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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Asks Supreme Court To Decide That Certified Classes May Not Include Uninjured Members

(Laboratory Corporation of America v. Davis)

“The Ninth Circuit’s decision cannot be squared with Article III’s concrete-injury requirement.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Earlier today, Washington Legal Foundation (WLF) asked the U.S. Supreme Court to reverse a decision by the U.S. Court of Appeals for the Ninth Circuit that held a class may be certified despite having many uninjured members. In its amicus brief, WLF argues that Article III of the Constitution bars federal courts from hearing claims brought on behalf of those who suffered no concrete harm from alleged statutory violations. Class actions are no exception.

The case arises from Labcorp’s alleged violation of the Americans with Disabilities Act. In October 2017, Labcorp installed electronic kiosks in their waiting rooms to allow patients to check-in. Plaintiffs sued arguing that this violated the ADA because the kiosks are inaccessible to the blind. But many of the putative class members were unaware of the kiosks or wanted to check-in with a human. So most class members were not harmed by the inaccessibility of the kiosks. Still, the District Court certified two classes, and the Ninth Circuit affirmed that decision. Earlier this year, the Supreme Court agreed to review the Ninth Circuit’s decision.

In its brief supporting Labcorp, WLF argues that while Congress occasionally adopts statutes that create a right of action by private citizens, such statutes cannot alter the Constitution’s fundamental separation of powers, which bars courts from hearing claims by those who suffered no injury-in-fact. As WLF’s brief points out, authorizing federal courts to enforce federal statutes at the behest of private individuals who have suffered no concrete injury would permit Congress to interfere unduly with the Executive Branch’s constitutional duty to enforce the nation’s laws under Article II’s Take Care Clause.

Private citizens may be unhappy to discover a violation of federal law. But they cannot pursue money damages on behalf of uninjured citizens. That is the Executive Branch’s duty. By allowing district courts to certify classes with uninjured members, the Ninth Circuit enlarged the judicial power at the expense of the executive power. This violation of the separation of powers—if unchecked—could lead to the tyranny our Founders wanted to avoid.

Celebrating its 48th 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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