Press Release

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WLF Asks California Supreme Court To Review Novel Liability Theory For Prescription Drugs

(*In re Gilead Tenofovir Cases*)

> **"Imposing tort liability for non-defective products would be devastating to manufacturers and consumers alike."**
> —Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the Supreme Court of California to review, and ultimately to overturn, an appeals court ruling that blesses a radical new theory of liability for manufacturers of non-defective prescription drugs.

The case arises from Gilead Sciences, Inc's successful HIV/AIDS drug, tenofovir disoproxil fumarate (TDF). Plaintiffs allege injury from TDF but do not allege any defect with the design, manufacture, marketing, or labeling of TDF. In denying Gilead's summary judgment motion, the trial court held that Gilead could be held liable in tort for not developing and selling tenofovir Alafenamide (TAF)—a completely different drug from TDF. California's Court of Appeal affirmed, agreeing that Gilead could be found liable in tort for not developing and selling an entirely different product.

As WLF explained in its amicus brief, the appeals court's theory of liability makes a hash of California tort law. Under longstanding principles governing product-based injuries, a concession that the product at issue is not defective should end the litigation. Eliminating the defect element from product-based claims would open the door to untethered liability and undermine product innovation beyond the drug and device space.

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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