# Press Release

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

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

# WLF Urges Supreme Court to Uphold Limits on Who May Assert Claims for Antitrust Damages

*(Apple, Inc. v. Pepper)*

**"The Ninth Circuit's decision exposes antitrust defendants to multiple recoveries for a single course of action. The Supreme Court should grant review 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—Washington Legal Foundation filed an *amicus* brief yesterday in the United States Supreme Court, urging the Court to grant review in *Apple, Inc. v. Robert Pepper*, an antitrust lawsuit filed by several consumers claiming that Apple is illegally monopolizing the sale of iPhone applications ("apps").

This petition for a *writ of certiorari* comes from the Ninth Circuit and asks the Supreme Court to resolve a circuit-split by determining whether consumers may sue for antitrust damages even if the consumers are not the immediate victims of allegedly anticompetitive conduct. Apple does not permit software developers to sell apps independently from Apple. These apps can only be sold on Apple's App Store. The plaintiffs claim that by preventing independent purchases, Apple is illegally monopolizing the sale of apps in violation of Section 2 of the Sherman Act. WLF argues that federal law does not grant these purchasers standing to sue Apple because they purchase apps from independent software developers, not Apple.

WLF filed its brief asking for review and reversal of the Ninth Circuit's decision out of concern for the potential expansion of antitrust class actions against companies involved in ecommerce and other forms of agency selling. Under the antitrust laws, it is well established that only "direct purchasers" have standing to sue for damages. The plaintiffs here are "indirect purchasers" and WLF's brief argues that Congress determined that if these downstream purchasers were allowed to sue, antitrust lawsuits would become unduly complicated and would expose antitrust defendants to multiple recoveries for a single course of conduct.

An iPhone owner purchases apps from the app developer, and Apple acts as the developer's agent in facilitating the sale. The only parties that possess standing to challenge Apple's conduct are the app developers because they are the ones directly affected by Apple's restrictions on where apps may be sold.WLF's brief explains that the title to an app sold on the App Store remains with the app developer, who retains the right to determine the price at which his product is sold. WLF argues that since Apple does not determine the price of apps, it is not the seller and thus lacks a direct relationship with the purchasers—a prerequisite for antitrust standing.

*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.*

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