

San Francisco Abandons Unconstitutional Cell Phone Ordinance in Settlement with Wireless Industry

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San Francisco officials have agreed to abandon the City's unconstitutional "Cell Phone Right-to-Know Ordinance" in a settlement that ends a three-year legal battle with the wireless industry. The settlement follows a series of significant court victories that Wiley Rein secured on behalf of client CTIA – The Wireless Association, in *CTIA v. City and County of San Francisco*.

The 2010 ordinance was a first-in-the-nation warning regime predicated on unfounded fears about health risks from mobile phones. The law required retailers to distribute "fact sheets," display posters and place stickers on display materials, warning consumers about unsubstantiated dangers from radio frequency (RF) energy emitted by the devices.

"The settlement vindicates important First Amendment principles regarding government-compelled speech while saving the taxpayers of San Francisco hundreds of thousands of dollars in attorney's fees," said Andrew G. McBride, co-chair of Wiley Rein's Appellate Practice. The settlement was approved this week by San Francisco Mayor Edwin Lee.

Mr. McBride and Wiley Rein partners Joshua S. Turner and Megan L. Brown serve as lead counsel, with other law firms, for CTIA, which prevailed in its argument that the ordinance constituted government-compelled speech in violation of retailers' First Amendment rights. Mr. McBride argued the case before both the district court in San Francisco and the U.S. Court of Appeals for the Ninth Circuit.

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In 2011, a district judge ruled that the First Amendment precluded the City from forcing retailers to post and disseminate the City-drafted warnings. In September 2012, a Ninth Circuit panel agreed with CTIA that the original regime was unconstitutional and also rejected the district court's attempt to revise the City's "fact sheet" to make it less misleading and controversial. On the merits of cross-appeals, the panel found the entire regime to be unfounded, misleading and violative of the First Amendment.

Wiley Rein vindicated this First Amendment victory for the wireless industry in February 2013, when the City's petition for rehearing en banc was denied.