

MONTH IN REVIEW

November 2024

December 2, 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

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

In re Final Amplifier Rule Clarification

In re Gilead Tenofovir Cases

Decisions

RJ Reynolds Tobacco Co. v. FDA

Facebook, Inc. v. Amalgamated Bank

NEW FILINGS

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

WLF asks the Supreme Court to reverse a controversial decision about proximate cause and aiding-and-abetting liability.

On November 27, WLF filed an amicus brief urging the Supreme Court to reverse a controversial First Circuit decision 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.

On November 6, WLF filed comments with the Federal Trade Commission urging it to clarify that a rule setting new requirements for the promotion of amplification equipment does not apply retroactively. Four days after publishing a final Amplifier Rule, an FTC attorney indicated in email correspondence with an electronics trade association that the Rule would apply to products manufactured before the new requirements take effect. The trade association asked FTC to further amend the rule to clarify its prospective effect. WLF argued that basic notions of fair notice reflected in the Fifth Amendment's Due Process Clause and Article I's Ex Post Facto Clauses, as well as Supreme Court jurisprudence on retroactivity, compel FTC to implement the association's request.

In re Final Amplifier Rule Clarification

WLF urges the FTC to clarify that a recent rule on amplifier promotion does not apply retroactively.

In re Gilead Tenofovir Cases

WLF asks the California Supreme Court to reject a novel liability theory for prescription drugs.

On November 4, WLF urged the California Supreme Court to reject a radical new theory of liability for manufacturers of non-defective prescription drugs. As explained in WLF's amicus brief, the trial 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. WLF joined the U.S. Chamber of Commerce and the California Chamber of Commerce on the brief, which was drafted by Ilana Eisenstein, Ben Fabens-Lassen, Alicia Hickock, and David Josefovits of DLA Piper LLP.

Celebrating its 47th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual and business civil liberties, and the rule of law.

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

DECISIONS

R⁷ Reynolds Tobacco Co. v. FDA

The Supreme Court declines to review FDA's latest compelled-speech mandate on tobacco products and retailers.

On November 25, the Supreme Court declined to review a Fifth Circuit decision upholding an FDA requirement that tobacco manufacturers and retailers prominently display misleading graphic warnings on cigarette packages and advertisements. The decision was a setback for WLF, which filed an amicus brief urging review of the Fifth Circuit's ruling. WLF's brief emphasized that the First Amendment fully protects the right both to speak and not to speak. WLF also explained why the graphic warnings at issue here do not qualify as ordinary disclosures akin to those that the Supreme Court has upheld. Rather, they are the very sort of controversial, ideological messages that have nothing to do with preventing consumers from being misled.

On November 22, the Supreme Court dismissed as improvidently granted a petition to review an important Ninth Circuit securities case. The dismissal was a disappointment for WLF, which filed an amicus brief urging reversal. WLF's brief explained that the Ninth Circuit's rule would force companies to overdisclose risks about immaterial past incidents, confusing investors who must navigate a company's SEC filings to find information relevant to their investment decisions. Under this lax pleading standard, companies will 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. WLF's amicus brief was prepared with the pro bono assistance of Lyle Roberts, George Anhang, and William Marsh of A&O Shearman.

Facebook, Inc. v. Amalgamated Bank

The Supreme Court dismisses, as improvidently granted, a petition in an important securities case.

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

Glenn Lammi

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