

23-1187 FDA V. R.J. REYNOLDS VAPOR CO.

DECISION BELOW: 2024 WL 1945307

LOWER COURT CASE NUMBER: 23-60037, 23-60128, 23-60545

QUESTION PRESENTED:

The Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, Div. A, 123 Stat. 1776, requires a person to obtain authorization from the Food and Drug Administration (FDA) before introducing a new tobacco product into interstate commerce. If FDA denies an application for authorization, "any person adversely affected by such * * * denial may file a petition for judicial review of such * * * denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business." 21 U.S.C. 387l(a)(l). The U.S. Court of Appeals for the Fifth Circuit has determined that a manufacturer may seek judicial review in that circuit even if it neither resides nor has its principal place of business there, so long as its petition is joined by a seller of its products, such as a gas station or convenience store, based in the circuit. The question presented is:

Whether a manufacturer may file a petition for review in a circuit (other than the D.C. Circuit) where it neither resides nor has its principal place of business, if the petition is joined by a seller of the manufacturer's products that is located within that circuit.

CERT. GRANTED 10/4/2024