In re JULIE ANNE, a Minor Child.

[Cite as *In re Julie Anne*, 121 Ohio Misc.2d 20, 2002-Ohio-4489.]
Court of Common Pleas of Ohio,
Juvenile Division, Lake County.
No. 97-PR-755.
Decided Aug. 27, 2002.
Revised Oct. 15, 2002.

SYLLABUS BY THE COURT

1. About one-third of the world's adults, over one thousand million people, smoke cigarettes. Half of these smokers will die prematurely, one-half of these deaths will occur during middle age, and these smokers will lose on average 20 to 25 years of non-smoker life expectancy.

2. Smoking is the leading cause and secondhand smoke is the third leading cause of preventable death in the United States. For every eight smokers killed by active smoking, passive smoking kills one non-smoker. The overwhelming majority of adults believe people have a right to be free from breathing other people's secondhand smoke.

3. Smoking causes about four million deaths annually worldwide. Smoking is responsible for approximately 15% of all deaths in the United States, killing more than 430,000 U.S. citizens each year – more than alcohol, AIDS, cocaine, heroin, homicide, suicide, auto accidents, and fire combined.

4. Smoking kills almost the same number of smokers in the United States each week of the year as would be killed in three World Trade Center catastrophes.

5. Although cigarette smoking among adults in the United States has declined since the health hazards of smoking became common knowledge almost four decades ago, the prevalence of cigarette smoking among U.S. high school students has increased. Every day on average over

3,000 additional children in the U.S. begin smoking on a daily basis. Very few people begin using tobacco as adults. More than 90% of smokers begin using tobacco before age 19, and the average age at which they begin smoking is 12½ years old.

6. There is a plethora of comprehensive authoritative scientific studies on passive smoking. Every independent authoritative scientific body that has examined the evidence has concluded that secondhand smoke causes diseases affecting children.

7. A causal relation was established almost two decades ago by the United States Surgeon General between secondhand smoke and disease in healthy non-smokers, including respiratory diseases in children of parents who smoke. A decade ago, the United States Environmental Protection Agency classified secondhand smoke as a substance that produces cancer in humans. Several months ago, the World Health Organization issued its meta-analysis summary analyzing more than 3,000 studies on secondhand smoke that involved millions of people on six continents, concluding: "Secondhand smoke is carcinogenic to humans."

8. While the emphasis on passive smoking has been on lung cancer and breathing, the effects on heart disease are even more severe. Secondhand smoke causes about 15 times more deaths from heart disease than from lung cancer.

9. The National Cancer Institute estimates that secondhand smoke causes 3,000 lung disease deaths and 48,500 heart disease deaths in non-smokers each year, about the same number of Americans as died in the Vietnam War.

10. Secondhand smoke kills about the same number of non-smokers in the United States every three weeks of the year as would be killed in a World Trade Center catastrophe.

11. The adverse health effects from breathing smoke are manifest, whether one is actively smoking or is a captive involuntary passive smoker in a highchair.

12. Secondhand smoke is carcinogenic to adults and children.

13. Because the bodily tissues and organs of children are still developing, secondhand smoke has a much greater detrimental effect on them than on adults, resulting in reduced growth and development.

14. Children raised in homes with smokers are particularly susceptible to health problems linked to secondhand smoke, predominantly respiratory disorders. Children's bodies simply are more vulnerable because they are developing. These health problems extend beyond childhood, and include an increased risk of lung cancer in later life.

15. Children exposed to secondhand smoke are twice as likely to develop asthma.

16. Asthma, the most common long-term childhood disease, affects about 1 in 13 school-age children in the United States. Between 1980 and 1994, asthma increased 160% in children under age 5. Secondhand smoke causes between 8,000 and 26,000 new cases of childhood asthma each year, and aggravates the condition in 200,000 to 1,000,000 asthmatic children each year.

17. There is a strong link between parental smoking and Sudden Infant Death Syndrome, with typical studies finding a 2-to-3-fold increase in risk among children of smokers. It is reported that three times as many infants die of Sudden Infant Death Syndrome caused by maternal smoking as are killed as a result of homicide or child abuse.

18. Almost half of the world's children regularly breathe air polluted by tobacco smoke, particularly at home.

19. The vast majority of children exposed to tobacco smoke do not choose to be exposed. The major source of exposure to tobacco smoke for young children is smoking by parents and other household members. The large number of exposed children, coupled with the evidence that environmental tobacco smoke causes illness and disease in children, constitutes a substantial public health threat.

20. Overwhelmingly, children are captive involuntary passive smokers. The involuntary nature of children's exposure to second-hand smoke crystallizes the harm as egregious.

21. Courts take judicial notice that a superabundance of authoritative scientific evidence irrefutably demonstrates that secondhand smoke is a real and substantial danger to the health of children because it causes and aggravates serious diseases in children.

22. Children comprise the most abused segment of society in the world. The children of America fortunately are protected, however, by our unrivalled century-old system of juvenile justice.

23. The doctrine of *parens patriae* (the state as parent) is the fundamental rule of law that underlies our system of family courts and juvenile justice, providing that the state is "the ultimate parent" of children within the care of juvenile court. Under the doctrine of *parens patriae*, the state has an "urgent interest" in the welfare of the child, and a "duty of the highest order" to protect the child.

24. For at least a century and a half, the "best interests of the child" standard has been the polestar for family courts in Ohio and throughout the United States in determining matters involving children.

25. The Ohio "best interests of the child" statute sets a mandatory standard in directing that "the court shall consider all relevant factors" and "physical health factors" in determining visitation and custody matters. An avalanche of authoritative scientific studies is clear and convincing evidence that secondhand smoke constitutes a real and substantial danger to children because it causes and aggravates serious diseases in children, which danger is both a "relevant factor" and "physical health factor" a family court is mandated to consider under the statute.

26. Under the mandatory standard of Ohio's "best interests of the child" statute, the clear and convincing evidence that secondhand smoke causes and aggravates serious diseases in children cannot be ignored by the court because a parent fails to raise it. Many people simply are unaware of the danger, but the danger exists regardless whether a parent is aware of it, acknowledges it, or complains to the court about it. The duty of the court under the statute to consider the danger of secondhand smoke to children is not conditioned upon a complaint by a parent. To hold otherwise would be contrary to the unequivocal mandatory language and manifest intent of the statute.

27. Family courts on their own initiative as standard practice in exercising their judicial duties consider other serious risks of harm to children, such as the use of alcohol and drugs by persons living in the home of the child, as a factor in determining “best interests of the child” issues. A family court has a mandatory statutory duty to similarly consider on its own initiative the serious risk of harm of secondhand smoke to children.

28. The United States Supreme Court has ruled that the harm to be considered from secondhand smoke includes both present harm and possible future harm, and accordingly family courts have an unqualified duty to consider the dangers of secondhand smoke to all children within their care, regardless of the condition of their health.

29. Secondhand smoke is a danger to all children, regardless of the condition of their health. Because of the irrefutable proof that secondhand smoke causes and aggravates serious diseases in children, it would be inherently contradictory for a family court to fail to grant to any child under its care, regardless of the condition of his health, legal protection against being compelled to breath secondhand smoke until after the child has suffered the health-destructive diseases the protection is intended to prevent.

30. Smoking restrictions automatically protect prison inmates across America from the real and present danger of being compelled to breathe secondhand smoke in places where they live. The children of America under the care of family courts, who can neither choose where they live nor speak for themselves, are entitled to the same protection afforded to prison inmates under the law.

31. Over a century ago, the Supreme Court of the United States affirmed a state supreme court decision that took judicial notice that cigarettes are “wholly noxious and deleterious to health.”

32. The Supreme Court of the United States has definitively ruled that (1) smoking is not a fundamental right, (2) judicial notice is taken of the health-destructive effects of cigarettes and secondhand smoke, (3) both present harm and possible future harm from secondhand smoke is a real and substantial danger to non-smokers, and (4) secondhand smoke cannot be imposed involuntarily upon people because it is detrimental to their health.

33. The Supreme Court of the United States has definitively ruled that (1) the constitutional right to privacy is not absolute, (2) the state has an "urgent interest" in the welfare of the child and a "duty of the highest order" to protect the child, (3) along with parental rights come reciprocal responsibilities, and (4) when the interests of the parent and the child conflict to the point where the child is threatened with harm the state has an obligation to protect the welfare of the child.

34. Based upon unequivocal pronouncements of the Supreme Court of the United States, a smoker has a right of privacy to treat his health in whatever manner he chooses, but this right does not include the right to inflict health-destructive secondhand smoke upon other persons, especially children who have no choice in the matter.

35. A man's home is his castle, but no one is allowed to hurt little children -- even in his castle.

36. Under the 1989 United Nations Convention on the Rights of the Child, which has been ratified by the United States, courts of law, state legislatures, and administrative agencies have a duty as a matter of human rights to reduce children's compelled exposure to tobacco smoke. Family courts can protect our children by issuing court orders as standard practice restraining persons from smoking in the presence of children within their care. Legislatures can protect our children by enacting statutes prohibiting persons from smoking in the presence of children, by enacting more specific legislation directing family courts to consider the danger of secondhand smoke in determining best-interests-of-the-child matters, and by enacting statutes directing administrative agencies to establish regulations restraining smoking around children in their care. Administrative agencies can protect our children by enacting regulations and issuing directives that foster parents and other persons in close contact with children in their care shall not smoke around them.

