Press Release

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FOR IMMEDIATE RELEASE June 5, 2015

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WLF Encourages High Court to Uphold Class Arbitration Waiver

(DIRECTV, Inc. v. Imburgia)

"As an attractive and effective alternative to costly and time-consuming litigation, arbitration has come under increased attack by plaintiffs' lawyers who see it as a barrier to lucrative class-action lawsuits."—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to overturn a hostile, anti-arbitration decision from the California Court of Appeal. The latter court had relied on a class arbitration waiver contained in DIRECTV's standard customer agreement as a basis to disregard the parties' entire arbitration agreement. In a brief filed in *DIRECTV, Inc. v. Imburgia*, WLF urges the Supreme Court to reaffirm the primacy of federal arbitration law over inconsistent state laws that attempt to limit the availability of efficient private arbitration.

The dispute arises from consolidated class actions alleging that DIRECTV violated California law by charging subscribers an early cancellation fee when they prematurely cancelled their service. When DIRECTV moved to compel arbitration under the arbitration agreement, the trial court denied the motion. On appeal, the California Court of Appeal read the contractual phrase "the law of your state" to include, counterfactually, state laws preempted by federal law, in order to find the entire arbitration agreement unenforceable.

In its brief, WLF argues the California appeals court erred in refusing to honor the parties' agreement to individually arbitrate their dispute. The Supreme Court has consistently held that Courts must enforce arbitration agreements, like all other contracts, according to their terms. Because the parties to this case expressly agreed to arbitrate their disputes through binding arbitration, WLF argues the courts below should have compelled plaintiffs to arbitrate their claim.

WLF also contends that the appeals court's curious construction of the phrase "the law of your state" to mean "the (nonfederal) law of your state without considering the preemptive effect, if any," of federal law fundamentally misunderstands the interplay between state and federal law. Under the U.S. Constitution, there is no such thing as "state law" free from the preemptive force of federal law. Preempted state law is a legal nullity, so it is not "law" in any meaningful sense of the word. As WLF notes, the Supreme Court has long made clear that federal law is as much the "law of the several States" as are the laws passed by state legislatures.

Upon filing its brief, WLF issued this statement by Senior Litigation Counsel Cory Andrews:
"As an attractive and effective alternative to costly and time-consuming litigation, arbitration has come under increased attack by plaintiffs' lawyers who see it as a barrier to lucrative class-action lawsuits. The Supreme Court must reiterate it will not tolerate state-court hostility to arbitration."

WLF is a national, public interest law firm and policy center that devotes substantial resources to promoting civil justice reform and reining in excessive litigation.