

FOR IMMEDIATE RELEASE

October 5, 1999

SUPREME COURT URGED TO CLARIFY LOCAL ANTITRUST IMMUNITY

(Hospital Service District No. 1. v. Surgical Care Center, No. 98-1464)

Last week the Washington Legal Foundation (WLF) filed a brief urging the U.S. Supreme Court to clarify the standard governing when cities, towns, and other state political subdivisions are entitled to immunity from federal antitrust claims.

In a brief filed with the Court WLF argued that the case deserved review for three reasons. First, WLF pointed out that the decision of the U.S. Court of Appeals for the Fifth Circuit in this case creates a true conflict among four circuits around the country. Second, that conflict centers on a point of federal law of deep importance to federal-state relations and local self-government. And third, the decision below harbors serious errors that require the Court's correction.

This case arose when Surgical Care Center, a privately owned hospital, brought a federal antitrust claim against Hospital Service District No. 1 of Tangipahoa Parish, a political subdivision of Louisiana. Surgical Care alleged that Hospital Service District had used its monopoly over inpatient services as leverage to get exclusive contracts with local managed care plans. The federal district court dismissed Surgical Care's complaint, finding that Louisiana law entitled Hospital Service District to immunity from federal antitrust claims. A three-member panel of the Fifth Circuit affirmed.

The Fifth Circuit, sitting *en banc*, reversed, however. It reasoned that state political subdivisions can claim immunity from federal antitrust liability only if they can show that the state legislature has passed a statute which "necessarily contemplates" that political subdivisions will act in anticompetitive ways. Prior case law had couched the standard in terms of whether the statute made such conduct "reasonably foreseeable" instead.

"Federal antitrust claims can pose a genuine threat to the efficient and responsive operation of local governments," said WLF's Senior Counsel for Litigation Affairs Shawn Gunnarson. "The Supreme Court ought to take this case to better clarify when local governments may be sued under federal antitrust law."

* * *

For further information, contact WLF Senior Counsel for Litigation Affairs Shawn Gunnarson at (202) 588-0302.

