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April 7, 2015

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## Third Circuit to Hear Oral Argument Tomorrow in Closely Watched Case Involving Proposal by Shareholder Activist

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—Richard Samp, WLF Chief Counsel

**WASHINGTON, DC**—The U.S. Court of Appeals for the Third Circuit will hear oral argument in Philadelphia tomorrow, April 8, in a closely watched case that will determine when individual corporate shareholders can force a corporation to include shareholder proposals in its annual proxy statement. WLF Chief Counsel Richard Samp will be available following oral argument to discuss the case, *Trinity Wall Street v. Wal-Mart Stores, Inc.*

WLF filed an *amicus curiae* brief in the case in January, urging the Third Circuit to overturn a district court decision that threatens to allow the inclusion of frivolous and inappropriate shareholder proposals in proxy statements at a company’s expense—and, therefore, at the expense of other shareholders. The lawsuit centers on the proper scope of SEC Rule 14a-8, which constitutes a narrowly-defined exception to the general rule that shareholders must prepare and distribute their own proxy materials, rather than utilize the company’s materials. Even where Rule 14a-8’s procedural requirements have been satisfied, a company may exclude a shareholder proposal if it falls within one of the Rule’s thirteen exclusions.

In this case, an activist shareholder sought to include a proposal in Wal-Mart’s proxy materials that would, if adopted, compel the board’s governance committee to review the company’s policies concerning the sale of potentially dangerous or offensive products. WLF argues that the “ordinary business” exception permits exclusion of proposals about the nature of the products the company sells.

Ahead of tomorrow’s argument, WLF issued the following statement by Chief Counsel Richard Samp:

“The decision below upset long-settled understandings regarding shareholder voting on corporate policy matters and increased the uncertainty that surrounds the proxy ballot process, thereby substantially raising proxy voting costs for all public companies. WLF opposes the inclusion of frivolous and inappropriate Rule 14a-8 shareholder proposals in proxy statements at the company’s expense—and, therefore, at the expense of every other shareholder.”

*WLF is a national public interest law firm and policy center that regularly litigates to protect investors from activists’ excesses, such as unwarranted proxy proposals that drive up costs for all shareholders.*