Press Release

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Supreme Court Agrees to Review Second Circuit's Flawed Reading of SEC Rule 10b-5

(*Macquarie Infrastructure Corp. v. Moab Partners, LP*)

"Left in place, the Second Circuit's rule would force issuers to bury investors in an avalanche of trivial information just to avoid potential federal-securities-fraud liability. That is not what Congress intended."
—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Today the U.S. Supreme Court agreed to review the U.S. Court of Appeals for the Second Circuit's novel interpretation of federal securities law that splits with every other circuit that has decided the issue. The decision was a success for Washington Legal Foundation, which filed an amicus brief in the case urging review. WLF's brief was prepared with generous pro bono support from Lyle Roberts, George Anhang, and William Marsh of Shearman & Sterling LLP.

Section 10(b) of the Securities Exchange Act of 1934 makes companies liable for misleading statements in their financial filings. Concluding that Item 303 of Regulation S-K creates a privately enforceable duty to disclose, the Second Circuit allowed a shareholder to sue a company for omitting 303 information from its financial statement—even though that omission did not render any portion of the filing misleading.

WLF's brief detailed how the Second Circuit's reasoning is at odds with the plain meaning of the SEC rule, the common law of fraud-by-omission, and longstanding Supreme Court precedent. WLF argued that expanding the court-created private right of action under Rule 10b-5 to cover omitted Item 303 information would expand liability far beyond anything contemplated by Congress. WLF intends to file a merits brief with the Supreme Court later this year.

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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