37. A causal relation exists between parental smoking and their children becoming addicted to nicotine as active smokers, exposing them to the serious diseases of smokers. Children of smokers are almost twice as likely to smoke as children of nonsmoking parents. Numerous studies have found tobacco products to be as addictive as heroin, cocaine, and alcohol. Once children become addicted to nicotine by smoking cigarettes, usually within a year or less of beginning smoking, they are likely to suffer the detrimental health consequences of

active smokers because only a small percentage of cigarette smokers are successful in quitting smoking.

38. Parental smoking is a key factor in children becoming active smokers, which not only constitutes a serious health danger but also is a risk factor for substance and drug abuse

39. The synthesis of active smoking by parents, the glamorization of smoking by the film industry, and the targeted marketing of tobacco products to children by the tobacco industry is a deadly combination for children.

40. The evidence is overwhelming and irrefutable (1) that smoking tobacco causes and aggravates serious diseases in smokers, (2) that secondhand smoke causes and aggravates serious diseases in non-smoking adults and children, and (3) that children are especially susceptible to diseases caused by secondhand smoke. For these reasons, a family court that fails to issue court orders restraining persons from smoking in the presence of children within its care is failing the children whom the law has entrusted to its care.

WILLIAM F. CHINNOCK, Judge.

{¶1} This is *a case of first impression* in which the court on its own initiative issues a restraining order against tobacco smokers, restraining them from smoking in the presence of a healthy child within the court's care, to protect the child from having her health compromised by being forced to breathe secondhand smoke.

{¶2} *This ruling is a recognition of the law as it exists, and does not constitute an extension of the law.*

{¶3} In this case, the court conducted a hearing on custody and visitation in which it was admitted that adults smoke cigarettes around the child, including in her home. *The court raised the issue of the danger of secondhand smoke to children, including healthy children,* with the custodial parent mother and her significant other with whom she and her healthy eight-year-old daughter Julie Anne live. They responded that the court's prohibition against smoking around the child would place a strain on their relationship.

{¶4} The primary issue is the degree of scientific evidence demonstrating a causal relationship between secondhand smoke and serious health problems of children. The secondary issue is the authority and duty of family courts to prevent serious harm to children by prohibiting and restraining persons from smoking tobacco in their presence.

{¶5} The order in the case at bar is issued upon (1) the finding of fact that secondhand smoke constitutes a real and substantial danger to the health of children because it causes and aggravates serious diseases in children, as evidenced by the judicially-noticed superabundance of authoritative scientific studies demonstrating this conclusion; (2) the further finding of fact that this real and substantial danger to the health of children exists regardless whether the parents are aware of it, acknowledge it, or complain about it to the court, and regardless of the condition of the children's health; (3) the further finding of fact that there is a causal relation between parental smoking and their children becoming addicted as active smokers, which not only is a serious health danger but also is a risk factor for substance and drug abuse; and (4) the legal basis of the fundamental rule of juvenile justice, the doctrine of *parens patriae* (the state as parent), the Ohio "best interests of the child" statute, and case law precedent of the United States Supreme Court.

{¶6} A considered analysis of the facts and law of this case leads to the inescapable conclusion that a family court that fails to issue court orders restraining persons from smoking in the presence of children under its care is failing the children whom the law has entrusted to its care.1

I. ISSUE: EVIDENCE OF CAUSAL RELATION BETWEEN SECONDHAND SMOKE AND SERIOUS DISEASE IN CHILDREN

(1) Smoking Tobacco as Cause of Serious Disease in Smokers

{¶7} About one-third of the world's adults smoke cigarettes, and half of these smokers will die prematurely. 2

{¶8} Smoking tobacco is practiced worldwide by over one thousand million people. Between one-fifth and two-thirds of men in most populations smoke, while women's smoking rates vary more widely and although increasing generally do not equal male rates. 3

{¶9} More than 80,000 scientific publications have linked tobacco to dozens of causes of death. 4

{¶10} Lung cancer is the most common cause of death from cancer in the world; the major cause of lung cancer is tobacco smoking, primarily cigarettes. 5

{¶11} *Smoking causes about four million deaths annually worldwide*, mainly attributable to cardiovascular disease, chronic lung disease, lung cancer, and other cancers. There is evidence in humans that tobacco smoking causes many types of cancer, including cancer of the lung, oral cavity, nasal cavity, larynx, esophagus, stomach, pancreas, liver, kidney, bladder, and cervix. 6 The risk of developing mouth and throat cancer is 7 times greater for people who use tobacco. 7

{¶12} *Smoking is responsible for approximately 15% of all deaths in the United States,8 killing more than 430,000 U.S. citizens each year – more than alcohol, AIDS, cocaine, heroin, homicide, suicide, auto accidents, and fire combined. 9*

{¶13} *Smoking kills almost the same number of smokers in the United States each week of the year as would be killed in three World Trade Center catastrophes. 10*

{¶14} Although the United States Surgeon General's optimistic prediction that America will be a smoke-free society by 2000 11 has not proven accurate, smokers receive a dire caution with every package of cigarettes: "SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy." 12

{¶15} Since 1964 when the U.S. Surgeon General first called the nation's attention to the health hazards of smoking, smoking among adults in the United States has declined from 40.4% in 1965 to 25.7% in 1991. In 2000, 23.3% of U.S. adults were current smokers, down from 25% in 1993. The prevalence of cigarette smoking among U.S. high school students, however, increased from 27.5% in 1991 to 36.4% in 1997 before declining to 34.8% in 1999. 13

{¶16} *Every day on average over 3,000 additional children in the United States begin smoking on a daily basis*. 14 Very few people begin using tobacco as adults. 15 More than 90% of smokers begin using tobacco before age 19, nearly 25% try their first cigarette by age10, 16 and *the average age at which they begin smoking is 12½ years old. 17*

{¶17} All tobacco products that are smoked deliver substantial amounts of carcinogens to their users. 18 Half of all persistent cigarette smokers are eventually killed by a tobacco-caused disease, half of these deaths occur in middle age, and those killed by tobacco lose on average 20 to 25 years of non-smoker life expectancy. 19 One of the documents released under the1998 Master Settlement Agreement between the tobacco industry and 46 states to recover states' Medicaid costs for treating sick smokers, an internal handwritten memo by a lawyer for Liggett Tobacco Group, provides the proverbial "smoking gun," candidly and succinctly admitting: *"Cigarettes kill people beyond a reasonable doubt."* 20

{¶18} *The evidence is overwhelming and irrefutable that smoking tobacco causes and aggravates serious diseases in smokers.*

(2) Secondhand Smoke as Cause of Serious Disease in Non-Smokers

{¶19} *Smoking is the leading cause and secondhand smoke is the third leading cause of preventable death in the United States.* For every eight smokers killed by active smoking, passive smoking kills one non-smoker. 21 Passive smoking kills about the same number of Americans each year as died in the Vietnam War. 22

{¶20} *Secondhand smoke kills about the same number of non-smokers in the United States every three weeks of the year as would be killed in a World Trade Center catastrophe. 23*

{¶21} *There is a plethora of comprehensive authoritative scientific studies on passive smoking*. 24 The compelling evidence that passive smoking causes disease is not new. The first studies linking passive smoking with breathing problems in children and lung cancer and heart disease in adults were issued 10 to 20 years ago.

{¶22} *A causal relation was established almost two decades ago between secondhand smoke and disease in healthy non-smokers, including respiratory diseases in children of parents who smoke*, in the United States Surgeon General's 1986 report entitled The Health Consequences of Involuntary Smoking. 25

{¶23} A decade ago, in 1992, the United States Environmental Protection Agency classified *secondhand smoke* as a "Group A" carcinogen–*a substance that produces cancer in humans.* 26

{¶24} Several months ago, in June 2002, an international team of 29 experts from 12 countries comprising the International Agency for Research on Cancer, a branch of the World Health Organization, issued its meta-analysis summary analyzing more than 3,000 studies on secondhand smoke that involved millions of people on six continents. Its conclusion: *"Secondhand smoke is carcinogenic to humans."* 27

{¶25} More than two-thirds of non-smokers recognize that smoking is hazardous to non-smokers' health; nearly half of smokers recognize this reality. 28 *The overwhelming majority of adults (87%) believe people have a right to be free from breathing other people's secondhand smoke.* 29 The tobacco industry's response to public awareness of the dangers of secondhand smoke is contained in a secret study conducted for the U.S. Tobacco Institute in 1978 – that such public awareness is "the most dangerous development to the viability of the tobacco industry that has yet occurred." 30

{¶26} Secondhand smoke is the single most important source of indoor air pollution 31 which is a much greater health risk than outdoor air pollution because people spend most of their time indoors, increasing the time of exposure to air pollutants. 32 Many people are unaware of the indoor air pollution problem 33, which often is ten times greater than outdoor air pollution. 34

