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Media Contact: Derek Dye | ddye@wlf.org | 202-588-0302

DC Circuit Hears Oral Argument in “Too Big to Fail” Case

(MetLife, Inc. v. Financial Stability Oversight Council)

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— Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today attended oral argument in *MetLife, Inc. v. Financial Stability Oversight Council* (FSOC) at the U.S. Court of Appeals for the DC Circuit. In March 2016, a federal district court overturned MetLife’s “too big to fail” designation, holding that FSOC had failed to adhere to the requirements of the Dodd-Frank Act and its own rules in making the designation. Today, a three-judge panel of the DC Circuit heard FSOC’s appeal from that decision. Chief Counsel Richard Samp attended the session and is available to answer questions about the argument.

WLF’s *amicus curiae* brief filed in August argued for affirming the lower-court decision based on FSOC’s violation of MetLife’s due process rights. Today’s oral argument focused more on the argument that FSOC acted in an arbitrary and capricious manner by failing even to consider some of the arguments MetLife made against designating it as a “nonbank systemically important financial institution” (SIFI)—*i.e.*, as “too big to fail.” FSOC’s SIFI designation will subject MetLife—an insurance company that does not engage in any of the high-risk ventures that contributed to the 2008 financial collapse—to massive and costly new regulation. Indeed, in an effort to avoid some of that burden, MetLife announced in January 2016 that it is divesting the vast majority of its U.S. retail insurance operations. WLF’s brief was joined by the Allied Educational Foundation.

After attending today’s argument, WLF issued this statement by Chief Counsel Richard Samp: “The appeals court judges each expressed incredulity over the federal government’s refusal even to address many of MetLife’s arguments as to why it should not be designated ‘too big to fail.’ While the judges recognized that they are required to give considerable deference to the decisions of administrative agencies, they repeatedly noted that agency action must be overturned as ‘arbitrary and capricious’ when the agency fails to consider important aspects of the problem. The appeals court may well send this case back to FSOC and demand a more complete explanation for the agency’s decision.”

WLF is a national, public-interest law firm and policy center that regularly advocates for procedural fairness in proceedings conducted by federal administrative agencies.

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