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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges California Supreme Court to Reject Wage Challenge to Apple's Bag-Check Policy

(*Frlekin v. Apple, Inc.*)

“Words can be stretched only so far before they break. A ruling against Apple would stretch the words in the wage order beyond that breaking point. It would leave California employers to guess at what employee conduct is compensable.”

—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) earlier today filed a brief in *Frlekin v. Apple, Inc.*, urging the California Supreme Court to clarify that an employer need not pay an employee for the time she spends voluntarily using an optional perk or service the employer provides.

The U.S. Court of Appeals for the Ninth Circuit asked the California high court to answer the question at issue in *Frlekin*. That certified question turns on the meaning of “hours worked” under a California Industrial Welfare Commission wage order. The defendant, Apple, Inc., permits its retail employees to bring a personal bag to work for their own convenience, subject to a security check. Four former Apple employees sought back wages and penalties from Apple for time they spent undergoing bag checks, contending that such time amounts to unpaid “hours worked” under the wage order. But Apple’s bag-check policy subjects its retail employees to mandatory checks *only if* they voluntarily choose to bring a bag into an Apple store during work.

The district court certified a class of retail employees who voluntarily brought a bag to work and thus underwent a bag-check. Because employees were not required to bring bags to work and thus not required to undergo bag checks, the district court granted summary judgment in favor of Apple, concluding that time spent undergoing bag checks did not constitute “hours worked” and thus was not compensable. The employees appealed that ruling.

WLF’s *amicus curiae* brief advances two points. First, a holding that the wage order covers Apple’s bag-check time would render that order over-inclusive to the point of unintelligibility. Because plaintiffs can prevail on appeal only under an interpretation that would render the wage order void for vagueness, the court should reject that tortured construction under the constitutional avoidance canon. Second, in adopting its bag-check policy, Apple reasonably relied not only on the wage order itself but on the California Supreme Court’s 2000 decision in *Morillion v. Royal Packing Co.* Because holding Apple liable retroactively for not paying wages for bag-check time would punish Apple unfairly, WLF argues that any ruling applying the wage order to Apple’s bag-check policy should be enforced only going forward, not retroactively.

Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.