“At a time when our nation’s free-enterprise system is facing many challenges, Washington Legal Foundation speaks with a powerful voice in helping to shape a legal and regulatory environment conducive to economic growth and prosperity for all people. Join me in supporting this dynamic organization, the talented team at WLF that provides leadership, and the engaged network of committed professionals across the country whose pro bono efforts contribute mightily to the important work of this remarkable foundation.”

Jay B. Stephens, Chairman, Legal Policy Advisory Board

Washington Legal Foundation is the nation’s premier public-interest law firm and policy center. Our mission is to preserve and defend America’s free-enterprise system by litigating, educating, and advocating for free-market principles, a limited and accountable government, individual and business civil liberties, and the rule of law. We LITIGATE precedent-setting issues before courts and regulatory agencies; PUBLISH and distribute timely and influential legal studies; and COMMUNICATE our message through webcast programs, blog commentary, editorials, and public education campaigns.
For more than forty years, WLF has been a fearless advocate for limited, accountable government and the rule of law. We have litigated more than 1,500 court cases, participated in almost 900 administrative and regulatory proceedings, and published more than 2,700 publications.

2019 was another banner year for WLF. Our litigators filed briefs in 49 major cases in the Supreme Court, the federal courts of appeals, and state high courts. We saw positive decisions for, among many other things, the Takings Clause (Knick v. Township of Scott), federal preemption (Merck, Sharpe & Dohme v. Albrecht), and sensible environmental law (a grant of Supreme Court review in Atlantic Richfield v. Christian). WLF also submitted comments to federal agencies such as the National Labor Relations Board, the Department of Labor, and the Department of Housing and Urban Development. The topics addressed in these comments ranged from wage-and-hour law to the federal civil-procedure rules to alcoholic-beverage labeling.

Once again, the quality of WLF’s legal work was widely hailed. “Your brief was very, very readable,” one attorney wrote; “it will give SCOTUS something to really carefully think about.” In another case, the attorney arguing the matter before the Supreme Court said: “The brief is just sensational. It’s a pleasure to read and re-read.”

Our Legal Studies Division continued to shine as a unique legal-policy think tank. It published 48 policy papers this year on administrative law, securities law, antitrust law, class actions, expert evidence, arbitration, federal jurisdiction, and much more. As always, most of WLF’s publications were written pro bono by outside experts. Some of our outstanding contributors this year included Maureen K. Ohlhausen and Anthony W. Swisher, who drew lessons from an FTC merger approval; Victor E. Schwartz and Christopher E. Appel, who wrote to set the record straight about the benefits of arbitration; and Joe G. Hollingsworth and Mark A. Miller, who urged federal judges to be more consistent gatekeepers of expert evidence. WLF’s blog, the WLF Legal Pulse, published 80 commentaries this year, including pieces on cutting-edge topics such as the rise of “hipster” antitrust, recent climate-change lawsuits, and the role government should play in advancing artificial intelligence.

In 2019 WLF continued to have an outsized presence in the media. WLF was published, quoted, or discussed this year in the Washington Post, Reuters, Forbes.com, Bloomberg Law, SCOTUSBlog, Overlawyered, Truth on the Market, Law & Liberty, ABA Journal, National Law Journal, Law360, and many other outlets.

It was also a great year for WLF’s Legal Policy Advisory Board, which added six phenomenal new members: a top Supreme Court advocate, two former FTC commissioners, a Fortune 500 general counsel, and top outside and in-house corporate counsel. We are grateful both to our Board Chairman, the Honorable Jay Stephens, and to the full Board for their invaluable guidance.

We could not do all that we do without the support of our allies. Above all, we recognize and appreciate our many generous and civic-minded donors. Thank you for putting your faith in WLF. Rest assured that we are as determined as ever to defend free enterprise and secure our precious freedoms.

Constance Claffey Larcher
President and Chief Executive Officer

We applaud the law firms and professionals who offer their expertise as pro bono attorneys and authors.

Akin Gump Strauss Hauer & Feld LLP
Allen & Overy LLP
Amin Talati Upadhye
Baker Botts LLP
BakerHostetler
Brownstein Hyatt Farber Schreck, LLP
Buchanan Ingersoll & Rooney PC
Capital Appellate Advocacy PLLC
Chuhak & Tecson PC
Dechert LLP
Deutsch Hunt PLLC
Dorsey & Whitney LLP
Epstein Becker & Green, PC
Gibson, Dunn & Crutcher LLP
Haynes and Boone, LLP
Hollingsworth LLP
Horvitz & Levy LLP
K&L Gates LLP
Keller and Heckman LLP
King & Spalding LLP
Kirkland & Ellis LLP
Littel Mendelson PC
Mayer Brown LLP
Murphy & McGonigle PC
Ogletree, Deakins, Nash, Smoak & Stewart, PC
Orrick LLP
Parr Brown Gee & Loveless
Parker Heitz & Cosgrove
Patterson Belknap Webb & Tyler LLP
Reed Smith LLP
Shearman & Stirling LLP
Shook, Hardy & Bacon LLP
Sidley Austin LLP
Strategic Policy Counsel, PLLC
Stris & Maher LLP
Utrecht & Lenvin
Venable LLP
Vinson & Elkins LLP
White & Case LLP
Wiley Rein LLP
Wilkinson Barker Knauer, LLP
Williams & Connolly LLP
“Your work in support of free markets, accountable government, and the rule of law helps keep America competitive and folks like us on the straight and narrow.”

