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WLF Urges Supreme Court to Clarify Whether Federal Courts May Certify Damages Class With Uninjured Members

(Nestlé USA, Inc. v. Falcone)

“Article III’s injury requirement doesn’t wilt at class certification. It becomes more important.”

— Jay DeSanto, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review a Ninth Circuit decision to uphold certification of a California damages class. In its amicus brief, WLF argues that review is warranted because the petition raises a recurring and consequential question about Article III’s limits on federal judicial power: whether a federal court may certify a damages class that includes individuals who have no injury.

The case arises from claims that Nestlé mislabeled certain of its chocolate products as “responsibly” or “sustainably” sourced. The certified class includes “all purchasers” of the products regardless of whether they saw, relied on, or were influenced by the challenged labelling. The parties’ survey experts found that many consumers didn’t see the labels or are indifferent to product-sourcing issues. But the Ninth Circuit affirmed the class anyway, dismissing in a footnote Nestlé’s Article III objection that the class contained a substantial number of uninjured members.

In its brief, WLF argues that certification is the critical moment when the claims of absent class members become joined in litigation and invoke Article III’s judicial power. It contends that certifying a class before standing is established allows courts to exercise sweeping judicial power through thousands, or even millions, of class-member claims without first determining whether Article III authorizes that exercise of power in the first place. WLF explains that the Ninth Circuit is the Nation’s busiest class-action forum and warns that if this practice is allowed to continue it risks unconstitutional exercises of judicial power on a massive scale.

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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