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WLF Urges Fifth Circuit To Hold CPSC's Structure Unconstitutional

(Consumers' Research v. CPSC)

“The CPSC knows its structure is unconstitutional and so has resorted to meritless attacks on the Fifth Circuit’s jurisdiction.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fifth Circuit to affirm the District Court’s order in an important separation-of-powers case. In its *amicus* brief, WLF argues that the Consumer Product Safety Commission’s structure is unconstitutional and that both the District Court and Fifth Circuit have subject-matter jurisdiction over the case.

The case arises from two groups’ Freedom of Information Act requests. The CPSC applied newly promulgated regulations to the requests. As the response was inadequate, the plaintiffs filed an agency appeal, which was denied. The plaintiffs then sued and argued that the regulations the CPSC applied were issued *ultra vires* because the commissioners enjoy unconstitutional for-cause removal protections. The District Court granted the plaintiffs partial summary judgment and certified its order as final under Federal Rule of Civil Procedure 54(b).

In its brief supporting the plaintiffs, WLF argues that the District Court had subject-matter jurisdiction over the parties’ dispute. The plaintiffs suffered an injury, the application of unconstitutional agency regulations to their FOIA requests, that was directly traceable to the unconstitutional agency structure. The harm could be redressed by a favorable decision by a court. The Fifth Circuit also has appellate jurisdiction over the case because plaintiffs raised three distinct claims: a declaratory-judgment claim, a FOIA claim, and an Administrative Procedure Act claim. So the District Court had discretion to certify its order as a final judgment under Rule 54(b).

WLF’s brief also describes the constitutional problem with the CPSC’s structure. CPSC commissioners, principal officers under the Constitution, have for-cause removal protections. As the Supreme Court explained in *Seila Law*, such protections violate Article II’s Appointments Clause unless the agency exercises power like the power that the Federal Trade Commission exercised in the 1930s. As the CPSC exercises far more executive power, its structure violates the Constitution.

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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