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WLF Brief Opposes Government's Effort to Force Businesses to Speak

(United States v. Philip Morris USA Inc.)

“The First Amendment permits the government to require product labels to include factual information designed to prevent consumers from being deceived. But ... [i]f the government—or the federal district court—wishes to see advertising aired criticizing the tobacco industry’s past behavior, the government has to run those ads itself.”—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the District of Columbia Circuit to overturn a district court order requiring tobacco companies to buy millions of dollars in advertising space to print “corrective statements” regarding the health risks of smoking. In a brief filed with the appeals court, WLF argued that such compelled speech violates the First Amendment because the district court went well beyond simply requiring factual and noncontroversial statements regarding health risks.

Rather, the “corrective statements” require the companies to brand themselves as liars and to tell consumers that they have “deliberately deceived the American public” regarding health risks. Noting that the tobacco companies do not believe that they engaged in deliberate deception and do not wish to convey the government’s vilifying message, 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. WLF stated that if the government seeks to vilify an entity, the government must run its own derogatory advertising.

The “corrective statements” were ordered in connection with the federal government’s long-running litigation against the tobacco industry. The federal courts rejected the government’s efforts to recover hundreds of billions of dollars from the industry, but they upheld the imposition of non-monetary remedies designed to prevent the industry from engaging in future deceptive marketing.

Upon filing, WLF issued the following statement by Chief Counsel Rich Samp: “The First Amendment permits the government to require product labels to include factual information designed to prevent consumers from being deceived. But government may not require businesses to disseminate the government’s views on controversial matters; the First Amendment right *not* to speak precludes such mandates. If the government—or the federal district court—wishes to see advertising aired criticizing the tobacco industry’s past behavior, the government has to run those ads itself.”

WLF is a public interest law firm and policy center that devotes a substantial portion of its resources to defending individual and business civil liberties, including First Amendment rights like commercial free speech.

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