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## In WLF Victory, Sixth Circuit Agrees to Reconsider Case That Gutted the Congressional Review Act (*Ohio Telecom Ass’n v. FCC*)

***“The CRA is a vital oversight tool that gives Congress the last word on Executive Branch rulemaking.”***

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—In a victory for Washington Legal Foundation (WLF), the U.S. Court of Appeals for the Sixth Circuit agreed to en banc review of a panel decision holding that a Federal Communications Commission (FCC) rule did not run afoul of the Congressional Review Act (CRA). En banc review—where the entire court sits to reconsider an opinion issued by three of their fellow judges—is rare. Oral argument is scheduled for October 21.

The CRA allows Congress to override an administrative agency’s rulemaking and void it—leaving it with “no force or effect.” In 2017, Congress invoked the CRA to undo a recent FCC data-breach reporting mandate. Yet in 2024, the FCC reissued the same reporting requirement, insisting that since Congress vacated the entire rule, the CRA did not prohibit it from reissuing parts of the ousted whole. A three-judge panel of the Sixth Circuit, over a vigorous dissent by Judge Richard Griffin, sided with the FCC.

As WLF’s amicus brief explains, en banc review is necessary to salvage the CRA. The CRA is a useful tool for Congress to review the work of executive agencies, but the Sixth Circuit’s decision would render it a nullity. As the brief says, “Just as a parent’s instruction to a four-year old not to eat a pie isn’t license to have ‘just’ two or three slices, Congress’s thundering announcement that an overarching rule is devoid of ‘force or effect’ precludes the agency from taking the rule piecemeal back into the Code of Federal Regulations.” WLF was joined on the brief by the National Federation of Independent Business Small Business Legal Center and the Buckeye Institute.

*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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