Press Release

WASHINGTON LEGAL FOUNDATION
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WLF Urges D.C. Circuit to Declare FINRA Order Unlawful

(*Kielczewski v. SEC*)

"Congress can't privatize the presidency."

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the District of Columbia Circuit to vacate a Securities and Exchange Commission (SEC) order upholding penalties imposed by the Financial Industry Regulatory Authority (FINRA).

The case arises from the unique structure of FINRA, a national securities association empowered by Congress to enforce federal law. FINRA functions as an auxiliary arm of the SEC and applies its share of the securities laws to broker-dealers in the United States. Yet FINRA claims to be a nonprofit corporation domiciled in Delaware, immune from constitutional constraints (such as the Fifth and Seventh Amendments) and wholly independent of the Executive Branch (no presidential appointees staff it).

WLF's brief explains why that's wrong. As the Supreme Court just declared in *Trump v. Slaughter*, there's no constitutionally acceptable pocket of independent executive power outside the singular historical exception of independent central banking. But FINRA, formed in 2007, has no similar ancient pedigree and no hall pass from the normal constitutional course. As WLF argues, if FINRA is allowed to escape the normal rule, it would provide a dangerous blueprint for Congress to privatize core presidential functions by delivering them to sham nonprofits unencumbered by the Bill of Rights.

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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