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COURT DECLINES TO REVIEW DECISION REJECTING COMPELLED SPEECH CLAIMS

(R.J. Reynolds Tobacco Co. v. Shewry)

The U.S. Supreme Court this week declined to review an appeals court decision that rejected a First Amendment challenge to an advertising campaign conducted by the State of California. The Court's action, made without comment, was a setback for the Washington Legal Foundation (WLF), which urged the Court to review (and ultimately overturn) the appeals court ruling.

In a brief filed in *R.J. Reynolds Tobacco Co. v. Shewry*, WLF argued that the First Amendment prohibits a State from forcing a company to pay for advertisements that vilify the company. WLF argued that the First Amendment protects the right not to speak -- including the right not to be compelled to provide financial support for others' speech -- just as strongly as it protects the right to speak.

The case arose in connection with an advertising campaign being conducted by the State of California. California spends \$25 million per year in a campaign designed to prevent smoking by vilifying the tobacco industry. The advertisements repeatedly have called the tobacco industry "deceptive," a "dangerous enemy," and indifferent to the health of its customers, and have routinely accused the industry of lying to the public. The campaign is funded entirely by the tobacco industry: the funding comes from a 25 cent per-pack tax on cigarette sales, imposed on distributors of tobacco products.

Two of the distributors, R.J. Reynolds Tobacco Co. and Lorillard Tobacco Co., filed suit against the advertising campaign in federal district court in California. The district court rejected their First Amendment claim, and the appeals court affirmed that decision in September by a 2-1 vote. The plaintiffs then filed a petition asking the Supreme Court to review that decision. WLF filed its brief in support of that petition. The Court's denial of the petition brings the litigation to a close.

WLF's brief argued that the First Amendment protection against compelled financial support of speech to which one objects has been recognized repeatedly by the Supreme Court and applies just as strongly when the speaker is the government as it does when the speaker is a private party. WLF conceded that the compelled speech doctrine does *not* apply when the

government funds speech out of its general revenues because otherwise dissenting taxpayers would have the ability to prevent the government from speaking out on issues of public importance. But WLF argued that the government may not use funds obtained from a small group of citizens to finance ideological speech to which those citizens object. WLF argued that that prohibition applies particularly strongly when, as here, the advertisements suggest that many of the derogatory statements are actually being uttered by tobacco executives.

“More than two centuries ago, Thomas Jefferson said, ‘To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical,’” said WLF Chief Counsel Richard Samp following the Supreme Court's action. “Jefferson's words are as true today as they were when spoken at the time of the First Amendment’s adoption,” Samp said. Samp noted that the Supreme Court has cited Jefferson’s quote repeatedly in cases upholding First Amendment protections against compelled speech.

WLF said that the First Amendment would not interfere with California’s vilification campaign if it were paid for out of general revenues. But because the campaign is paid for with funds that are easily identifiable as coming from the tobacco industry, the campaign is unconstitutional, WLF argued.

WLF is a public interest law and policy center with supporters in all 50 States, including many in California. WLF devotes a substantial portion of its resources to promoting free speech rights, both of individuals and of the business community. WLF also filed briefs in this case in 2003 and 2004 when it was before the appeals court.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is available on its web site, www.wlf.org.