



FOR IMMEDIATE RELEASE

August 4, 2016

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Asks Ninth Circuit to Strike Down S.F. Law Requiring Health Warnings on Soft Drink Ads

(American Beverage Assn. v. City and County of San Francisco)

“The First Amendment protects not only the right to speak but also the right not to speak. In the absence of evidence that advertisements for sugar-sweetened beverages are deceiving consumers, soft drink manufacturers should not be required to include ominous health warnings in their ads.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Court of Appeals for the Ninth Circuit to enjoin a San Francisco ordinance that requires advertisements for sugar-sweetened beverages (SSBs) to include prominent health warnings linking SSB consumption to obesity, diabetes, and tooth decay. In briefs filed in *American Beverage Assn. v. City and County of San Francisco* and in *California State Outdoor Advertising Assn. v. City and County of San Francisco*, WLF argues that requiring advertisers to include the controversial warning violates their First Amendment right not to be compelled to convey the government’s message.

The ordinance requires that all outdoor SSB advertisements—even ones that do no more than display a product logo—must include the following statement: “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay.” The warning must occupy at least 20% of the area of the advertisement. A federal district court denied the plaintiffs’ request for a preliminary injunction against enforcement of the ordinance.

WLF’s brief notes that although the First Amendment permits government to require advertisers to include “disclaimers” in their ads to ensure that consumers are not deceived, San Francisco has not argued—and has not shown—that its warning requirement prevents consumer deception. WLF’s brief argues that compelled speech not designed to prevent deception cannot withstand constitutional scrutiny when, as here, government could achieve its goal (increasing public awareness about sugar consumption) by disseminating that message itself. The Supreme Court has explained that compelled speech is constitutionally impermissible when the government could achieve its goal without burdening the speech rights of private parties.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “The First Amendment protects not only the right to speak but also the right not to speak. In the absence of evidence that advertisements for sugar-sweetened beverages are deceiving consumers, soft drink manufacturers should not be required to include ominous health warnings in their ads. If San Francisco wants to supply its citizenry with additional information about sugar-sweetened beverages, it is free to do so on its own nickel.”

WLF is a public-interest law firm and policy center that regularly litigates in support of commercial speech rights.

###