IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 03-453

AMERICAN CANCER SOCIETY, AMERICAN LUNG ASSOCIATION OF THE NORTHERN ROCKIES, AMERICAN HEART ASSOCIATION, MONTANA MEDICAL ASSOCIATION, PROTECTMONTANAKIDS.ORG, MONTANA SENIOR CITIZENS ASSOCIATION, HELENA HEALTH CARE ASSOCIATES, CITIZENS FOR A SMOKE FREE BOZEMAN, CITIZENS IN SUPPORT OF HELENA'S SECOND-HAND SMOKE ORDINANCE, UNITED TOBACCO FREE COALITION, CITIZENS FOR A HEALTHY HELENA, JERI LOU DOMME, MARK SANZ, M.D., BARBARA SUMMERS, TERRY CUREY, ALEXANDRA PHILLIPS, DAVID B. KING, M.D., EDWARD G. ALLEN, M.D., CRYSTAL BRIDGES, ERNESTO RANDOLFI, RON BONE, PATRICK COBB, M.D., AND DONNA WHITEMAN, Petitioners, v. STATE OF MONTANA, Respondent.	*AMICUS* BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, AMERICANS FOR NON-SMOKER'S RIGHTS, MHA . . . AN ASSOCIATION OF MONTANA HEALTH CARE PROVIDERS, THE MONTANA PUBLIC HEALTH ASSOCIATION, THE NATIONAL CENTER FOR TOBACCO-FREE KIDS AND THE TOBACCO CONTROL LEGAL CONSORTIUM

I. BACKGROUND

On August 9, 2003 the Tobacco Control Legal Consortium, Americans for Nonsmokers' Rights and MHA . . . An Association of Montana Health Care Providers moved this Court for leave to file a brief on the merits of this case as A*mici Curiae,* if the Court decided to accept the Petition for Original Proceeding. On August 25, the American Medical Association and the National Center for Tobacco-Free Kids joined the *Amicus* motion. The Court accepted original jurisdiction over some, but not all, of the issues on October 22, 2003, granting the five groups' motion for leave to file as *Amici*. This *Amicus* Brief addresses the importance of local decision making in public health generally, and tobacco control particularly. *Amici* cite experience showing that local decision making is especially important in efforts to improve public health through control of secondhand smoke -- sometimes also referred to as "environmental tobacco smoke" or ETS.

II. INTERESTS OF *AMICI CURIAE*

Amici are six groups with extensive experience in combating tobacco-related death and disease. All *Amici* have either generally opposed preemption of local tobacco control ordinances or specifically opposed the passage of HB 758, the legislation at issue in this case.

The American Medical Association ("AMA"), is an Illinois nonprofit corporation with approximately 260,000 member physicians and medical students practicing throughout the United States.[1] The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these still remain its core purposes. Its members practice in all fields of medical specialization, and it is the largest medical society in the United States. The AMA believes that because secondhand smoke plays such a significant role in the incidence of tobacco related cancer, cardiovascular disease, lung disease and other respiratory maladies, local health authorities are uniquely situated to adopt regulations to protect their citizens from its devastating impact. Accordingly, AMA Policy H490.964, 1995, provides: "The [AMA] supports the right of local jurisdictions to enact tobacco regulations that are stricter than those that exist in state statutes." The AMA's "SmokeLess States" National Tobacco Policy Initiative has published a booklet entitled *Preemption: Taking the Local Out of Tobacco Control (2003 ed.).* The booklet (Appendix A hereto) will be cited throughout this Brief as "*Preemption.*"

[1] The AMA appears herein on its own behalf as a corporate entity and also as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is an unincorporated association of the AMA, the medical societies of each of the fifty states, and the Medical Society of the District of Columbia. Its purpose is to concentrate the resources of its members, in order to represent the medical profession in the courts.

ANR is a national advocacy organization with over 8,000 members consisting of both individuals and organizations working to protect employees and the public from the harmful effects of secondhand smoke and challenging the tobacco industry at all levels of government. The organization was incorporated in 1976 and is based in Berkeley, California. ANR has stated with respect to preemption of local tobacco control initiatives: "There's never any benefit to the public from preemption, and there's always a cost." ANR *Update,* quoted in *Preemption*, at 7

MHA … An Association of Montana Health Care Providers ("MHA") is a nonprofit representation and advocacy association for many of Montana's health care providers. MHA's more than 70 institutional members range from the largest hospitals in Montana to small critical access hospitals serving rural communities throughout the state. Almost without exception, MHA's institutional members are government-owned facilities or non-profit, tax-exempt charitable organizations with a mission that includes improving the health of the community. MHA testified in opposition to HB 758.

