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MEMORANDUM

November 5, 2015

To Our Clients and Friends

Re: Eleventh Circuit Court of Appeals Finds Florida Credit Card Surcharge Ban Unconstitutional

The U.S. Court of Appeals for the Eleventh Circuit has struck down a Florida law that makes it a misdemeanor for a seller to impose a surcharge on customers who pay by credit card rather than cash or check, holding that the Florida law unconstitutionally abridges free speech in violation of the First Amendment.

In its ruling, the court stated that the law violates freedom of speech because it allows merchants to tell customers that there are "discounts" for cash transactions but not that there are "surcharges" for credit card transactions, despite that those terms are "nothing more than two sides of the same coin." The court reasoned that rather than regulating commercial behavior, the Florida law has the sole effect of banning merchants from using the word "surcharge," criminalizing speech that is neither false nor misleading.

In contrast, the U.S. Court of Appeals for the Second Circuit recently took a different view and upheld a similar credit card surcharge ban under New York state law as constitutional. In that case, the Second Circuit ruled that speech regarding prices of goods and services and associated surcharges is not speech protected by the First Amendment.

A copy of the court's opinion can be found on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Ben Gray at (202) 776-0700.