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APPEALS COURT URGED TO STRIKE DOWN COMMERCIAL SPEECH RESTRICTIONS

(Educational Media Co. at Va. Tech, Inc. v. Insley)

The Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fourth Circuit to overturn a decision that recently upheld the Commonwealth of Virginia's controversial ban on truthful alcohol advertising in college student publications, in a case where a majority of the readers of those publications are adults over the age of twenty-one.

In a brief filed in *Educational Media Co. at Va. Tech v. Insley*, WLF argued that the ban violates the First Amendment rights of alcohol manufacturers and distributors to speak truthfully about their product. While acknowledging that states have a strong interest in reducing and discouraging underage consumption and abuse of alcohol, WLF argued that the First Amendment does not permit the government to use speech restrictions as its primary means of achieving that goal.

“Alcohol manufacturers and distributors have an interest in conveying truthful information about their products to adults, and adult consumers have a corresponding interest in receiving truthful information,” said WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief with the court. “The Supreme Court has held unequivocally that such content and speaker-based restrictions on truthful speech are constitutionally impermissible; the Constitution requires state governments to turn to restrictions on truthful speech as a *last* resort not—as here—as a first resort,” Andrews said.

WLF's brief emphasized that the Supreme Court's recent opinion in *Sorrell v. IMS Health Inc.* established that where, as here, a law restricts truthful, non-misleading commercial speech on the basis of its content and the identity of its speaker, that law must be subjected to heightened judicial scrutiny. *Sorrell* also clarified, WLF argued, that restrictions on truthful speech that discriminate based on content or speaker are presumptively invalid, whether those restrictions impose burdens on political speech, commercial speech, or any other kind of speech. In other words, content and speaker-based restrictions on commercial speech will fail heightened scrutiny in the ordinary case.

Although WLF believes that Virginia's advertising ban constitutes a content and speaker-based restriction subject to strict scrutiny, WLF also argued that the ban fails to satisfy even the intermediate level of scrutiny established by the Supreme Court in

Central Hudson. WLF argued that the district court's application of the third prong of that test was so watered down and deferential to the Government that it rendered that prong essentially meaningless. Such an approach, WLF insisted, marks a fundamental shift away from the Supreme Court's commercial speech precedent and severely weakens the protections afforded to commercial speakers by the First Amendment.

WLF is a public interest law and policy center with supporters in all 50 States, including many in Pennsylvania. WLF devotes a substantial portion of its resources to protecting and preserving commercial speech rights under the First Amendment.

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For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.