The Montana Public Health Association ("MPHA") has a membership of 300 professional individuals and organizations. The purpose of MPHA is to work for the advancement of the health of the community through advocacy and action. MPHA has submitted testimony to the Legislature in support of tobacco control

initiatives and has actively worked for tobacco settlement monies being used for education and tobacco cessation programs and health related services. The Executive Board of the MPHA, on behalf of the membership, participates in any actions deemed necessary to forward the cause of tobacco cessation.

The National Center for Tobacco-Free Kids works to protect minors from tobacco by raising awareness that tobacco use and exposure to ETS have caused a pediatric epidemic, by changing public policies to limit the marketing and sales of tobacco to children, and by altering the environment in which tobacco use and policy decisions are made. The National Center has over 100 member organizations, including health, civic, corporate youth, and religious groups dedicated to reducing children's use of tobacco products. Through its Campaign for Tobacco-Free Kids, the National Center has stated that "Local control should be viewed as a public health tool to be protected and encouraged." The National Center has an additional interest in this case because children suffer more serious effects from ETS exposure than adults.

The Tobacco Control Legal Consortium ("TCLC") is a recently organized national network of legal resource centers dedicated to advancing tobacco control policy change in the United States and providing technical legal assistance in tobacco control. TCLC grew out of a network of existing legal resource centers on tobacco control in California, Maryland, Massachusetts, Michigan, Minnesota,

New Jersey and, most recently, Arkansas. TCLC's initial funding was provided by the Tobacco Technical Assistance Consortium, located in the Rollins School of Public Health at Emory University in Atlanta. TCLC's coordinating office is located at the William Mitchell College of Law in St. Paul, Minnesota.

In this Brief *Amici* will address the following issue:

III. ISSUE

Whether Local Ordinances Protecting Montanans From A Clear Danger To Public Health Should Be Preempted By House Bill No. 758.

Amici and other public health groups have taken strong positions against preemption of local tobacco control actions because local control has a direct and positive benefit on health.

IV. ARGUMENT

Sound Public Health Policy Generally, And The History Of Tobacco Control Specifically, Strongly Support The Importance Of Local Tobacco Control Ordinances.

A. Introduction to Argument

Since 1854, when Dr. John Snow stopped a cholera epidemic by convincing West London municipal authorities to remove the pump handle from a contaminated well (*see* www.ph.ucla.edu/epi/snow/.html), the science of public health has been applied to save lives through regulation at the local level. It should be no surprise, then, that *Amici*, and indeed *all* major health and tobacco control organizations, oppose preemption of local tobacco control initiatives. *Preemption,* at 7.

Local control over public health decision making is entirely consistent with the long established role of local governments. Public health protection is a core attribute of the "police power" commonly delegated to municipalities. See 6A McQuillan, *Municipal Corporations* §24-44 (3rd ed. 1997). As this Court has noted, local authorities are presumed to be familiar with local conditions and to know the needs of the community. *Billings Properties v. Yellowstone County*, 394 P.2d 182 (Mont. 1964); *State. v Gateway Mortuaries, Inc.*, 298 P.2d 156, 158 (Mont. 1930). There is no question that local authorities everywhere have a compelling basis for regulating ETS exposure, because tobacco smoke is poisonous, no matter which end of the cigarette you breathe.

Environmental tobacco smoke is a combination of smoke from the lit end of a cigarette and smoke exhaled by the smoker. There exists a vast body of scientific research on the deadly effects of ETS. This medical evidence is now so conclusive that, six months ago, when 192 countries concluded negotiation of the world's first public health treaty, the Framework Convention on Tobacco Control, they included a unanimous declaration that "scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability," and a treaty requirement that national governments "actively promote … the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor

workplaces, public transport, indoor public places and, as appropriate, other public places." Framework Convention on Tobacco Control, Article 8. Official text at http://www.who.int/tobacco/fctc/text/en/fctc_en.pdf.

