United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5276 **September Term 2008**

07cv01021

Filed On: November 21, 2008

Federal Trade Commission,

Appellant

v.

Whole Foods Market, Inc., et al.,

Appellees

BEFORE: Sentelle, Chief Judge, and Ginsburg**, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh*, Circuit Judges

O R D E R

The petition of appellee Whole Foods Market, Inc. ("Whole Foods") for rehearing en banc was circulated to the full court, and a vote was requested. Thereafter, a majority of the judges eligible to participate did not vote in favor of the petition. Upon consideration of the foregoing and the motion of Whole Foods for leave to file a reply, the opposition thereto, and the lodged reply, it is

ORDERED that the motion for leave to file a reply be granted. The Clerk is directed to file the lodged reply. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

* Circuit Judge Kavanaugh would grant the petition.
** A statement by Circuit Judge Ginsburg, with whom Chief Judge Sentelle joins, concurring in the denial of rehearing en banc is attached.

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Ginsburg, Circuit Judge, with whom Chief Judge Sentelle joins, concurring in the denial of rehearing en banc: I concur in the denial of rehearing en banc because, there being no opinion for the Court, that judgment sets no precedent beyond the precise facts of this case. *See King v. Palmer*, 950 F.2d 771, 783 (D.C. Cir. 1991) (en banc) ("without implicit agreement" among a majority of the judges "we are left without a controlling opinion").