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

WLF Urges Sixth Circuit to Vindicate 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—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Sixth Circuit to hold that, thanks to the Congressional Review Act (CRA), a Biden-era Federal Communications Commission (FCC) rule is illegal. The National Federation for Independent Business Small Business Legal Center and The Buckeye Institute joined WLF on the brief.

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. In a rare move, the Sixth Circuit will reconsider the panel’s decision “en banc.” That means the entire court—16 active judges rather than three—will decide the case.

As WLF’s amicus brief explains, the CRA is a useful tool for Congress to review the work of executive agencies, but the FCC’s legal theory would render the Act a nullity. As the brief argues, just as a “parent’s instruction to a ten-year-old not to eat a pie isn’t license to have ‘just’ two or three slices . . . Congress’s announcement that an overarching rule lacks ‘force or effect’ precludes the agency from taking it piecemeal back into the Code of Federal Regulations.”

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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