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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Asks Massachusetts High Court Not to Declare Publishing a Public Nuisance (*Massachusetts v. Meta*)

“Instagram isn’t a public nuisance. It’s speech, association, and press protected by federal statute, caselaw, and the First Amendment.”

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the Massachusetts Supreme Judicial Court to shut down the Commonwealth of Massachusetts’s effort to deem Instagram, one of the most popular social media platforms in the world, a “public nuisance” under that state’s laws.

The case arises from a suit by the Massachusetts attorney general against Meta and Instagram LLC seeking to deem their wildly successful product a “public nuisance” because of its high rates of use among young people. Public nuisances are usually things like polluting factories, not publishing others’ videos and stories. But the lower state court has allowed Massachusetts’s case to go forward—despite that Section 230 of the Communications Decency Act provides expansive immunity from suit for social media platforms and that the First Amendment protects speech, publishing, and association.

WLF’s brief argues that both section 230 and the First Amendment point in the same direction—the attorney general’s case must be dropped. As the brief says, “What is the Instagram scroll, the push notifications, the Meta-curated feed that each Instagram user encounters when opening the app, if not the seriatim distribution of many works—a video, a post, a comment, a message—to a subscribing public? There’s an English word for that—publishing.” And publishing is what section 230 and the First Amendment both shield from causes of action like the Commonwealth’s.

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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