

## **COURT URGED TO STRIKE DOWN OUTDOOR ADVERTISING BAN**

*(Federation of Advertising Industry Representatives v. Chicago)*

The Washington Legal Foundation (WLF) yesterday urged the U.S. Court of Appeals for the Seventh Circuit to strike down 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 in the case, *Federation of Advertising Industry Representatives, Inc. v. City of Chicago*, WLF argued that the federal law regulating tobacco advertising prohibits state and local governments from imposing their own additional regulations. WLF added that although the Chicago ordinance also violates the First Amendment rights of advertisers, the court need not reach that constitutional issue because federal law so clearly prohibits what Chicago is attempting to do.

"While cities should be permitted to impose reasonable restrictions on advertising based on aesthetic and traffic-safety concerns, federal law and the First Amendment demand that any such restrictions be imposed in a content-neutral fashion - unless the government can produce strong evidence demonstrating why advertising conveying certain messages needs to be suppressed," WLF Chief Counsel Richard Samp said after filing WLF's brief. "Chicago has failed to produce any such evidence in this case," Samp said.

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, 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. That was the basis of a district court opinion striking down the Ordinance. The City is appealing from the district court ruling.

WLF also argued that the Ordinance cannot realistically be severed into two parts, and thus that the invalidation of the Ordinance's ban on tobacco advertising means that the Ordinance's ban on alcoholic beverage advertising must be struck down as well.

Although recognizing that the court was not required to address the First Amendment issue in order to decide the case, WLF argued that the Ordinance almost surely could not pass First Amendment scrutiny. WLF noted that 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 argued 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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