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WLF Urges Ninth Circuit Not To Stifle Innovation

(Epic Games v. Apple Inc.)

“If adopted by the Ninth Circuit, Epic’s theory of antitrust liability would sound the death knell for innovation in America.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to promote innovation in an important antitrust case. In an *amicus* brief, WLF argues that the District Court correctly held that Apple did not violate antitrust laws but erred in entering a nationwide injunction for alleged violation of California law.

The case arises after Epic chose not to follow its contract with Apple. Under that agreement, developers may distribute their apps only through the App Store. Developers are also prohibited from steering customers to outside payment processors to make in-app purchases. Apple removed Epic’s Fortnite from the App Store when Epic breached its contract. Epic then sued for violations of the Sherman Act and California’s unfair competition law.

In its brief supporting Apple, WLF argues that the District Court properly held that Apple’s conduct violates neither Section 1 nor Section 2 of the Sherman Act. First, the increased output of apps at a lower price shows that Apple is not a monopolist. Second, many procompetitive effects flow from Apple’s policies while there are few, if any, anticompetitive effects. At bottom, Epic wants to hold Apple liable for legal innovation that improved all Americans’ lives.

WLF’s brief also explains why the District Court’s injunction violates horizontal federalism principles. The injunction regulates Apple’s out-of-state conduct that is directed at developers outside of California. It deprives other States of the ability to define what is unfair competition law in those jurisdictions.

Celebrating its 45th 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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