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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 **November 2021** filings and results.

New Filings

- WLF urges the Federal Trade Commission to follow the law and not damage the economy. (*In re Draft Strategic Plan for FY2022-2026*)
- WLF asks the Supreme Court to review a Ninth Circuit ruling that is inconsistent with the Federal Arbitration Act. (*Coverall v. Rivas*)
- WLF urges the Supreme Court to review an improper class-action certification in light of the Court's recent *TransUnion* decision. (*Rocket Mortgage v. Alig*)
- WLF asks the Supreme Court to review a Second Circuit decision requiring federal trial courts to exercise Article III jurisdiction in cases brought by non-existent plaintiffs who have no stake in the outcome of the litigation. (*Bank of America v. Fund Liquidation Holdings LLC*)

Decisions

- The Supreme Court dismisses a case about the scope of Section 504 of the Rehabilitation Act of 1973. (*CVS v. Doe*)
- The Supreme Court calls for the Solicitor General's view on a petition that asks the Court to halt California's attempt to regulate trucking nationwide. (*California Trucking Association v. Bonta*)

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, at times 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 General Counsel and Vice President of Litigation, Cory Andrews.

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NEW FILINGS

WLF urges the Federal Trade Commission to follow the law and not damage the economy.

[*In re Draft Strategic Plan for FY2022-2026*](#)

On November 29, WLF filed a comment urging the FTC not to amend its mission statement. The proposed amendment would allow the FTC to unnecessarily burden legitimate business activities. As WLF's comment explains, such a mission would lead the FTC to take unconstitutional actions that violate federal statutes. It would also lead to regulatory uncertainty, which would hurt the American economy. As WLF believes in the rule of law and supports economic growth, it urges the FTC to reject the proposed amendment.

WLF asks the Supreme Court to review a Ninth Circuit ruling that is inconsistent with the Federal Arbitration Act.

[*Coverall v. Rivas*](#)

On November 17, WLF filed an *amicus* brief asking the Supreme Court to review a Ninth Circuit ruling that is inconsistent with the Federal Arbitration Act. The decision, which holds that public and *qui tam* claims occupy a unique FAA-free zone under California law, is the latest in a long line of decisions refusing to follow the FAA's directive that arbitration contracts be enforced as written. In its brief, WLF argues that Supreme Court review is needed to ensure uniform application of the FAA nationwide so that arbitration achieves its basic purpose: resolving disputes efficiently, predictably, individually, and cost-effectively. The decision below thwarts those aims. WLF's brief was prepared with the pro bono assistance of Peder Batalden, Felix Shafir, and John Querio of Horvitz & Levy LLP.

WLF urges the Supreme Court to review an improper class-action certification in light of the Court's recent *TransUnion* decision.

[*Rocket Mortgage v. Alig*](#)

On November 12, WLF filed an *amicus* brief urging the Supreme Court to hear an important separation-of-powers case. The Fourth Circuit affirmed an eight-figure judgment for a class of West Virginians who refinanced their homes in 2007 and 2008. Despite no evidence that either the named plaintiffs or absent class members suffered an actual injury, the Fourth Circuit held that the District Court had jurisdiction. As WLF's brief shows, this decision is inconsistent with the Supreme Court's recent *TransUnion* decision. There, the Court said that allowing uninjured class members to maintain suit in federal court violates core separation-of-powers principles. Because the Fourth Circuit allowed uninjured plaintiffs to maintain suit in federal court, WLF urges the Supreme Court to hear this case.

WLF asks the Supreme Court to review a Second Circuit decision requiring federal trial courts to exercise Article III jurisdiction in cases brought by non-existent plaintiffs who have no stake in the outcome of the litigation.

[*Bank of America v. Fund Liquidation Holdings LLC*](#)

On November 4, WLF urged the Supreme Court to review, and ultimately to overturn, a Second Circuit decision requiring federal trial courts to exercise jurisdiction in cases brought by non-existent plaintiffs who have no stake in the outcome of the litigation. WLF's *amicus* brief supporting certiorari advances three arguments. First, the Second Circuit's decision contravenes the Supreme Court's standing jurisprudence

by virtually eliminating the case-or-controversy requirement as a meaningful check on federal-court jurisdiction. Second, if left to stand, the Second Circuit's holding will severely erode the Constitution's careful separation of powers. And third, the Second Circuit's decision elevates a procedural rule above a bedrock constitutional duty, in violation of the Rules Enabling Act and Federal Rule of Civil Procedure 82.

DECISIONS

The Supreme Court dismisses a case about the scope of Section 504 of the Rehabilitation Act of 1973.

CVS v. Doe

On November 12, the Supreme Court dismissed a case about the scope of Section 504 of the Rehabilitation Act of 1973. The Ninth Circuit, and three other circuits, have held that Section 504 permits disparate-impact claims under the statute. The Sixth Circuit, on the other hand, has ruled that the statute does not permit disparate-impact claims. WLF's brief, which Cato Institute joined, argued that the Ninth Circuit's decision makes no sense in light of Supreme Court decisions interpreting other nondiscrimination statutes. Courts should not imply a cause of action; the Constitution gives Congress the power to make laws. Because the Affordable Care Act greatly expanded who may be sued under the Rehabilitation Act, WLF hopes that the Court will grant cert in another case to resolve the circuit split.

The Supreme Court calls for the Solicitor General's view on a petition that asks the Court to halt California's attempt to regulate trucking nationwide.

California Trucking Association v. Bonta

On November 15, the Supreme Court called for the views of the Solicitor General on a petition WLF supported with an August 26 *amicus* brief. California uses the ABC test to classify workers as employees or independent contractors. The FAAAA preempts any state law affecting trucking prices, routes, or services. Even so, the Ninth Circuit held that the FAAAA does not bar California from applying the ABC test to truck drivers. WLF's brief explains why applying the FAAAA's preemption provision advances federalism and vindicates Congress's intent in passing the FAAAA. Warning of the potential consequences of not ensuring that the Ninth Circuit follows its decisions, WLF urges the Supreme Court to hear this case and reaffirm the supremacy of federal law.