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SUPREME COURT RULES POSTAL SERVICE IMMUNE FROM ANTITRUST LAWS *(United States Postal Service v. Flamingo Industries)*

The United States Supreme Court unanimously held that federal antitrust laws are not applicable to the U.S. Postal Service (USPS) for those commercial activities which are not part of its statutory monopoly for certain mail delivery services. The Court ruled that even though Congress revoked sovereign immunity of the USPS, it was not a "person" subject to the antitrust laws.

In *U.S. Postal Service v. Flamingo Industries*, the U.S. Court of Appeals for the Ninth Circuit had ruled that the Postal Service was not immune from being sued for antitrust violations with respect to certain conduct that is not directly connected to its statutory mission of delivering the mail. USPS was sued by Flamingo Industries, an American company which manufactures mail sacks, for violating the antitrust laws in the way USPS secured the contract for the sacks from a Mexican company. USPS claimed that it was immune from antitrust liability for all of its conduct simply because of its status as a federal government entity.

In its brief, filed on behalf of itself, the Allied Educational Foundation, and Americans for Tax Reform, WLF had argued that in 1970, Congress enacted the Postal Reorganization Act allowing the USPS to "sue and be sued," and intended that the USPS be held liable as any other private competitor, except for the narrow area of certain mail delivery services. Accordingly, the Court should have analyzed the specific conduct that is the subject of the antitrust complaint to see if it falls within USPS's statutory mission.

USPS engages in numerous commercial activities that are not part of its mail service monopoly, such as selling money orders, phone cards, and other merchandise, and offering electronic bill paying and other financial services, all of which directly competes with the private sector. USPS spends millions on advertising, sponsors sporting events, and even changed its Internet domain name from ".gov" to ".com." Now that the Court has ruled that the USPS is not subject to antitrust laws, closer regulation of USPS is all the more warranted when it competes unfairly with private commercial entities.

WLF's brief was drafted with the *pro bono* assistance of Alan Charles Raul and Derek Brown of the Washington, D.C. law firm of Sidley Austin Brown & Wood LLP.

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