

PRESS RELEASE

Wiley Files *Amicus* Brief for WLF Urging the Supreme Court to Reject Content-Based Speech Restrictions

September 30, 2021

Washington, DC – Wiley, a preeminent DC law firm, filed an *amicus* brief on behalf of Washington Legal Foundation (WLF), urging the U.S. Supreme Court to strike down an Austin, TX ordinance that limits businesses' free-speech rights. The brief can be found here: *City of Austin v. Reagan National Advertising*. WLF's brief was prepared with the pro bono assistance of Wiley Issues and Appeals Practice co-chair and partner Thomas M. Johnson, Jr. and associate Krystal B. Swendsboe.

The appeal addresses the City of Austin's sign ordinance. That ordinance allows on-premises signs to use digital technology but prohibits off-premises signs from presenting digitized messages. The City of Austin's rationales for the digital-sign ban – traffic safety and aesthetics – make no sense because those same rationales apply to on-premises digital signs, which are allowed.

Reagan National Advertising challenged the ordinance. It relied on the Supreme Court's 2015 *Reed* decision, which held that any ordinance that makes distinctions based on the content of the message on a sign must pass strict scrutiny. The District Court rejected this argument and upheld the ordinance after applying a lower level of scrutiny. The Fifth Circuit reversed that decision. In its view, the Supreme Court's *Reed* decision requires application of strict scrutiny. And because the ordinance cannot withstand strict scrutiny, the Fifth Circuit found the ordinance unconstitutional. The *amicus* brief argues that the Fifth Circuit's ruling correctly applies *Reed*.

"The City of Austin's selective ban on digitized signs prevents citizens

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and businesses from getting out their messages in the locations where they would be most effective—public highways,” Johnson said. “The government should not be permitted to limit people’s access to modern forms of communication based solely on the message the speaker wishes to convey.”