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## Citing Class-Certification Defects, WLF Urges Eighth Circuit to Throw Out \$34 Million Judgment

(*Vogt v. State Farm Life Insurance Co.*)

**“The district court’s certification decision radically transforms the class action from a device designed to avoid the inefficiencies of trying (and deciding) the same claims repeatedly into a device that unfairly alters the parties’ substantive rights.”**  
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the U.S. Court of Appeals for the Eighth Circuit to reverse a \$34 million jury award made possible by the trial court’s deeply flawed certification of an unwieldy class of State Farm life-insurance policyholders. In its brief in *Vogt v. State Farm Life Insurance Company*, WLF argues that, by defining class membership based on whether a policyholder ultimately prevails on the merits of her claims, the district court created an impermissible “fail-safe” class.

The appeal arises from a class action by Missouri life-insurance policyholders who allege that State Farm breached their policies by including unlisted factors in their cost of insurance (COI) rates during the class period. Over State Farm’s objection, the trial court certified a class that included hundreds of individuals who suffered no harm or loss from State Farm’s COI calculations. Following a three-day damages trial, the jury returned a verdict of more than \$34 million. Months later, the district court modified the judgment to exclude from the class some 487 policyholders who could not prove damages.

But that approach to class certification requires the court first to resolve the merits of the case before it can determine who is a member of the proposed class. While many federal appeals courts have flatly prohibited such fail-safe classes, the Eighth Circuit has not yet considered the question. In its brief, WLF contends that this appeal offers the appeals court an excellent vehicle for doing so.

Fail-safe classes raise serious due-process concerns. They are unfair to defendants because they allow class members to evade the bar of res judicata, as plaintiffs are bound only by a favorable judgment. And they are unfair to absent class members, who too often are deprived of the requisite notice and ability to opt out of the class prior to final judgment.

*Celebrating its 42nd 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.*

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