

**FOR IMMEDIATE RELEASE****July 21, 2009**

WLF FILES PETITION IN SUPREME COURT WLF CLIENT TO TESTIFY BEFORE CONGRESS

(Evertson v. United States)

The Washington Legal Foundation (WLF) yesterday filed a Petition for a Writ of Certiorari in the U.S. Supreme Court urging that they review (and ultimately overturn) the conviction of a small businessman in Idaho for alleged technical violations of the Resource Conservation and Recovery Act (RCRA), the law that governs disposal of hazardous wastes. WLF's client was convicted and sentenced to 21-months imprisonment for storing chemicals that prosecutors deemed "hazardous wastes." The evidence at trial showed that the chemicals were not "waste" at all but rather were valuable products that the defendant was using in connection with his business.

WLF's client, businessman Krister Evertson, will testify before the House Judiciary Subcommittee hearing looking into the "overcriminalization" of the activities of law-abiding members of the business community. The hearing will take place on Wednesday, July 22, 2009, at 3 p.m. WLF's Legal Policy Advisory Board Chairman, former Attorney General Dick Thornburgh, will also testify with Evertson.

In its petition for certiorari filed on behalf of Evertson, WLF argued that the lower courts misinterpreted RCRA and in essence denied him the opportunity to demonstrate that the chemicals were not "waste" because he had never abandoned them. Although Evertson has now served virtually all of his prison sentence, WLF argued that review by the Supreme Court is important to ensure that other business people are not convicted under similarly dubious circumstances.

"This conviction can fairly be characterized as a miscarriage of justice, particularly given the uncontested evidence that Evertson's conduct caused no harm to the environment, nor was there any imminent threat of such harm," WLF Chief Counsel Richard Samp said after filing the certiorari petition. "Congress intended that criminal prosecutions for violations of the environmental laws should focus on those who intentionally cut corners and abuse the environment in order to avoid the costs of compliance, not those who in good faith are doing all they can to comply with the law," Samp said.

Evertson established a business in Salmon, Idaho in 2000 for the purpose of manufacturing sodium borohydride, a chemical with numerous industrial uses. Working without salary for two years and purchasing supplies with money borrowed from a relative, Evertson sought to develop a new and cheaper method of manufacturing the

chemical. When he ran out of working capital in 2002, he left Idaho in order to earn the funds necessary to continue the business. Before leaving, he placed the hazardous chemicals his company had been using in long-lasting storage tanks at a nearby storage facility.

The Environmental Protection Agency (EPA) found out about the chemicals 22 months later. Although Evertson told EPA that he intended to return to Idaho to continue his business operations, EPA determined that the stored chemicals had been abandoned by Evertson and were thus “waste.” Because all agree that the chemicals at issue were hazardous, the “waste” determination meant that the stored chemicals were “hazardous wastes” – and EPA ordered the chemicals destroyed and disposed of. Evertson was subsequently charged with storing “hazardous wastes” without a permit – even though no one alleges that any of the chemicals had leaked out of their storage containers or caused any environmental harm.

Under RCRA, it is a complete defense to a “hazardous waste” charge to demonstrate that the materials at issue were not waste because they had never been abandoned. WLF argued in its certiorari petition, however, that the lower courts prevented Evertson from raising a no-abandonment defense by instructing jurors to defer to EPA’s determination that the materials were hazardous “waste.” WLF argued that in a RCRA prosecution, it should be up to the jury, not EPA officials, to determine whether the materials at issue should be deemed “waste.” WLF also argued that the Ninth Circuit erred in determining that prosecutors did not need to show that Evertson acted intentionally with respect to all elements of his alleged crime. WLF stated that the lower courts’ rulings on both issues conflicted with decisions from other federal appeals courts; WLF asked the Supreme Court to grant review in order to resolve that conflict.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous federal and state courts in cases raising claims that prosecutors are unfairly seeking to criminalize business practices that, even if technically a violation of some regulatory rule, are more appropriately addressed in a civil proceeding.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.