

MONTH IN REVIEW

May 2024

June 3, 2024



Washington Legal Foundation

2009 Massachusetts Avenue, NW
Washington, DC 20036
WLF.org



Washington Legal Foundation's *Month in Review* report is a Litigation Division feature that highlights WLF's court and regulatory filings each month, as well as decisions issued in response to WLF's filings.

To learn more about WLF's litigation work, visit our website at www.wlf.org.

New Filings

Wisconsin Bell, Inc. v. United States ex rel. Heath

Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos

Valeant Pharmaceuticals Int'l v. United States ex rel. Silbersher

Decisions

Cantero v. Bank of America

CFPB v. Community Financial Services Association

In re Bystolic Antitrust Litig.
victory

Carey v. CSX ***victory***

PhRMA v. McClain

In re Gilead Tenofovir Cases
victory

Wisconsin Bell, Inc. v. United States ex rel. Heath

WLF encourages the Supreme Court to hear an important case about the False Claims Act's scope.

On May 10, WLF filed an amicus brief urging the Supreme Court to hear an important case about the False Claims Act's scope. Splitting from the Fifth Circuit, the Seventh Circuit held that the involvement of federal funds is not an element of an FCA cause of action. WLF's brief explains why the Seventh Circuit's decision has broad implications beyond the federal E-rate program. It also will affect other telecommunications programs, including those that provide services for hearing-impaired, low-income, and rural citizens. WLF's brief also explains how the FCA's history shows that it is aimed at protecting the federal fisc while discouraging parasitic suits.

On May 3, WLF filed an amicus brief urging the Supreme Court to hear an important case about proximate cause and aiding-and-abetting liability. Splitting from other courts of appeals and state courts of last resort, the First Circuit held that Mexico could sue firearms manufacturers for allegedly causing the drug-cartel violence in Mexico. WLF's brief explains why the First Circuit's decision conflicts with Supreme Court precedent on proximate cause and violates the firearms manufacturers' due-process rights. The brief also details the problems with the First Circuit's aiding-and-abetting holding.

Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos

WLF asks the Supreme Court to hear an important case about proximate cause and aiding-and-abetting liability.

Valeant Pharmaceuticals Int'l v. United States ex rel. Silbersher

WLF urges the Supreme Court to clarify the scope of the False Claims Act's public-disclosure bar.

On May 1, WLF urged the Supreme Court to review—and ultimately to overturn—a Ninth Circuit decision that would allow opportunistic qui tam bounty hunters to evade the False Claims Act's public-disclosure bar. In its amicus brief urging review, WLF explains that the Ninth Circuit's holding flouts the FCA's text and purpose, splits sharply from other circuits on two vital questions of law, and cries out for Supreme Court review. WLF's brief encourages the Court to rigorously enforce the balance of incentives Congress struck in the FCA and details how the appeals court's departure from settled law invites disastrous, unintended consequences.

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.

To learn more about our new briefs and regulatory filings, visit our website at wlf.org/litigation.

Cantero v. Bank of America

The Supreme Court vacates a Second Circuit decision holding a New York state banking law preempted by the National Bank Act.

On May 30, the Supreme Court vacated a Second Circuit decision holding a New York banking law preempted by the National Bank Act. This was a disappointment for WLF, which filed an amicus brief urging affirmance. As WLF's brief explained, there are myriad federal laws that expressly preempt state and local laws regulating important industries. These express-preemption provisions help both consumers and businesses. The Supreme Court's ruling will cause uncertainty for businesses by chipping away at the preemptive effect of all these statutory provisions.

On May 16, the Supreme Court held that Congress need not appropriate money for independent agencies on an annual basis. This was a setback for WLF, which filed an amicus brief supporting CFSA's argument that the CFPB's funding mechanism violates the Appropriations Clause. As WLF's brief explained, no past agency had a funding mechanism comparable to the CFPB's funding mechanism. WLF's brief also explained why the courts are the appropriate venue to resolve these separation-of-powers disputes.

CFPB v. Community Financial Services Association

The Supreme Court upholds the CFPB's novel funding mechanism as constitutional.

In re Bystolic Antitrust Litig.

The Second Circuit affirms
the dismissal of a baseless
antitrust complaint.

victory

On May 13, the Second Circuit affirmed a decision dismissing the plaintiffs' baseless antitrust complaint. This was a victory for WLF, which filed an amicus brief supporting the defendants. WLF's brief explained why the court should disregard an amicus brief filed by the FTC, which lacked credibility. The Commission continues to advance arguments that the Supreme Court has rejected, ignores its own legal and ethical guidance, and overlooks its actions on the deals at issue in the case. WLF's brief also explained that, contrary to its averments, the FTC lacks any expertise in construing Federal Rule of Civil Procedure 12.

On May 3, the Kentucky Court of Appeals vacated a damages award against the defendants. This was a victory for WLF, which submitted an amicus brief supporting the defendants. Although the court did not reach the punitive damages issues, WLF's brief showed that the evidence did not support an award of punitive damages. WLF's brief also explained why the Fourteenth Amendment's Due Process Clause limits punitive damages to the amount of compensatory damages when the compensatory-damages award is substantial. WLF's brief was filed with the pro bono assistance of Byron N. Miller of Thompson Miller & Simpson PLC.

Carey v. CSX

The Kentucky Court of
Appeals vacates an
unjustified damages award.

victory

PhRMA v. McClain

The Eighth Circuit denies rehearing in a case involving state interference with a federal prescription-drug benefit program.

On May 2, the Eighth Circuit declined to rehear a panel decision holding that Arkansas could amend the federal statute regulating the 340B Program. This was a setback for WLF, which filed an amicus brief supporting PhRMA's rehearing petition. The brief explained that the 340B Program is so large that any decision whether to expand the program must be made at the national level by Congress. WLF's brief also explained the consequences of allowing the panel's decision to stand. It will lead to less research and development by pharmaceutical companies, meaning fewer life-saving drugs. It will also increase regulatory costs leading to higher prices for patients.

On May 1, the Supreme Court of California agreed to review an appeals court ruling that blesses a radical new theory of liability for manufacturers of non-defective prescription drugs. The decision was welcome news for WLF, which filed an amicus brief urging review. Under longstanding principles governing product-based injuries, WLF explained in its brief, 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.

In re Gilead Tenofovir Cases

The Supreme Court of California agrees to review a radical new theory of liability for pharmaceutical manufacturers.

****victory****

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, at times with the pro-bono assistance of leading private attorneys, litigates original actions, files amicus briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact our General Counsel and Vice President of Litigation, Cory Andrews.

WLF Legal Staff Contacts

Cory Andrews

General Counsel & Vice President of Litigation
candrews@wlf.org

John Masslon II

Senior Litigation Counsel
jmasslon@wlf.org

Glenn Lammi

Executive Director & Vice President of Legal Studies
glammi@wlf.org