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WLF Urges Appeals Court to Reinstate Medical Device Makers' Suit Over Controversial Library of Congress Rulemaking

(*MITA v. Library of Congress*)

“Judicial review of federal agency actions is a cornerstone of the American legal system.”

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

WASHINGTON, DC—On June 9, 2023, Washington Legal Foundation (WLF) urged the U.S. Court of Appeals for the District of Columbia Circuit to reverse a federal trial-court’s dismissal of an important challenge to a final rule issued by the Library of Congress. WLF joined the National Association of Manufacturers on the amicus brief, which was drafted by David Chung and Elizabeth Dawson of Crowell & Moring LLP.

The appeal arises from a suit by medical device makers against the Library of Congress. At issue is the Library’s authority under Section 1201 of the Digital Millennium Copyright Act (DMCA), which prohibits any attempt to “circumvent a technological measure” as an act of copyright infringement. Among other things, Section 1201 was intended to limit access to proprietary software embedded in medical equipment. In a final rule adopted in 2021, however, the Library exempted companies that repair medical devices, allowing them to bypass Section 1201’s robust copyright protections. When medical device makers sued alleging that the exemption exceeds the Librarian’s congressional authority and violates the separation of powers, the court dismissed the suit.

The amicus brief argues that judicial review of federal action is essential to maintain the separation of powers. Only a clear statement from Congress can overcome the strong presumption of judicial review of administrative actions. Here there is no clear statement precluding review of the Library’s DMCA rulemaking. Moreover, withholding judicial review of the Library’s rule will have unintended consequences. The rule threatens to erode copyright protections, stifle innovation, and harm consumers.

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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