



March 30, 2005

HIGH COURT DECLINES TO REVIEW TAKINGS CASE FROM FEDERAL CIRCUIT *(Franklin Savings Corp. v. United States)*

The U.S. Supreme Court this week declined to review a decision from a lower court that adversely affected the property rights of businesses that are heavily regulated by the government. The decision was a setback for the Washington Legal Foundation (WLF) which had filed a brief in the Court urging it to reverse the decision from the U.S. Court of Appeals for the Federal Circuit. In *Franklin Savings Corp. v. United States*, the court of appeals ruled that since the savings industry is a heavily regulated industry, the government may effectively take over the private institution and deplete its assets without having to pay compensation to its owners under the Takings Clause of the Fifth Amendment.

In its brief filed on behalf of itself and the Allied Educational Foundation, WLF argued that if the decision were allowed to stand, it would threaten the property rights of many other heavily regulated businesses and industries, and would be at odds with prior Supreme Court decisions. For example, the Supreme Court ruled in 2003 that wireless telephone spectrum licenses, which are heavily regulated by the Federal Communications Commission (FCC), were subject to protection by the Takings Clause. Airport landing slots and aviation routes which cost the airlines millions of dollars are heavily regulated by the Federal Aviation Administration (FAA). Those valuable property interests would be at risk if the lower court ruling were allowed to stand. As WLF argued in its brief, "in the modern regulatory state, there are numerous other sectors of the economy that are just as consistently and intrusively regulated" as the financial savings industry.

The petition for Franklin Savings Corp. was filed by Carter Philips of Sidley & Austin. WLF's brief was filed with the *pro bono* assistance of Brian Brooks, Garrett Wotykyms, and Schan Duff of the law firm O'Melveny & Myers LLP in Washington, D.C. WLF will continue to participate in other major takings cases to protect the property rights of individuals and businesses.

* * *

For information, contact Paul Kamenar, Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief is available on its website at www.wlf.org.