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## In WLF Victory, Appeals Court Strikes Down Government-Mandated Speech by Businesses

*(United States v. Philip Morris, Inc.)*

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—Richard Samp, WLF Chief Counsel

**WASHINGTON, DC**—The U.S. Court of Appeals for the District of Columbia Circuit today overturned a district court order requiring tobacco companies to buy millions of dollars in advertising space to print “corrective statements” containing confessions that they had “deliberately deceived the American public about the health effects of smoking.” The decision was a victory for WLF, which filed a brief arguing that federal law does not permit the government to require individuals or businesses to brand themselves as liars. The court agreed with WLF that the district court went well beyond simply requiring factual and noncontroversial statements regarding health risks.

WLF argued that the First Amendment prohibits compelled speech when, as here, the message is not designed to prevent consumer deception but rather to punish the speaker. The appeals court ruled against the government without reaching the First Amendment argument, however. It ruled that RICO (the Racketeer-Influenced and Corrupt Organizations Act), the statute invoked by the federal government in its decades-old enforcement proceeding against the tobacco industry, only authorizes remedies that “prevent and restrain” future statutory violations. It held that compelling confessions of past wrongdoing is unauthorized under RICO because such compelled speech does not serve to prevent and restrain future violations.

The appeals court upheld the government’s right to require the tobacco industry to publish advertising disclosing truthful statements regarding the adverse health effects of smoking. The court concluded that the defendants had waived their right to object to such truthful disclosures by failing to raise those objections in prior court proceedings.

Following the court’s decision, WLF issued the following statement by Chief Counsel Samp: “Today’s decision, although not based on the First Amendment, was nonetheless a major victory in efforts to prevent the government from forcing individuals to engage in Maoist-style self-criticism. If the government seeks to vilify an entity, it is free to run its own derogatory advertising. The government may not require businesses to disseminate the government’s views on controversial matters; the First Amendment right *not* to speak precludes such mandates.”

*WLF is a public interest law firm and policy center that regularly litigates in support of civil liberties, including First Amendment rights like commercial free speech.*