# Press Release

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# High Court Vacates Decision that Upheld Berkeley's Cell Phone Health Warning Mandate

*(CTIA-The Wireless Association v. City of Berkeley)*

**"The First Amendment protects not only the right to speak but also the right not to speak. In the absence of evidence that cell-phone usage is dangerous to one's health, cell-phone retailers should not be required to provide their customers with ominous health warnings."**
**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—The U.S. Supreme Court today "GVR'd" a certiorari petition that challenged a Berkeley, California ordinance requiring all cell-phone retailers to post notices suggesting that normal cell-phone usage is dangerous. The Court *granted* the petition, *vacated* the lower-court decision upholding the ordinance, and *remanded* the case for reconsideration in light of a High Court decision issued Tuesday that significantly expanded commercial speech rights. The Court's action was a victory for WLF, which filed a brief urging the Court to grant the petition in *CTIA—The Wireless Association v. City of Berkeley*.

WLF's brief argued that requiring retailers to post the controversial warning violates their First Amendment rights not to be compelled to convey the government's message. The mandated notice purports to provide instructions for "safe" use of cell phones. It states that carrying a cell phone adjacent to one's body (as in a pocket)—the manner in which most users carry their phones—exposes one to very high levels of "radiation." One of the judges who reviewed the ordinance concluded, "Taken as a whole, the most natural reading of the disclosure warns that carrying a cell phone in one's pocket is unsafe." Nonetheless, the U.S. Court of Appeals for the Ninth Circuit rejected claims that compelling retailers to convey Berkeley's message violates the First Amendment—even though the message is contradicted by the Federal Communications Commission's conclusion that cell-phone use entails no safety risks.

WLF's brief argued that laws compelling speech by commercial entities ought to be subject to the same exacting First Amendment standards that are applied to restrictions on commercial speech. WLF asserted that although the government is entitled to compel businesses to attach "disclaimers" to their advertisements for the purpose of reducing the possibility that consumers will misinterpret the ads, courts should closely scrutinize compelled speech when (as here) it is not designed to alleviate possible confusion. WLF stated that the scrutiny should be particularly intense when, as here, the speech is "controversial" and not supported by scientific evidence.

*Celebrating its 41st year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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