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# WLF Month in Review

This WLF Litigation Division feature highlights WLF's court filings, as well as decisions issued in response to WLF's filings. In this edition, we list **May 2023** filings and results.

## New Filings

- WLF asks the Supreme Court to hear an important case about fundamental fairness in the regulatory process. ([Avail Vapor v. FDA](#))

## Decisions

- The Supreme Court clarifies the scope and jurisdictional reach of the term "waters of the United States" in the Clean Water Act. ([Sackett v. EPA](#))  
**\*victory\***
- The Supreme Court grants review and vacates the Sixth Circuit's affirmance of an FDIC occupational debarment order. ([Calcutt v. FDIC](#))  
**\*victory\***
- The Supreme Court defers deciding whether Section 230 of the Communications Decency Act protects interactive computer services from claims over third-party content. ([Gonzalez v. Google](#)) **\*victory\***
- The Supreme Court upholds a controversial California law that burdens out-of-state pork producers. ([Nat'l Pork Producers Council v. Ross](#))

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, at times with the pro-bono assistance of leading private attorneys, litigates original actions, files amicus briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact WLF General Counsel and Vice President of Litigation, Cory Andrews.

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## NEW FILINGS

**WLF asks the Supreme Court to hear an important case about fundamental fairness in the regulatory process.**

[\*Avail Vapor v. FDA\*](#)

On May 31, WLF urged the Supreme Court to hear an important case about the regulatory process. The Fourth Circuit held that the Food and Drug Administration could tell companies they need not include information in applications and then deny those applications for failing to include that very information. WLF's brief argues that this bait-and-switch violates the petitioners' due-process rights. The brief also details how FDA's denial orders are arbitrary and capricious because FDA did not consider the petitioners' evidence. Finally, the brief explains why FDA's action could endanger American lives.

## DECISIONS

**The Supreme Court clarifies the scope and jurisdictional reach of the term "waters of the United States" in the Clean Water Act.**

[\*Sackett v. EPA\*](#)

On May 25, the Supreme Court refused to defer to federal agencies when undertaking the core function of the judiciary—interpreting the law. The Court held that the term "waters of the United States" in the Clean Water Act does not mean all wetlands but rather refers only to "streams, oceans, rivers, and lakes" and to adjacent wetlands that are "indistinguishable" from those bodies of water. The decision was a victory for WLF, which joined the Cato Institute, Associated General Contractors of America, Mountain States Legal Foundation, and NFIB Small Business Legal Center on an amicus brief in the case.

**The Supreme Court grants review and vacates the Sixth Circuit's affirmance of an FDIC occupational debarment order.**

[\*Calcutt v. FDIC\*](#)

On May 22, the Supreme Court granted review and vacated a Sixth Circuit order affirming an FDIC occupational debarment order. This outcome was a welcome victory for WLF. The Supreme Court's per curiam opinion tracked an argument in WLF's brief, which explained how the Sixth Circuit erred by affirming the FDIC despite holding that the FDIC's decision was infected with legal errors. The Sixth Circuit's holding ignored important Supreme Court precedent on when remand is necessary in administrative cases. The Supreme Court also declined to give the Sixth Circuit another bite at the apple, directing it to remand the case to the FDIC without further proceedings.

**The Supreme Court defers deciding whether Section 230 of the Communications Decency Act protects interactive computer services from claims over third-party content.**

[\*Gonzalez v. Google\*](#)

On May 18, the Supreme Court declined to decide whether Section 230 protects interactive computer services from claims based on third-party content. The Court held that under its decision in *Twitter v. Taamneh*, the plaintiffs likely failed to state a claim under the Antiterrorism Act. So it vacated the Ninth Circuit's decision and remanded for further proceedings consistent with *Twitter*. WLF's amicus brief had argued that Section 230 bars suits against websites like YouTube for content uploaded by third parties. This interpretation is the only one supported by Section 230's plain language. WLF's brief also described why

allowing Section 230 to preempt state-law claims violates neither the clear-statement rule nor federalism principles.

**The Supreme Court upholds a controversial California law that burdens out-of-state pork producers.**

*Nat'l Pork Producers Council v. Ross*

On May 11, the Supreme Court blessed California's imposing its will on other States. This was a setback for WLF, which filed an amicus brief supporting the petitioners. California allows pork to be sold in the State only if the pig's mother was kept in a group pen with at least 24 square feet of space per sow. WLF's brief argued that this de facto extraterritorial application of California law violates horizontal federalism principles. The brief also explained how it could lead to increased food prices and hunger worldwide.