



March 23, 2007

COURT DISMISSES CHALLENGE TO SARBANES-OXLEY ACCOUNTING OVERSIGHT BOARD *(Free Enterprise Fund v. PCAOB)*

The U.S. District Court for the District of Columbia earlier this week dismissed a challenge to the constitutionality of the Public Company Accounting Oversight Board (PCAOB) established by Congress under the Sarbanes-Oxley Act of 2002. The case will be promptly appealed to the U.S. Court of Appeals for the D.C. Circuit where WLF will participate in the case as it did in the district court.

Congress established the PCAOB as a private organization whose members are appointed by the Securities and Exchange Commission (SEC) rather than by Chairman of the Commission or the President as required by the Appointments Clause of Article II, and who are otherwise immune from control or removal by the President in violation of the separation of powers. More troubling, as WLF emphasized in its 20-page brief, Congress unconstitutionally delegated core legislative powers to the PCAOB, including the power to set criminal penalties.

WLF's brief also described the enormous economic impact that the PCAOB has on the American economy, which further demonstrates the dangers of circumventing the constitutional design and political accountability. In the first year alone, regulation by the PCAOB cost American businesses some \$35 billion, and has been especially harmful to smaller businesses and investors.

In dismissing the suit, Judge Robertson did agree with the plaintiff that the members of the PCAOB should have been appointed by the Chairman of the SEC rather than the full Commission, but ruled that the parties suffered no legal injury because of this defect. He also ruled that there was no violation of the non-delegation doctrine.

WLF's brief was filed as part of its Investor Protection Program (IPP) designed to prevent the loss of stock value due to abusive securities and related class actions, and reduced profitability due to burdensome and costly regulations. WLF's brief was drafted with the *pro bono* assistance of Kathryn Comerford Todd, partner in the Washington, D.C. firm of Wiley, Rein & Fielding, LLP, and associates Thomas R. McCarthy and William S. Consovoy.

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