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PRESS RELEASE

Wiley Rein's *Amicus* Brief on Behalf of U.S. Chamber Supports First Amendment Challenge to San Francisco's Sweetened Beverages Warning Ordinance

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Washington, DC – Yesterday Wiley Rein filed an *amicus* brief on behalf of the U.S. Chamber of Commerce, challenging the constitutionality of government attempts to force manufacturers to include negative government messages in their otherwise lawful advertising. Last year, San Francisco city officials approved an ordinance requiring companies that market and sell sugar-sweetened beverages to devote 20% of the area of certain promotional materials –including billboards and signs–to a prescribed "warning message" that disparages the products.

The American Beverage Association, the California Retailers Association, and the California Outdoor Advertising Association are appealing from a district court decision sustaining the ordinance in the U.S. Court of Appeals for the Ninth Circuit. The U.S. Chamber's *amicus* brief in support of the associations was authored by Wiley Rein partners Bert W. Rein and Megan L. Brown and associate Jeremy J. Broggi.

The brief argues that the First Amendment "does not allow the government to compel businesses to discourage the use of their own lawful products" and criticizes the district court for failing to subject

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Practice Areas

First Amendment/Commercial Speech Issues and Appeals

such government mandates to meaningful First Amendment review.

The brief argues: "The common thread running throughout the Supreme Court's First Amendment jurisprudence is that the government may not impose speech regulations—whether mandating speech or prohibiting it—designed to shape citizens' personal views on matters of policy or personal choice to government preferences. As the Supreme Court held in *Sorrell*, '[t]he State can express [its] view through its own speech. But a State's failure to persuade does not allow it to hamstring the opposition. The State may not burden the speech of others in order to tilt public debate in a preferred direction.'"

The *amicus* brief can be found here.

Wiley Rein attorneys have participated in First Amendment litigation regarding commercial speech regulations and compulsions for decades, in cases as varied as *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) (pharmaceutical marketing); *Grocery Manufacturers Association et al. v. Sorrell et al.*, No. 15-1504 (2d Cir. 2016) (GMO label mandate); and *CTIA–The Wireless Association v. City & Cty. of San Francisco, Cal.*, 827 F. Supp. 2d 1054 (N.D. Cal. 2011), *aff'd* 494 F. App'x 752 (9th Cir. 2012) (mandatory cell phone warnings).