{¶27} Secondhand smoke, including mainstream smoke inhaled and exhaled by the smoker, and sidestream smoke released directly from the end of a burning cigarette, is a complex "chemical cocktail" of more than 4,000 chemical substances, over 40 of which are known to cause cancer. 35

{¶28} Secondhand smoke, or environmental tobacco smoke, inevitably results in involuntary or passive smoking by non-smokers. Two-thirds of the smoke from a burning cigarette is not inhaled by the smoker, but enters into the surrounding environment, and the contaminated air is inhaled by anyone in the area. 36 Studies indicate that the average passive smoker inhales the equivalent of six to eleven cigarettes a day. 37 Exposure for as little as 8 to 20 minutes to passive smoke causes physical reactions linked to heart and stroke disease. 38

{¶29} Sidestream smoke is much more dangerous than mainstream smoke to the passive smoker because it contains significantly higher amounts of toxic compounds than found in mainstream smoke. 39 One study indicates that sidestream smoke may contain up to 50 times as many carcinogens as the mainstream smoke inhaled by an active smoker. 40

{¶30} The non-smoking spouse of a smoker has double the risk of lung and heart disease of a non-smoker living with a non-smoker. 41

{¶31} It is estimated by the United States Environmental Protection Agency that the risk of developing cancer from exposure to secondhand smoke is about 57 times greater than the total risk posed by all outdoor air contaminants regulated under federal environmental law. 42

{¶32} While the emphasis on passive smoking has been on lung cancer and breathing, the effects on heart disease are even more severe. The chemicals in secondhand smoke injure the heart muscle, interfere with the ability of blood vessels to control blood pressure and flow, increase the buildup of blockages of blood vessels (which leads to heart attacks), and make blood stickier. *The net effect is that passive smoking causes about 15 times more deaths from heart disease than from lung cancer. 43*

{¶33} *The National Cancer Institute estimates that secondhand smoke causes 3,000 lung disease deaths and 48,500 heart disease deaths in non-smokers each year in the United States. 44*

{¶34} *The evidence is overwhelming and irrefutable that secondhand smoke causes and aggravates serious diseases in non-smoking adults and children.*

(3) Children Especially Susceptible to Diseases Caused by Secondhand Smoke

{¶35} *The adverse health effects from breathing smoke are manifest, whether one is actively smoking or is a captive involuntary passive smoker in a highchair. 45*

{¶36} *Every independent authoritative scientific body that has examined the evidence has concluded that secondhand smoke causes diseases affecting children,* including low fetal birth weight, bronchitis, pneumonia, asthma induction, asthma exacerbation, chronic respiratory problems, middle ear infections, and Sudden Infant Death Syndrome (SIDS). 46

{¶37} *Because the bodily tissues and organs of children are still developing, secondhand smoke has a much greater detrimental effect on them than on adults, resulting in reduced growth and development*. 47

{¶38} *Children raised in homes with smokers are particularly susceptible to health problems linked to secondhand smoke, predominantly respiratory disorders. 48 Children's bodies simply are more vulnerable because they are developing. 49 These health problems extend beyond childhood, and include an increased risk of lung cancer in later life. 50*

{¶39} In the United States, about 43% of children two months to eleven years of age live in homes with at least one smoker. 51 Simple separation of smokers and non-smokers, if they remain within the same building, only reduces but does not eliminate exposure of non-smokers to environmental tobacco smoke. 52 It takes more than three hours to remove 95% of the smoke from one cigarette from the room once smoking has ended. 53

{¶40} Asthma, the most common long-term childhood disease, which affects about 1 in 13 school-age children in the United States, results in 10 million missed school days each year. 54 *Between 1980 and 1994, asthma increased 160% in children under age 5*. 55 The United States Environmental Protection Agency found that *secondhand smoke causes between 8,000 and 26,000 new cases of childhood asthma each year, and aggravates the condition in 200,000 to 1,000,000 asthmatic children each year. 56*

{¶41} *Children exposed to secondhand smoke are twice as likely to develop asthma,* 57 making the motto of the American Lung Association especially relevant to children: *"When You Can't Breathe, Nothing Else Matters."*

{¶42} The infants of women who smoke during pregnancy are at greater risk of spontaneous abortion, premature birth, and SIDS. 58 *There is a strong link between parental smoking,* including maternal smoking during pregnancy and parental (especially maternal) smoking after birth, *and SIDS; typical studies find a 2-to-3-fold increase in risk among children of smokers*. 59 Same-room exposure doubles the risk. 60 It is reported that three times as many

infants die of SIDS caused by maternal smoking as are killed as a result of homicide or child abuse. 61

{¶43} In response to the 1997 Declaration on Children's Environmental Health, adopted by the Environment Leaders of the Eight (Canada, France, Germany, Italy, Japan, Russian Federation, United Kingdom of Great Britain and Northern Ireland, and the United States of America), the World Health Organization in 1999 convened an International Consultation on Environmental Tobacco Smoke and Child Health ("ETS Consultation") in Switzerland. Experts from developing and developed countries gathered to examine the effects of exposure to tobacco smoke on child health and develop actions to eliminate this exposure. 62

{¶44} The ETS Consultation found that *the vast majority of children exposed to tobacco smoke do not choose to be exposed. Children's exposure is involuntary*, arising from smoking mainly by adults in the places where children live, work, and play. *The major source of exposure to tobacco smoke for young children is smoking by parents and other household members.* Given that more than a thousand million adults smoke worldwide, the World Health Organization estimates that around 700 million, or *almost half of the world's children, regularly breathe air polluted by tobacco smoke, particularly at home. The large number of exposed children, coupled with the evidence that environmental tobacco smoke causes illness and disease in children, constitutes a substantial public health threat.*

{¶45} It was concluded by the ETS Consultation that *environmental tobacco smoke is a real and substantial danger to child health, causing death and suffering throughout the world. Environmental tobacco smoke exposure causes a wide variety of detrimental health effects in children,* including lower respiratory tract infections such as pneumonia, bronchitis, coughing, wheezing, asthma, and middle ear disease. Children's exposure to environmental tobacco smoke may also contribute to cardiovascular disease and neurobehavioral impairment in adulthood.

{¶46} The ETS Consultation also concluded that maternal smoking during pregnancy is a major cause of sudden infant death syndrome and other well-documented health effects, including reduced birth weight and decreased lung function. In addition, the ETS Consultation noted that environmental tobacco smoke exposure among non-smoking pregnant women can cause a decrease in birth weight, and that infant exposure to environmental tobacco smoke increases the risk of SIDS.

{¶47} *The evidence is overwhelming and irrefutable that children are especially susceptible to diseases caused by secondhand smoke.*

(4) Judicial Notice: Secondhand Smoke is a Real and Substantial Danger to the Health of Children Because It Causes and Aggravates Serious Diseases in Children

{¶48} *Overwhelmingly, children are captive involuntary passive smokers. 63 The involuntary nature of children's exposure to secondhand smoke crystallizes the harm as egregious.*

{¶49} For almost three decades, since 1976, the Great American Smoke Out Day has been celebrated each year on the third Thursday of November. In August 2003, the 12th World Conference on Tobacco or Health will be held in Helsinki, Finland, and will bring together thousands of professionals dedicated to counteracting the global tobacco epidemic in favour of a smoke-free world.

{¶50} The 1989 United Nations Convention on the Rights of the Child, ratified by almost 200 countries including the United States, is the most universally accepted human rights document in the history of the world. It provides that "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" 64 (Emphasis added). Because the Convention creates obligations for signatory governments to ensure children's right to the highest attainable standard of health, *the involuntary harmful exposure of children to secondhand smoke can be seen as a human rights violation.*

{¶51} *This court takes judicial notice that a superabundance of authoritative scientific evidence irrefutably demonstrates that secondhand smoke is a real and substantial danger to the health of children because it causes and aggravates serious diseases in children. 65*

II. ISSUE: AUTHORITY AND DUTY OF FAMILY COURTS TO PREVENT SERIOUS HARM TO CHILDREN BY RESTRAINING SMOKING IN THEIR PRESENCE

{¶52} Children comprise the most abused segment of society in the world. The children of America fortunately are protected, however, by our unrivalled century-old system of juvenile justice.

{¶53} Although this is a case of first impression, ample precedent for this ruling is found in (1) the doctrine of *parens patriae*, (2) the Ohio "best interests of the child" statute, and (3) case law precedent of the United States Supreme Court.

