

Press Release

Washington Legal Foundation
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FOR IMMEDIATE RELEASE

September 11, 2002

COURT URGED TO STRIKE DOWN COMPELLED ADVERTISING PROGRAM *(Gerawan Farming, Inc. v. Lyons)*

The Washington Legal Foundation (WLF) this week urged the California Supreme Court to strike down a California law compelling farmers to pay for advertisements generically promoting plums. In a brief filed in *Gerawan Farming, Inc. v. Lyons*, WLF argued that forcing plum growers to pay for advertising with which they disagree violates the California Constitution.

“Businesses have the constitutional right under California law to choose what speech they will pay for,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “That right must not be sacrificed merely because the government wants to promote a certain industry as a whole.”

This case arose when Gerawan Farming, Inc., a family-owned business that grows plums, challenged a mandatory program requiring all plum growers and handlers to pay for advertisements generically promoting the sale of California plums. Gerawan objected to paying for such advertisements because it had invested heavily in developing a distinctive, high-quality plum, while the generic advertisements promoted the message that *all* California plums are high-quality. Gerawan was thus paying for advertisements that would benefit its competitors.

Following the U.S. Supreme Court’s decision in the related case of *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U.S. 457 (1997), a California trial court ruled against Gerawan. The California Court of Appeals affirmed, upholding the mandatory advertising program against Gerawan’s argument that the program violated its free speech rights under the California Constitution. The California Supreme Court reversed in 2000, holding that the California Constitution provided broader protection to commercial speech than does the U.S. Constitution. It remanded the case to the appeals court for reconsideration under the proper constitutional standard. In 2001, the appeals court struck down the mandatory assessment program, and California has appealed that decision back to the California Supreme Court.

In its brief, WLF argued that the California Supreme Court’s prior decision in this case pre-ordains a finding against the State. WLF argued that the prior decision established that the

compelled funding program is subject to strict scrutiny and that the State has failed to explain why it is necessary to fund its generic advertising campaign by extracting funds from dissenting growers. WLF argued that California could quite easily fund its program from general tax revenues or from the voluntary contributions of plum growers who agree with the program.

WLF also filed briefs in this case when it was before the Court of Appeal and when it initially was before the California Supreme Court.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights. WLF filed its brief with the pro bono assistance of Steven G. Brody of the New York City office of King & Spalding, and California attorney Susan Liebeler.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. WLF's brief is posted on its website, www.wlf.org.