The Honorable Noah Joshua Phillips
Commissioner, Federal Trade Commission
“Your brief is terrific; it complements our integrity of the country’s legal system.

Litigating

Our litigation team, together with more than 270 prestigious law firms nationwide, rigorously monitors and intervenes in cases, actions, and complaints that threaten the fundamental rights of hard-working Americans and the integrity of the country’s legal system.

When government agencies interfere with those rights, WLF’s litigation team does not hesitate to challenge those agencies in court.

WLF Gets Results

In 2019 WLF participated in or obtained outcomes in 85 court cases and regulatory proceedings. WLF’s highly effective approach to advocacy put us on the winning side in nineteen high-profile cases, including five wins in merits cases at the U.S. Supreme Court: Merck, Sharp & Dohme v. Albrecht; Knick v. Scott Township; Parker Drilling Management Services v. Newton; Nielsen v. Preap; and Fourth Estate Public Benefit Corporation v. Wall-Street.com.

Unlike other organizations, WLF does not focus narrowly on one or two niche issues. We can spread resources across multiple fronts and pivot quickly to combat emergent threats to free enterprise. While our experienced attorneys are adept at mastering new areas of law as novel issues arise, they are also experts in several fields where threats recur, such as: Regulatory Agency Abuse

Government regulatory agencies have a natural tendency to extend their powers beyond those delegated to them by the legislature. That “mission creep” can have adverse effects on the regulated community, which often has no advance warning that long-accepted practices will now be subjected to intense government scrutiny. WLF regularly opposes agencies’ efforts to unilaterally enhance their powers. For example, in one pending U.S. Supreme Court case, Liu v. Securities and Exchange Commission, WLF argues that the SEC may not evade statutory limits on the penalties it may obtain by relabeling those penalties “disgorgement.” WLF is asking the Supreme Court to hear a similar challenge to the Federal Trade Commission’s authority to impose penalties, AMG Capital Management, LLC v. FTC. In FTC v. Shire ViroPharma, WLF persuaded the Third Circuit to impose limits on the FTC’s authority to seek injunctive relief. And in Kisov v. Wilkie, WLF persuaded the Supreme Court to narrow the deference courts must sometimes give to a federal agency’s interpretation of its own regulations.

Class Actions

WLF has long fought against excessive and improperly certified class-action lawsuits that too often force settlement of meritless claims. In

Antitrust Liability

Some recent federal court rulings have expanded liability under the antitrust laws. WLF has repeatedly appeared in court—in the Supreme Court and six federal circuit courts in 2019 alone—in an effort to counter that trend. WLF argued that a unilateral refusal to deal with a competitor does not normally violate the antitrust laws (Swisher International v. Trendset Dahl USA and Viamedia, Inc. v. Comcast Corporation); that antitrust standing should be limited to companies that purchase products directly from an alleged antitrust violator (Apple, Inc. v. Pepper); that litigants who settle patent-infringement lawsuits should not normally be subject to antitrust liability (Impax Laboratories v. FTC); and that price-fixing claims cannot proceed past the pleadings stage unless the plaintiffs allege facts plausibly demonstrating the existence of a conspiracy (Quality Auto Painting Center v. State Farm Indemnity Co.).

In J-800 Contacts v. FTC, WLF urged the Second Circuit not to let the FTC wantonly expand its use of an abbreviated “quick look” standard for assessing antitrust liability. WLF’s brief in that appeal was joined by five prominent antitrust scholars.

Judge K.K. Legett Academic Fellowship Program

“Interning with WLF has truly been an incredible experience!”

Noah A. Hearn, 2019 Judge K.K. Legett Fellow

Each summer for over 25 years, WLF has been privileged to host a select group of exceptional students from Texas Tech University School of Law through our Judge K.K. Legett Academic Fellowship Program. K.K. Legett Fellows are a central part of WLF’s activities during the summer, working one-on-one with our litigators on amicus briefs, regulatory comments, and other projects. Each Fellow also prepares either a paper or blog post that WLF publishes and distributes nationally.

The Fellowship program contributes significantly to the students’ education and exposes them to a free-enterprise perspective on law and policy that will serve them well and help advance WLF’s mission once they join the legal community.
**Federal Trade Comm’n v. Shire ViroPharma Inc.**

Restricting FTC’s Enforcement Powers

Federal law grants the FTC authority to seek court injunctions against those accused of unfair competition. WLF argues that the FTC cannot seek an injunction unless it shows that improper conduct is ongoing or “about to” happen. The Third Circuit agreed and held that the FTC was not entitled to an injunction when the last alleged misconduct occurred five years before suit was filed.

