Press Release

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In Win for WLF, Supreme Court Agrees to Consider Limits on Standing to Assert Antitrust Claims

(*Apple, Inc. v. Pepper*)

> **"The Ninth Circuit's decision exposes antitrust defendants to multiple recoveries for a single course of action. By granting review in this case, the Supreme Court has an opportunity to make clear that only direct purchasers have standing to sue for antitrust damages, thereby eliminating the possibility of multiple recoveries."**
> **—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC— In a victory for Washington Legal Foundation (WLF), the U.S. Supreme Court today agreed to review a decision by the U.S. Court of Appeals for the Ninth Circuit that exposes antitrust defendants to multiple recoveries. In a brief urging the Court to review *Apple, Inc. v. Pepper*, WLF argued that the appeals court failed to adhere to well-accepted limits on who has standing to sue to recover antitrust damages.

In order to prevent the possibility of multiple recoveries arising from a single course of conduct, the Supreme Court ruled 40 years ago in *Illinois Brick Co. v. Illinois* that standing to assert claims for antitrust damages is limited to the immediate victims of the anticompetitive conduct—the direct purchasers. The Ninth Circuit adopted an extremely broad definition of who qualifies as a "direct purchaser," an outcome that would complicate antitrust litigation and expose numerous companies to duplicative claims.

The antitrust claims were filed by lawyers purporting to represent a class consisting of tens of millions of consumers who purchased iPhone applications ("apps"). The apps are manufactured and sold to consumers by independent companies. The plaintiffs allege that Apple is illegally monopolizing the sale of iPhone apps by requiring them to be sold through Apple's App Store and charging the manufacturers a commission on each app sold. The Ninth Circuit held that consumers may sue Apple for the alleged antitrust violation even though they did not purchase any items directly from Apple.

WLF's brief argued that the only parties that possess standing to challenge Apple's conduct are the app manufacturers because they are the ones directly affect by Apple's restrictions on where apps may be sold. WLF asserted that because Apple does not determine the price at which manufacturers choose to sell their apps, it should not be deemed to have a direct sales relationship with consumers—the prerequisite for antitrust standing under *Illinois Brick*. WLF argued that the appeals court decision exposes Apple to duplicative damage claims from manufacturers and consumers and threatens to chill the very sorts of competition that the antitrust laws are designed to encourage.

Celebrating its 41st 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.

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