Press Release

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WLF Urges Supreme Court to Rein in Class Actions That Include Uninjured Plaintiffs

(*Painters Fund v. Takeda Pharmaceutical Co.*)

"Certifying classes that include uninjured members undermines Article III and threatens the separation of powers."

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to grant certiorari and reverse a Ninth Circuit ruling affirming certification of a class containing uninjured members. WLF contends that allowing federal courts to certify classes that include members without concrete Article III injuries enlarges judicial and congressional power at the expense of the executive branch.

The case arises from a RICO class action by third-party payors alleging fraud related to the anti-diabetes drug Actos. The district court certified a class of payors who purchased Actos prescriptions, relying on statistical modeling to establish predominance despite uncontroverted evidence that some class members suffered no injury. The Ninth Circuit affirmed, deeming the number of uninjured members de minimis and inconsequential.

In its amicus brief, WLF argues that Article III requires every class member to prove a concrete injury-in-fact, consistent with *TransUnion v. Ramirez*. Allowing courts to stand certification on averaged injuries permits private enforcement of federal law without executive oversight, violating Article II. WLF urges the Supreme Court to grant review and preserve the Constitution's limits on judicial authority.

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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