MONTH IN REVIEW

January 2025

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Washington Legal Foundation
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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 WLF.org.

New Filings

In re Gilead Sciences, Inc.

In re Amtrack Petition for Substandard Performance of Sunset Limited Trains

Decisions

Labcorp v. Davis* victory

E.M.D. Sales v. Carerra* victory

In re In-Use Locomotive Regulation

Comcast Cable Communications v. Ramsey

Sunoco LP v. City & County of Honolulu

In re Safeguarding and Securing the Open Internet* victory

NEW FILINGS

In re Gilead Sciences, Inc.

WLF asks the Texas Supreme Court to end abusive serial qui tam litigation.

On January 31, WLF asked the Supreme Court of Texas to put an end to abusive serial qui tam litigation. WLF's amicus brief was prepared with the generous pro bono assistance of Allyson Ho, Bradley Hubbard, Benjamin Wilson, Jason Muehlhoff, and Catherine Frappier of Gibson, Dunn & Crutcher LLP. In its amicus brief supporting mandamus relief, WLF argued that if the government chooses to share its treble-damages claims with private qui tam relators, the government must also share the consequences—and that means holding the government to the same preclusion rules that apply to any litigant. Otherwise, qui tam relators could repeatedly sue, voluntarily dismiss, and never face preclusion. But litigation must end. Giving the government a get-out-of-preclusion-free card would encourage gamesmanship, prolong meritless litigation, and impose an enormous litigation tax on Texas businesses and consumers.

In re Amtrack Petition for Substandard Performance of Sunset Limited Trains

WLF reminds the Surface transportation Board not to exceed its statutory authority.

On January 22, WLF filed comments with the Surface Transportation Board (STB) on its authority to punish railroad businesses for allegedly causing Amtrak to fall below performance standards on two lines running between New Orleans and Los Angeles. Federal law requires railroads that host Amtrak trains on their tracks to grant the passenger trains "preference" over freight-hauling trains. In a complaint filed with STB, Amtrak accuses several national and short-rail railroads of causing hundreds of delays and urges the agency to fine the companies. WLF argues that Amtrak's interpretation of STB's punitive authority is much broader than the relevant statute allows. The comment also urges STB to respect the targeted railroad companies' right to fair notice of what preference standards apply to their conduct with Amtrak and emphasizes the companies' due-process right to be heard on the definition of "preference."

DECISIONS

Labcorp v. Davis

The Supreme Court agrees to decide whether all members of a certified class must satisfy Article III's concrete-injury requirement.

victory

On January 27, the U.S. Supreme Court agreed to review a Ninth Circuit decision in an important separation-of-powers case. The grant of certiorari was a victory for WLF, which filed the only amicus brief in support of Labcorp. Despite Supreme Court precedent holding that district courts may not enter judgment for uninjured class members, the Ninth Circuit held that district courts may certify classes with uninjured members. As WLF's brief shows, the Ninth Circuit's ruling contravenes foundational separation-of-powers principles. The Founders gave federal courts constitutional jurisdiction over only cases and controversies. They did so to prevent the judiciary from governing the country through injunction. Similarly, the Take Care Clause gives the President the authority to enforce federal laws. But the Ninth Circuit's decision improperly transfers that authority to the plaintiffs' bar.

E.M.D. Sales v. Carerra

The Supreme Court confirms that employers bear the burden of proving only by a preponderance of the evidence the applicability of an exemption to the Fair Labor Standards Act.

victory

On January 15, the U.S. Supreme Court unanimously held that employers need to prove the applicability of Fair Labor Standards Act exemptions by a preponderance of the evidence. The decision was a victory for WLF, which argued in an amicus brief that the U.S. Court of Appeals for the Fourth Circuit erred by applying the clear and convincing evidence standard. WLF's brief argued that the Fourth Circuit's rule relied on the principle that FLSA exemptions must be construed narrowly. But the Supreme Court's *Encino Motorcars* decision rejected that principle. WLF's brief also explained why the Fourth Circuit's holding conflicts with the history and purpose of the FLSA.

In re In-Use Locomotive Regulation

The California Air Resources Board withdraws its request for EPA authorization to implement the Board's In-Use Locomotive Regulation.

On January 14, the California Air Resources Board (CARB) withdrew its request for EPA authorization to implement the Board's In-Use Locomotive Regulation. Along with Steven G. Bradbury, a Distinguished Fellow at The Heritage Foundation, WLF had filed a comment urging EPA to deny CARB's request. The comment explained why, despite its deceptive title as a regulation of locomotive "use," CARB's rule would require rail operators in California to buy or lease new locomotives or locomotive engines that meet CARB's emissions limits. Under Supreme Court precedent, that is a regulation relating to emissions controls for new locomotives and engines that is barred under the plain language of section 209 of the Clean Air Act.

Comcast Cable Communications v. Ramsey

The Supreme Court declines to review a California appeals court decision that misconstrues the Federal Arbitration Act's saving clause.

On January 13, the Supreme Court declined to review a California appeals court decision that sidesteps the Federal Arbitration Act. The decision was a setback for WLF, which filed an amicus brief in the case urging review. In *McGill v. Citibank*, the California Supreme Court held that an arbitration clause may not extinguish a party's right to seek injunctive relief for the public at large. The California Court of Appeal recently held that this "*McGill* rule" is not preempted by the FAA. In urging the Supreme Court to take up that question, WLF's amicus brief explained why the FAA preempts a state rule whose only purpose is to serve as a tool for striking down arbitration clauses.

Sunoco LP v. City & County of Honolulu

The Supreme Court denies review in a controversial climate-change case.

On January 13, the Supreme Court declined to hear important cases about greenhouse-gas litigation. The decision was a setback for WLF, which filed an amicus brief in the case urging review. Splitting from the Second Circuit, the Hawaii Supreme Court held that claims about climate change arising from greenhouse-gas emissions are not exclusively governed by federal common law. WLF's brief explained why, despite passage of the Clean Air Act, federal common law still controls claims about interstate and international greenhouse-gas emissions. The brief also explained the devastating consequences of allowing the Hawaii Supreme Court's decision to stand.

On January 2, the Sixth Circuit held that the Federal Communications Commission's (FCC) categorization of broadband as a heavily regulated common carrier service was contrary to the Communications Act of 1934. The decision was a victory for WLF, which joined TechFreedom on an amicus brief urging the court to overturn FCC's Open Internet Order. Agreeing with WLF and TechFreedom's brief, the court reasoned that the statute's plain language, structure, and history dictate that Internet Service Providers offer information, not telecommunication, services, and thus merit lighter-touch regulation under Title I.

In re Safeguarding and Securing the Open Internet

The Sixth Circuit rejects the FCC's latest attempt to classify broadband internet access as a telecommunications service under Title II of the Communications Act.

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.

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