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January 24, 2002

COURT URGED TO RULE ON CHALLENGE TO CONTENT-BASED SPEECH RESTRICTIONS *(Federation of Advertising Industry Representatives v. Chicago)*

The Washington Legal Foundation (WLF) this week urged the U.S. District Court for the Northern District of Illinois not to dismiss a challenge to speech restrictions imposed by Chicago simply because Chicago lifted the restrictions after the challenge was filed.

In a brief filed in *Federation of Advertising Industry Representatives, Inc. v. City of Chicago*, WLF argued that to dismiss a suit as "moot" in such circumstances would leave a government free to re-impose the speech restrictions at any time. WLF argued that it is important for courts to enter injunctions against unconstitutional speech restrictions in order to ensure that such actions are not repeated.

The case involves an ordinance adopted by Chicago in 1997 that prohibited outdoor advertising of alcohol and tobacco products without imposing similar restrictions on advertising for other products. The Federation of Advertising Industry Representatives, Inc. ("FAIR"), a group of Chicago advertisers, immediately filed suit against the Ordinance, alleging that it was an unconstitutional content-based speech restriction. Chicago denied that it had violated the First Amendment, and it vigorously defended the suit for four years.

However, in June 2001, the Supreme Court held in *Lorillard Tobacco Co. v. Reilly* that a similar Massachusetts speech restriction violated the First Amendment. FAIR then filed a motion for summary judgment in Chicago, based on the *Lorillard* decision. Rather than opposing the motion, Chicago filed a motion to dismiss the case as moot, on the ground that it would soon be repealing the ordinance. Two months later -- on October 31, 2001 -- the Chicago City Council repealed the Ordinance, and the next week the district court dismissed the case as moot.

WLF filed its brief in support of FAIR's motion to reconsider the dismissal. WLF argued that the district court's mootness ruling is contrary to established Supreme Court precedent. It argued that if a government voluntarily withdraws a policy after it has been challenged in court, the challenge should not be dismissed as moot unless the government can meet a "stringent"

burden of establishing that its allegedly wrongful behavior could not reasonably be expected to recur.

WLF argued that Chicago had failed to meet that burden in this case. WLF noted, for example, that following the dismissal of this lawsuit, legislation has been introduced into the Chicago City Council to impose a new set restrictions on outdoor advertising.

"By entering an injunction against Chicago's blatantly unconstitutional content-based advertising restriction, the district court can ensure that the City adheres to First Amendment norms in the future," said WLF Chief Counsel Richard Samp after filing WLF's brief. "There simply cannot be any other adequate assurances that a city that has been battling for years for the right to trample on First Amendment rights will not decide once again to censor truthful speech," Samp said.

WLF also argued that FAIR is entitled to an award of attorney fees for successfully ridding Chicago of an unconstitutional ordinance, but that federal law will not permit a fee award unless a judgment is entered in FAIR's favor.

WLF is a nonprofit public interest law and policy center with supporters in all 50 states, including many in Illinois. WLF devotes a significant portion of its resources to defending the rights of individuals and businesses that have become the targets of unwarranted government regulation.

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