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MEMORANDUM

September 30, 2015

To Our Clients and Friends

Re: Second Circuit Court of Appeals Upholds New York Ban on Credit Card Surcharges

The U.S. Court of Appeals for the Second Circuit has upheld the constitutionality of a New York law that prohibits sellers from imposing a surcharge on customers who use credit cards rather than cash. The decision overturns a lower court decision that found that New York's surcharge ban law violates the First Amendment and is unconstitutionally vague.

In its ruling, the court stated that prices of goods and services are not "speech," despite being communicated through language, and they therefore do not enjoy the protection of the First Amendment. Additionally, the court found that consumers react negatively to surcharges not because of a message they communicate but rather because the consumers do not like having to pay extra for a particular payment method.

The Second Circuit also rejected the argument that the New York law is unconstitutionally vague, citing an identical lapsed Federal statute as proof that sellers should not have trouble complying with it.

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.