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**Atlantic Richfield Co. v. Christian**

Supporting Exclusivity of “Superfund” Remedies

Adopted in 1980, the federal “Superfund” law has facilitated the orderly and federally supervised clean-up of numerous toxic waste sites across the country. WLF argues that state courts are not permitted to impose their own, conflicting clean-up plans on those same sites.

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**CTIA v. City of Berkeley**

Challenging Berkeley’s Free-Speech Violations

A Berkeley law requires all cell-phone retailers to post signs warning of supposed health dangers of ordinary cell-phone use. WLF argues that the law violates the First Amendment right of retailers not to be forced to convey a government message they believe is misleading.

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**Ahold U.S.A., Inc. v. Warner Chilcott PLC**

Limiting Who May File Antitrust Claims

When plaintiffs’ lawyers sue a drug company for allegedly excessive prices, they routinely include claimants who never purchased the company’s product—but who claim that the company’s alleged misconduct increased the price of products they did buy. WLF argues that antitrust standing should be limited to those who had direct financial dealings with the defendant drug companies.
**Whole Foods Market Group, Inc. v. Molock**

**Supporting Due Process Limits on State-Court Jurisdiction**

WLF argues that a defendant should not be forced to defend a nationwide class action outside its home State. Absent class members should be required to sue in the State where their claims arose, not in a far-off jurisdiction thought to have plaintiff-friendly courts.

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**City of Oakland v. BP p.l.c.**

**Opposing Judicial Regulation of Climate Change**

WLF argues that climate change issues should be addressed by legislatures, not the courts. WLF’s brief urges dismissal of lawsuits filed by cities seeking to hold energy companies responsible for costs the cities may face in responding to a changing environment.

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**Publishers Business Services, Inc. v. Federal Trade Comm’n**

**Limiting Judicial Remedies Available to FTC**

The FTC Act grants the Commission authority to seek federal-court injunctions against those accused of deceptive practices or unfair competition. WLF argues that the statute should be enforced as written; it does not also authorize the FTC to seek other remedies, such as disgorgement or restitution.
Litigation and Regulatory Reform

Washington Legal Foundation litigates at every level of the judicial system, from local courts to the U.S. Supreme Court. WLF also regularly initiates, or intervenes in, administrative proceedings to promote regulatory reform. WLF participated in or obtained outcomes in 85 court cases and regulatory proceedings in 2019. Briefs and regulatory comments filed by WLF are available at WLF.org.

1-800 Contacts, Inc. v. FTC
U.S. Court of Appeals for the Second Circuit
Challenging inappropriate FTC antitrust enforcement

Ahold U.S.A. v. Warner Chilcott PLC
U.S. Court of Appeals for the First Circuit
Limiting who may file antitrust claims

Allen v. Cooper
U.S. Supreme Court
Requiring states to respect copyrights

American Beverage Assoc. v. San Francisco
U.S. Court of Appeals for the Ninth Circuit
Supporting federal preemption of state-law railroad injury claims

Arguedas v. Seawright
New Mexico Court of Appeals
Supporting class actions for uninjured plaintiffs

Atlantic Richfield Co. v. Christian
U.S. Supreme Court
Supporting exclusivity of federal “Superfund” remedies

Bottini v. City of San Diego
U.S. Supreme Court
Supporting property owners’ compensation rights

BNSF Railway Co. v. Montana Eighth Judicial District
U.S. Supreme Court and Montana Supreme Court
Supporting federal preemption of state-law railroad injury claims

Bottini v. Wright Medical Group
Utah Supreme Court
Supporting liability limits for unavoidably unsafe products

Chamber of Commerce for Greater Philadelphia v. City of Philadelphia
U.S. Court of Appeals for the Third Circuit
Challenging ordinance that restricts employer speech

City of Oakland v. BP p.l.c.
U.S. Court of Appeals for the Ninth Circuit
Opposing judicial regulation of climate change

City of New York v. Chevron Corp.
U.S. Court of Appeals for the Second Circuit
Opposing judicial regulation of climate change

Comcast Corp. v. NAAOM
U.S. Supreme Court
Requiring proof of “but-for” causation in discrimination cases

County of Maui v. Hawaii Wildlife Fund
U.S. Supreme Court
Supporting reasonable limits on Clean Water Act

CTIA—The Wireless Ass’n v. City of Berkeley
U.S. Supreme Court
Challenging Berkeley’s free-speech violations

Dannels v. BNSF Railway Co.
Montana Supreme Court
Supporting federal preemption of state-law railroad injury claims

Doe I v. Exxon Mobil Corp.
U.S. District Court for the District of Columbia
Urging dismissal of suits likely to cause diplomatic strife

Dolin v. GlaxoSmithKline LLC
U.S. Supreme Court and U.S. Court of Appeals for the Seventh Circuit
Opposing “innovator liability” for drug companies

Domino’s Pizza, LLC v. Robles
U.S. Supreme Court
Opposing unwarranted expansion of Americans with Disabilities Act

Emulex Corp. v. Varjabadian
U.S. Supreme Court
Reining in securities fraud litigation

Erfindergemeinschaft UroPep v. Eli Lilly and Co.
U.S. Court of Appeals for the Federal Circuit
Supporting limitations on venue of patent lawsuits

