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## WLF Urges Supreme Court to Bar Class Actions Where Members of Class Cannot Be Identified

*(Conagra Brands, Inc. v. Briseño)*

**“When courts permit a case to proceed as a class action even when the identity of class members cannot be ascertained, the only ones who benefit are the plaintiffs’ lawyers.”**  
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today called on the U.S. Supreme Court to review and overturn a decision by the U.S. Court of Appeals for the Ninth Circuit that permits lawsuits to proceed as class actions even when there is no administratively feasible method of identifying members of the plaintiff class. In a brief filed in *Conagra Brands, Inc. v. Briseño*, WLF argues that Rule 23 of the Federal Rules of Civil Procedure does not permit class certification when class members cannot be identified, because any such lawsuits would be wholly unmanageable—they would quickly devolve into a series of mini trials regarding whether a specific claimant is really a member of the class.

The issue of whether an administratively feasible method exists for identifying class members is often referred to as “ascertainability.” The federal appeals courts are sharply divided on whether Rule 23 includes an ascertainability requirement.

The case involves a claim that the “100% Natural” labeling on Wesson cooking oil is false or misleading because the product contains genetically modified organisms. The certified class consists of everyone who purchased Wesson products in recent years in 11 different States.

WLF’s brief notes that most Wesson oil is purchased in grocery stores, that no company possesses records identifying purchasers, and that consumers virtually never save their old cash-register receipts. WLF argues that in the absence of written records, there is no way to ascertain who the class members are. The absence of such information is crucial, WLF asserts, because notice cannot be sent as Rule 23 requires if the identity of class members is unknown. Class members who are unaware of the lawsuit thus cannot benefit from the suit because they will have no occasion to submit a claim for payment.

*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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