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In Major WLF Victory, Ninth Circuit Strikes Down S.F. Law Requiring Warnings on Soft Drink Ads

(American Beverage Assn. v. City and County of San Francisco)

“The First Amendment protects not only the right to speak but also the right not to speak. The court correctly held that San Francisco violated the rights of soft drink manufacturers when it mandated inclusion of controversial and unduly burdensome warnings in their ads.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—In a victory for Washington Legal Foundation, the U.S. Court of Appeals for the Ninth Circuit today enjoined enforcement of a San Francisco ordinance that required advertisements for sugar-sweetened beverages (SSBs) to include prominent health warnings linking SSB consumption to obesity, diabetes, and tooth decay. The court held in *American Beverage Assn. v. San Francisco* that requiring advertisers to include the controversial warning violates their First Amendment rights not to be compelled to convey the government’s message. WLF submitted a brief in the case, urging the court to strike down the ordinance.

The ordinance required that every outdoor SSB advertisement—even ones that do no more than display a product logo—must include the following statement: “WARNING. Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay.” The warning must occupy at least 20% of the area of the advertisement. Today’s ruling reversed the decision of the district court, which denied the plaintiffs’ request for an injunction against the ordinance.

The appeals court agreed with WLF that although governments may require companies to include noncontroversial statements in their advertising and labeling (such as a list of product ingredients), they may not require inclusion of “controversial” statements without satisfying exacting First Amendment requirements. The Court held that the health warning mandated by San Francisco was “controversial” because it misleadingly suggested that any consumption of SSBs can lead to obesity, diabetes, and tooth decay—when, in fact, health authorities have only warned against *overconsumption* of SSBs.

The Court also agreed with WLF that the ordinance violated the First Amendment because it imposed an undue burden on speech. Noting that the ordinance required a black-box bold warning that covered 20% of the advertising space, the court concluded that the warning “effectively takes over [the advertisers’] message” and would unduly chill free speech. While noting that advertisers would be entitled to counter San Francisco’s “controversial” message with counter-speech of their own, the Court concluded that “this would defeat the purpose of the advertisement, turning it into a vehicle for a debate about the health effects of [SSBs].”

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.