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WLF ASKS U.S. SUPREME COURT TO FIND PREEMPTION OF STATE SECURITIES SUITS

(Merrill Lynch, Pierce, Fenner & Smith v. Dabit)

The Washington Legal Foundation (WLF) filed a brief today in the U.S. Supreme Court asking the Justices to reverse a lower court's restrictive interpretation of the Securities Litigation Uniform Standards Act of 1998, or "SLUSA."

In that statute, Congress acted to curb abusive class action claims for securities fraud. SLUSA expressly preempts any class action based upon state law concerning a material misrepresentation or omission "in connection with the purchase or sale of a covered security." The U.S. Court of Appeals for the Second Circuit in this case read a restriction into the statute's preemption provision, holding that it allows suits to proceed in state court on behalf of persons who merely hold, rather than purchase or sell, securities.

In its brief, WLF noted that SLUSA was intended to protect the federal policy of encouraging efficient securities markets by preventing circumvention of the Private Securities Litigation Reform Act of 1995. Congress enacted SLUSA after determining that the trend toward state class-action litigation "created a ripple-effect that has inhibited small, high-growth companies in their efforts to raise capital, and has damaged the overall efficiency of our capital markets." WLF argued that the statute's language broadly preempts "holder" claims as well as purchaser and seller claims. WLF further argued that this plain-language interpretation of SLUSA is the only reading of SLUSA consistent with sound policy and common sense. Finally, WLF's brief argued that a broad reading of SLUSA is consistent with principles of federalism, noting that the Framers granted Congress the power to prescribe uniform national rules when necessary to promote the flourishing of interstate commerce, and that the flow of capital manifested in the trading of securities on national exchanges is interstate (and increasingly international) in character.

Donald B. Verrilli, Jr. of the Washington, D.C. office of Jenner & Block represented WLF on a *pro bono* basis.

WLF is a nonprofit, nonpartisan public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF engages in litigation and participates in administrative proceedings to defend free enterprise, individual rights, and a balanced civil justice system. To that end, WLF has frequently appeared in federal and state courts to address

the proper scope of federal preemption. In addition, WLF frequently publishes policy papers and takes part in litigation and agency proceedings to promote and defend legal rules that protect employees, pensioners, and investors from stock losses caused by abusive securities litigation. Among WLF's recent papers on this topic are James Maloney, *Strict Standing Requirement For Securities Fraud Suits Upheld* (2005); Lyle Roberts & Paul Chalmers, *Lower Courts Will Determine Impact Of Supreme Court's Securities Fraud Suit Ruling* (2005); and Neil M. Gorsuch & Paul B. Matey, *Settlements In Securities Fraud Class Actions: Improving Investor Protection* (2005).

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of the brief is posted on WLF's web site, www.wlf.org.