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February 5, 2016

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Prominent Legal Scholar Joins WLF in Urging High Court to Abolish Undue Judicial Deference to Agencies

(United Student Aid Funds, Inc. v. Bible)

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WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Supreme Court to overturn its own precedent that requires federal courts to defer to an administrative agency’s interpretation of its own regulations. In an *amicus* brief filed in *United Student Aid Funds, Inc. v. Bible*, WLF argues that the rule of deference announced in *Auer v. Robbins* undermines the rule of law by creating a systematic bias in favor of the federal government. WLF’s brief was joined by Professor Philip Hamburger of Columbia Law School, a leading expert on constitutional and administrative law.

The case arises from a dispute over a defaulted student loan. When USA Funds assessed Bryana Bible collection costs as spelled out in her promissory note, she brought a nationwide class action alleging a violation of federal regulations governing the note. When the district court dismissed her complaint, Bible appealed. The Department of Education filed an *amicus* brief with the appeals court, announcing for the first time that its regulations prohibit guarantors from assessing collection costs. Deferring to the agency’s belated interpretation of its own regulation, the appeals court reinstated the lawsuit.

Decided nearly 20 years ago, *Auer* requires judges to give an agency’s interpretation of its own rules “controlling” weight. WLF’s brief argues that when the Framers authorized judicial power under Article III of the Constitution, they took for granted that judges, in line with common-law ideals of judicial office, owed a duty to exercise independent judgment in deciding the legal questions before them. By requiring judges to reflexively defer to the legal interpretations of federal bureaucrats in administrative agencies, *Auer* asks jurists to abandon their duty of exercising independent judgment.

Even worse, WLF’s brief contends, the agency to which a court must defer under *Auer* is frequently a party to the litigation. In such cases, *Auer* essentially obliges judges to accept one party’s argument over another’s on a legal question at issue. In so doing, *Auer* requires judges to adopt a systematic bias in favor of the government, in violation of the Fifth Amendment’s guarantee of due process of law.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “Experimenting with judicial deference is a dangerous game. In all cases—but especially where adjudicating the power of government over the people—it is crucial that federal judges exercise their independent judgment about what the law requires.”

WLF is a national, public-interest law firm and policy center that defends free enterprise, in part by litigating to ensure that federal agencies are not accorded undue deference in judicial proceedings.

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