(1) Doctrine of Parens Patriae – Fundamental Rule
of Family Courts and Juvenile Justice

{¶54} The doctrine of *parens patriae* (the state as parent) is the fundamental rule of law that underlies our system of family courts and juvenile justice, providing that the state is "the ultimate parent" of children within the care of juvenile court. 66

{¶55} Under the doctrine of *parens patriae*, the state has an "urgent interest" in the welfare of the child 67, and a "duty of the highest order" to protect the child.68

(2) "Best Interests of Child" Standard – Mandatory Duty of Family Courts
to Consider Danger of Secondhand Smoke to Children

{¶56} For at least a century and a half, the "best interests of the child" standard has been the polestar for family courts in Ohio and throughout the United States in determining matters involving children. 69

{¶57} The Ohio "best interests of the child" statute 70 sets a mandatory, not discretionary, standard. In statutory construction, the word "may" is construed as permissive and the word "shall" is construed as mandatory. 71 *In crystal-clear language, the statute directs that "the court shall consider all relevant factors" and "physical health factors" in determining the "best interests of the child" in visitation and custody matters.* An avalanche of authoritative scientific studies cited in this opinion is clear and convincing evidence that secondhand smoke constitutes a real and substantial danger to children because it causes and aggravates serious diseases in children, *which danger is both a "relevant factor" and a "physical health factor" that a family court is mandated to consider under the statute.*

{¶58} *Under the mandatory standard of Ohio's "best interests of the child" statute, the clear and convincing evidence that secondhand smoke causes and aggravates serious diseases in children cannot be ignored by the court because a parent fails to raise it. Many people simply are unaware of the danger,72 but the danger exists regardless whether a parent is aware of it, acknowledges it, or complains to the court about it.* The duty of the court under the statute to consider the danger of secondhand smoke to children is not conditioned upon a complaint by a parent. To hold otherwise would be contrary to the unequivocal mandatory language and manifest intent of the statute. 73

{¶59} Family courts on their own initiative as standard practice in exercising their judicial duties consider other serious risks of harm to children, such as the use of alcohol and drugs by persons living in the home of the child, as a factor in determining "best interests of the child" issues. 74 *A family court has a statutory duty to similarly consider on its own initiative the serious risk of harm of secondhand smoke to children.*

{¶60} *A superabundance of judicially noticed authoritative studies demonstrates by clear and convincing evidence that secondhand smoke is a real and substantial danger to the health of children because it causes and aggravates serious diseases in children, and both general ("all relevant factors") and specific ("physical health factors") provisions of Ohio's "best interests of the child" statute impose a mandatory duty upon family courts on their own initiative to consider the danger of secondhand smoke to all children within their care in determining matters of visitation and custody.75*

(3) United States Supreme Court Case Law – Duty of Family Courts to Consider Danger of Secondhand Smoke to Children Regardless of Condition of Health -Smoking Not A Fundamental Right – Secondhand Smoke Cannot be Imposed Involuntarily Upon Other People Because It is Detrimental to Their Health

{¶61} *The United States Supreme Court has ruled that the harm to be considered from secondhand smoke includes both present harm and possible future harm, and accordingly family courts have an unqualified duty to consider the dangers of secondhand smoke to all children within their care, regardless of the condition of their health.* The high court ruled in 1993 that a state prisoner's complaint states a cause of action by alleging that other inmates' secondhand smoke constitutes an unreasonable risk to his health and involuntarily subjects him to cruel and

unusual punishment in violation of the Eighth Amendment to the United States Constitution, *and that the claim can be based upon possible future harm to health as well as present harm*. 76

{¶62} *Secondhand smoke is a danger to all children, regardless of the condition of their health.* 77 Because of the irrefutable proof of the health dangers of secondhand smoke to children, it would be inherently contradictory for a family court to fail to grant to any child under its care, regardless of the condition of his health, legal protection against being compelled to breath secondhand smoke until *after* the child has suffered the health-destructive diseases the protection is intended to prevent.

{¶63} Additionally, constitutional challenges (i.e., due process, equal protection, and freedom of expression) by smoking prison inmates attempting to strike down smoking restrictions are uniformly held to be without merit upon the basis that *smoking is not a fundamental right and secondhand smoke can not be imposed involuntarily upon other people because it is detrimental to their health.* 78 Smoking restrictions automatically protect prison inmates across America from the real and present danger of being compelled to breathe secondhand smoke in places where they live. Are not the children of America, who can neither choose where they live nor speak for themselves, entitled to the same protection afforded to prison inmates under the law?

(4) United States Supreme Court Case Law – Judicial Notice – Constitutional Right to Privacy Not Absolute – State has Duty of Highest Order to Protect Children – Parents Have Both Rights and Responsibilities – State Must Protect Children When Parents' and Children's Rights Conflict

{¶64} Over a century ago, the Supreme Court of the United States affirmed a state supreme court decision that took judicial notice that cigarettes are "wholly noxious and deleterious to health." 79

{¶65} The Supreme Court of the United States has definitively ruled that (1) smoking is not a fundamental right, 80 (2) judicial notice is taken of the health-destructive effects of cigarettes and secondhand smoke, 81 (3) both present harm and possible future harm from secondhand smoke is a real and substantial danger to non-smokers, 82 and (4) secondhand

smoke cannot be imposed involuntarily upon people because it is detrimental to their health. 83 How then could it be reasonably contended that any child's possible future harm to his health resulting from his involuntary exposure to secondhand smoke is a harm that he must suffer in cases in which a family court is considering his "best interests" in visitation and custody matters?

{¶66} The United States Supreme Court has also definitively ruled that (1) the constitutional right to privacy is not absolute,84 (2) the state has an "urgent interest" in the welfare of the child 85 and a "duty of the highest order" to protect the child,86 (3) along with parental rights come reciprocal responsibilities,87 and (4) when the interests of the parent and the child conflict to the point where the child is threatened with harm the state has an obligation to protect the welfare of the child.88

(5) United States Supreme Court Case Law – Smoker's Right of Privacy Does Not Include Right to Inflict Secondhand Smoke on Children

{¶67} *Based upon these unequivocal pronouncements of the Supreme Court of the United States, a smoker has a right of privacy to treat his health in whatever manner he chooses, but this right does not include the right to inflict health-destructive secondhand smoke upon other persons, especially children who have no choice in the matter.*

{¶68} *A man's home is his castle, but no one is allowed to hurt little children – even in his castle.*

(6) Duty of Family Courts, Legislatures, and Administrative Agencies to Protect Children from Diseases Caused by Compelled Exposure to Secondhand Smoke

{¶69} *The clear and convincing evidence of manifold harm from secondhand smoke to children is consistent, robust, and irrefutable, and gives rise to a duty upon family courts, the legislature 89, and administrative agencies to take action to reduce children's compelled exposure to tobacco smoke.*

{¶70} As noted, under the 1989 United Nations Convention on the Rights of the Child, as ratified by the United States, *courts of law, state legislatures, and administrative agencies*

have a duty as a matter of human rights to reduce children's compelled exposure to tobacco smoke.90.

{¶71} *Family courts* can protect our children by issuing court orders as standard practice restraining persons from smoking in the presence of children within their care. *Legislatures* can protect our children by enacting statutes prohibiting persons from smoking in the presence of children, by enacting more specific legislation directing family courts to consider the danger of secondhand smoke in determining best-interests-of-the-child matters, and by enacting statutes directing administrative agencies to establish regulations restraining smoking around children in their care. *Administrative agencies* can protect our children by enacting regulations and issuing directives that foster parents and other persons in close contact with children in their care shall not smoke around them.

(7) Causal Relation Exists Between Parental Smoking and Children Becoming Addicted as Active Smokers

{¶72} *A causal relation exists between parental smoking and their children becoming addicted to nicotine as active smokers, exposing them to the serious diseases of smokers.* Children of smokers are almost twice as likely to smoke as children of nonsmoking parents. Very few people begin using tobacco as adults. 91 More than 90% of smokers begin using tobacco before their age 19, and the average age at which they begin smoking is 12½ years old. 92

{¶73} *Numerous studies have found tobacco products to be as addictive as heroin, cocaine, and alcohol*. 93 The United States Surgeon General concluded almost 15 years ago in 1988 that nicotine in tobacco is addictive, and that nicotine addiction is similar to heroin or cocaine addiction. 94 In 2000, the Royal College of Physicians' Report on Nicotine Addiction concluded that nicotine is a powerful addictive substance on a par with heroin and cocaine. 95

{¶74} The extreme *addictive nature of nicotine* is demonstrated by the facts that although almost three-quarters of smokers want to stop smoking,96 and although about one-third of them attempt to quit each year, only about one-third of smokers who try to quit smoking actually succeed in becoming long-term ex-smokers,97 *and an astonishing 50% of lung cancer patients resume smoking after undergoing surgery.98*

{¶75} The causal relation between parent-child smoking supports the fact that children are the chief source of new consumers of the tobacco industry, which each year must replace the many consumers who quit smoking and the many who die from smoking-related diseases. 99

{¶76} *The synthesis of active smoking by parents,100 the glamorization of smoking by the film industry 101, and the targeted marketing of tobacco products to children by the tobacco industry 102 is a deadly combination for children.*

{¶77} Once children become addicted to nicotine by smoking cigarettes, usually within a year or less of beginning smoking 103, they are likely to suffer the detrimental health consequences of active smokers because only a small percentage of cigarette smokers are successful in quitting smoking. 104

(8) Parental Smoking is Key Factor in Children Becoming Active Smokers, Which is Risk Factor for Substance and Drug Abuse

{¶78} *Parental smoking is a key factor in children becoming active smokers, which not only constitutes a serious health danger but also is a risk factor for substance and drug abuse. 105*

{¶79} Studies show that nicotine use increases alcohol consumption. 106 *Teens who smoke are three times more likely than non-smokers to use alcohol, eight times more likely to use marijuana, and 22 times more likely to use cocaine*. 107 High school seniors who are regular smokers and began smoking by grade nine are 2.4 times more likely than their nonsmoking peers to report poorer overall health, 2.7 times more likely to report cough with phlegm or blood and shortness of breath when not exercising, and 3.0 times more likely to have seen a physician for an emotional or psychological complaint. 108

(9) Considered Analysis of Law and Evidence Leads to Inescapable Conclusion that Family Court that Fails to Restrain Smoking in Presence of Children is Failing Children Whom Law has Entrusted to Its Care

{¶80} A considered analysis of the law including the *parens patriae* (the state as parent) doctrine, the Ohio "best interests of the child" statute, and United States Supreme Court case

law; as well as a considered analysis of the facts including the irrefutable judicially noticed authoritative scientific evidence demonstrating that secondhand smoke constitutes a real and substantial danger to the health of children because it causes and aggravates serious diseases in children, leads to the inescapable conclusion that a family court that fails to issue court orders restraining persons from smoking in the presence of children within its care is failing the children whom the law has entrusted to its care.

