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October 9, 2026

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WLF Urges Third Circuit to Reverse FCRA Class of Uninjured Letter Recipients (*Kaplan v. TransUnion*)

“Certifying a class of letter recipients without establishing concrete harm defeats predominance and invites credit washing.”

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

WASHINGTON, DC—Yesterday Washington Legal Foundation (WLF) urged the U.S. Court of Appeals for the Third Circuit to reverse certification of a nationwide FCRA class. In an amicus brief, WLF contends that the district court certified a class containing letter recipients lacking any proof of injury, and it improperly rested that order on a block-first duty. WLF joined the U.S. Chamber of Commerce and the American Bankers Association on the brief, which was drafted by Adam Unikowsky and Daniel Schwei of Jenner & Block LLP.

The case stems from a Wells Fargo card charge that Lesley Kaplan reported as identity theft. She sent TransUnion a police report and an FTC identity-theft report and asked for a block. TransUnion declined the request in a letter because a statutory exception applied. TransUnion opposed certification because receiving a letter is not an injury, and because the FCRA imposes no block-first duty. Over those objections, the district court certified a nationwide class of about 280,000 consumers who received the same letter.

In their brief, amici argue that mere receipt of a letter stating the basis for TransUnion’s decision is not an Article III injury. Each class member must prove concrete harm from the missing block, and that individualized proof defeats predominance. Amici further argue that the statute lets an agency decline a block before imposing one. A mandatory first block would fuel credit washing and corrupt the reports businesses use to price credit.

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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