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WLF Urges Supreme Court To Clarify Scope Of Attorney-Client Privilege

(In re Grand Jury)

“The Ninth Circuit’s rule will have a chilling effect on companies’ communications with their in-house and outside counsel.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to hear a case in which the United States Court of Appeals for the Ninth Circuit limited the attorney-client privilege. In an *amicus* brief, WLF argues that the Supreme Court’s review is needed to ensure that companies are not discouraged from trying to comply with the law.

The case arises from a grand jury investigation of a company’s taxes. The grand jury subpoenaed documents from the company’s law firm. When the firm asserted that some documents were protected by the attorney-client privilege, the District Court held that they were not protected because the primary purpose of the documents was to provide tax advice. The Ninth Circuit then affirmed that decision.

In its brief supporting the law firm, WLF argues that the Ninth Circuit’s rule will have a chilling effect on internal investigations. Rather than foster robust internal-investigation procedures, the Ninth Circuit’s rule will encourage companies to undertake perfunctory investigations so as to not risk waiving the attorney-client privilege. Companies will also be more hesitant to hire outside counsel.

Even if the ruling applies only in tax cases, WLF’s brief shows why such “tax exceptionalism” is still problematic. And WLF’s brief argues that the Court should grant review to ensure uniformity in the federal rules. The Ninth Circuit’s decision splits from other circuits on the interpretation of Federal Rule of Civil Procedure 26 and Federal Rule of Evidence 501. As the Ninth Circuit’s decision also ignores Federal Rule of Civil Procedure 1, the Court should grant the petition.

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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