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WLF Asks Supreme Court To Rein In California's Arbitrary Consumer-Protection Regime

(Johnson & Johnson v. California)

“California’s overzealous and unpredictable enforcement of broad consumer protection laws harms businesses and consumers in myriad ways.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review, and ultimately reverse, a California court’s decision imposing over \$300 million in civil penalties on a medical-device manufacturer for marketing its pelvic mesh product within the State.

Imposing a penalty that dwarfs any actual harm to consumers, the California Court of Appeal decided that *every* communication Jonson & Johnson made about its Ethicon pelvic-mesh products—whether to doctors or patients, written or verbal—violated California consumer-protection law. These marketing communications served as the basis for thousands of individual violations of California law, penalized at \$1,250 apiece.

Urging Supreme Court review, WLF’s *amicus* brief details how a series of statutory and prosecutorial overreaches have radically transformed California’s well-intentioned consumer-protection laws into a trap for the wary and unwary alike. As applied today, California law fails to put the public on fair notice of what kind of conduct constitutes a violation. With no definition of a “violation” for purposes of assessing penalties, courts are left to interpret and apply amorphous, elastic, and imprecise language—such as whether a practice is “unlawful,” “unfair,” or “fraudulent”—on a case-by-case basis. This deprives businesses of the benefit of fair notice and due process.

WLF’s brief was prepared with the pro bono assistance of Elizabeth Andrews, Dane Chanove, Kaitlin O’Donnell, and Moses Tincher of Troutman Pepper Hamilton Sanders LLP.

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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