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WLF Asks Texas Appeals Court to Block Trial on Federally Rejected Qui Tam Theory (*In re Gilead Sciences, Inc.*)

“Texas courts must not become the last refuge for qui tam theories the federal system has rejected.”

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

WASHINGTON, DC—Yesterday Washington Legal Foundation (WLF) urged Texas’s Fifteenth Court of Appeals to grant mandamus relief and direct summary judgment for Gilead Sciences. WLF contends that the trial court’s unexplained denial of summary judgment forces a punitive trial on a kickback theory that Texas law and federal authorities have already foreclosed. WLF’s brief was filed with the pro bono assistance of Andrew Bean and Grant Schmidt of Willkie Farr & Gallagher LLP in Dallas.

The case arises from a serial qui tam suit by Health Choice Advocates, a shell entity in a network that files copycat claims against pharmaceutical manufacturers. The relator alleges that Gilead’s patient-support programs, such as teaching patients to self-inject prescribed medicines, amount to illegal remuneration under the Texas Medicaid Fraud Prevention Act. Federal courts and the United States have rejected this exact theory, and Health Choice abandoned its prior federal suits against Gilead. After a complete summary-judgment record, the Harrison County trial court denied Gilead’s motion without explanation and cleared the claim for trial.

In its amicus brief, WLF argues that the Act is a penal statute that must be strictly construed and applied in harmony with parallel federal law, which holds that product-integrated patient support is not remuneration. Sending a legally foreclosed theory to a high-stakes punitive trial inflicts irreparable harm that no later appeal can cure, and it invites parallel suits across Texas. WLF urges the Fifteenth Court of Appeals to grant the petition, vacate the denial, and direct summary judgment for Gilead.

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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