in administering Cialis (a prescription-only drug) to users. This indicates a new potential for abuse if the FDA cannot regulate such products.

2. News that e-cigarettes have been found to be "potentially lethal to children," a newly-recognized danger especially if there can be no FDA-imposed age-of-purchaser restrictions on selling the product - which comes in children-friendly fruit flavors - to minors.

3. The very strong concerns by the major national public health and antismoking organizations in this country about the known and potential health hazards of e-cigarettes, especially following the report by the FDA that several samples contained carcinogens and toxic chemicals; all of which are also directly relevant in connection with the factors which must be considered for granting injunctive relief.

### **MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

Action on Smoking and Health (ASH), by this motion, respectfully seeks leave to file a very short amicus curiae brief, a brief which is included within this document. Unlike Sottera, Inc. d/b/a/ NJOY, to which this Court has granted intervenor status, ASH does not seek to intervene nor to necessarily present oral arguments.

Instead, by and through its included brief amicus curiae, ASH hopes to insure a more complete record for the Court's benefit, and to bring to the Court's attention information which may not now be before it, including new information which has just come to light.