



January 12, 2009

COURT DECLINES TO BAR CONGRESS FROM DECIDING INDIVIDUAL COURT CASES

(Exxon Mobil Corp v. FERC, No. 08-212)

The U.S. Supreme Court today issued an order declining to hear a case that would have addressed whether Congress is permitted to adopt legislation dictating the results of on-going judicial proceedings. The one-sentence order did not explain the Court's rationale for denying review.

The order was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case, *Exxon Mobil Corp. v. Federal Energy Regulatory Comm'n*, urging the Court to grant review. WLF argued that while Congress is permitted to amend generally applicable law even when doing so affects pending lawsuits, separation-of-powers principles prohibit Congress from exercising judicial power by dictating the results in individual cases without simultaneously making its new rule applicable to all similarly situated cases. WLF urged the Court to review (and ultimately overturn) an appeals court decision that upheld the challenged congressional action.

“The Framers of the Constitution established very clear boundaries between legislative and executive power because they had seen first-hand abuses by colonial legislatures, which often sought to control the outcomes of particular cases,” said WLF Chief Counsel Richard Samp after reviewing the Court's order. “The types of legislative skullduggery that went on in this case were exactly the types of abuses the framers sought to prevent,” Samp said.

The case involved a dispute, among a number of the petroleum companies that make use of the Alaska pipeline, regarding how to split the proceeds of oil that leaves the pipeline at its southern terminus. After lengthy proceedings both before FERC (the Federal Energy Regulatory Commission) and the U.S. Court of Appeals for the District of Columbia Circuit, an Administrative Law Judge (ALJ) issued a 949-page decision that resolved the dispute. The ALJ determined that several oil companies (including Exxon Mobil) were entitled to large refunds, while two Alaska-based oil refiners were required to pay substantial sums. One of the refiners was found to owe more than \$100 million.

The Alaska oil refiners were disappointed with the decision. But they did not confine their appeals to the ongoing proceedings. Instead, they also appealed to the Alaska congressional delegation for assistance. The result of that appeal was July 2005 legislation adopted by Congress without hearings, committee reports, or floor debate. The legislation reversed the decision of the ALJ and cut the Alaska refiners' potential liability by 65%. The

special legislation first appeared in print in a conference report issued on July 25, 2005, the night before the legislation was passed as part of a much larger appropriations bill. The special legislation applied only to this single FERC proceeding and made clear that the rule of law established by the legislation would *not* be applicable to future FERC proceedings.

FERC thereafter issued a final judgment that conformed to the new legislation, and the D.C. Circuit affirmed the judgment. Exxon Mobil petitioned the Supreme Court to review the D.C. Circuit's decision; today's order denied that petition.

In its brief in support of the petition, WLF argued that the Constitution imposes strict limits on how far Congress may go in adopting legislation that encroaches on powers allocated by the Constitution to other branches of government. WLF noted that the Court, in its 1871 *Klein* decision, struck down congressional legislation on precisely such separation-of-powers grounds. *Klein* barred an effort by Congress to interfere with pending litigation in which former Confederate soldiers were seeking compensation for confiscated property; the Court held that Congress could not change the rules with respect to the pending lawsuits without simultaneously adopting new law applicable to all similarly situated individuals. WLF urged the Court to grant review in this case to consider the scope and continued viability of *Klein*.

WLF argued that by requiring Congress to act generally, rather than particularly, separation-of-powers principles minimize the chance of oppressive legislation. The Framers' theory was that if everyone in a particular class were equally affected by a legislature's rule, all class members would act collectively to ensure that the legislature was fair to the class, WLF argued.

WLF is a non-profit public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF devotes a substantial portion of its resources to defending free-enterprise, individual rights, and a limited and accountable government.

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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.