



Washington Legal Foundation
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WLF Month in Review

This WLF Litigation Division feature highlights WLF's court filings, as well as decisions issued in response to WLF's filings. In this edition, we list **January 2021** filings and results.

New Filing

- States may not rely on speculative and hypothetical harms to manufacture standing to sue in federal court. (***New York v. Scalia***)

Decisions

- The Massachusetts Supreme Judicial Court requires plaintiffs to plausibly allege causation to escape federal preemption and survive a motion to dismiss in medical-device cases. (***Dunn v. Genzyme***)
- Supreme Court declines to review whether the Due Process Clause's limits on personal jurisdiction apply to the claims of unnamed plaintiffs. (***IQVIA, Inc. v. Florence Mussat, M.D., S.C.***)

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, often with the pro-bono assistance of leading private attorneys, litigates original actions, files *amicus* briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact WLF Vice President of Litigation, Cory Andrews.

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NEW FILING

States may not rely on speculative and hypothetical harms to manufacture standing to sue in federal court.

New York v. Scalia

On January 19, 2021, WLF filed an *amicus* brief urging the Second Circuit to reverse the Southern District of New York in an important employment-law case. A group of States sued the Department of Labor after it issued a revised joint-employer rule. After finding the States had standing, the lower court invalidated the rule. As WLF's brief shows, however, a State's choice to update state rules is not a direct Article III injury. The Supreme Court's recent standing precedent makes this clear. Allowing States to sue anytime they update a state rule in response to a federal regulatory change will allow States to essentially manufacturer standing to challenge any federal regulation.

DECISIONS

The Massachusetts Supreme Judicial Court requires plaintiffs to plausibly allege causation to escape federal preemption and survive a motion to dismiss in medical-device cases.

Dunn v. Genzyme

On January 29, 2021, the Massachusetts Supreme Judicial Court overturned a decision that would have allowed plaintiffs to impose burdensome and costly discovery on medical-device makers for unspecified wrongdoing. The case arose from a lawsuit over Genzyme's Synvisc-One®, an FDA-approved injection that supplements the knee's own fluids to help lubricate the joint. While the plaintiff vaguely alleges that her Synvisc-One® injection was "defective" and violated unspecified "FDA regulations," the complaint lacks factual allegations to support either of those claims. As WLF's *amicus* brief showed, and the Massachusetts high court ultimately held, the plaintiff's claims are a textbook example of inadequate pleading and should be dismissed. WLF's brief was submitted with the pro bono assistance of David Geiger, Michael Hoven, and Stephen Stich at Foley Hoag LLP.

Supreme Court declines to review whether the Due Process Clause's limits on personal jurisdiction apply to the claims of unnamed plaintiffs.

IQVIA, Inc. v. Florence Mussat, M.D., S.C.

On January 11, 2021, the Supreme Court declined to grant review in an important personal-jurisdiction case. The ruling was setback for WLF, which had filed an *amicus* brief in the case urging review. Although the Supreme Court's 2017 *Bristol-Myers* decision cut back on a court's exercise of jurisdiction over out-of-state defendants, a Seventh Circuit panel held that *Bristol-Myers* does not apply in federal court. WLF's brief argued that the Seventh Circuit's deeply flawed holding, if left to stand, would erode Supreme Court precedent, undermine uniform application of Federal Rule of Civil Procedure 4(k), and harm business as well as the judicial system. Highlighting the flaws in the appeals court's analysis, WLF contended that review was needed to prevent the lower courts from transforming specific jurisdiction in a class action into "a loose and spurious form of general jurisdiction." WLF's *amicus* brief was joined by the U.S. Chamber of Commerce.