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High Court Will Hear Argument Monday on Whether Agencies Must Seek Input Before Reversing Policies

(Perez v. Mortgage Bankers Assoc.)

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WASHINGTON, DC—This coming Monday, December 1, 2014, at 10 a.m., the U.S. Supreme Court will hear oral argument in a labor law case, *Perez v. Mortgage Bankers Association*, that addresses an important unresolved administrative law issue: before reversing a policy, must a federal agency provide public notice of its proposed reversal and a meaningful opportunity to comment on the proposed change?

Washington Legal Foundation filed a brief in the case, urging the Court to rule that a federal statute, the Administrative Procedure Act (APA), requires federal agencies to provide such an opportunity—a process known as “notice-and-comment rulemaking.” WLF Chief Counsel Richard Samp will be available following oral argument to discuss the case and to assess whether the justices’ questioning pointed to a likely resolution.

In 2010, the U.S. Department of Labor (DOL), without providing any advance warning, reversed a prior policy and issued a rule determining that mortgage loan officers employed by lenders are subject to the overtime-payment requirements of the Fair Labor Standards Act. The justices will decide whether a new rule reversing a prior policy should be classified as a “legislative rule” (in which case the rule is invalid because DOL failed to engage in notice-and-comment rulemaking before adopting it) or as an “interpretive rule” (in which case the rule is exempt from APA requirements). Ahead of oral argument, WLF issued the following statement by Chief Counsel Richard Samp:

“Administrative agencies are entitled to revise the rules governing how they carry out their statutory mandate, to reflect an incoming Administration’s new priorities. But they aren’t permitted to act unilaterally; they must provide notice and allow the public to participate in the revision process. Among other things, requiring advance notice gives affected entities time to adjust their operations to come into compliance with the new rules.”

WLF is a national public interest law firm and policy center that regularly litigates in support of the rights of individuals to participate directly in the government decision-making process.

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