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WLF Asks Supreme Court to Strike Down Berkeley Law Requiring Cell-Phone Health Warnings

(CTIA—The Wireless Association v. City of Berkeley)

“The First Amendment protects not only the right to speak but also the right not to speak. In the absence of evidence that cell-phone usage is dangerous to one’s health, cell-phone retailers should not be required to provide their customers with ominous health warnings.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately strike down) a Berkeley, California ordinance that requires all cell-phone retailers to post notices, at their own expense, suggesting that normal cell-phone usage is dangerous. In a brief filed in *CTIA—The Wireless Association v. City of Berkeley*, WLF argues that requiring retailers to post the controversial warning violates their First Amendment right to not communicate the government’s message.

The mandated notice purports to provide instructions for “safe” use of cell phones. It states that carrying a cell phone adjacent to one’s body (as in a pocket)—the manner in which most users carry their phones—exposes one to very high levels of “radiation.” One of the judges who reviewed the ordinance concluded, “Taken as a whole, the most natural reading of the disclosure warns that carrying a cell phone in one’s pocket is unsafe.” Nonetheless, a federal appeals court rejected claims that compelling retailers to convey Berkeley’s message violates the First Amendment—even though the message is contradicted by the Federal Communications Commission’s conclusion that cell-phone use entails no safety risks.

WLF’s brief argues that laws compelling speech by commercial entities ought to be subject to the same exacting First Amendment standards that are applied to restrictions on commercial speech. WLF asserts that although the government is entitled to compel businesses to attach “disclaimers” to their advertisements for the purpose of reducing the possibility that consumers will misinterpret the ads, courts should closely scrutinize compelled speech when (as here) it is not designed to alleviate possible confusion. WLF states that the scrutiny should be particularly intense when, as here, the speech is controversial and not supported by scientific evidence.

Celebrating its 41st 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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