Press Release

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FOR IMMEDIATE RELEASE January 19, 2021

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WLF Urges Second Circuit to Reject Manufactured Article III Standing for States

(*New York v. Scalia*)

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—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Court of Appeals for the Second Circuit to prohibit States from manufacturing Article III standing. Adopting the States' position, the U.S. District Court for the Southern District of New York held that a State's voluntary choice to update its rules in response to a federal regulatory change is a direct Article III injury. It also held that a State's decision to increase its wage-and-hour enforcement because of federal regulatory action is a direct Article III injury. WLF's brief urges vacating that decision.

The appeal arises from a lawsuit by a group of States against the Department of Labor. Last year, the Department of Labor revised the joint-employer rule for the first time in 60 years. The States sued alleging that the joint-employer rule would harm their residents and ultimately decrease the States' tax revenues. The District Court correctly rejected both of these arguments. WLF's brief explains why the States lack *parens patriae* standing and why the revised joint-employer rule will lead to *increased* State tax revenue.

Nothing in the FLSA requires the States to update their own rules or enforce their own wage-and-hour laws. As WLF's brief explains, a self-inflicted injury is insufficient for Article III standing. If adopted, the States' "theory of injury would pervert Article III's standing requirement for States. A State could always manufacturer standing." WLF therefore urges the Second Circuit to follow Supreme Court precedent—by not permitting manufactured standing—and to vacate the District Court's order.

Celebrating its 44th 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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