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October 3, 2022

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WLF Asks Supreme Court To Clarify Scope Of Liability In Important Securities Case

(Slack Technologies, LLC v. Pirani)

“Unless the Supreme Court intervenes, the Ninth Circuit’s departure from the Security Act’s text will upset Congress’s carefully balanced liability framework in the Securities Act.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review—and ultimately to overturn—a decision by the U.S. Court of Appeals for the Ninth Circuit that drastically expands liability under federal securities law. WLF’s *amicus* brief was drafted with the pro bono assistance of James N. Kramer and Sunny Hwang of Orrick Herrington & Sutcliffe LLP.

The case arises from a suit under Section 11 of the Securities Act of 1933, which prohibits issuers from making material misstatements or omissions in connection with a registered offering. For more than fifty years, the federal courts of appeal have uniformly held that to prove a violation of Section 11, a plaintiff first must “trace” their shares to the offering that made the alleged misrepresentations or omissions. But in a 2-1 panel decision, the Ninth Circuit swept aside that longstanding rule in favor of an expansive rule that far exceeds anything Section 11’s text can justify.

In its *amicus* brief urging review, WLF asked the Court to intervene to ensure that the task of making law and policy is performed by Congress, not the courts. This is especially true when Congress, by actively amending the Securities Act nearly thirty times over the past fifty years without negating the tracing requirement, has tacitly embraced the uniform construction of the other federal courts. Unless the Court grants review, the Ninth Circuit’s outlier decision will unjustly expose issuers to greatly expanded Section 11 liability.

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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