

For Immediate Release

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CALIFORNIA SUPREME COURT URGED TO REVIEW IMPORTANT BUSINESS CASE

(America Online, Inc. v. Mendoza)

The Washington Legal Foundation (WLF) filed a brief with the California Supreme Court urging it to review an important business case that could have ramifications throughout the country. In *America Online, Inc. v. Mendoza*, a California Court of Appeal held that a forum selection clause in a consumer agreement can be voided by California courts on the basis of California's Consumer Legal Remedies Act (CLRA). If the decision is left intact, businesses operating anywhere in the United States with customers in California can be forced to litigate any consumer complaint in California rather than in the states specified in the agreement.

In this case, Mendoza, an AOL customer, brought a nationwide class action in California against the company because of disputed billing practices, despite the fact that the service agreement provides that any litigation shall be brought in Virginia where AOL is based. The Court of Appeal held that the CLRA provides that consumers may not waive their rights to have consumer complaints litigated in California; hence, the forum selection clause in the contract agreed to by the parties was unenforceable.

In its brief, WLF argued that the "anti-waiver" provisions of CLRA effectively eviscerates forum selection and choice-of-law provisions in all contracts between vendors of goods and services and their customers, wherever in the country those customers may be, so long as at least one customer is in California and files a class action case. Indeed, following the lower court decision in the AOL case, another California court held unenforceable a forum selection clause in a contract by Microsoft. WLF argued that the lower court decision conflicts with other decisions and would not be in the public interest. By respecting the venue and choice-of-law provisions agreed to by the parties, confusion about where lawsuits should be filed would be dispelled, and judicial and litigant resources would be preserved. The California Supreme Court is expected to decide by next month whether it will hear the case.

WLF's brief was drafted with the *pro bono* assistance of Mark Perry and G. Charles Nierlich with the San Francisco office of Gibson, Dunn & Crutcher.

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