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WLF Asks District Court to Uphold Free Speech

(The Chamber of Commerce for Greater Philadelphia v. City of Philadelphia)

“By preventing employers from asking job applicants about their current salaries, Philadelphia is banning speech on the basis of its content. Such content-based speech bans are presumptively unconstitutional.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief Friday in the U.S. District Court for the Eastern District of Pennsylvania supporting the plaintiffs in *The Chamber of Commerce for Greater Philadelphia v. City of Philadelphia*.

This case challenges a city ordinance that prohibits employers from inquiring about an applicant’s wage history. Violation of this ordinance can incur significant penalties, including compensatory damages, punitive damages of up to \$2,000 per violation, and imprisonment for up to 90 days upon a repeat offense.

Philadelphia’s chamber of commerce filed suit against the City of Philadelphia on April 6, 2017, seeking a judgment declaring that Phila. Code § 9-1131 violates the First Amendment and due process rights of the chamber’s members under the U.S. Constitution. Along with this judgment, the chamber seeks a preliminary injunction against enforcement of the ordinance.

The main argument WLF’s brief makes against the ordinance is that it restricts speech based on its content (the viewpoint expressed) and speaker (it only applies to employers). Such speech restrictions are subject to strict scrutiny under the First Amendment. As WLF’s brief points out, Philadelphia’s reason for prohibiting truthful speech is the fear that the speech could perpetuate disparities in the average salaries of men and women. But the First Amendment does not allow the government to prohibit truthful speech for such speculative gains.

WLF’s brief also addresses Philadelphia’s argument that the speech being restricted is commercial speech that is subject to a less stringent standard of review. The brief explains that an employer’s inquiry into the wage history of a job applicant is not commercial speech because it does not propose any sort of commercial transaction.

Attorney Kevin M. Siegel provided valuable *pro bono* assistance to WLF in submitting this *amicus* brief.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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