Joel Kurtzberg, Adam Mintz, and John MacGregor Publish "FDA's First Amendment Blindspot Widens with Overzealous Interpretation of Modified-Risk Tobacco Regulation" in WLF's Critical Legal Issues: Working Paper Series

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The Food and Drug Administration has a complicated relationship with the First Amendment. The agency consistently chafes against arguments that the Constitution limits its regulation of promotional and other types of speech. Over the past three decades, regulated entities have been increasingly successfully challenging FDA actions that prohibit, limit, or compel speech about their products or services. Despite those defeats, FDA has continued its confrontational approach. One example of that approach is the agency's overzealous implementation of a 2009 tobacco control law's section on modified-risk tobacco products.

In a new *Working Paper* published in Washington Legal Foundation's (WLF) Critical Legal Issues: Working Paper Series, Cahill attorneys Joel Kurtzberg, Adam Mintz, and John MacGregor explain how modified-risk tobacco manufacturers could successfully bring *as-applied* First Amendment challenges against FDA actions under the tobacco control law. The *Working Paper* also notes that the two court decisions upholding the tobacco control law's provision on modified-risk communication leave open one form of promotion.

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