(10) Court Order: Parents Restrained from Allowing Anyone to Smoke in Presence of Minor Child

{¶81} For these compelling reasons, the mother and father are restrained under penalty of contempt from allowing any person, including themselves, to smoke tobacco anywhere in the presence of the minor child Julie Anne.

{¶82} Let right be done.

{¶83} SO ORDERED.

Judgment accordingly.

WILLIAM F. CHINNOCK, Judge, retired, of the Cuyahoga County Juvenile Court, sitting by assignment.

M. R. C., for mother.
W. F. C., for father.
R. Publius, for child.

ENDNOTES

1. The instant case is a companion to the collection of cases discussed in the annotation found at 36 ALR5th 377 entitled "Smoking as Factor in Child Custody and Visitation Cases," and in the law review article found at 97 W.Va.L.Rev. 115 (1994) entitled "Secondhand Smoke as an Issue in Child Custody/Visitation Disputes," holding that the danger of secondhand smoke to children is a "best interests of the child" factor in a family court determining visitation and custody

issues. In the annotated cases, as in this case, judicial notice is taken of the danger of harm of secondhand smoke to children; a well-grounded legal presumption based upon judicial notice obviates the need for expert testimony. In this case, judicial notice of the danger of secondhand smoke to children is based upon an avalanche of cited authoritative scientific evidence. *This case differs from the annotated cases, however, in several significant respects.* First, in the annotated cases the issue of the danger of secondhand smoke to the child is raised by a non-smoking parent. In this case, the issue is raised by the court *on behalf of the child* under the *parens patriae* doctrine, based upon the duty imposed by law upon family courts to prevent risk of serious harm to a child, regardless whether the risk is known, acknowledged, or complained of by a parent. The ruling on this point of law is mandated by the plain language and manifest intent of the Ohio "best interests of the child" statute. Second, in the annotated cases the child has a respiratory problem and the legitimate objective is to prevent it from becoming worse. In this case, the child is healthy and the legitimate objective is to prevent the onset of the destruction of the child's health. The ruling on this point of law is supported by United States Supreme Court case law. Neither of these points of law applied to the two above-specified factual differences between the annotated cases and the case at bar is meant to suggest that the risk of secondhand smoke to children should in all cases be the sole factor in determining the "best interests of the child." *Under existing law a family court on its own initiative and regardless of the health of the child, however, has a legal duty to consider the danger of secondhand smoke to children as a significant and possibly determinative factor (where child has health problems) in determining issues of visitation and custody, and to protect children under its care as a matter of standard practice by issuing a court order restraining anyone from smoking in their presence.*

2. World Health Organization (1999) Addressing the Worldwide Tobacco Epidemic.

3. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002.

4. World Health Organization (2001) Monograph: Advancing Knowledge on Regulating Tobacco Products.

5. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002.

6. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002.

7. Blot, Alcohol and Cancer, Cancer Res (1992) 52:2119.

8. United States Department of Health Services, Office on Smoking and Health (1986) The Health Consequences of Involuntary Smoking. A Report of the Surgeon General.

9. National Institute on Drug Abuse, U. S. Department of Health Services (Feb. 2002) NIDA Research Report.

10. September 11, 2001 World Trade Center deaths set at 3,030 (as of August 2002 by CNN and Reuters); U.S. smoking deaths set at 430,000 annually (See fns. 8, 9, infra).

11. New York Times, Oct. 22, 1985, at C2.

12. In 1965, Congress' first cigarette warning label legislation specified the warning: "Caution: Cigarette Smoking May Be Hazardous to Your Health." 15 U.S.C. 1333. In 1970, Congress made the label warning more specific "Warning: The Surgeon General Has Determined that Cigarette Smoking is Dangerous to Your Health." Pub.L. No. 91-222, 84 Stat. 88. In 1984, Congress enacted legislation expanding the public warning to advertisements and outdoor billboards, and also substituted four specific warnings for the previous single warning, to be rotated quarterly: (1) "SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy," (2) SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health," (3) SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight," and (4) "SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide." Pub.L. No. 98-474, 98 Stat. 2201 (1994); 15 U.S.C. 1333(a) (2) and (3), and 1333(c).

13. Centers for Disease Control (2002) Cigarette Smoking Among Adults – United States, 2000.

14. Centers for Disease Control, Surveillance Summaries (June 2000); C. Everett Koop, M.D., Sc.D (1997) Final Report to the United States Congress of the Advisory Committee on Tobacco

Policy and Public Health. There are 314,000 children living in Ohio today who will ultimately die prematurely from smoking. National Center for Tobacco-Free Kids, tobaccofreekids.org (2002).

15. C. Everett Koop, M.D., Sc.D (1997), Final Report to the United States Congress of the Advisory Committee on Tobacco Policy and Public Health; Lynch (1994) Growing Up Tobacco Free, National Academy Press; Bauman (1990) Effect of Parental Smoking Classification on the Association between Parental and Adolescent Smoking; Canadian Council on Smoking and Health (1995) ETS in Home Environments. National Clearing House on Tobacco and Health; United States Department of Health Services, Office on Smoking and Health (1994) Preventing Tobacco Use Among Young People. A Report of the Surgeon General.

16. Global Youth Tobacco Survey Collaborative Group (2002) Tobacco Use Among Youth: A Cross Country Comparison 11:252 (produced by United States Centers for Disease Control and Prevention, the World Health Organization, the Canadian Health Association, and the National Cancer Institute, presenting summary of findings of Global Youth Tobacco Survey covering 43 different countries, showing youth tobacco use and exposure as a global problem).

17. See fn. 14, supra.

18. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002. Studies estimate the monetary health-care costs from smoking to be between 6% and 14% of all annual
personal health-care expenditures in the United States, with a commonly cited figure of $50 billion in annual costs. Tsai (2000) A Primer on Domestic and International Tobacco Control, American Medical Student Association, citing to Warner, et. al. (1999) Medical Costs in the United States, Tobacco Control 8:290, and Barlett, et. al. Medical-Care Expenditures Attributable to Cigarette Smoking – United States 1993. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report (July 1994). It is reported that each pack of cigarettes sold in the United States costs American taxpayers an estimated $7.18 in medical care costs and lost productivity. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report (April 2002).

19. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002.

20. Schwartz (8-7-97) Tobacco Firms Shielded Data on Hazards, Washington Post, p. A1; Meier (8-7-97) Tobacco Lawyers Papers are Made Public, N. Y. Times, p. A16; Geyelin (8-7-97) Lawyers Shielded Tobacco Firms, Papers Show, Wall Street Journal, at A3; Kelly (8-7-97) Tobacco Lawyers Discussed Hiding Risk, USA TODAY, p. D1.

21. Glantz, et al. (1991) Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry, Circulation, Journal of American Heart Association; Taylor et al. (1992) Environmental Tobacco Smoke and Cardiovascular Disease, Circulation, Journal of American Heart Association.

22. Circulation (1991) Journal of American Heart Association. See fn. 44, supra.

23. September 11, 2001 World Trade Center deaths set at 3,030 (as of August 2002 by CNN and Reuters); U.S. secondhand smoke deaths set at 53,800 annually (see fn. 44, infra).

24. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002; United States Department of Health Services, Office on Smoking and Health (2001) Women and Smoking: A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (2000) Reducing Tobacco Use: A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (2000) Oral Health in America: A Report of the Surgeon General ; United States Department of Health Services, Office on Smoking and Health (1998) Tobacco Use Among U.S. Racial/Ethnic Minority Groups. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1994) Preventing Tobacco Use Among Young People. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1994) Surgeon General's Report for Kids about Smoking; United States Department of Health Services, Office on Smoking and Health (1992) Smoking and Health in the Americas. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1990) The Health Benefits of Smoking Cessation. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1989) Reducing the Health Consequences of Smoking

– 25 Years of Progress. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1988) The Health Consequences of Smoking – Nicotine Addiction. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1986) Smoking and Health, A National Status Report: A Report to Congress. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1986) The Health Consequences of Involuntary Smoking. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1985) The Health Consequences of Smoking – Cancer and Chronic Lung Disease in the Workplace. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1984) The Health Consequences of Smoking – Chronic Obstructive Lung Disease. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1983) The Health Consequences of Smoking – Cardiovascular Disease. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1982) The Health Consequences of Smoking - Cancer. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1981) The Health Consequences of Smoking – The Changing Cigarette. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1981) The Health Consequences of Smoking for Women. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1979) Smoking and Health. A Report of the Surgeon General; United States Department of Health Services, Office on Smoking and Health (1978, 1977, 1976, 1975, 1974, 1973, 1972, 1971, 1969, 1968, 1967, and 1964) The Health Consequences of Smoking. A Report of the Surgeon General; California Environmental Protection Agency (1999) Health Effects of Exposure to Environmental Tobacco Smoke. Bethesda, Md., National Institute of Health; Scientific Committee on Tobacco and Health (1998) Report of the Scientific Committee on Tobacco and Health. London, United Kingdom; National Health and Medical Research Council, Australia (1997) The Health Effects of Passive Smoking; California Environmental Protection Agency (1997) Health Effects of Exposure to Environmental Tobacco Smoke; Cameron, et al. (1998) The Health of Smokers' and Non-smokers' Children. Journal of Allergy; Klonoff-Cohen et al. (1995) The Effect of Passive Smoking and Tobacco Exposure through Breast Milk on Sudden Infant Death Syndrome. JAMA; Glantz, et al. (1994) The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales. American Journal of Public Health; Fontham, et al. (1994) Environmental Tobacco Smoke and Lung Cancer in Nonsmoking Women. JAMA; United States Environmental Protection Agency Fact Sheet (1993) Respiratory Health Effects of

Passive Smoking; United States Environmental Protection Agency (1992) Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders; Glantz, et al. (1991) Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry. Circulation; Wells (1988) An Estimate of Adult Mortality in the United States from Passive Smoking. Environ. Int.; National Research Council (1986) Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Effects; National Health and Medical Research Council (1986) Effects of Passive Smoking on Health. Australia; Hirayama (1981) Non-Smoking Wives of Heavy Smokers Have a Higher Risk of Lung Cancer: A Study from Japan. British Medical Journal; Repace, et al. (1980) Indoor Air Pollution, Tobacco Smoke, and Public Health. Science; Colley, et al. (1974) Influence of Passive Smoking and Parental Phlegm on Pneumonia and Bronchitis in Early Childhood. Lancet. www.Google.com lists 60,000+ links for "secondhand smoke" and 30,000+ links for "secondhand smoke – children".

25. United States Department of Health Services, Office on Smoking and Health (1986) *The Health Consequences of Involuntary Smoking. A Report of the Surgeon General.*

26. United States Environmental Protection Agency (1992) Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders.

27. International Agency for Research on Cancer, World Health Organization, Monograph Vol. 83, Tobacco Smoke and Involuntary Smoking, June 2002.

28. Tobacco Free Initiative, Secondhand Smoke. http://www5.who.int/tobacco/page.cfm?pid=43.

29. Ekos Research Associates, An Assessment of Knowledge, Attitudes and Practices Concerning Environmental Tobacco Smoke (1995). See Annotation found at 46 ALR5th 813 entitled "Secondary Smoke as Battery."

30. Roper Organization (1978) A Study of Public Attitudes towards Cigarette Smoking and the Tobacco Industry, Washington D.C.

31. Ginzel (1990) Hazards Smokers Impose, New Jersey Medicine 87:311.

32. Conservation Foundation (1987) The Epidemic of Indoor Air Pollution, Bus. and Soc. Rev. 60:53.

33. Conservation Foundation (1987) The Epidemic of Indoor Air Pollution, Bus. and Soc. Rev. 60:53; Legislation for Clean Air: An Indoor Front (1973) Yale L.J. 82:1042 (dangers of smoke to non-smokers, while not well known, are significant).

34. Conservation Foundation (1987) The Epidemic of Indoor Air Pollution, Bus. and Soc. Rev. 60:53 (five-year EPA study).

35. National Clearinghouse on Tobacco and Health, Canadian Council on Smoking and Health (1995) ETS in Home Environments; Hoffman (1997) The Changing Cigarette, 1950-1995, J. Toxicology and Environmental Health 50:307.

36. American Academy of Pediatrics (1986) Involuntary Smoking – A Hazard to Children, Pediatrics, Vol. 77.

37. Repace, Tobacco Smoke and the Non-Smoker, reprinted in Hearings before Congressional Committees and Subcommittees of Congress, Indoor Air Quality Research, H.R. Doc. No. 54, 98th Congress, 1st Session, p. 451.

38. Wells (1994) Passive Smoking as a Cause of Heart Disease, Journal of the American College of Cardiology. One writer calculates that a non-smoker in a smoky room inhales the equivalent of 35 cigarettes an hour. Cunningham (1986) Smoke & Mirrors – the Canadian Tobacco War. Ottawa: International Development Research Centre.

39. Action on Smoking and Health (ASH) (1989) The Effects of Involuntary Smoke.

40. Morgan (1982) Time for Action on Passive Smoking, Canadian Med. Assn. J. 127:810.

41. Centers for Disease Control (1994) www.cdc.gov/tobacco.

42. See fn. 38, supra.

43. Tobacco Free Initiative, A Project of the World Health Organization. www5.who.int/tobacco; Pitsavos, et. al. (2002) Association Between Exposure to Environmental Tobacco Smoke and the Development of Acute Coronary Syndromes (2002) Tobacco Control 11:220.

44. National Cancer Institute (November 1999) Smoking and Health Monograph 10 (53,800 secondhand smoke deaths annually, based upon midpoints for heart disease [48,500], lung cancer [3,000)], and SIDS deaths [2,300]).

45. See text and supporting footnotes 2-9, 14, 18-29, 35-50, 54-65, 89-108.

46. California Environmental Protection Agency (1997) Health Effects of Exposure to Environmental Tobacco Smoke. Background papers relating to secondhand smoke and child health prepared for the International Consultation on Environmental Tobacco Smoke and Child Health can be accessed online at http://www5.who.int/tobacco/page.cfm?tld=67, including J. Samet, School of Hygiene and Public Health, Johns Hopkins University. Synthesis: The Health Effects of Tobacco Smoke Exposure on Children; B. Eskenazi, et al., School of Public Health, University of California, Berkeley. Association of in utero or Postnatal Environmental Tobacco Smoke Exposure and Neurodevelopmental and Behavioral Problems in Children; D. Cook et al., St. George's Hospital Medical School, London, England. Effects of Maternal and Paternal Smoking on Children's Respiratory Health; S. Gidding, N.W. Univ. Medical School. Effects of Passive Smoking on the Cardiovascular System in Children and Adolescents; A. Greco, et al., University of Lyon, France. Parental Tobacco Smoke and Childhood Cancer; G. Windham, Department of Health Services, Oakland, USA. Prenatal Exposure to Environmental Tobacco Smoke and Fetal Growth; E. Mitchell, et al., University of Auckland, New Zealand. Smoking and Sudden Infant Death Syndrome; M. Jarvis, University College of London, London, UK. Children's Exposure to Passive Smoking: Survey Methodology and Monitoring Trends; C. Melvin et al., Division of Reproductive Health, Centers for Disease Control, USA. The Costs of Environmental Tobacco Smoke (ETS): An International Review; W. Long, US Environmental Protection Agency, Washington, D.C. Environmental Tobacco Smoke: Using Communication and Outreach to Reduce Childhood Exposure to ETS; V. Covello, Center for Risk Communication, New York, USA. Risk Communication, Children's Health, and Environmental Tobacco Smoke; Leiss, Queen’s University, Ontario, Canada. Risk Perception and Communication: Environmental Tobacco Smoke and Child Health; R. Borland, Anti Cancer Council of Victoria, Australia. Theories of Behavior Change in Relation to ETS Control to Protect Children.

47. National Research Council (1986) Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Risks.

48. United States Department of Health Services, Office on Smoking and Health (1986) The Health Consequences of Involuntary Smoking. A Report of the Surgeon General; Martinez, et al. (1992) Increased Incidence of Asthma in Children of Smoking Mothers, 89 Pediatrics 21; Colley (1974), Respiratory Systems in Children and Parental Smoking and Phlegm Production, 2 Brit. Med. J. 210; Neuspiel et al. (1989) Parental Smoking and Post Infancy Wheezing in Children, 79 Am. J. Pub. Health 168; Pedreira et al. (1985) Involuntary Smoking and Incidence of Respiratory Illness During the First Year of Life, 75 Pediatrics 594.

49. Shoop (1991) Smoking Parents Lose Points in Child-Custody Case, Trial.

50. Mitchell (1990) Growing Up In Smoke.

51. Pirkle et al. (1996) Exposure of the US Population to Environmental Tobacco Smoke. JAMA 275:1233.

52. United States Department of Health Services, Office on Smoking and Health (1986) The Health Consequences of Involuntary Smoking. A Report of the Surgeon General.

53. Repace (1999), Risk Management of Passive Smoking at Work and at Home, St. Louis University Public Law Review Vol. 13:2, 763-785.

