

MONTH IN REVIEW

March 2025

April 1, 2025



Washington Legal Foundation

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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 WLF.org.

New Filings

State Farm v. Jama

*Ratha v. Rubicon
Resources LLC*

*Drake v. Bayer
Healthcare LLC*

*In re Withdrawal of FDA
Tobacco Product Standard for
Nicotine Yield Proposed Rule*

*In re Tesla Inc.
Derivative Action*

*U.S. ex rel. Zafirov v. Florida
Medical Associates*

IQVIA v. Superior Court

Labcorp v. Davis

Decisions

In re Gilead Sciences Inc.

State Farm v. Jama

WLF asks the Supreme Court to rein in “no-injury” class actions.

On March 31, WLF filed an amicus brief urging the Supreme Court to review a Ninth Circuit decision that approved class certification without common proof of harm. Plaintiffs claimed that State Farm’s pricing formula undervalued totaled vehicles. But many could not show that the pricing formula shortchanged them. Nevertheless, the Ninth Circuit certified the class. In its brief, WLF argues that the decision violates Article III by allowing uninjured plaintiffs to sue in federal court. The brief stresses that class certification requires common injury, while allowing uninjured claimants to proceed turns courts into oversight bodies, undermines due process, and erodes the separation of powers. The decision also conflicts with Supreme Court rulings requiring concrete harm for standing. WLF urges the Court to intervene, uphold Article III’s limits, and prevent courts from awarding damages without actual injury.

On March 24, WLF asked an en banc Ninth Circuit panel to return to the ordinary test for determining whether a statute applies retroactively to pre-enactment conduct. In its amicus brief, WLF urged the Ninth Circuit to dispense with its “clarifying legislation” exception and decide this case—and all other retroactivity cases—based on the Supreme Court’s *Landgraf* framework. As WLF’s brief explained, the “clarifying legislation” exception is inconsistent with *Landgraf*. Such amendments in fact raise the precise same fairness and notice concerns as any other change in the law. WLF’s amicus brief was prepared with the generous pro bono assistance of Joshua M. Wesneski and Sydney Hargrove of Weil, Gotshal & Manges LLP.

Ratha v. Rubicon Resources LLC

WLF urges the en banc Ninth Circuit to return to the ordinary test for determining whether a statute applies retroactively to pre-enactment conduct.

Drake v. Bayer Healthcare LLC

WLF asks the Ninth Circuit to reverse a trial court decision that failed to require common proof of harm for class certification.

On March 24, WLF asked the Ninth Circuit to reverse a trial court decision that failed to require common proof of harm for class certification. Rule 23 allows class actions only when the claims share common legal elements capable of common proof. The class-action plaintiffs here accused the defendant of falsely labeling its multivitamins as “natural.” But they failed to show in one stroke that consumers were misled or harmed. Despite this, the district court certified the class without evidence of class-wide injury. In its amicus brief urging reversal of the district court’s class certification order, WLF argues that no-injury class actions distort the legal system and encourage meritless litigation. These cases create unnecessary legal costs and raise consumer prices.

On March 20, WLF filed comments with the Food and Drug Administration requesting the agency to withdraw a proposed rule published in the Biden Administration’s waning days that would require all conventional cigarettes and cigars to contain a near zero amount of nicotine. WLF makes this request pursuant to a January 20, 2025 Trump Administration memo that empowers agencies to evaluate non-final rules. WLF argues that the de-facto prohibition measure raises questions of law and policy sufficient to warrant withdrawal under the Trump memo. The proposal flouts the federal Tobacco Control Act and by creating a massive black market, would do substantial harm to public health and the economy.

In re Withdrawal of FDA Tobacco Product Standard for Nicotine Yield Proposed Rule

WLF asks the FDA to withdraw a proposed rule that would nearly eliminate nicotine from conventional cigarettes and cigars.

In re Tesla Inc. Derivative Action

WLF urges the Delaware Supreme Court to reverse an unprecedented decision that nullified Tesla shareholders' ratification of their CEO's compensation.

On March 18, WLF asked the Delaware Supreme Court to reverse a Chancery Court decision that cancelled Elon Musk's compensation package for Tesla—even after 72% of Tesla's shareholders ratified that compensation package. In its amicus brief urging reversal, WLF argues that affirming the lower court's cramped view of shareholder ratification would curtail shareholder democracy, invite wasteful litigation, dampen innovation, and harm Delaware's business climate. WLF's brief also explores the shortcomings of judicial second-guessing of business judgments. The brief was filed with pro bono assistance from Rebecca Butcher of Landis Rath & Cobb LLP in Wilmington, Delaware.

On March 17, WLF urged the Eleventh Circuit to affirm a Middle District of Florida decision declaring the False Claims Act's qui tam provisions unconstitutional. In its amicus brief urging affirmance, WLF explains why only the executive branch is empowered to represent the interests of the United States in litigation. Congress cannot delegate that power to private actors. Officers in the executive branch are appointed to an office of public trust and act under obligation of oath, at peril of impeachment. And Article II's directives protect against the abuse of prosecutorial discretion. The FCA upends that design by allowing private relators to wield the tremendous power of public prosecution with no constitutional checks on their discretion.

U.S. ex rel. Zafirov v. Florida Medical Associates

WLF urges Eleventh Circuit to declare False Claims Act's qui tam provision unconstitutional.

IQVIA v. Superior Court

WLF asks the Supreme Court to take up a controversial personal-jurisdiction case.

On March 17, WLF asked the Supreme Court to review, and ultimately to summarily reverse, a controversial personal-jurisdiction decision from a California state court. There, the California courts held that they had personal jurisdiction over the New Jersey company simply because its former employee elected to join a California company and promptly filed suit in California court. In its amicus brief urging summary reversal, WLF explains why horizontal federalism protects against tyranny by diffusing power not only between the States and the federal government, but also among the fifty States. Such federalism interests constitute a separate, independent check on personal jurisdiction, serving to prevent State overreach no matter the weight of a defendant's convenience concerns. WLF's brief was prepared with the generous pro bono assistance of Judd E. Stone II, Christopher D. Hilton, and Cody C. Coll of Stone Hilton.

On March 12, WLF filed an amicus brief urging the Supreme Court to reverse a Ninth Circuit decision in an important case about the limits of federal-court jurisdiction. 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 many 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.

Labcorp v. Davis

WLF asks the Supreme Court to vindicate Article III's strict standing limits in class actions.

In re Gilead Sciences Inc.

The Supreme Court Texas denies mandamus relief in a controversial qui tam case.

On March 14, the Supreme Court of Texas denied mandamus relief in a controversial qui tam case. The decision was a setback for WLF, which filed an amicus brief with the court urging mandamus. 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. 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.

WLF welcomes new Senior Litigation Counsel



In March, WLF's Litigation Division added a new attorney, Saad Gul, a seasoned appellate litigator.

Click [here](#) to read the release announcing his hiring.

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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