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In Victory for WLF, 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..”

—Richrd Samp, WLF Chief Counsel

WASHINGTON, DC—In a victory for Washington Legal Foundation (WLF), 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 11-judge *en banc* court unanimously 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 decision was relatively narrow. The court agreed with WLF that by requiring advertisers to devote such a large percentage of their ads to the mandated warning, the ordinance violated a constitutional prohibition against mandated speech that is “unduly burdensome” and that thereby discourages companies from advertising at all. The court did not address WLF’s alternative argument that the ordinance violated the First Amendment because the mandated speech was both controversial and misleading. The court also left open the possibility that an identical warning might be upheld if San Francisco required that it occupy only 10% of the area of the advertisement.

Celebrating its 42nd 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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