

# MONTH IN REVIEW

August 2025

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Washington Legal Foundation

2009 Massachusetts Avenue, NW  
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 activity in WLF litigation filings.

To learn more about WLF's litigation work, visit our website at [WLF.org](http://WLF.org).

## New Filings

*First Choice Women's  
Resource Centers v. Platkin*

*R.J. Reynolds v. FDA*

*SAP v. Teradata*

## Activity

*Popa v. Microsoft Corporation*  
**\*victory\***

*Burgess v. Whang*

*SpaceX v. NLRB*  
**\*victory\***

*Painters Fund v. Takeda  
Pharmaceuticals Co.*

# NEW FILINGS

## ***First Choice Women’s Resource Centers v. Platkin***

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WLF asks the Supreme Court to rein in the States’ unfettered use of constitutionally invasive administrative subpoenas.

On August 28, WLF urged the Supreme Court to reverse a Third Circuit decision which held that a constitutional challenge to a state attorney general’s investigative demand for donor information must first be heard in state court. As WLF’s amicus brief explains, that outcome is at odds with both the text, history, and purpose of 42 U.S.C. § 1983 (providing federal jurisdiction for constitutional claims against state officials)—and creates an incentive to lawfare. WLF argued that these cases must be heard in disinterested federal fora, overseen by appointed, life-tenured federal judges.

On August 25, WLF urged the Fifth Circuit to affirm a district court decision preliminarily enjoining FDA’s graphic cigarette warning labels under the Administrative Procedure Act. As WLF’s amicus curiae brief explains, FDA’s labels violate the law. Congress provided specific text for *nine* warning labels, FDA’s regime would mandate *eleven* disclaimers—only two of which use Congress’s language. WLF also argued that if the injunction could not be affirmed on APA grounds, it should be affirmed as a matter of constitutional avoidance, since disclaimers are unlikely to survive proper First Amendment review.

## ***R. J. Reynolds v. FDA***

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WLF asks the Fifth Circuit to rein in FDA overreach on tobacco disclaimers.

## *SAP v. Teradata*

WLF urges the Supreme Court to reconsider whether tying arrangements can ever be per se illegal under the Sherman Act.

On August 11, WLF urged the Supreme Court to review a Ninth Circuit decision holding that tying arrangements can be per se illegal under the Sherman Act. As WLF's amicus curiae brief explains, the caselaw on which the court of appeals relied has been undercut by later Supreme Court decisions and is unsupported by modern economics. WLF asks the Court to grant review to overrule those precedents and to establish that only ties that restrict output violate the Sherman Act.

Celebrating its 48<sup>th</sup> year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual and business civil liberties, and the rule of law.

To learn more about our new briefs and regulatory filings, visit our website at [wlf.org/litigation](http://wlf.org/litigation).

# ACTIVITY

## ***Popa v. Microsoft Corporation***

The Ninth Circuit affirms dismissal of a privacy suit in which the plaintiff lacked an Article III injury to pursue her state wiretapping claims.

***\*victory\****

On August 26, the Ninth Circuit affirmed dismissal of a suit in which the plaintiff lacked standing to pursue her state wiretapping claims. The decision was welcome news for WLF, which joined the U.S. Chamber of Commerce, NetChoice LLC, and the Interactive Advertising Bureau on a brief urging affirmance. Amici argued that dismissal was consistent with the Supreme Court's recent teaching on Article III's need for "a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts." Alternatively, the brief asked the court to affirm dismissal because the complaint failed to state a claim under Pennsylvania's Wiretap Act. The amicus brief was drafted by Megan Brown, Jeremy Broggi, and Joel Nolette of Wiley Rein LLP.

On August 25, the Fifth Circuit held that 12 U.S.C. § 1818(i)(1) explicitly precluded a district court's jurisdiction to enjoin a final order of the FDIC. The decision was a setback for WLF, which filed an amicus brief in the appeal arguing that the district court enjoyed jurisdiction over the case. After a lengthy administrative proceeding, the district court concluded that the proceeding violated Burgess's Seventh Amendment right to a jury trial and enjoined the FDIC from issuing a final order. On appeal, the Fifth Circuit vacated the injunction and remanded with instructions to dismiss the suit.

## ***Burgess v. Whang***

The Fifth Circuit holds that federal law bars a district court's jurisdiction to enjoin a final order of the FDIC.

## *SpaceX v. NLRB*

The Fifth Circuit preliminarily enjoins unlawful and unconstitutional enforcement actions by the NLRB.

*\*victory\**

On August 19, the Fifth Circuit preliminarily enjoined enforcement actions by the National Labor Relations Board (NLRB). The decision was a victory for Washington Legal Foundation, which filed an amicus brief supporting that result. WLF's brief urged the court to hold that NLRB's ALJs enjoy unconstitutional removal protection. As the brief explained, NLRB's ALJs are inferior officers who enjoy multiple levels of for-cause removal protection. The Supreme Court's decisions in *Jarkesy* and *Free Enterprise Fund* make clear that this violates Article II because the President lacks the ability to ensure that the ALJs are fulfilling their duties. WLF's brief was prepared by Alex T. Macdonald at Littler Mendelson PC.

On August 8, the Ninth Circuit denied rehearing and en banc review of a panel decision certifying a sprawling class action against Takeda Pharmaceutical. The decision was a setback for WLF, which had filed an amicus brief urging en banc review. WLF argued that the panel's decision conflicted with Supreme Court and Ninth Circuit precedent requiring a thorough predominance inquiry for all classes.

## *Painters Fund v. Takeda Pharmaceutical Co.*

The Ninth Circuit denies rehearing and en banc review of a panel decision certifying an unwieldy class action.

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.

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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.

### WLF Litigation Staff Contacts

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**Cory Andrews**

General Counsel & Vice President of Litigation  
*candrews@wlf.org*

**Zac Morgan**

Senior Litigation Counsel  
*zmorgan@wlf.org*