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Federal Appeals Court Vacates Drastic Labor Department Rule Change

(Chamber of Commerce, et al. v. Department of Labor)

“Rather than increasing access to investment education and expanding consumer choice, the Fiduciary Rule would have made it more difficult for America’s workers and retirees to receive quality advice about their investment options. The Fifth Circuit’s ruling prevents that result and restores more than 40 years of settled reliance interests to a vital part of our economy.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Late yesterday, the United States Court of Appeals for the Fifth Circuit issued an opinion invalidating the Department of Labor’s (DOL) Fiduciary Rule, which sought to impose extraordinary new fiduciary obligations and burdens on those who sell retirement investment products. The decision was a victory for the Washington Legal Foundation, which filed a brief in the case arguing that the Rule was unconstitutional.

Although it invalidated the Rule without reaching the specific First Amendment concerns WLF raised, the appeals court held that DOL’s novel expansion of the scope of fiduciary responsibilities far exceeded the agency’s statutory authority under the Employment Retirement Income Security Act of 1974 (ERISA). The Fifth Circuit further found that even if ERISA’s statutory text were ambiguous, DOL’s interpretation was so unreasonable that it was not entitled to judicial deference. Because DOL made no argument concerning severability of any of the Rule’s invalid provisions, the court vacated the Rule in its entirety.

As WLF’s brief explained, the Rule distorted the meaning of “investment advice” and abandoned 40 years of statutory interpretation and common law understanding. WLF’s brief charged DOL with unduly expanding the definition of a “recommendation” so that a “fiduciary” is anyone who participates in communication that “would reasonably be viewed as a suggestion” to “engage in or refrain from taking a particular course of action.”

The Fifth Circuit’s decision conflicts with a decision earlier this week of the Tenth Circuit in *Market Synergy Group, Inc. v. U.S. Dep’t of Labor*, which upheld the Rule against a nearly identical challenge. WLF will continue to monitor the case for a possible petition for Supreme Court review.

Celebrating its 41st year as America’s premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

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