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## WLF Urges Fifth Circuit To Follow Administrative Procedure Act's Plain Language

*(Walmart Inc. v. U.S. Drug Enforcement Administration)*

**“Companies should have the ability to bring declaratory-judgment actions to clarify their federal-law obligations.”**

—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 Fifth Circuit to allow suits seeking to clarify businesses’ obligations under federal law. Applying the Fifth Circuit’s outlying interpretation of the Administrative Procedure Act, the District Court dismissed the action as barred by sovereign immunity. WLF’s brief urges reversing that decision and remanding for merits adjudication.

The appeal arises from a lawsuit by Walmart against the Department of Justice and the Drug Enforcement Administration. After failing to respond effectively to the opioid epidemic, DEA and DOJ began demanding that Walmart take certain actions when filling opioid prescriptions. But those demands conflict with the Controlled Substances Act, applicable regulations, and state-law requirements. Attempting to clarify whether it had a legal duty to follow DEA and DOJ’s demands, Walmart filed a declaratory-judgment action in the Eastern District of Texas.

Under Fifth Circuit precedent, to maintain its suit Walmart must show that DEA and DOJ took agency action. The threats that DEA made through DOJ constituted agency action because the statements were intended to force Walmart to act. WLF’s brief also explains how the District Court’s order erroneously divorced Walmart’s due-process rights from the sovereign-immunity inquiry. And, if the panel disagrees, WLF’s brief explains why the Fifth Circuit should reconsider its outlying precedent. WLF therefore urges the Fifth Circuit to apply the APA’s plain language and find that Walmart’s suit is not barred by sovereign immunity.

*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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