Press Release

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WLF Asks Supreme Court to Preserve Text and Purpose of the Federal Arbitration Act (*Flower Foods v. Brock*)

"Brock owns his own goods and delivers them only within the borders of the State of Colorado. That's not interstate commerce, and the Court shouldn't pretend otherwise."

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the United States Supreme Court to reverse a lower court decision which cancelled out an arbitration agreement on the basis that solely in-state commercial activity qualifies as interstate commerce.

The case arises from a dispute over the meaning of the Federal Arbitration Act (FAA). Enacted one hundred years ago, the FAA helps to reduce litigation by affirmatively instructing courts to favor arbitration in virtually all cases. But the law has a small caveat, excluding the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." But in this case, the Tenth Circuit Court of Appeals determined that Brock—who owns the products he delivers and moves them about wholly within Colorado—was engaged in interstate commerce.

WLF's brief explains why that's wrong. To arrive at that conclusion, the Tenth Circuit created an "inchoate balancing test" that converted Brock's in-state activity into interstate commerce. But the FAA is a statute designed to reduce litigation. It follows that the law's narrow caveat should be straightforward for a court to apply, not a requirement for courts to have to wade through extensive discovery and fact-intensive mini-trials before deciding a motion to compel arbitration. A bright-line rule excluding in-state commerce achieves that mission, and aligns with the statute's plain text and sweeping pro-arbitration purpose.

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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