Expressions Hair Design v. Schneiderman
U.S. Court of Appeals for the Second Circuit
Challenging restrictions on merchants’ speech

Facebook, Inc. v. Patel
U.S. Supreme Court and U.S. Court of Appeals for the Ninth Circuit
Opposing certification of classes of uninjured plaintiffs

Frlkin v. Apple, Inc.
California Supreme Court
Opposing expanded definition of “hours worked”

Federal Trade Comm’n v. Shire ViroPharma, Inc.
U.S. Court of Appeals for the Third Circuit
Seeking to rein in FTC litigating authority

Financial Oversight and Management Bd. v. Aurelius Investment, LLC
U.S. Supreme Court
Urging adherence to Appointments Clause interpretations

First Advantage Background Services Corp. v. Superior Court
U.S. Supreme Court
Supporting federal preemption of state-law railroad injury claims

Fourth Estate Public Benefit Corp. v. Wall-Street.com
U.S. Supreme Court
Supporting expanded False Claims Act liability

Gilead Sciences, Inc. v. U.S. ex rel. Campie
U.S. Supreme Court
Opposing expanded False Claims Act liability

Hammons v. Ethicon, Inc.
Pennsylvania Supreme Court
Limiting personal jurisdiction over nonresident defendants

Home Depot U.S.A., Inc. v. Jackson
U.S. Supreme Court
Supporting federal-court forum for class actions

Impax Laboratories, Inc. v. FTC
U.S. Court of Appeals for the Fifth Circuit
Supporting antitrust liability for settling patent suits

In re Velocis Express
National Labor Relations Board
Supporting employer rights against compelled speech

In re Velos Express
National Labor Relations Board
Opposing expanded labor-relations penalties

Kisor v. Wilkie
U.S. Supreme Court
Opposing judicial deference to agencies’ regulatory interpretations

Knick v. Township of Scott
U.S. Supreme Court
Supporting federal forum for Takings Clause claimants

Latiolais v. Huntington Ingalls, Inc.
U.S. Court of Appeals for the Fifth Circuit
Supporting federal contractors’ removal rights

Liu v. Securities and Exchange Commission
U.S. Supreme Court
Limiting SEC’s power to seek disgorgement remedies

Love Terminal Partners, L.P. v. United States
U.S. Supreme Court
Supporting personal jurisdiction based on registration to do business

Pennsylvania Superior Court
Supporting personal jurisdiction based on registration to do business
Marion Healthcare LLC v. Becton Dickinson & Co.
U.S. Court of Appeals for the Seventh Circuit
Urging adherence to antitrust law’s “direct purchaser” rule

Merck & Co. v. HHS
U.S. Court of Appeals for the D.C. Circuit
Supporting right to resist compelled government speech

Merck Sharp & Dohme Corp. v. Albrecht
U.S. Supreme Court
Supporting preemption of failure-to-warn tort claims

Missouri Broadcasters Ass’n v. Taylor
U.S. Court of Appeals for the Eighth Circuit
Supporting First Amendment right to advertise liquor

Moussouris v. Microsoft
U.S. Court of Appeals for the Ninth Circuit
Opposing class certification when common issues do not predominate

Mozilla v. Corp. v. FCC
U.S. Court of Appeals for the D.C. Circuit
Supporting repeal of “net neutrality” rules

Murray v. American LaFrance, LLC
Pennsylvania Superior Court
Limiting personal jurisdiction over nonresident defendants

Mussat v. IQVIA, Inc.
U.S. Court of Appeals for the Seventh Circuit
Opposing nationwide class actions against nonresident defendants

Nielsen v. Preag
U.S. Supreme Court
Supporting detention of alien felons

Nestlé USA, Inc. v. Doe I
U.S. Supreme Court
Opposing expansive Alien Tort Statute liability

U.S. Court of Appeals for the Second Circuit
Supporting antitrust liability

Nicopure Labs, LLC v. FDA
U.S. Court of Appeals for the D.C. Circuit
Supporting commercial speech rights

Noel v. Thrifty Payless, Inc.
California Supreme Court
Supporting certification of “unascertainable” classes

Parker Drilling Management Services, Inc. v. Newton
U.S. Supreme Court
Opposing application of California law to off-shore sites

Pfizer, Inc. v. Adamyan
U.S. Supreme Court
Supporting removal of “mass actions” to federal court

Pulse Network, LLC v. Visa, Inc.
U.S. Court of Appeals for the Fifth Circuit
Supporting antitrust standing requirements

Quality Auto Painting Center v. State Farm Indemnity Co.
U.S. Court of Appeals for the Eleventh Circuit
Supporting heightened pleadings standard for antitrust claims

Restoration I of Port St. Lucie v. Ark Royal Ins. Co.
Florida Supreme Court
Supporting freedom to enter into contracts

Seila Law, LLC v. Consumer Financial Protection Bureau
U.S. Supreme Court
Challenging CFPB structure as unconstitutional

Stromberg v. Qualcomm Inc.
U.S. Court of Appeals for the Ninth Circuit
Opposing certification of unwieldy nationwide class

