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FLOYD ABRAMS REPRESENTS WLF IN CHALLENGE TO CHICAGO ADVERTISING RESTRICTIONS

(Federation of Advertising Industry Representatives v. Chicago)

Noted First Amendment advocate Floyd Abrams is now representing the Washington Legal Foundation (WLF) on a pro bono basis in connection with a challenge to a Chicago ordinance that bans outdoor advertising of alcoholic beverages and tobacco while imposing virtually no restrictions on other products' advertising. In a brief filed today in the U.S. Court of Appeals for the Seventh Circuit in Chicago by Abrams and his law firm (Cahill Gordon & Reindel), WLF argued that the ordinance imposes speech restrictions in violation of federal law.

WLF's brief asks the Seventh Circuit to reconsider its decision last month upholding the ordinance. Last month's decision in *Federation of Advertising Industry Representatives, Inc. v. City of Chicago* was a setback for WLF, which last spring filed a brief urging that a lower-court decision striking down the ordinance be upheld. The Seventh Circuit is likely to decide within the next few weeks whether its decision, which was rendered by a three-judge panel, should be reheard in front of all 10 of the court's judges. In its brief urging a rehearing, WLF argued that the court had ignored the plain meaning of relevant federal law and that its decision conflicted with decisions from the Supreme Court and other federal appeals courts.

"We are extremely honored to be represented in this matter by Floyd Abrams, who is widely regarded as one of the nation's premier advocates for free speech rights," said WLF Chief Counsel Richard Samp after WLF's brief was filed. "His involvement in the case demonstrates that the advertising restrictions imposed by Chicago are a dangerous assault on First Amendment rights," Samp said. Cahill Gordon attorneys Jonathan R. Donnellan and Joel Kurtzberg also worked on the brief for WLF.

In its decision last month, the Seventh Circuit rejected WLF's argument that the federal law regulating tobacco advertising prohibits state and local governments from imposing their own additional regulations. WLF also argued that the Chicago ordinance violates the First Amendment rights of advertisers; the Seventh Circuit did not address that argument but rather remanded the case to allow the district court to consider the First

Amendment arguments in the first instance.

The ordinance in question bans virtually all outdoor tobacco and alcoholic beverage signs within Chicago, as well as indoor signs that are visible from the street. The ordinance is being challenged by a coalition of Chicago advertisers and businesses that display tobacco and alcoholic beverage advertising on the front of their stores. For many small businesses, the income they receive from displaying such signs can make the difference between operating at a profit or a loss.

In its brief seeking rehearing, WLF argued that the Federal Cigarette Labeling and Advertising Act (the "Act") prohibits any attempts by state and local governments to regulate cigarette advertising. The Act provides that state and local governments may neither regulate nor prohibit cigarette advertising to the extent that such regulation is "based on smoking and health." 15 U.S.C. § 1334(b). WLF's brief argued that the Chicago ordinance quite clearly *is* "based on smoking and health" and thus is preempted by federal law.

In its decision last month, the appeals court held that it should be presumed that federal law does not displace local governments' exercise of their traditional police powers unless that is Congress's clear intent. The court said that no such clear intent is manifest in the language of the Act and thus that local controls on the location of outdoor advertising (which the court held to be a part of local governments' traditional police powers) are not preempted. WLF responded in its brief by pointing out the court failed to focus on the Act's language, which quite clearly demonstrates Congress's intent to displace state and local control of cigarette advertising.

WLF has pledged to continue the fight to have the Chicago ordinance struck down on both statutory and First Amendment grounds. WLF believes that the Ordinance almost surely will not pass First Amendment scrutiny. The U.S. Supreme Court has held that *all* truthful commercial speech -- provided it does not propose an illegal transaction -- is entitled to substantial First Amendment protection. WLF will argue that Chicago's attempt to single out two types of advertising for prohibition cannot withstand First Amendment scrutiny in the absence of any evidence that the ban is narrowly drawn to address a substantial government concern *and* that the ban is likely to alleviate that concern "to a material degree."

The Washington Legal Foundation is a nonprofit public interest law and policy center with supporters in all 50 states, including many in Chicago. It devotes a substantial portion of its resources to defending the rights of businesses who have become the targets of unwarranted government regulation.

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For further information, contact WLF Chief Counsel Richard Samp at (202) 588-0302.