Press Release

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WLF Asks Sixth Circuit to Salvage the Congressional Review Act

(*Ohio Telecom Ass'n v. FCC*)

"Madison called the separation of powers 'the sacred maxim of free government.' The CRA preserves it by allowing Congress to have the last word on administrative rulemaking."

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Sixth Circuit to grant a petition for en banc review of a recent panel's decision that a Federal Communications Commission (FCC) rule did not violate the Congressional Review Act (CRA).

The case arises from a data-breach reporting requirement the FCC imposed as part of an overarching consumer-privacy rulemaking in 2016. In 2017, Congress used the CRA to declare that rulemaking had "no force or effect." Yet in 2024, the FCC reissued the same reporting requirement, insisting that since Congress vacated the entire rule, the CRA did not prohibit it from reissuing parts of the ousted whole. A panel of the Sixth Circuit, over a vigorous dissent by Judge Richard Griffin, sided with the FCC.

As WLF's amicus brief explains, en banc review is necessary to salvage the CRA. The CRA is a useful tool for Congress to review the work of executive branch agencies, but the Sixth Circuit's decision would render it a nullity. As the brief says, "Just as a parent's instruction to a four-year old not to eat a pie isn't license to have 'just' two or three slices, Congress's thundering announcement that an overarching rule is devoid of 'force or effect' precludes the agency from taking the rule piecemeal back into the Code of Federal Regulations." WLF was joined on the brief by the National Federation of Independent Business Small Business Legal Center and the Buckeye Institute.

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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