

# Ninth Circuit Blocks San Francisco's Sweetened Beverages Warning Ordinance

## WILEY REIN AMICUS BRIEF HELPS PERSUADE COURT THAT LAW BURDENS COMMERCIAL SPEECH

September 20, 2017

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Washington, DC—Wiley Rein LLP helped persuade a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit to block a San Francisco ordinance requiring advertisements for sugar-sweetened beverages to include a prescribed “warning” message that disparages the products. In yesterday’s high-profile ruling of *American Beverage Association, et al. v. City and County of San Francisco*, the court agreed with beverage manufacturers and retailers that the ordinance was burdensome and would likely violate commercial speech under the First Amendment. Last fall, Wiley Rein LLP filed an *amicus* brief on behalf of the U.S. Chamber of Commerce in support of the plaintiffs, making a similar argument.

In the Ninth Circuit decision, the panel found that “the warning requirements – a black box warning that overwhelmed other visual elements of the ad – unduly burdened and chilled protected speech.” Specifically, the judges held that “because the required warning was not purely factual and uncontroversial, San Francisco had not established that the plaintiffs’ constitutionally protected interest in not providing the warning was minimal” under a 1985 Supreme Court decision in *Zauderer v. Office of Disciplinary Counsel*. The Ninth Circuit ruling overturns a U.S. district court’s decision that denied the plaintiffs’ initial request for a preliminary injunction against the San

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## Practice Areas

First Amendment/Commercial Speech  
Issues and Appeals

Francisco ordinance.

Wiley Rein's *amicus* brief, submitted to the appellate court in August 2016, supported the view of the beverage and retailer associations, arguing that the First Amendment "does not allow governments to compel businesses to discourage the use of their own lawful products." The Ninth Circuit panel agreed with this premise, concluding that the district court had abused its own discretion in denying the plaintiffs' motion for a preliminary injunction. The appellate court reversed and remanded the case back to the lower court.

Wiley Rein partner Megan L. Brown and firm co-founder Bert W. Rein were authors on the *amicus* brief filed on behalf of the U.S. Chamber of Commerce. To view a news release on the filing, please [click here](#).

The Ninth Circuit decision is being covered widely in the media, including stories in the *Associated Press*, *The Wall Street Journal*, and the *Los Angeles Times*. To view the decision, please [click here](#).