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WLF Urges Supreme Court To Rein In Effective-Vindication Exception To FAA (New York Football Giants v. Flores)

“Courts may not undermine the FAA’s pro-arbitration mandate by speculating about arbitrator impartiality.”

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review and reverse a decision by the U.S. Court of Appeals for the Second Circuit that invalidated the parties’ agreement to arbitrate their dispute. WLF contends that the appeals court improperly expanded the effective-vindication exception to the FAA by speculating about the arbitrator’s impartiality, an approach that threatens the enforceability of all arbitration agreements. WLF joined Atlantic Legal Foundation on the amicus brief, which was prepared by Grant Hollingsworth and Brett Covington of Hollingsworth LLP.

The case arises from a racial discrimination lawsuit filed by former NFL coach Brian Flores under 42 U.S.C. § 1981 against the NFL and several teams. Flores’s employment contracts with the New York Giants incorporated by reference the NFL Constitution, which contains a broad arbitration provision.

The NFL moved to compel arbitration under that provision, which designates the Commissioner as arbitrator. The district court denied the motion in part, and the Second Circuit affirmed, holding that the arbitration scheme failed to allow effective vindication of Flores’s statutory rights.

In their brief, amici argue that the effective-vindication exception is narrow and applies only when arbitration precludes assertion of statutory rights, not to mere speculation about bias. If left to stand, this ruling will invite courts to substitute subjective judgments for the parties’ contracts, fostering inconsistent results and a hostility to arbitration. For these reasons, amici urge the Supreme Court to grant the petition and reverse.

Celebrating its 49th 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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