Much of the research underlying this global consensus was summarized in *Health Effects of Exposure to Environmental Tobacco Smoke*: *The Report of the California Environmental Protection Agency*, *Smoking and Tobacco Control Monograph No. 10*, Bethesda, MD, USDHHS, National Institutes of Health, National Cancer Institute, NIH Pub. No. 99-4645, 1999, (hereinafter "Cal. EPA"). ETS contains many of the same chemical compounds inhaled by smokers and some that may be worse, including 69 known causes of cancer. *See* National Cancer Institute, *Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine.* Smoking and Tobacco Control Monograph No. 13. Bethesda MD: U.S. Department of Health and Human Services, National Institutes of Health, NIH Pub. No. 02-5074, October 2001. http://dccps.nci.nih.gov/tcrb/monographs/13/m13_5.pdf. US Dept. of Health and Human Services, *Reducing the Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General* (1989) ("*1989 Surgeon General's Report*"). *See also Reducing Tobacco Use: A Report of The Surgeon General.* Atlanta, Georgia: U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Office of Smoking and Health, 2000, at 193 ("*2000 Surgeon General's*

Report");[2] Cal. EPA, *supra*; U.S. Dept. of Health and Human Services, *Report of the Surgeon General: The Health Consequences of Involuntary Smoking, (1986).*

Diluting tobacco smoke, whether by separating smokers from nonsmokers, or by increasing ventilation, does not make the smoke safe. As with asbestos, science has been unable to find any level of exposure at which ETS does not cause cancer. *See, 1989 Surgeon General's Report, supra*. The United States Environmental Protection Agency reported as long ago as 1992 that ETS is a cause of lung cancer in healthy adult nonsmokers. *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders,* U.S. Environmental Protection Agency (Washington, D.C. 1992). ETS causes cardiovascular disease, childhood asthma, lower respiratory tract infections and other respiratory illnesses. See, Cal. EPA *supra*. The California EPA Report estimates that, in the United States, ETS kills 1,900 to 2,700 infants each year by inducing Sudden Infant Death Syndrome and another 136 to 212 children each year from respiratory effects such as asthma. Cal. EPA at ES-4. The same report estimates that ETS kills an astonishing 35,000 to 62,000 American adults each year from heart attacks and other heart disease, and another 3,000 from lung cancer. *Id.* In short, it is a matter of accepted scientific fact that ETS exposure is not a mere annoyance – it is one of the leading

[2] The Report also cites studies showing that controlling ETS has, as a side benefit, a significant beneficial impact on people trying to quit smoking. *2000 Report* at 193.

causes of death and disease. Indeed, it kills more Americans than are killed by guns or highway accidents.

HB 758 would strike down smoke-free indoor air ordinances in four of Montana's largest cities. As the 2000 Surgeon General's Report succinctly stated "[T]he public health necessity of regulating ETS exposure is manifest." *2000 Surgeon General's Report at 193.* Thus, the direct effect of HB 758 will be to increase public exposure to one of the most potent causes of death and disease.

B. Tobacco Control Initiatives Have Often Come From the Local Level and Have Unique Public Health Benefits.

In 1997, as the States' "Medicaid cases" revealed the tobacco industry's own knowledge of the hazards of smoking, a bipartisan Congressional group asked former-Surgeon General C. Everett Koop and Food and Drug Administration Administrator David Kessler to convene a committee on national tobacco policy. The Advisory Committee on Tobacco Policy and Public Health produced a report which remains the preeminent authority on tobacco control policy. The *Final Report of The Advisory Committee on Tobacco Policy and Public Health,* commonly called the "Koop-Kessler Report," made comprehensive tobacco control policy recommendations. The Report (available on-line at http://ash.org/areport.html) was based on the work of five task forces on subjects including ETS, youth, and the future of tobacco control. With respect to ETS

regulation, the Report noted that "Local governments have usually led the way in these efforts. . . ." *Id.* at 11.

The Task Force went on to note that all levels of government, and the courts, had provided some protections for nonsmokers, but specifically recommended that "In those statutes where preemption exists, states should act to remove the preemptive clauses." Id. The Full Committee's first recommendation on Regulatory Policy reads as follows:

> Any Federal or State regulation of tobacco products should contain unambiguous provisions expressly clarifying that higher standards of public health protection imposed by State and Local governments are preserved.
>
> The Committee is particularly concerned about the effect of ETS on children. Children are powerless to control their exposure to ETS and yet they are the group most adversely affected by exposure. Children are at risk simply because they are young – they take in more air (and more pollution) relative to their body weight and lung surface area, their lungs are still developing and their biologic defenses against pollution are not fully mature.

Koop-Kessler Report, App. 3D, Report of the Task Force on Environmental Tobacco Smoke.