Swisher In’tl v. Trendsetah USA
U.S. Supreme Court
Supporting certification of unwieldy nationwide class

Swisher Int’l v. Trendsetah USA
U.S. Supreme Court
Limiting “refusal to deal” antitrust liability

Thole v. U.S. Bank
U.S. Supreme Court
Supporting nationwide class actions against nonresident defendants

Tillage v. Comcast Corp.
U.S. Court of Appeals for the Ninth Circuit
Supporting enforcement of arbitration agreements

U.S. Supreme Court
Supporting commercial speech rights

U.S. ex rel. Ruckh v. Salus Rehabilitation, LLC
U.S. Court of Appeals for the Eleventh Circuit
Supporting enforcement of arbitration agreements

Vago, Inc. v. City of New York
U.S. Court of Appeals for the Second Circuit
Supporting freedom to enter into contracts

Wallace v. Grubhub Holdings, Inc.
U.S. Court of Appeals for the Seventh Circuit
Supporting proper reading of Federal Arbitration Act

Walsh v. BASF Corp.
Pennsylvania Supreme Court
Supporting certification of “fail safe” classes

Whole Foods Marketing Group, Inc. v. Molock
U.S. Court of Appeals for the D.C. Circuit
Opposing nationwide class actions against nonresident defendants

Whelan v. A.O. Smith Corp.
U.S. Court of Appeals for the Eighth Circuit
Supporting commercial speech rights

Winston & Strawn LLP v. Ramos
U.S. Supreme Court
Supporting commercial speech rights

In re Alcohol and Labeling Regulations
Alcohol and Tobacco Tax and Trade Bureau
Urging increased recognition of commercial speech rights

In re Anti-Kickback Statute Safe Havens
Department of Health and Human Services
Urging increased recognition of commercial speech rights

In re FHA Disparate-Impact Liability
Department of Housing and Urban Development
Supporting limits on liability under Fair Housing Act

In re Multi-District Litigation Reform
Judicial Conference of the United States
Recommending MDL rule changes to protect due-process rights

In re Proposed Amendments to Fed.R.Civ.P.
Judicial Conference of the United States
Arguing that proposed amendments to Rule 30(b)(6) be scrapped

In re Required Warnings for Cigarette Packages and Advertising
Food and Drug Administration
Supporting commercial speech rights

In re Revised Definition of “Waters of the United States”
Environmental Protection Agency and U.S. Army Corps of Engineers
Supporting proposed revision of Clean Water Act regulations

In re Standards for Determining Joint Employer Status
U.S. Department of Labor
Supporting commercial speech rights

In re Standards for Determining Joint Employer Status
National Labor Relations Board
Urging 2015 Browning-Ferris standard be overturned
Publishing

Enterprising Legal Advocacy

Successfully advocating for a legal and regulatory environment that fosters free enterprise requires the timely dissemination and steady reinforcement of compelling arguments and ideas to those lawyers and jurists who shape the law. WLF established the Legal Studies Division in 1986 to deliver such well-informed critiques and principled analyses to decisionmakers in a variety of publication formats.

WLF’s publications target highly selective legal policy-making audiences. We market our publications to:

• Federal and state judges and their clerks
• Members of Congress and their aides
• Regulatory agencies and executive branch attorneys
• State legislators, state attorneys general, and their aides
• Business leaders and corporate general counsel
• Law professors
• Influential legal journalists, bloggers, and media commentators

We archive our publications in our website’s searchable online catalog. The shorter-format papers are also available on the Lexis/Nexis® database. Our authors supplement WLF’s targeted distribution with their own extensive marketing efforts. Recipients use our publications as third-party educational tools in legal-policy campaigns, handouts at conferences, references in court briefs and law review articles, and instructive materials in internal corporate-compliance programs. Our publications are also routinely reprinted in specialized trade and professional journals.

Unlike a traditional “think tank” that supports a stable of in-house scholars, each year WLF solicits scores of independent legal professionals to author our publications on a pro bono basis. This allows WLF to tap relevant expertise and focus our resources on putting these intellectual tools in the right hands.

WLF has enlisted nearly 2,400 writers over the last four decades. Our authors are law firm partners and associates; corporate executives; in-house counsel; eminent legal scholars; and federal and state judges, regulators, and elected officials.

Over the past year, WLF released 48 papers authored by 69 legal professionals, including 40 first-time authors.

Our publications shaped some of the most critical legal debates and developments confronting America’s free-enterprise system. The information consumers share during online activities is a vital commodity for commerce. Businesses’ protection and use of that data have become prime targets for regulators and plaintiffs’ lawyers. State-by-state promulgation of data-privacy rules, as well as a precipitous rise in privacy-based class-action lawsuits, foster confusion and legal unpredictability in an inherently national marketplace. A trio of WLF Legal Backgrounders discuss the proliferation of state laws, explain the benefits of uniform data-privacy rules through federal preemption, and detail the pitfalls of allowing private plaintiffs to enforce a national privacy law.

