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WLF Asks Supreme Court to Rein in FTC's Enforcement Powers

(Ross v. Federal Trade Commission)

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WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately overturn) a federal appeals court decision that authorizes the Federal Trade Commission (FTC) to file lawsuits seeking restitution from businesses alleged to have violated the FTC Act’s prohibition against “unfair or deceptive” trade practices. In a brief urging the Court to review a decision of the U.S. Court of Appeals for the Fourth Circuit, WLF argued that in order to seek restitution for such violations, FTC must first file an administrative proceeding against the company, per the terms of the FTC Act, and then file a suit for restitution only *after* the administrative proceeding has generated a cease-and-desist order.

FTC argued (and the appeals court agreed) that § 13(b) of the FTC Act authorizes FTC to seek (and authorizes federal courts to grant) restitution in an action alleging violations of the FTC Act, even when FTC has not previously considered the matter administratively. But § 13(b) authorizes FTC to file suit to “enjoin” violations of the FTC Act and says nothing about monetary remedies. WLF argued that both the language and structure of the FTC Act indicate that Congress, in adopting § 13(b), did not intend to authorize suits for monetary relief in addition to the injunctive relief explicitly authorized under § 13(b).

Upon filing, WLF issued the following statement by Chief Counsel Richard Samp: “The Federal Trade Commission and other federal agencies should not be permitted to exercise powers that Congress cannot plausibly be understood to have granted them. As the Supreme Court explained just last week in barring EPA from acting in excess of its delegated powers, judicial acquiescence to such power grabs would deal a ‘severe blow’ to the Constitution’s separation of powers. If FTC alleges that restitution is warranted for FTC Act violations, it must prove its allegations under the procedures established for its own administrative hearings before seeking restitution in federal court.”

WLF is a national public interest law firm and policy center that regularly raises separation-of-powers concerns in litigation to oppose overreaching government regulation.

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