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February 18, 2014

Media Contact: Rich Samp | 202-588-0302

## WLF Believes U.S. Supreme Court Unlikely to Hear Argentina's Appeal from Bond Decision

*(Republic of Argentina v. NML Capital, Ltd.)*

**“The Supreme Court almost surely will not agree to hear Argentina’s last-ditch effort to avoid an injunction requiring it to honor its commitment to treat all bondholders equally. The Court rarely agrees to examine state-law issues of the sort that were key to the decision below.” – Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—The Washington Legal Foundation expects the Republic of Argentina to file a petition today asking the U.S. Supreme Court to review an appeals court decision ordering the country not to play favorites among creditors by paying interest to some bondholders while ignoring legitimate claims of others. WLF, which filed a brief in the appeals court below in support of bondholders challenging Argentina, believes the Court will not agree to hear the case.

The Supreme Court’s reluctance to hear the sort of issue upon which the appeal hinges hampers Argentina’s chances to obtain review. The appeals court applied New York contract law to interpret the bond agreement’s standard *pari passu* clause to require Argentina to make ratable payments to “hold-out” bondholders if it made payments to other bondholders who agreed to a 70% “haircut” following Argentina’s 2001 bond default. Before that ruling, some commentators assumed a *pari passu* clause was meaningless boilerplate. As the Court generally only decides federal issues, it is unlikely to second-guess the appeals court’s interpretation of New York law.

Argentina’s certiorari petition will challenge the appeals court’s remedy for Argentina’s violation of the *pari passu* clause, an injunction preventing Argentina from making payments to exchange bondholders without also making comparable payments to hold-outs. It will argue the injunction violates the federal Foreign Sovereign Immunities Act (FSIA), which provides that property belonging to a foreign government is “immune from attachment, arrest, and execution” by a U.S. court. But the appeals court’s injunction cannot properly be characterized as an “attachment” of any specific Argentine property. The injunction does not require Argentina to make any bond payments; it provides merely that if Argentina decides to make payments on some bonds, then it must abide by its contractual commitment to treat all bondholders equally.

In anticipation of Argentina’s filing, WLF issued a statement by Chief Counsel Richard Samp: “The Supreme Court almost surely will not agree to hear Argentina’s last-ditch effort to avoid an injunction requiring it to honor its commitment to treat all bondholders equally. The Court rarely agrees to examine state-law issues of the sort that were key to the decision below. On the one federal issue it raises, Argentina points to no conflicting decisions.”

*WLF is a public interest law firm and policy center that regularly defends legal standards that ensure equal treatment of all creditors and prevent debtors favoring some creditors over others.*