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## Antitrust Scholars Join WLF in Urging Fifth Circuit Not to Dilute Antitrust Standing Requirement

*(Pulse Network, LLC v. Visa, Inc.)*

**“Antitrust is about unleashing competition, not throttling it. Yet accepting Pulse’s watered-down approach to antitrust injury would invite struggling firms to use antitrust law as a sword rather than a shield.”**

**—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—Earlier today, Washington Legal Foundation (WLF) asked the U.S. Court of Appeals for the Fifth Circuit to reject an effort by Pulse Network, LLC (Pulse) to weaken one of the core elements of antitrust standing: “antitrust injury.” WLF’s brief was joined by leading antitrust scholars Richard A. Epstein and Geoffrey A. Manne.

The case arises from Pulse’s lawsuit against Visa, Inc. (Visa), claiming that Visa’s debit-network-pricing strategies are exclusionary and violate federal antitrust laws. The district court held that Pulse could not sue because it lacks antitrust injury—that is, even assuming that Visa’s conduct violates the antitrust laws (which Visa very much disputes), Pulse was not injured by any anticompetitive aspect of Visa’s conduct. Pulse has appealed, contending that the district court’s antitrust-injury analysis was flawed—and asking the Fifth Circuit to adopt an expansive theory of antitrust injury under which virtually *any* competitor that alleges it was harmed by an antitrust violation has automatically suffered “antitrust injury.”

WLF’s brief advances three main arguments. First, adopting Pulse’s approach would dramatically dilute the force antitrust injury has as a standing threshold in private antitrust cases to ensure that antitrust laws are used to benefit competition, not competitors. Second, Pulse’s theory of antitrust injury, if embraced on appeal, would make it much easier for struggling competitors to pursue litigation as a business strategy, bogging down thriving companies in meritless but time-consuming and expensive antitrust litigation. And third, reversing the decision below would ultimately harm consumers—the very group that antitrust law aims to protect—because Pulse complains that Visa’s transaction fees are *too low*, forcing Pulse, in turn, to lower its own fees.

*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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