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January 23, 2020

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WLF Urges Massachusetts Judiciary to Adopt Rule Allowing Both Sides to Address Damages Amount

(In re Proposed Amendment to Mass. R. Civ. P. 51)

“The proposed rule is sensible, fair, and essential for dispensing civil justice.”

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Earlier today, Washington Legal Foundation (WLF) joined a coalition of leading business, civil justice, and public-policy groups in urging the Massachusetts Supreme Judicial Court to adopt a proposed rule—Rule 51(a)(2) of the Massachusetts Rules of Civil Procedure—that would help to ensure that civil litigation in the Commonwealth is procedurally fair to all parties.

In 2014, the Massachusetts Legislature amended Mass. Gen. Laws. c. 231, §13B to give plaintiffs in civil actions the statutory right to request a specific amount in damages during closing arguments. WLF’s letter cites studies showing that plaintiffs’ attorneys, by anchoring their closing argument to a specific amount of damages, are more likely to obtain larger jury awards.

But because the plaintiffs’ attorney gives closing argument last in Massachusetts civil trials, defense counsel have no opportunity to rebut the requested amount. In response to this procedural unfairness, the Massachusetts Supreme Judicial Court’s Standing Advisory Committee has proposed an amendment to Rule 51. Under Rule 51(a)(2), if a party who intends to suggest a specific monetary amount fails to notify all parties of that amount before closing argument, the court must structure the closing argument to allow the opposing party an opportunity to respond to the amount requested.

WLF’s letter was drafted with the *pro bono* assistance of Mark A. Behrens, a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P.

Celebrating its 43rd 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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