54. President's Task Force on Environmental Health Risks and Safety Risks to Children (1999), Asthma and the Environment: A Strategy to Protect Children; Taylor (1992) Impact of Childhood Asthma on Health. Pediatrics 90:657.

55. National Heart, Lung, and Blood Institute (1999) Data Fact Sheet on Asthma.

56. United States Environmental Protection Agency (1992) Respiratory Effects of Passive Smoke: Lung Cancer and Other Disorders, EPA/600/6-90/006F (peer-reviewed by 18 eminent independent scientists).

57. Centers for Disease Control and Prevention "Facts About Secondhand Smoke" Fact Sheet.

58. Needleman et al. (1994) *Raising Children Toxic Free*. New York: Farrar, Strauss, and Giroux.

59. DiFranza (1995) Effect of Maternal Cigarette Smoking on Pregnancy Complications and Sudden Death Syndrome. J Fam Prac 40:385 (Smoking during pregnancy increases a woman's risk of miscarrying by 24%; maternal smoking is responsible for 35% of all SIDS deaths in the U.S., and 66% of all SIDS deaths among the infants of women who smoked during their pregnancy; *smoking during pregnancy triples the risk of SIDS*); Anderson (1997) Passive Smoking and Sudden Infant Death Syndrome: Review of the Epidemiological Evidence, Thorax 52:1003 (*Conclusion: maternal smoking doubles the risk of Sudden Infant Death Syndrome*); Waller (1996) Environmental Tobacco Smoke and Sudden Infant Death Syndrome. Assn. of Reproductive Health Professionals, Clinical Proceedings; Mitchell, et al. (1998) Objective Measurements of Nicotine Exposure in Victims of Sudden Infant Death Syndrome and other Unexpected Child Deaths. Ped 133:232 (increased risk of SIDS probably predominantly due to in-utero effect of tobacco smoke rather than postnatal secondhand smoke); Am J Epidemiol (8-1-97) (Smoking is one of the most important preventable risk factors for SIDS; adjusted SIDS odds ratios for infants of women who smoked 10 or more cigarettes per day during pregnancy were 2.3 to 3.8, compared with infants of nonsmoking women); Mitchell (1997) Risk Factors for Sudden Death Syndrome, Ped 100:835 (adjusted SIDS odds ratio for infants of mothers who smoked was 5.01); MacDorman (1997) Sudden Infant Death Syndrome and Smoking in the United States and Sweden. Am J Epidemiol 146:249; Pirkle, et al. (1996) Exposure of the US Population to Environmental Tobacco Smoke, 1988-1991. JAMA 275:1233; Blair et al. (1996) Smoking and the Sudden Infant Death Syndrome, Brit Med J 313:195; Greenberg, et al. (1996) Passive Smoking During the First Year of Life. Am J Public Health 80:29; Haglund, et al. (1995) Sudden Infant Death Syndrome in Sweden, 1983—1990, Am J Epidemiol 142:619; JAMA (3-8-95) (Sudden Infant Death Syndrome is the most common cause of death of infants between one month and one year of age, and accounts for about 50% of deaths of infants between two and four months of age; breast-feeding was protective for SIDS among non-smokers but not smokers); Klonoff-Cohen, et al. (1995) The Effect of Passive Smoking and Tobacco Exposure through Breast Milk on Sudden Infant Death Syndrome. JAMA 273:795; Mitchell, et al. (1993) Smoking and the Sudden Infant Death Syndrome. Ped 91:893 *("Passive tobacco smoking is causally related to SIDS*; Schoendorf (1992) Relationship of Sudden Infant Death Syndrome to Maternal Smoking During and After Pregnancy. Ped 90:905; Windham, et al. (1992) Parental Cigarette Smoking and the Risk of Spontaneous Abortion. Am J Epidemiol 135:1394; Nicholl, et al. (1992) Antenatal Smoking, Postnatal Passive Smoking, and Sudden Infant Death Syndrome. In: Poswillo, eds. Effects of Smoking on the Fetus, Neonate and Child. Oxford: Oxford Medical

Publications; Li D-K, et al. (1991) Maternal Smoking, Low Birth Weight and Ethnicity in Relation to Sudden Infant Syndrome. Am J Epidemiol 134:958; Haglund, et al (1990) Cigarette Smoking as a Risk Factor for Sudden Infant Death Syndrome. Am J Public Health 80:29; Milerad (1989) Nicotine and Cotinine Levels in Pericardial Fluid in Victims of SIDS. Acta Paediate 83:59; Bulterys, et al. (1990) Chronic Fetal Hypoxia and Sudden Infant Death Syndrome: Interaction Between Maternal Smoking and Low Hematocrit During Pregnancy. Ped 86:535; McGlashan (1989) Sudden Infant Deaths in Tasmania, 1980-1986. Soc Sci Med 29:1015; Nicholl, et al. (1989) Epidemiology of Babies Dying at Different Ages from the Sudden Infant Death Syndrome. J Epidemiology 43:133; Kraus, et al (1989) Risk Factors for Sudden Infant Death Syndrome in the U.S. Internatl. J Epidemiol 18:113; Sandahl (1989) Smoking Habits and Spontaneous Abortion. Eur J Obstet Gynecol Reprod Bio. 31:23; Malloy, et al. (1988) The Association of Maternal Smoking with Age and Cause of Infant Death. Am J Epidemiol 128:46; Hoffman, et al (1988) Risk Factors for SIDS. Results of the National Institute of Child Health and Human Development SIDS Cooperative Epidemiological Study. NY Acad. Sci 533:13; Gilles, et al. (1987) Smoking Cessation in Pregnancy, in Aoki, Smoking and Health, Amsterdam, the Netherlands; Knowelden (1985) A Multicentre Study of Post-neonatal Mortality. London: Her Majesty's Stationery Office; VandenBerg (1985). Smoking During Pregnancy and Post-neonatal Death. NZ Med J 98:1075; Lewak, et al. (1979) Sudden Infant Death Syndrome Risk Factors. Clin Ped 18:404; Sudden Infant Death Syndrome and Smoking (1981) Am J Epidemiol 113:583; Himmelberger (1978) Cigarette Smoking During Pregnancy and The Occurrence of Spontaneous Abortion and Congenital Abnormality. 108 Am J Epidemiol 108:470; Kline, et al. (1977) Smoking: A Risk Factor for Spontaneous Abortion. N Eng. J. of Med 297:793; Bergman, et al. (1976) Relationship of Passive Cigarette Smoking to Sudden Infant Death Syndrome. Ped 58:665; Naeye et al. (1976) Relationship of Passive Cigarettes Smoking to Sudden Infant Death Syndrome. Ped 58:665; Schrsuzer, et al. (1975) Sudden Infant Death Syndrome. Am J Dis Child 130:1027; Kullander, et al. (1971) A Prospective Study of Smoking and Pregnancy. Acta Obstet Gynecol Scand 50:83; Beckwith (1970) Definition of Terminology and Sudden Infant Death Syndrome, Proceedings of the Second International Conference on Causes of Sudden Infant Death. University of Washington Press; Steele (1966) The Relationship of Antenatal and Postnatal Factors to Sudden Unexpected Death in Infancy. Can Med Assoc J 94:1165; Zabriski (1963) Effect of Cigaret Smoking During Pregnancy. Obstet Gynecol 21:405; O'Lane (1963) Some Fetal Effects of Maternal Cigaret Smoking. Obstet Gynecol 22:181.

60. Waller (1996) Environmental Tobacco Smoke and Sudden Infant Death Syndrome. Assoc. of Reproductive Health Professionals Clinical Proceedings.

61. DiFranza (1995) Effect of Maternal Cigarette Smoking on Pregnancy Complications and Sudden Death Syndrome. J Fam Prac. 40:385.

62. World Health Organization (1999) International Consultation on Environmental Tobacco Smoke and Child Health.

63. See fn. 62, supra.

64. United Nations (1989) The Convention on the Rights of the Child.

65. See text and supporting footnotes 2-9, 14, 18-29, 35-50, 54-65, 89-108.

66. *Meyer v. Nebraska* (1923), 262 U.S. 390; *Sturges & Burn Mfg. Co. v. Beauchamp* (1913), 231 U.S. 320; *Muller v. Oregon* (1908), 208 U.S. 412*; Interstate Consol. Street Ry. Co. v. Massachusetts* (1907), 207 U.S. 79; Schlossman, Juvenile Justice: History and Philosophy, in 3 Encyclopedia of Crime and Justice 961, 962 (Kadish ed 1983); Mack (1909) The Juvenile Court, 23 Harv.L.Rev. 104. See footnotes 85 to 88, infra.

67. See fn. 85, infra.

68. See fn. 86, infra.

69. *Gishwiler v. Dodez* (1855), 4 Ohio St. 615; *In re Contemnor Caron* (2000) 110 Ohio Misc.2d 5, 744 N.E.2d 787.

70. R.C. 3109.04(F) (1).

71. *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917* (1991) 65 Ohio St.3d 532; *Dorrian v. Scioto Conserv. Dist*. (1971) 27 Ohio St.2d 102; *Dennison v. Dennison* (1956) 165 Ohio St. 146.

