



FOR IMMEDIATE RELEASE

August 6, 2019

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Second Circuit to Correct Wayward Commercial-Speech Ruling

(*Vugo, Inc. v. City of New York*)

“The panel’s decision is simply the latest example of the Second Circuit’s refusal to take seriously the Supreme Court’s landmark commercial-speech decision in *Sorrell v. IMS Health, Inc.*”

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation filed an *amicus curiae* brief today in the U.S. Court of Appeals for the Second Circuit, supporting Appellee Vugo, Inc.’s petition for rehearing or rehearing *en banc*. The case involves a First Amendment challenge to a New York City ordinance banning all advertising in private ride-share vehicles.

Vugo, a technology company, sells Internet-connected tablets to for-hire vehicle drivers, who then mount the tablet on the front seat’s headrest for passengers to view. Advertisers pay Vugo, which splits the proceeds with the for-hire vehicle drivers. Although New York City bans all advertisements in for-hire vehicles, it permits taxicabs to run advertisements on a platform called “Taxi TV.” Because Vugo’s business is illegal under New York’s advertising ban, it brought a First Amendment challenge. Vugo prevailed in the U.S. District Court for the Southern District of New York, but the City appealed.

The Second Circuit reversed. Purporting to apply intermediate scrutiny, the panel held that the City has a substantial interest in protecting passengers from “annoying” in-ride advertising. Although the City’s ban may appear to be underinclusive by excepting ads for Taxi TV, the appeals court held that the exception is rationally related to defraying costs for the City’s mandate requiring taxis to adopt the Taxi TV platform. As for whether the City’s ban was more extensive than necessary to serve the City’s interest, the court concluded that the City’s regulation was “reasonable.”

In its brief urging rehearing or rehearing *en banc*, WLF addresses the panel’s erroneous reading of the Supreme Court’s landmark decision in *Sorrell v. IMS Health*. Contrary to the panel’s opinion, *Sorrell* mandates scrutiny stricter than intermediate scrutiny for all content- and speaker-based restrictions on truthful commercial speech. As WLF’s brief shows, the panel’s misreading of *Sorrell* in this case counsels strongly in favor of rehearing *en banc*.

Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF’s mission is to preserve and defend America’s free-enterprise system by litigating, educating, and advocating for free-market principles, a limited and accountable government, individual and business civil liberties, and the rule of law.

###