

Wiley Rein Files Supreme Court Amicus Brief in Compelled Commercial Speech Case

January 31, 2018

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Washington, DC—Wiley Rein LLP filed an *amicus* brief yesterday in the U.S. Supreme Court on behalf of The Cato Institute, the Competitive Enterprise Institute, and the Cause of Action Institute in *CTIA v. City of Berkeley*, an important First Amendment commercial speech case. The brief urges the Supreme Court to grant certiorari and resolve an important question that goes to the heart of the First Amendment: How much scrutiny does the First Amendment require when governments impose “disclosure” regimes that force sellers to speak and disparage their own products?

Increasingly, Governments at all levels are turning to compelled disclaimer or warning regimes that force commercial actors to communicate value-laden messages with controversial subtext. If not subjected to meaningful judicial review, this proliferation of controversial disclosure requirements undermines basic First Amendment protections. The Wiley Rein litigation team has represented clients in numerous First Amendment business cases, including in challenges to San Francisco’s cell phone warning regime, that same city’s mandatory messages on advertising by the makers of sweetened beverages, and Vermont’s efforts to require labeling of products containing GMOs. We regularly advise clients on the scope of their constitutional rights and the legality of federal, state and local regulatory activity that imposes on free speech rights.

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Practice Areas

First Amendment/Commercial Speech

In the case below, the Ninth Circuit permitted the City of Berkeley to force retailers to transmit a negative and controversial message about cell phone radiation. The brief argues that the Ninth Circuit's opinion impermissibly relieved the City of Berkeley from having to show that that its warning was "reasonably related to the State's interest in preventing deception of consumers," in direct contrast to the Supreme Court's decision in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985). The brief describes lower court confusion that has developed in the wake of the *Zauderer* doctrine, and highlights the absurdity of the Ninth Circuit's approach through compelling visual aids.

The brief, filed January 30, 2018, was authored by Wiley Rein partners Megan L. Brown, Joshua S. Turner, and Stephen J. Obermeier, and associates Jeremy J. Broggi and Bethany A. Corbin.