

MONTH IN REVIEW

April 2025

May 2, 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

*In re Care Labeling Rule
Modernization*

*Merck Sharp & Dohme
Corp. v. Albrecht*

Decisions

*Lotus Vaping
Technologies v. FDA*

*Medical Marijuana, Inc.
v. Horn*

*FDA v. Wages & White
Lion Investments, LLC*

NEW FILINGS

In re Care Labeling Rule Modernization

WLF asks the FTC to amend a rule to allow manufacturers to provide consumers with a QR code or short web address on a label or stamped on the product.

On April 18, WLF submitted a comment with the Federal Trade Commission supporting a petition to amend an FTC rule that dictates how apparel and footwear manufacturers share washing, drying, and other care instructions with consumers. The petition asks the Commission to amend the Care Labeling Rule to allow manufacturers to provide a QR code or short web address on a label or stamped on the product. The digital label would direct purchasers to a website that contains the required care instructions and other information such as the type and origin of the fabric and its recyclability. The current rule does not permit digital labels be used in place of those that contain either very brief written instructions or non-intuitive symbols. WLF's comment urged the FTC to embrace the First Amendment concepts of expanding access to information and the freedom for businesses to choose how to provide information.

On April 11, WLF filed a brief with the Supreme Court urging it to grant certiorari to clarify, for a second time in the same case, when federal law preempts a plaintiff's state-law failure-to-warn claim. In its amicus brief urging review, WLF argues that the Third Circuit's approach strays from *Albrecht*'s clear path and the Supremacy Clause's mandate. It mires Merck in escalating fees and costs, denies the plaintiffs much-needed closure, and burdens the courts with more than a decade of MDL proceedings. WLF further shows why the Third Circuit's so-called presumption against preemption has no support in the Constitution's text or history. And WLF cautions that allowing the Third Circuit's decision to stand would chill the innovation of lifesaving and therapeutic drugs.

Merck Sharp & Dohme Corp. v. Albrecht

WLF asks the Supreme Court to revisit a landmark pharmaceutical preemption case.

DECISIONS

Lotus Vaping Technologies v. FDA

The Supreme Court declines to hear an important case about the regulatory process for vaping products.

On April 21, the Supreme Court declined to hear an important case about the regulatory process. The denial was a disappointment for WLF, which filed an amicus brief in the case urging review. The Ninth Circuit held that the Food and Drug Administration could tell companies they need not include information in applications and then deny those applications for failing to include that very information. WLF's brief argued that this regulatory bait-and-switch violated the petitioner's due-process rights. The brief also detailed how FDA's denial orders were arbitrary and capricious because FDA did not consider the petitioner's evidence. Finally, the brief explains why FDA's action could harm Americans' health.

On April 2, the Supreme Court declined to cabin the scope of damages available under civil RICO. In a 5-4 holding, the Court affirmed the Second Circuit's holding that a plaintiff may seek treble damages for business or property loss even if the loss resulted from a personal injury. The decision was a setback for WLF, which filed an amicus brief in the case urging reversal. As WLF's brief explained, under the Second Circuit's logic, all RICO predicate offenses can cause direct injuries to business or property. WLF's brief also explained that civil RICO defendants are entitled to heightened due-process protections because of the potential for treble damages and criminal penalties.

Medical Marijuana, Inc. v. Horn

The Supreme Court holds that damages "for business or property" under civil RICO includes money damages arising from personal injuries.

FDA v. Wages & White Lion Investments, LLC

The Supreme Court looks the other way at an agency's regulatory bait-and-switch.

On April 2, the Supreme Court vacated a Fifth Circuit ruling that held that the Food and Drug Administration could not advise companies they need not include information in pre-market applications and then deny those applications for failing to include that very information. The decision was a setback for WLF, which filed a brief in the case urging affirmance. WLF's brief argued that FDA's denial orders are arbitrary and capricious because FDA did not consider certain evidence. A unanimous Supreme Court disagreed, leaving open on remand whether any error was harmless because FDA issued denial orders to other manufacturers after reviewing marketing plans that were materially indistinguishable from respondents'.



WLF welcomes new Senior Litigation Counsel

In April, WLF's Litigation Division added a new attorney, Zac Morgan, a litigator with extensive appellate experience in the federal government and at a non-profit organization.

[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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