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WLF Urges Supreme Court to Rein in Federal Courts' "*Erie* Guessing" About State Law
(*Uber v. Drammeh*)

> **"*Erie* obliges federal courts to determine state law as the State's highest court has declared, not as what they imagine the court would say if only given the chance."**
> —Saad Gul, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review two decisions of the U.S. Court of Appeals of the Ninth Circuit and reaffirm that federal judges determining state law in federal court must adhere to the decisions of the State's highest court.

Both the Constitution and *Erie R.R. Co. v. Tompkins* require federal courts to apply state law when no federal statute or constitutional provision governs. Here, two Ninth Circuit panels imposed legal duties on Uber based on legal predictions—not precedent. One case involved a murdered Uber driver; the other, an assault by an Uber-driver impersonator. In both, plaintiffs had to show that Uber owed them a special duty. But neither California's nor Washington's highest court had recognized such a duty. In fact, both declined to rule when the issue was certified. Even so, the Ninth Circuit chose to determine the matter itself and found a special duty in each case.

In its amicus brief urging review, WLF argues that these rulings contradict Supreme Court precedent, undermine federalism, and allow unelected federal judges to function as state lawmakers. As WLF's brief shows, determining state law requires adherence to existing doctrine from the State's highest court—not predictions about how that law may develop in the future. Judicial speculation disrupts federalism and turns federal judges into state legislators.

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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