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## PETITION SEEKS TRANSFER OF OVERSIGHT FOR DRUG PROMOTION INVESTIGATIONS

by  
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As part of its efforts to ensure that federal prosecutors — in their efforts to suppress promotional activity by pharmaceutical companies — do not infringe on First Amendment rights, the Washington Legal Foundation (WLF) has petitioned the U.S. Department of Justice (DOJ) to remove oversight responsibilities for those prosecutions from an office that has failed to provide any meaningful oversight. WLF's petition contends that the Office of Consumer Litigation ("OCL," a branch of DOJ located within the Civil Division) has done little to develop a coherent federal government policy regarding when criminal investigations into alleged improper promotion of pharmaceuticals and medical devices is warranted. The result is that individual U.S. Attorney offices are conducting wide-ranging criminal investigations into manufacturers' truthful promotional activities, with little or no guidance from DOJ headquarters and with little opportunity for FDA officials — who recognize the value of such promotional campaigns — to provide any input.

WLF is particularly concerned about the need for effective DOJ coordination in this area because criminal investigations of promotional activities have the potential to adversely affect the nation's health care delivery system. Indeed, in *Washington Legal Foundation v. Friedman*, WLF won an injunction against any federal government efforts to suppress certain forms of truthful promotional activity, both because that activity is protected by the First Amendment and because it serves vital health care needs. Yet, WLF is aware of several high-profile criminal investigations that target precisely the types of promotional investigations that *WLF v. Friedman* deemed constitutionally protected. WLF's petition argues that DOJ could more effectively exercise its oversight responsibilities — and ensure that prosecutors avoid infringing on First Amendment rights — if those responsibilities were transferred to the Criminal Division.

Counsel are urged to contact WLF if they are able to share information about other criminal investigations that target constitutionally protected promotional activities. They are also urged to contact senior DOJ personnel to express their support for the transfer of oversight responsibilities sought by WLF.

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**Richard A. Samp** is Chief Counsel of the Washington Legal Foundation. WLF's petition can be viewed on WLF's web site at <http://www.wlf.org/Litigating/casedetail.asp?detail=342>.

## **About WLF and the COUNSEL'S ADVISORY**

The Washington Legal Foundation (WLF) is the nation's largest non-profit, free enterprise public interest law and policy center. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's seven publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.

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