

FOR IMMEDIATE RELEASE

September 24, 2026

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

WLF Urges Fifth Circuit to Correct Judicial Gatekeeping Failure in Texas Trial (*Civelli v. Mulacek*)

“What’s true for computers is true for the courtroom: ‘garbage-in, garbage-out.’

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fifth Circuit to reverse an unjust \$210 million trial verdict. While the trial below was riddled with procedural errors, WLF’s filing focuses on the improper, late admission of uncleared expert testimony.

Five days before trial in a complicated, multi-million-dollar breach-of-contract case, the district court added a new expert to the plaintiffs’ witness list. This is unusual, and the expert testified without the normal pre-trial vetting that experts undergo ahead of trial, including submission of a formal expert report or sitting for a deposition. The plaintiffs’ witness testified that third-party digital forensics reports—which he never independently verified—suggested that a crucial defense document had been forged.

As WLF’s brief explains, this late-breaking witness should never have been allowed to testify. Adding a critical defense witness five days before trial violated the defendants’ due process rights. Worse yet, the expert’s testimony came with none of the indicia of reliability and sufficiency mandated by the Federal Rules of Evidence. Those Rules impose a “gatekeeping obligation” on federal judges to keep unvetted, prejudicial expert testimony out of the courtroom. The district court’s failure to do so demands reversal of the judgment and remand for a new trial.

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.

###