Press Release

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WLF Calls on Supreme Court to Limit Scope of Disclosure Obligations Under Federal Securities Law

(*Facebook, Inc. v. Amalgamated Bank*)

> **"Affirming the Ninth Circuit would create an unworkable disclosure regime—one that forces companies to fill their risk disclosures with extraneous details of past incidents rather than focusing on the most important future risks."**
> —Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Earlier today, Washington Legal Foundation urged the U.S. Supreme Court to reverse a decision of the U.S. Court of Appeals for the Ninth Circuit that held a company liable for failing to include irrelevant and stale information in its forward-looking risk disclosures. WLF's amicus brief was prepared with the pro bono assistance of Lyle Roberts, George Anhang, and William Marsh of A&O Shearman.

The case arose from a securities class action on behalf of investors who bought Facebook stock before 2018 price drops. The district court thrice dismissed their claims for failure to plead falsity, scienter, and loss causation under Federal Rule of Civil Procedure 9(b), which requires fraud allegations to be pleaded with particularity. After the third dismissal, plaintiffs appealed to the Ninth Circuit. Over a partial dissent by Judge Bumatay, a Ninth Circuit panel revived plaintiffs' claims based on (1) risk-factor statements in Facebook's 2016 10-K warning that Facebook could suffer business or reputational loss if a security breach exposed data to improper use by third parties and (2) statements that Facebook users could "control" how their data was shared. In reaching that conclusion, the panel applied Rule 8's more lenient pleading standard instead of Rule 9(b)'s heightened requirements.

As WLF explains in its amicus brief urging reversal, affirming the Ninth Circuit's rule would force companies to overdisclose risks about immaterial past incidents, thus confusing investors who must navigate a company's SEC filings to find information relevant to their investment decisions. And under this lax pleading standard, companies would be vulnerable to frivolous securities litigation based on accurate forward-looking statements—an outcome Congress sought to avoid when passing the Private Securities Litigation Reform Act.

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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