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

WLF Asks Fifth Circuit To Reject FDA's Unconstitutional Compelled-Speech Mandate

(RJ Reynolds v. FDA)

“These are not mere ‘disclosures’ in any sense of the word. If FDA wishes to convey a message, it should do so by using its own resources—not by commandeering the property of others who disagree with that message.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the U.S. Court of Appeals for the Fifth Circuit to affirm a decision declaring unconstitutional a Food and Drug Administration (FDA) requirement that tobacco manufacturers and retailers prominently display a series of graphic warning labels on cigarette packages and advertisements.

The appeal stems from a challenge to FDA’s final rule implementing the Family Smoking Prevention and Tobacco Control Act of 2009. That rule would require all tobacco manufacturers and retailers to include large, graphic, anti-smoking warnings on all cigarette packaging and advertising. Concluding that the rule compelled speech in violation of the First Amendment, the U.S. District Court for the Eastern District of Texas vacated the rule.

In its amicus brief urging affirmance of the trial court’s ruling, WLF emphasized that the First Amendment fully protects the right both to speak and not to speak. WLF’s brief explained why the graphic warnings at issue here do not qualify as ordinary disclosures akin to those that the Supreme Court has upheld. Rather, they are the very sort of controversial, ideological messages that have nothing to do with preventing consumers from being misled. WLF also challenged the FDA’s empirical support for its new rule. As detailed in WLF’s brief, no credible evidence exists that the proposed warnings would accomplish the government’s stated goal of improving public awareness of the risks of smoking.

Celebrating its 46th 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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