Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

FOR IMMEDIATE RELEASE June 26, 2017

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

In Victory for WLF, Supreme Court Honors Statutory Time Limit in Securities Fraud Class Action

(CalPERS v. ANZ Securities, Inc.)

"There is a cottage industry of plaintiffs' lawyers who urge larger shareholders to 'opt out' of securities class-action settlements at the last minute to extort bigger settlement shares. The Court today has reduced the returns for that practice, protected other class members, and ensured speedier settlement negotiations."
—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—The U.S. Supreme Court today upheld § 13 of the Securities Act of 1933's three-year statute of repose to dismiss a tardy individual lawsuit filed by a party that opted out of a class action. Justice Kennedy's 5-4 decision for the Court in *CalPERS v. ANZ Securities, Inc.* recognized that § 13's "[i]n no event shall any such action be brought … more than three years after the security was … offered" language makes it a statute of repose. Hence, equitable tolling principles, which might have applied to overcome a statute of limitation, did not apply here.

The California Public Employees Retirement System, the petitioner in this case, opted out of a securities fraud class action and filed an individual suit against ANZ Securities (and other respondents) after the three-year repose period passed. It urged the Supreme Court to judicially override the statutory time limit, supposedly in order to protect class actions, safeguard shareholders, and prevent a flood of "protective" individual suits. The Court held that permitting a class action to splinter into individual lawsuits after a statute of repose had run would alter a defendant's accountability, undermining the purpose of a statute of repose. The Court also rejected petitioner's claim that dismissal of its suit would prevent it from opting out. The Court noted that it lacked authority to countermand a legislative statute of repose and that petitioner had likely overstated the practical concerns with an adverse ruling.

Justice Kennedy's opinion cited Washington Legal Foundation's *amicus* brief for the proposition that "the process [for protecting the right to litigate on an individual basis] is unlikely to be as onerous as petitioner claims. A simple motion to intervene or request to be included as a named plaintiff in the class-action complaint may well suffice. See, e.g., Brief for Washington Legal Foundation as *Amicus Curiae* 6-11 (describing procedures)[.]" As WLF's brief noted, investors can easily preserve their ability to file future individual claims by becoming non-lead named plaintiffs in a class action prior to the running of the time limit. WLF argued that the repose deadline protects both class members—especially smaller shareholders—as well as defendants in securities fraud cases, without creating significant burdens for larger investors or the courts.

Lyle Roberts, George E. Anhang, and Matthew Ezer of Cooley LLP provided substantial *pro bono* assistance to WLF in preparing this *amicus* brief.

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.

###