



FOR IMMEDIATE RELEASE

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In WLF Success, Supreme Court Confirms Tracing Requirement In Securities Cases

(Slack Technologies, LLC v. Pirani)

“With today’s unanimous decision, the Supreme Court vindicates the Security Act’s plain text and Congress’s carefully balanced liability framework.”

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

WASHINGTON, DC—The U.S. Supreme Court today unanimously vacated a decision by the U.S. Court of Appeals for the Ninth Circuit that drastically expanded the liability scope of federal securities law. The decision was welcome news for Washington Legal Foundation, which filed an amicus brief in the case. WLF’s brief was drafted with pro bono assistance from James N. Kramer of Orrick Herrington & Sutcliffe LLP. WLF also filed an amicus brief in support of Slack Technologies’ petition for certiorari.

The case arose from a suit under Section 11 of the Securities Act of 1933, which prohibits issuers from making material misstatements or omissions in a registered offering. For more than fifty years, the federal courts of appeal uniformly held that to prove a violation of Section 11, a plaintiff first must “trace” their shares to the offering that contained the alleged misrepresentations or omissions. But a divided opinion of the Ninth Circuit swept aside that longstanding tracing requirement in favor of an expansive rule that far exceeds anything Section 11’s text can justify.

In its amicus brief urging reversal, WLF asked the Court to ensure that the tasks of crafting public policy and amending federal law are performed by Congress, not the courts. The Supreme Court agreed, explaining in its opinion that “the Court’s function is to discern and apply existing law.” Doing just that, the Court held that the text and context of Section 11 confirm that liability “extends only to shares that are traceable to an allegedly defective registration.”

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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