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## In Victory for WLF, D.C. Circuit Refuses To Expand Antitrust Duty To Deal With Competitors

*(State of New York v. Facebook, Inc.)*

**“The panel wisely declined the States’ invitation for courts to become central planners in matters of cutting-edge and fast-moving technological innovation.”**

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

WASHINGTON, DC—The U.S. Court of Appeals for the District of Columbia Circuit today affirmed a federal trial court’s dismissal of antitrust claims against Facebook for denying its competitors free use of its platform to harm Facebook’s core business. The decision was welcome news for Washington Legal Foundation, which filed an amicus brief in the case urging affirmance. WLF’s brief was prepared with the generous pro bono assistance of Zack Tripp and Mark Pinkert at Weil, Gotshal & Manges LLP. WLF was joined on the brief by the Information Technology and Innovation Foundation (ITIF).

The case arose from a suit by a group of 46 States (plus Guam and the District of Columbia) against Facebook for alleged violations of Section 2 of the FTC Act. Dismissing the States’ Section 2 claims, the U.S. District Court for the District of Columbia explained that under the Supreme Court’s *Aspen Skiing* framework, a business’s choice to announce that it will not help rivals and to prospectively decline to do so is categorically lawful. On appeal, the States ask the D.C. Circuit to treat *Aspen* as a “flexible” test that is apparently satisfied by a refusal to deal coupled with mere evidence of a purpose to “harm competitors.”

In its amicus brief, WLF asked the appeals court to reject the States’ attempt at radically expanding refusal-to-deal liability. Among other things, judicial creation of a novel duty to deal with competitors in this fast-changing and highly competitive industry would threaten to harm competition and consumers. Writing for the panel, Judge Randolph agreed: “Many innovations may seem anti-competitive at first but turn out to be the opposite, and the market often corrects even those that are anti-competitive.” For reasons that are not yet clear, the D.C. Circuit sua sponte delayed issuing the mandate.

*Celebrating its 46th 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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