The Centers for Disease Control has elaborated on the Koop-Kessler Report Recommendations. The CDC's *Best Practices for Comprehensive Tobacco Control Programs*, USDHHS National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health (August 1999), lists

"Community Programs to Reduce Tobacco Use" as the first of nine components of a comprehensive tobacco control program. According to the CDC:

> Local community programs cover a wide range of prevention activities including engaging youth in developing and implementing tobacco control interventions; developing partnerships with local organizations; conducting educational programs . . . and promoting governmental and voluntary policies to promote clean indoor air . . . .

CDC *Best Practices* at 3, www.cdc.gov/tobacco/research_data/stat_nat_data/bestprac). Protection from ETS is one of the four recommended goals for community programs. *Id.,* at 12.

Conversely, preemption of local control has an adverse effect on public health. According to the Advocacy Institute, a non-profit organization dedicated to political, social and economic justice (*see* www.advocacy.org):

> Evidence demonstrates that such preemption of local tobacco regulation impairs efforts to protect the public health by:
>
> - Eliminating local control of public health policy;
> - Establishing weak public health standards that will be enormously difficult to strengthen in the future;
> - Eliminating strong, community-based tobacco-control interventions; and
> - Dividing tobacco-control coalitions when differences arise over the competing need for enactment of state tobacco-control interventions and the consequences of doing so in a manner that simultaneously preempts stronger local initiatives.

> The concern over the effects of preemptive legislation is further heightened by the knowledge that once installed, preemptive measures are almost impossible to repeal. Of the six state legislatures that have considered proposals to repeal preemption, only one has repealed a tobacco preemption law.

Making the Case: State Tobacco Control Policy Briefing Papers, at 70, Advocacy Institute (Wash. D.C. 2000).

In summary, tobacco control, like public health generally, is most effective at the local level, where it most closely reflects community attitudes and desires. Local control avoids the inequities of statewide politics, too often dominated by big lobbyists and too often removed from the wishes of ordinary citizens. As applied to this case, the evidence is clear: HB 758, if it stands, will flout the concept of local sovereignty, subjecting Montanans to increased disease and risk of death, even in communities that have acted decisively to respect the will of their citizens and to protect public health.

C. The Tobacco Industry's Opposition Validates the Effectiveness of Local Control

One clear measure of the effectiveness of local ETS ordinances is the tobacco industry's intense opposition to them. There is no mystery about why the industry opposes ETS ordinances: "It has been estimated that the combined effect of general smoking cessation and smoking reduction in public settings could decrease total cigarette consumption by as much as 40 percent." *2000 Surgeon General's Report at 193.* The industry is concerned that ETS restrictions send the

potent message that smoking in public is "an environmental issue with broad social consequences instead of . . . a personal behavior involving individual choice." *Id.* at 194 (citation omitted). As an RJ Reynolds survey noted, the message that smoking is dangerous to the smoker's health

> has not persuaded very many smokers to quit. The anti-smoking forces' latest tack, however – on the passive smoking issue – is another matter. *What the smoker does to himself may be his business, but what the smoker does to the non-smoker is quite a different matter.*

"The Roper Organization, *A Study of Public Attitudes Towards Cigarette Smoking and the Tobacco Industry in 1978,* Vol. 1, May 1978, Bates Number 204049960, at 2040499989, available online at www.pmdocs.com.

Top-down preemption has been one of the industry's most successful strategies since, in the wake of the first Surgeon General's Report on smoking and health, the industry persuaded Congress to preempt stronger health warnings than those provided in the Federal Cigarette Labeling and Advertising Act of 1965 ("FCLAA"). *Making the Case,* at 70.[3] The Advocacy Institute reports that since the late 1980's, however, the industry has focused mostly on "support of weak

[3] A contemporary analysis called the FCLAA "an unabashed act to protect private industry from government regulation." *See* Elizabeth Drew, "The Quiet Victory of the Cigarette Lobby," *Atlantic Monthly* (Sept. 1965), cited in Richard Kluger, *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris,* 291 (Alfred A. Knopf, NY 1996).

state tobacco-control laws that preempt stronger local regulation." *Id.* ETS regulation has been the industry's central concern.

