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## WLF Urges Ninth Circuit to Reconsider its Obsolete Reading of the FTC Act's Remedy Provision

(*FTC v. AMG Capital Management, LLC*)

**“The Ninth Circuit should reconnect its reading of the FTC Act to what the FTC Act actually says.”**

**—Corbin K. Barthold, WLF Litigation Counsel**

WASHINGTON, DC—Washington Legal Foundation today urged the Ninth Circuit to rehear *en banc* an appeal challenging a \$1.27 billion restitution judgment awarded without statutory authority.

Section 13(b) of the FTC Act empowers the FTC to sue, in federal court, to obtain an injunction against deceptive trade practices. The pertinent provision limits the FTC to injunctive relief—it says only that a court may “in proper cases” issue a “permanent injunction.” The Ninth Circuit has repeatedly said, however, that the word “injunction” in section 13(b) unlocks the entire vault of equitable remedies. In this case, that meant affirmance of a massive restitution award against a group of payday loan companies.

Rather than justify such restitution awards through a rigorous analysis of the FTC Act’s text and structure, the Ninth Circuit has simply relied on a 73-year-old Supreme Court case, *Porter v. Warner Holding Co.*, for the notion that the word “injunction” in a statute unleashes all equitable remedies.

In its *amicus* brief, WLF argues that *Porter* is obsolete. Its endorsement of judicial statutory revision resembles the defunct doctrine of “the equity of the statute,” by which a court may disregard a statute’s text in order to implement the court’s subjective sense of justice. This doctrine arose in the English common-law courts in the Late Middle Ages. It gradually died out, however, as judges came to realize that it is inconsistent with democratic governance and the separation of powers.

In the mid-twentieth century, the Supreme Court briefly adopted a new version of the equity of the statute to “imply” new rights and remedies into laws. But as WLF explains in its brief, the Court later reversed course. It came to recognize that it is solely for Congress to decide how, and by whom, its statutes are enforced.

WLF’s brief urges the Ninth Circuit to rehear the case *en banc* so that it can align its interpretation of section 13(b) with the modern and binding rules of statutory interpretation.

*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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