

Press Release



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WLF Asks Ninth Circuit To Reject Privacy Suit By Plaintiffs Who Knowingly Consented To Web Data Use *(Calhoun v. Google LLC)*

“Consent is a cornerstone of the law. For about as long as there have been civil trials, plaintiffs have been barred from obtaining relief for conduct to which they have knowingly consented.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to affirm a trial court’s rejection of a privacy suit because all plaintiffs consented to the receipt and use of their browsing data.

Google’s Privacy Policy and other disclosures explain clearly that Google receives data when users (in any browser) visit websites that have installed Google Ads, Analytics, and other web services. Plaintiffs brought a privacy class action alleging that Google was nonetheless prohibited from collecting that data unless users enabled “Sync,” an unrelated feature unique to Google Chrome that allows users to store browser settings for a consistent cross-device experience. The district court correctly ruled at summary judgment that plaintiffs consented to Google’s receipt and use of data when they agreed to Google’s privacy policy and other disclosures.

In an amicus brief asking the Ninth Circuit to affirm summary judgment for Google, WLF argued that allowing plaintiffs to impose liability on Google for data retention practices to which they’ve knowingly consented would invite disastrous, unintended consequences. Plaintiffs’ position, if adopted, would create runaway liability risks for virtually any data disclosure. If internet-based companies face an onslaught of spurious privacy litigation, they may have to stop offering innovative products and services to avoid liability exposure. In such a litigious climate, companies seeking to avoid liability would doubtless resort to overdisclosure, which imposes unnecessary costs and burdens on businesses and consumers alike.

Celebrating its 47th 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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