Thousands of decisionmakers and top legal minds across the country rely on our biweekly publications for the most insightful analysis of timely legal issues. Publications in print and online are marketed to expansive audiences ranging from business leaders to members of Congress and the media.

With the size of government still growing apace, more businesses are contracting with federal and state entities. Government contracts expose businesses to liability under the False Claims Act (FCA), a punitive and sweeping anti-fraud law that can be enforced by both federal prosecutors and private individuals known as “relators.” Private qui tam suits can impose high litigation costs on federal agencies with which the relators’ targets contract. Agencies’ frequent resistance of qui tam defendants’ discovery demands have serious due-process implications, a WLF Legal Backgrounder argues. The paper advocates that federal courts compel agency disclosure of evidence that is likely to be helpful to a contractor’s defense. Another Legal Backgrounder urges the Justice Department to more closely communicate with contracting federal agencies when prosecutors contemplate businesses’ requests that they unilaterally dismiss qui tam suits.

For a complete list of 2019 publications and topic areas covered, consult pages 21-24.
Counsel’s Advisory
Announces urgent legal developments that impact free enterprise.

Legal Opinion Letter
CMS’s “INTERNATIONAL PRICING INDEX” FOR MEDICARE-COVERED DRUG PAYMENT ILI-CONCEIVED AND ILEGAL

Legal Background
FEDERAL PREEMPTION: AN ESSENTIAL COMPONENT OF AN EFFECTIVE NATIONAL DATA-SECURITY AND PRIVACY REGIME

Working Paper
ADMISSIBILITY OF EXPERT TESTIMONY: RECOMMENDATIONS FOR RULE 702

Monograph
THE CONSTITUTIONAL IMPUGNABILITY OF EPA’S PUBLIC MENTIONS MANDATE FOR ACCIDENTAL CHEMICAL DISCHARGES

Contemporary Legal Note
Outlines basic principles and issues in a single area of law.
Circulating Opinion
Abridges persuasive and well-written judicial opinions relevant to WLF’s mission.

On the Merits
Presents concise, timely, and substantive analyses of important pending litigation from opposing perspectives.

Administrative Procedure
The Fuss over Stare Decisis: Four October Term 2018 Rulings Open Window to Justices’ Current Thinking
Lawrence S. Ebner, Capital Appellate Advocacy PLLC
Gundy v. U.S.: Does Decision Signal a Rougher Ride Ahead for the Administrative State?
Jeremy J. Broggi and Bert W. Rein, Wiley Rein LLP
The Qualcomm Antitrust Case: A Window on Our Vast, Dysfunctional Federal Government
Corbin K. Barthold, Washington Legal Foundation

Antitrust and Consumer Protection
The Death of Antitrust Leniency?: Reviving a Key Self-Reporting and Prosecutorial Mechanism
John Roberti, Providence Napoleon, and Eun Joo Hwang, Allen & Overy LLP; and Shireen Meer, Berkeley Research Group, LLC
Staples/Essendant as a Window into FTC Vertical Merger Enforcement
Maureen K. Ohlhausen and Anthony W. Swisher, Baker Botts LLP

Arbitration Rights
Setting the Record Straight About the Benefits of Pre-Dispute Arbitration
Victor E. Schwartz and Christopher E. Appel, Shook, Hardy & Bacon LLP

Asbestos and Toxic Torts
New Jersey Supreme Court Issues Compelling Precedent Removing Hearsay Bar to Third-Party-Fault Evidence
Nicholas P. Vari and Michael J. Ross, K&L Gates LLP

Business Civil Liberties and Criminal Liability
U.S. v. Davis: The Supreme Court Provides Further Clarity on How It Will Remedy Vague Laws
David Debold, Gibson, Dunn & Crutcher LLP
Navigating the Perilous Shoals of Congressional Oversight Investigations
Gregory A. Brewer and William E. Moschella, Brownstein Hyatt Farber Schreck, LLP

Court Finds NY Unconstitutionally Shifted Cost of “Opioid Stewardship Fund” to Out-of-State Commerce
Hyland Hunt, Deutsch Hunt PLLC
Capital Markets, Securities, and Corporate Governance

Federal Securities Law Should Supersede Conflicting Procedural Rules in Securities Class Actions
Doug Greene, Jessie M. Gabriel, Douglas Shively, and Genevie York-Erwin, BakerHostetler

Civil-Justice Reform

Oklahoma Opioid Ruling: Another Instance of Improper Judicial Governance through Public Nuisance Litigation
Eric G. Lasker and Jessica L. Lu, Hollingsworth LLP

Developments in Added-Sugar Food-and-Beverage Litigation: Cause for Hope, Cause for Concern—Creighton Magid, Dorsey & Whitney LLP

Class-Action Litigation

D.C. Circuit Fortifies Predominance Challenges in No-Injury Class Action Lawsuits
Andrew J. Trask, Shook, Hardy & Bacon LLP

Third Circuit Should Reverse Class Certification in In re Lamictal Indirect Purchaser & Antitrust Consumer Litigation
Douglas W. Dunham and Ellen P. Quackenbos, Dechert LLP

In re Asacol, First Circuit Shows What a Rigorous Analysis of Predominance Looks Like
Andrew J. Trask, Shook, Hardy & Bacon LLP

Commercial Speech

Circulating Opinion: American Beverage Association v. City and County of San Francisco
Digesting an opinion by The Honorable Sandra Segal Ikuta, U.S. Court of Appeals for the Ninth Circuit.

