



FOR IMMEDIATE RELEASE

March 3, 2017

Media Contact: Grace Galvin | ggalvin@wlf.org | 202-588-0302

WLF Asks U.S. Supreme Court to Limit SEC's Authority to Punish Long-Ago Activities

(Kokesh v. Securities and Exchange Commission)

“Congress has established a five-year limitations period for the enforcement of penalties. SEC cannot evade that limitation simply by giving a new name to its penalties.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Supreme Court to overturn a Tenth Circuit decision that permits the Securities and Exchange Commission to seek monetary penalties for securities law violations that occurred decades ago. In an *amicus* brief filed in *Kokesh v. Securities and Exchange Commission*, WLF argues that a strict five-year statute of limitations (28 U.S.C. § 2462) precludes such SEC enforcement actions.

The petitioner in this case allegedly defrauded customers over a 15-year period from 1991 to 2006. SEC did not file an enforcement action against him until 2009. SEC concedes it may only seek “penalties” for activities that occurred within five years of the date on which it filed suit. But it contends that the limitations period does not apply to “equitable” remedies—disgorgement in this case. SEC claims the agency may reach back indefinitely in time to require wrongdoers to disgorge ill-gotten gains.

In response, WLF’s brief argues that statutes of limitations serve important goals; they permit citizens to arrange their affairs secure in the knowledge that they won’t suddenly face sanctions based on long-ago events. This particular statute of limitations includes no exception for equitable remedies. The brief further contends that the “disgorgement” remedy SEC seeks has never been recognized as an equitable remedy throughout American legal history. SEC does not attempt to use disgorged funds to provide restitution to fraud victims. Rather, any funds collected simply go into the U.S. Treasury. Hence, they serve a punitive rather than a remedial purpose.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

###