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 29, 2017

Media Contact: Grace Galvin | ggalvin@wlf.org | 202-588-0302

WLF Asks Supreme Court to Reverse Second Circuit's Flawed Reading of SEC Rule 10b-5

(Leidos, Inc. v. Indiana Public Retirement System, et al.)

"SEC rules require companies to provide a narrative explanation of a company's financial statements through the eyes of company management. If the Second Circuit has its way, those statements will become worse than worthless to investors, because companies will insert every conceivable disclosure just to avoid liability for leaving something out."
—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief yesterday with the U.S. Supreme Court supporting the Petitioner in *Leidos, Inc. v. Indiana Public Retirement System*. The case involves Securities and Exchange Commission (SEC) regulations governing securities fraud. At issue is whether Item 303 of SEC Regulation S-K generates a duty to disclose that creates liability under Rule 10b-5.

Section 10(b) of the Securities Exchange Act of 1934 makes companies liable for misleading statements in their financial filings. The U.S. Court of Appeals for the Second Circuit held below that Item 303 of Regulation S-K creates a privately enforceable duty to disclose. Thus, it held that a shareholder may sue a company for omitting Item 303 information from its financial statement, even where that omission did not render any statement in the filing misleading.

The Second and Ninth Circuits, where the majority of federal securities cases are brought, are in direct conflict on this point. WLF's brief outlines how the Second Circuit's reasoning is at odds with the plain meaning of the SEC Rule, the common law of fraud by omission, and Supreme Court precedent. WLF's brief argues that expanding the court-created private right of action under Rule 10b-5 to encompass the omission of Item 303 information would expand liability far beyond anything contemplated by Congress.

Proper interpretation of the SEC Rule would not treat every mere failure to comply with Item 303 as rising to the level of securities fraud. If the Supreme Court agrees with the Second Circuit's interpretation, then companies will have to disclose far more information than shareholders will find useful. WLF's brief points out SEC has discouraged such unnecessary disclosure before. WLF also worries that such a holding would lead to a spike in baseless securities fraud litigation, straining judicial resources and reducing shareholder value.

Lyle Roberts, George Anhang, Jeffrey Kaban, and Jacqueline Kort of Cooley LLP provided substantial *pro bono* assistance to WLF in preparing this *amicus curiae* 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.

###