



FOR IMMEDIATE RELEASE

May 18, 2022

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Asks Second Circuit to Adhere to Supreme Court Precedent in Prominent Securities Class-Action Appeal

(Arkansas Teachers Retirement System v. Goldman Sachs)

“Left in place, the trial court’s rule has the potential to convert nearly any generic corporate statement of aspiration, commitment, or risk into a valid basis for a securities-fraud class action.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief with the U.S. Court of Appeals for the Second Circuit, urging it to faithfully apply a recent U.S. Supreme Court precedent for securities class actions. WLF’s *amicus* brief was prepared with the pro bono assistance of Lyle Roberts, George Anhang, and William Marsh of Shearman & Sterling LLP.

The appeal arises on remand from the Supreme Court’s decision last term in *Goldman Sachs Group v. Arkansas Teacher Retirement System*. There, the Supreme Court established a “mismatch” test to exclude from liability generic corporate statements made by virtually every public company. On remand, the district court misconstrued the “mismatch” test to require only a finding that the supposedly corrective disclosures generally “implicate” the same subject matter as the purported misrepresentations. And the district court expanded the inflation-maintenance theory by premising price impact on the effect of a disclosure differing in kind from the alleged misstatement itself.

WLF’s brief contends that the district court’s application of *Goldman*, if allowed to stand, would leave defendants with no meaningful ability to defeat class certification for failure to prove price impact, thus undermining Supreme Court precedent and congressional policy aimed at limiting meritless securities class actions and coercive settlements. The Supreme Court could not have meant for the “mismatch” test to be applied in this manner. *First*, the district court’s decision renders the “mismatch” test virtually meaningless by endorsing a very loose connection between the types of generic, front-end statements at issue and the purported back-end corrective disclosures. *Second*, the district court’s decision defeats the legal principles and public-policy considerations underlying the “mismatch” test. In both respects, WLF argues, the Court should not permit the application of the “mismatch” test to stray so far from its first principles.

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.

###