



April 4, 2017

U.S. SUPREME COURT REMANDS TEXAS SURCHARGE CASE

The United States Supreme Court granted the petition for a writ of certiorari in the Texas surcharge case and vacated the judgment of the United States Court of Appeals for the Fifth Circuit. *Rowell v. Pettijohn, Leslie L.*, ---S.Ct.---(2017). The Court remanded the case to the Fifth Circuit for further consideration in light of *Expressions Hair Design v. Schneiderman*, 581 U.S. ____ (2017) decided by the Court in March. See our Alert of March 29, 2017 for details.

The Fifth Circuit upheld the Texas Anti-Surcharge Law in the face of a First Amendment challenge. *Rowell v. Pettijohn*, Case No. 15-50168 (5th Cir. March 2, 2016). The Fifth Circuit held that Texas' law regulates conduct, not speech, and, therefore, does not implicate the First Amendment.

In March, the United States Supreme Court concluded that the New York law prohibiting merchants from imposing a surcharge on purchases paid for with a credit card regulates speech. *Expression Hair Design v. Schneiderman*, 581 U.S. ____ (March 29, 2017). The Supreme Court remanded the case to determine whether the New York Law is a valid commercial speech regulation or an unconstitutional regulation of speech under the First Amendment.

We will continue to follow the case on remand. Please contact us if you have any questions. □

✧ *Elizabeth Anstaett and Emily Cellier*

Darrell L. Dreher
ddreher@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Susan M. Seaman
sseaman@dltlaw.com

Emily C. Cellier
ecellier@dltlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTLAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com