72. See fn. 33, supra.

73. See fn. 71, supra.

74. Haralambie (1993), Handling Child Custody, Abuse, and Adoption Cases (McGraw-Hill Family Law Series).

75. See text and supporting footnotes 45 and 65, supra.

76. *Helling v. McKinney* (1993), 509 U.S. 25.

77. See text and supporting footnotes 45 and 65, supra.

78. See Annotation found at 66 ALR5th 235 entitled "Validity, Construction, and Application of Restrictions on Use or Possession of Tobacco Products in Correctional Facilities." See R.C. 5145.32.

79. In *Austin v. State* (1898), 101 Tenn. 563, 48 S.W. 305, the Supreme Court of Tennessee upheld a total ban on the sale of cigarettes based upon judicial notice that they are "wholly noxious and deleterious to health. Their use is always harmful, never beneficial. They possess no virtue, but are inherently bad, and bad only. They find no true commendation for merit or usefulness in any sphere. On the contrary, they are widely condemned as pernicious altogether. Beyond question, their every tendency is toward impairment of physical health and mental vigor." The Supreme Court of the United States affirmed on the issue of interstate commerce, with the concurring opinion endorsing the judicial notice taken by the state supreme court regarding cigarettes' "impairment of physical health." *Austin v. State* (1900), 179 U.S. 343.

80. See fn. 78, supra.

81.See fn. 78, supra.

82. See fn. 76, supra.

83. See fn. 76, supra.

84. *Roe v. Wade* (1973), 410 U.S. 113, 154 *("The privacy right . . . cannot be said to be absolute.").*

85. *Lassiter v. Dept. of Social Serv.* (1981), 452 U.S. 18, 27 *("The State has an urgent interest in the welfare of the child.").*

86. *Palmore v. Sidoti* (1984) 429, 433 *("The State, of course, has a duty of the highest order to protect the interests of minor children.").*

87. *Lehr v. Robertson* (1983) 463 U.S. 248, 257 *(" . . . the rights of the parent are a counterpart of the responsibilities they have assumed.").*

88. *Prince v. Massachusetts* (1944), 321 U.S. 158, 165, 170 ("It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens."). *("Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.");* Wald (1976) State Intervention on Behalf of 'Neglected' Children, 28 Stan.L.Rev. 625, 638 *(where there is a conflict of interests between parent and child "the legal system should protect the child's interest. Not only is the child a helpless party but the parents should suffer the consequences of their inadequacy rather than the child.").*

89. Ohio's "Endangering Children" statute, R.C. 2919.22(A), provides that "[n]o person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child *** shall create a substantial risk to the health and safety of the child, by violating a duty of care, protection, or support." Some medical authorities consider exposing children to secondhand smoke as a form of child endangering and/or child abuse. http://medicalreporter.health.org/tmr0895/smokemyth0895.html

90. See fn. 64, supra.

91. See fn. 15, supra.

92. See fn. 14, supra.

93. C. Everett Koop, M.D., Sc.D (1997) Final Report to the United States Congress of the Advisory Committee on Tobacco Policy and Public Health; United States Department of Health, Office on Smoking and Health (1994) Preventing Tobacco Among Young People: A Report of

the Surgeon General; United States Department of Health, Office on Smoking and Health (1988) The Health Consequences of Smoking: Nicotine Addiction: A Report of the Surgeon General; Institute of Medicine (1994) Growing Up Tobacco Free; Journal of the American Medical Association (July 1995). A 1963 tobacco industry internal memo freely admitted "we are . . . in the business of selling nicotine, an addictive drug." Yeaman, Implications of Battelle I & II and the Griffith Filter, cited in The Cigarette Papers (see fn. 102, infra).

94. United States Department of Health Services, Office on Smoking and Health (1988) The Health Consequences of Smoking – Nicotine Addiction. A Report of the Surgeon General.

95. Royal College of Physicians (February 2000) Nicotine Addiction in Britain.

96. Lader, Smoking Related Behaviour and Attitudes (2000) Great Britain Office for National Statistics.

97. Smoking Cessation Guidelines and Their Cost Effectiveness. Thorax 1998, Vol. 53, Supp.5, part 2, p. S13 (successful quit rates between 3% [will power alone] and 20% [nicotine replacement therapies such as patches, chewing gum, tablets, inhalers, nasal sprays, etc.]); Jha and Chaloupka (1999) The World Bank, Curbing the Epidemic: Government and the Economics of Tobacco Control (fewer than two out of five U.S. senior high-school smokers who believe they will quit within five years actually do quit); Tsai (2000) A Primer on Domestic and International Tobacco Control, American Medical Student Association (successful quit rates of about 30% in high-income countries such as United States and United Kingdom, and 5-10% in low-income countries such as China, India, and Vietnam). Nine out of every ten smokers in the United States try to quit using will power alone, resulting in a long-term success rate of only 5%. Goldman (1999) Clinical Rounds – Treat Tobacco Dependency as Chronic Disease. Int. Med. News 32(24):23.

98. Stolerms et. al. (1995), The Scientific Case that Nicotine is Addictive, Psychopharmacology 117:2.

99. United States Department of Health Services, Office on Smoking and Health (1994), Preventing Tobacco Use Among Young People. A Report of the Surgeon General.

100. See fn. 14, supra, and fn. 103, infra.

101. The American Lung Association points out that the recruitment of children as smokers is to a large extent effectuated by the film industry glamorizing smoking in movies, highlighting the use of tobacco in over two-thirds of the 25 movie hits of 2001, including eleven PG-13 movies. Mekemson and Glantz, How the Tobacco Industry Built Its Relationship With Hollywood, Tobacco Control (March 2002) (review of 1,500 previously secret tobacco industry documents obtained under Master Settlement Agreement showing collusion between tobacco industry and film industry to obtain maximum exposure of tobacco in movies, including PG ["Parental Guidance"] movies). Although a multi-state settlement in 1998 banned tobacco companies from displaying their products in films, tobacco use in top-grossing PG-13 rated movies increased by 50% between 1999 and 2000.

102. The tobacco industry's claim that it does not actively market its products to children has recently been debunked through the discovery of its internal documents showing that (a) cigarette manufacturers closely monitored the smoking habits of teenagers over the past several decades, (b) tobacco industry executives refer to youth as a source of sales and as fundamental to the survival of the tobacco industry, and (c) the features of cigarette brands (i.e., filter, taste, etc.), packaging (size, color, and design), and advertising (media placements, themes, and imagery) were developed specifically to appeal to teenagers. There is also evidence that youth-oriented marketing documents have been destroyed and the language of more recent documents sanitized to cover up efforts to market tobacco to youths. Cummings, et. al. (2002) Marketing to America's Youth: Evidence from Corporate Documents, Tobacco Control 11:15; Landman and Glantz (2002) Tobacco Industry Smoking Prevention Programs: Protecting the Industry and Hurting Tobacco Control. Am. J. Public Health 92:917; Ling and Glantz (2002) Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence from Industry Documents. Am. J. Public Health 92:908; Cummings and Pollay (2002) Exposing Mr. Butts' Tricks of the Trade, Tobacco Control 11:162. See The Cigarette Papers, by S. Glantz, et. al. (1996) (University of California Press), of which The New Yorker exclaimed: "Makes it clear that Big Tobacco has known for decades that cigarettes are lethal and addictive and has done everything in its power to suppress and deny that knowledge ***. A shocking collection of secret industry documents." A decade ago, 30% of three-year-olds and 91% of six-year-olds in the United States could identify "Joe Camel" as a symbol of smoking. Fischer, et. al., Brand Logo Recognition by Children aged 3 to 6 years. Mickey Mouse and Old Joe the Camel. JAMA (December 1991) 266(22):3145. In 1984, one tobacco industry researcher cautioned his employer: "Younger adult smokers are

critical to [the tobacco industry's] long-term performance and profitability. Therefore, [the tobacco industry] should make a substantial long-term commitment of manpower and money dedicated to younger adult smoker programs. *** If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle." Burrows (1984) Younger Adult Smokers: Strategies and Opportunities. R.J. Reynolds internal memo (No. 506777955-80420).

103. Royal College of Physicians (February 2000) Nicotine Addiction in Britain; DiFranza, et al. (2002) Development of Symptoms of Tobacco Dependence in Youths, Tobacco Control 11:228 (seventh grade students' loss of autonomy over tobacco use began with first symptom of dependence upon use of two cigarettes one day a week).

104. See fn. 97, supra.

105. Torabi (1993) P.V.V., Cigarette Smoking as a Predictor of Alcohol and other Drug Use by Children and Adolescents: Evidence of the Gateway Drug Effect. Journal of School Health.

106. Dzung Anh Le, J.B.R., University of Toronto Centre for Addiction and Mental health, U.S. Journal of Alcoholism (November 1999); National Institute on Drug Abuse, U.S. Department of Health and Human Services, J.B.R. NIDA News Release (February 2000).

107. United States Public Health Service, Office on Smoking and Health (1994). Preventing Tobacco Use among Young People: A Report of the Surgeon General.

108. Arday et al. (1995) Am J of Health Promotion, Cigarette Smoking and Self-Reported Health Problems among U.S. High School Seniors, 1982—1989.