Internal documents reveal the industry's candid assessment of the importance of local tobacco control efforts. An RJ Reynolds memo describing a proposed blue-print for eliminating local control, based on RJR's experiences in California, Massachusetts and Washington stated:

> Industry leaders have recognized that state laws which preempt local anti-tobacco ordinances are the most effective means to counter local challenges.

http://www.rjrdocs.com/rjrdocs/image_viewer.dms?DOC_RANGE=51333153+1965. The preemption strategy reflects the industry's calculation about its most favorable forum:

> By introducing pre-emptive statewide legislation we can shift the battle back away from the community level back to the state legislatures where we are on stronger ground.

http://www/pmdocs.com/getallimg.asp?DOCID=2041183751/3790 (1994 Philip Morris Presentation). Former Tobacco Institute lobbyist Victor Crawford explained:

> We could never win at the local level. The reason is, all the health advocates, the ones unfortunately I used to call 'health Nazis," they're all local activists who run the little political organizations. They may live next door to the mayor, or the city councilman, and they say "Who's this big-time lobbyist coming here to tell us what to do?' When they've got their friends and neighbors out there in the audience who want this bill, we get killed. So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field,

> preferably to put it all on the federal level, but if they can't do that, at least on the state level, because the health advocates can't compete with me on a state level.

Interview of Victor Crawford (July 19, 1995), quoted in *Preemption* at 1.

The industry's sensitivity to "big-time lobbyist[s] coming here to tell us what to do" explains why it often acts through surrogates. As the AMA's *Preemption* states: "Knowing it has a credibility gap, the tobacco industry tries to hide its activities behind more credible groups," with the retail and hospitality industries being prime candidates. *Preemption* at 9. As a cigarette company government relations operative noted:

> We try to keep Philip Morris out of the media on issues like taxation, smoking bans and marketing restrictions. . . . [W]e create coalitions of third party sources to help carry our baggage on issues.

http://www.pmdocs.com/getallimg.asp?DOCID=2024023252/3265.

Whether or not the tobacco industry is ultimately behind HB 758, or any other attempt to preempt local authorities from adopting more protective ETS measures, one fact stands out: the tobacco companies' interest is in promoting sales of a unique product – a product that not only shortens the lives of about half of the people who use it, but also kills, each year, between 40,000 and 70,000 innocent American bystanders. *See* Cal. EPA at ES-4. The tobacco industry's opposition to ordinances such as those adopted in Bozeman, Great Falls, Helena,

and Missoula stands as eloquent testimony to their positive impact on public health.

D. The American People Overwhelmingly Support Smoke-free Public Places

Finally, it must not be forgotten that the ordinances affected by HB 758 were adopted by the will of the people in those cities. This expression of popular support for smoke-free public places is not just a Montana phenomenon. The *2000 Surgeon General's Report* notes that, apart from the health benefits,

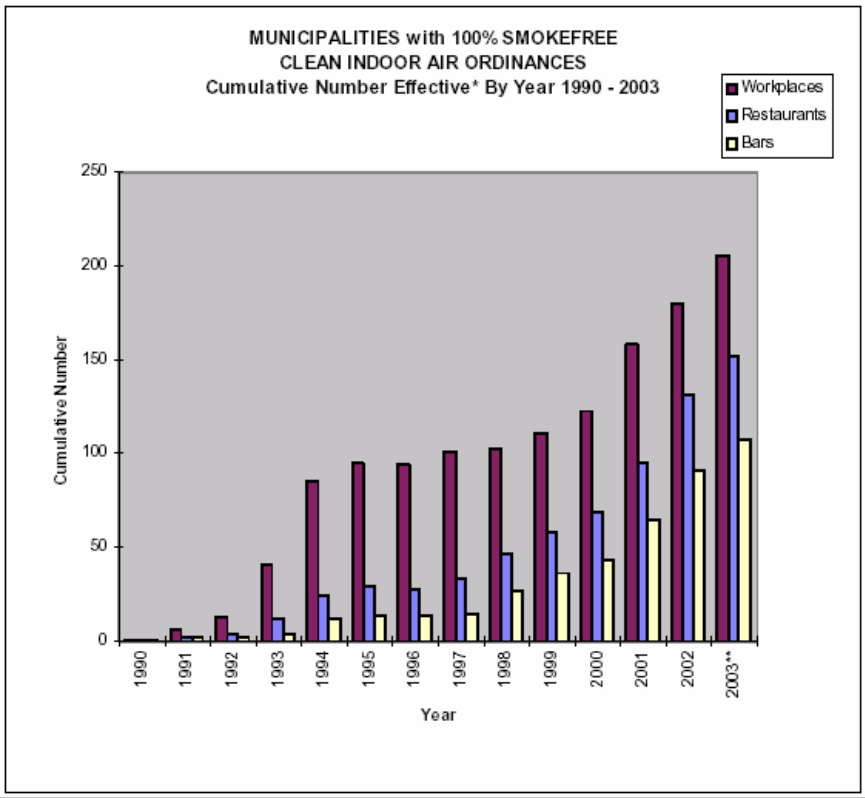
> national studies suggest that most of the U.S. public experiences discomfort and annoyance from ETS exposure [while] smaller-scale surveys have found that the great majority of both nonsmokers and smokers favors smoking restrictions in various public locations, including the workplace, restaurants, and bars.

