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October 24, 2022

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In Victory For WLF, Ninth Circuit Agrees To Clarify Rule 23's Requirements

(In re JUUL Marketing Practices Litigation)

“The District Court’s order allows virtually any class to be certified, even if the plaintiffs’ claims bear no resemblance to each other and the experts’ methods are flawed.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Today the U.S. Court of Appeals for the Ninth Circuit agreed to hear an appeal from a district court order granting class-certification in an important multi-district litigation case. The grant of the Rule 23(f) petition was a victory for Washington Legal Foundation (WLF), which filed an *amicus* brief urging the court to hear the appeal.

WLF’s brief argued that the plaintiffs’ nicotine journey and exposure to JUUL advertisements are material to the class-certification inquiry. For a class to be certified, common issues of law and fact must predominate over individualized questions. Yet whether an individual transitioned from cigarettes to vaping or began vaping with no previous nicotine use are critical to plaintiffs’ claims. These individualized inquiries will necessarily dominate any merits trial.

WLF’s brief also explained why the District Court erred by not applying the full Rule 702 analysis for plaintiffs’ experts’ testimony. As five other courts of appeals recognize, recent Supreme Court precedent and the text of Rule 23 require that a district court make admissibility decisions before certifying a class. But the District Court held that cross-examination of the expert witnesses suffices to protect JUUL’s interest. The Ninth Circuit therefore correctly agreed to hear this case and clarify Rule 23’s requirements.

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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