CMS’s DTC Drug Ad Price-Disclosure Mandate: An Ill-Conceived and Illegal Proposal
Howard L. Dorfman, Seton Hall University School of Law

Communications and Information Technology

Golden (State) Opportunity: What Businesses Need to Know About Rulemaking for California’s Privacy Act
Gerard M. Stegmaier and Mark D. Quist, Reed Smith LLP

California Consumer Privacy Act Remains Unclear on Lawyers’ Duty to Protect Client Confidentiality
David A. Zetoony and Anne Redcross Bechler, Bryan Cave Leighton Paisner LLP

The Coming Litigation Tsunami?: Why Private-Right-of-Action Enforcement Undermines Privacy and Data Security
Al Saikali, Shook, Hardy & Bacon LLP

Federal Preemption: An Essential Component of an Effective National Data-Security and Privacy Regime
Stuart M. Gerson, Epstein Becker & Green, PC

With First-of-its-Kind Decision, Pennsylvania High Court Identifies Common-Law Duty to Protect Digital Data
Andrew C. Glass, David R. Fine, and Roger L. Smerage, K&L Gates LLP

Case Involving Automobile’s Vulnerability to Hacking Allowed to Proceed to Trial
Gregory A. Brower and Samantha J. Reviglio, Dechert LLP

The Case for Uniform Standards Grows as States Sew More Laws into Patchwork of Data-Privacy Regulations
Boyd Garriott, Megan Brown, and Wes Weeks, Wiley Rein LLP

Discovery Process

Federal Civil Rules Committee Drops Divisive Corporate Witness ID Duty
Mark A. Behrens and Christopher E. Appel, Shook, Hardy & Bacon LLP

Employment Law

Courts Deliver Mixed Bag on Federal Law’s Preemption of State Independent Contractor Standards
Stephen T. Melnick, Littlef Mendelson PC

Environmental Regulation and Enforcement

Circulating Opinion: United States v. Florida
Digesting an opinion by The Honorable Elizabeth L. Branch, U.S. Court of Appeals for the Eleventh Circuit

Ninth Circuit Should Reject Court’s Fly-Specking of Keystone XL Pipeline’s NEPA Review
Kathryn K. Floyd, Maggie Fawal, and Chelsea O’Sullivan, Venable LLP

The Constitutional Implications of EPA’s Public Meeting Mandate for Accidental Chemical Releases
Lawrence P. Halprin and Javaneh S. Nekoomaram, Keller and Heckman LLP

Expert Evidence and Junk Science

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Alex Dahl, Lawyers for Civil Justice and Strategic Policy Counsel, PLLC

Roundup Cases May Be a New Example of an Old Problem: The Post Hoc Fallacy
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Frank Cruz-Alvarez and Melissa N. Madsen, Shook, Hardy & Bacon LLP

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Drug-Label “Highlights”: An Overlooked Avenue to Preemption in Failure-to-Warn Litigation
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James M. Beck, Reed Smith LLP

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**Circulating Opinion: Oberdorf v. Amazon.com Inc.**
Digesting an opinion by The Honorable Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit

Punitive Damages

**Circulating Opinion: Lindenberg v. Jackson National Life Insurance Company**
Digesting an opinion by The Honorable John K. Bush, U.S. Court of Appeals for the Sixth Circuit

WLF’s nine publishing formats target specific policy-making audiences. Each format presents single-issue advocacy on a meaningful legal topic. Our authors are among the nation’s foremost legal professionals, including expert attorneys, business executives, judges, and senior government officials who contribute their services on a strictly pro bono basis.
Washington Legal Foundation’s Civic Communications Program helps us shape and influence public debate through in-house and online programming, timely blog posts, and rapid-response media engagement. This Program also supports and complements our litigation and publishing initiatives.

**WLF Programming**

WLF’s in-house media facility hosts concise, informative Media Briefing and Webinar programs that educate leading decisionmakers and opinion leaders. Installments of both programs are broadcast live on WLF’s website, and are conveniently available to the public as on-demand video files. We partner with Ustream, IBM’s Cloud Video service, which both streams our events live and maintains a WLF page containing our recorded events. We also maintain an event library on YouTube.

In addition to our three annual briefings on the U.S. Supreme Court, WLF’s 2019 programs offered insightful analysis and practical guidance on issues of longstanding interest, such as white-collar enforcement and congressional investigations, as well as on emerging issues like regulation and litigation targeted at the makers and users of “PFAS” chemicals, and antitrust enforcers’ focus on businesses that collect and use large amounts of consumer data. The “More Antitrust, More Data!” Media Briefing featured former Acting Chairman and Commissioner of the Federal Trade Commission, Maureen Ohlhausen.

