# Press Release

WASHINGTON LEGAL FOUNDATION
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# WLF Urges Ninth Circuit to Reject Per Se Liability for 401(k) Forfeitures

## (*Hernandez v. AT&T Services, Inc.*)

***"ERISA protects promised benefits; it does not conscript sponsors into a larger match."***

— 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 affirm dismissal of an ERISA class action against AT&T Services. In an amicus brief, WLF contends that treating a lawful forfeiture offset as a fiduciary breach would erase ERISA's settlor line and deter employers from offering plans.

The case stems from a putative class suit attacking AT&T's plan-authorized use of 401(k) forfeitures to reduce coming employer contributions rather than pay plan expenses. Luis Hernandez received every benefit his plan promised, yet he claimed AT&T breached ERISA by choosing the offset over expenses. The Central District of California dismissed the complaint, holding that the theory contravenes ERISA and decades of settled precedent.

In its amicus brief, WLF argues that Hernandez's theory erases ERISA's settlor-fiduciary line and turns a lawful funding menu into a mandate. The complaint pleads a lawful outcome rather than a flawed process, and forfeitures that stay in the trust neither inure to the employer nor amount to a prohibited transaction. WLF urges the Ninth Circuit to reject a rule that would shrink the plans workers need.

*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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