Press Release

WASHINGTON LEGAL FOUNDATION
Keeping Free Enterprise Free

FOR IMMEDIATE RELEASE April 13, 2026

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

WLF Urges Ninth Circuit to Grant Rehearing En Banc to Correct Errors in Risk-Disclosure Liability

(*Construction Laborers Pension Trust of Greater St. Louis v. Funko, Inc.*)

"The panel's decision undermines the SEC's risk disclosure regime and the PSLRA's protections against meritless litigation."

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to grant rehearing en banc in an important securities case. WLF contends that the panel erred by imposing Rule 10b-5 liability on SEC-mandated risk disclosures for failure to disclose that identified risks had already materialized. By misapplying the PSLRA safe harbor, the decision creates a circuit split and threatens harm to companies and investors. WLF's brief was prepared with pro bono assistance from Lyle Roberts and Billy Marsh of A&O Shearman.

The case arises from a securities fraud class action against Funko, Inc. and its executives. Plaintiffs alleged that Funko's risk factor disclosures misleadingly depicted inventory management problems and technology failures as hypothetical future risks when those risks had already materialized. The district court dismissed the complaint with prejudice, concluding that the risk disclosures were protected by the PSLRA safe harbor. A Ninth Circuit panel reversed in part, reviving the claims based on the risk disclosures.

In its amicus brief, WLF argues that Item 105 risk disclosures are forward-looking by design and are not rendered misleading by omission of a risk's prior materialization. WLF further explains that the panel's flawed analysis guts the safe harbor's protection for forward-looking statements and undermines the SEC's efforts to simplify risk disclosures as well as Congress's goal of curbing abusive securities litigation. WLF urges the Court to grant rehearing en banc to correct these errors and preserve important policy goals.

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.

###