**Social Media**

Our blog, the *WLF Legal Pulse*, publishes regular contributions from WLF attorneys and facilitates posts from leading private practitioners, academics, law students, and others as guest contributors. We published 88 substantive blog commentaries, 59 of which were authored *pro bono* by guest contributors.

We are honored to have, among our guest contributors, thirteen attorneys from major law firms, and one contributor from a leading academic institution, who volunteer to cover specific topic areas. We gratefully acknowledge these “Featured Expert Contributors”:

- **Daniel S. Alter**, Murphy & McGonigle PC (Legal & Regulatory Challenges for Digital Assets)
- **Professor Stephen M. Bainbridge**, UCLA School of Law (Corporate Governance/Securities Law)
- **Samuel B. Boxerman**, Sidley Austin LLP (Environmental Law and Policy)
- **Gregory A. Brower**, Brownstein Hyatt Farber Schreck, LLP (White Collar Crime & Corporate Compliance)
- **Megan L. Brown**, Wiley Rein LLP (First Amendment)
- **Frank Cruz-Alvarez**, Shook, Hardy & Bacon LLP (Civil Justice/Class Actions)
- **Joe G. Hollingsworth**, Hollingsworth LLP (Litigation Strategies)
- **Jeffri A. Kaminski**, Venable LLP (Intellectual Property—Patents)
- **Robert H. Quinn**, Wilkinson Barker Knauer LLP (Communications Law)
- **M. Sean Royall**, Gibson, Dunn & Crutcher LLP (Antitrust & Competition Policy—FTC)
- **Anthony W. Swisher**, Baker Botts LLP (Antitrust & Competition Policy—DOJ)
- **Evan M. Tager**, Mayer Brown LLP (Judicial Gatekeeping of Expert Evidence)
- **Stephen A. Wood**, Chuak & Tecson, PC (False Claims Act)
- **Robert H. Wright**, Horvitz & Levy LLP (Mass Torts—Asbestos)

WLF also has a long-running blog-publishing relationship with Forbes.com. The company maintains a contributor site within its network of blogs for WLF attorneys’ commentaries (located at www.forbes.com/sites/wlf). The site exposes staff-authored posts to Forbes.com and its vast readership, which exponentially increases the viability of our online advocacy in web searches and expands our impact in legal debates.

Additionally, WLF’s presence on Twitter (@WLF), Facebook, and LinkedIn continues to grow and engage new audiences. The Twitter feed is followed by a steadily growing list of thought leaders who follow WLF’s latest briefs, publications, regulatory filings, blog posts, and media programs.

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WLF and its attorneys shape the coverage of court decisions, lawsuits, regulations, and other specific legal developments, as well as broader, longer-term debates by commenting directly to print and broadcast media. WLF further advances the public’s understanding and opinion of high-profile cases and legal policy matters by submitting our views to widely consumed articles or web/radio programs.
Speakers

Lisa S. Blatt
Williams & Connolly LLP

Maureen K. Ohlhausen
Baker Botts LLP

Gregory A. Brower
Brownstein Hyatt Farber Schreck LLP

Elizabeth P. Papez
Gibson, Dunn & Crutcher LLP

The Honorable Tom Davis
Holland & Knight LLP

Carter G. Phillips
Sidley Austin LLP

Ann Marie Duffy
Hollingsworth LLP

Ira Raphaelson
White & Case LLP

Lawrence S. Ebner
Capital Appellate Advocacy

Nicole A. Saharsky
Mayer Brown LLP

John P. Elwood
Vinson & Elkins LLP

Pratik A. Shah
Akin Gump Strauss Hauer & Feld LLP

Allyson N. Ho
Gibson, Dunn & Crutcher LLP

Alec Stapp
International Center for Law and Economics

Michael B. Kimberly
Mayer Brown LLP

Jay B. Stephens
Kirkland & Ellis LLP and Chair, WLF Legal Policy Advisory Board

Frank Leone
Hollingsworth LLP

William E. Moschella
Brownstein Hyatt Farber Schreck, LLP

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Informing the Media

Targeted and broad-based, our Civic Communications Program hosts Media Briefings on current legal issues to educate key decisionmakers and opinion leaders. As an essential element of our outreach strategy, these briefings feature leading legal authorities addressing a wide variety of timely topics. Participants donating their time and expertise to discuss legal reform, clean air regulation, national security, white collar crime, the U.S. Supreme Court, food and drug regulation, and criminalization of free enterprise, and other topics.

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All contributions to WLF are strictly confidential. WLF does not disclose, publish, or trade the names of its donors.

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<th>74%</th>
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2019 Expenses

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<td>Legal Activities</td>
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In high-profile legal matters, impact litigation and crisis-management situations, the WLF legal-PR team weighs in with authority. Our seasoned in-house attorneys, along with pro bono support from leading law firms, make us a powerful legal advocate for free enterprise. WLF influences public policy by hosting persuasive briefings for the electronic and print media, authoring national op-ed articles, publishing highly-regarded legal studies in eight different publication formats, and filing briefs in important, precedent-setting cases.

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WLF has litigated more than 1,500 cases, participated in almost 900 administrative and regulatory proceedings, and published more than 2,700 legal studies by 2,365 different legal experts.

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