2000 Surgeon General's Report at 195 (citations omitted). The tangible evidence of public support for smoke-free ordinances is the dramatic increase in smoke-free ordinances, as illustrated in the following chart compiled by *Amicus* ANR:

American Nonsmokers' Rights Foundation

Helping you breathe a little easier

October 2, 2003



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003**
Workplaces	1	6	13	41	85	95	94	101	103	111	123	158	180	205
Restaurants	1	2	4	12	25	29	28	33	46	58	69	95	131	152
Bars	1	2	2	4	12	14	14	15	27	36	43	65	91	107

*Includes ordinances effective for any part of the year, i.e., if an ordinance was effective for the first half of 2001 but then repealed half way through the year, that ordinance still gets counted in 2001 since it was in effect for part of the year.
**Year to Date

Since some municipalities have 100% smokefree coverage in more than one category, the numbers are mutually exclusive.

Includes all municipalities with ordinances or regulations that do not allow smoking in attached bars or separately ventilated rooms and do not have size exemptions.

Only ordinances reviewed and analyzed by ANR Foundation staff using standardized criteria are included on these lists. Omission of a particular ordinance may be the result of differences of opinion in interpretation, or because staff have not yet analyzed the ordinance.

Preemption is fundamentally undemocratic, and preemption of the clean indoor air ordinances at issue in this case will thwart both the public health and the public will.

V. CONCLUSION

By adopting smoke-free ordinances the people of Bozeman, Great Falls, Helena and Missoula took control of their health and that of their children. *Amici* believe that there are compelling policy reasons to respect their decisions and to strike down the preemption provision of HB 758.

Dated this 20th day of November, 2003.

LINDQUIST & VENNUM, P.L.L.P.

_____

Laurance R. Waldoch (MT Lic. # 1792)
Thomas F. Pursell (MN # 02168x)

444 Cedar Street – Suite 1700
Saint Paul, Minnesota 55101
Telephone (651) 312-1300
Facsimile (651) 223-5332

Attorneys for *Amici* the American Medical Association, Americans for Non-Smoker's Rights, MHA ... An Association of Montana Health Care Providers, The Montana Public Health Association, The National Center for Tobacco-Free Kids and the Tobacco Control Legal Consortium

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *Amicus* Brief was served by overnight delivery this 20th day of November, 2003, upon:

James P. Reynolds
David K.W. Wilson, Jr.
Reynolds, Motl & Sherwood, P.L.L.P.
401 N. Last Chance Gulch
Helena, Montana 59601
Attorneys for Petitioners

Paul Luwe
Bozeman City Attorney
615 South 16th Avenue
P.O. Box 1230
Bozeman, MT 59771

Mike McGrath
Montana Attorney General
Sara Bond
Assistant Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Dated this 20th day of November, 2003.

LINDQUIST & VENNUM, P.L.L.P.

_____

Laurance R. Waldoch (MT Lic. # 1792)
Thomas F. Pursell (MN # 02168x)

Attorneys for *Amici* the American Medical Association, Americans for Non-Smoker's Rights, MHA ... An Association of Montana Health Care Providers, The Montana Public Health Association, The National Center for Tobacco-Free Kids and the Tobacco Control Legal Consortium

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellant Procedure, I certify that this *Amicus* Brief of the American Medical Association, Americans for Non—Smokers' Rights, MHA … an Association of Montana Health Care Providers, the Montana Public Health Association, the National Center for Tobacco-Free Kids and the Tobacco Control Legal Consortium is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2000 is less than 5,000, not averaging more than 280 words per page, excluding caption and certificate of compliance.

Dated this 20th day of November, 2003.

LINDQUIST & VENNUM, P.L.L.P.

_____

Laurance R. Waldoch (MT Lic. # 1792)
Thomas F. Pursell (MN # 02168x)

Attorneys for *Amici* the American Medical Association, Americans for Non-Smoker's Rights, MHA ... An Association of Montana Health Care Providers, The Montana Public Health Association, The National Center for Tobacco-Free Kids and the Tobacco Control Legal Consortium

G:\DBD\Litigation Center\Briefs (electronic)\American Cancer Society v. Montana.DOC