

**FOR IMMEDIATE RELEASE****October 28, 2004**

## **COURT URGED TO PERMIT NAVY TO BUILD NEEDED AIRFIELD IN NORTH CAROLINA**

*(National Audubon Society v. Dep't of the Navy)*

The Washington Legal Foundation (WLF) yesterday urged the U.S. Court of Appeals for the Fourth Circuit in Richmond to permit the Navy to go forward with plans to build a new North Carolina airfield. The airfield, desperately needed for pilots being trained to land planes on aircraft carriers, has been blocked by a North Carolina district judge who has raised questions about whether the Navy prepared an adequate environmental impact statement (EIS) before going ahead with the project.

In a brief filed in *National Audubon Society v. Dep't of the Navy*, WLF argued that the district judge acted improperly in second-guessing the Navy's determination that building the base is vital for national security. WLF argued that the Constitution requires courts to defer to military determinations by those Executive Branch officials who have expertise in the area.

"Judges lack both the expertise and the resources to second-guess military determinations," said WLF Chef Counsel Richard Samp after filing WLF's brief. "Judges are charged with enforcing the environmental laws, but they have no business basing their environmental law decisions on factual determinations in areas far beyond their expertise," Samp said.

The case is a challenge by several environmental groups to the Navy's decision to build a new Outlying Landing Field (OLF) in Eastern North Carolina, to be used for training carrier pilots. After years of study (including preparation of a 1,000-page EIS), the Navy chose a Washington County site that is now used for agriculture and is five miles from a wildlife refuge. The environmental groups claim that the habitat of birds in the sanctuary will be degraded by the noise from aircraft.

They filed suit under the National Environmental Policy Act (NEPA), a federal law that, among other things, requires preparation of environmental impact statements in connection with federal actions that will have a significant effect on the environment. The environmental groups claim that the EIS prepared in this case did not take a close enough look at possible alternative sites.

A federal district judge in April granted a preliminary injunction preventing the Navy from taking *any* actions in connection with the OLF; it may not even complete preliminary site studies or continue with land acquisition from willing sellers. The judge entered his injunction without making any finding that the Navy's EIS was inadequate; he ruled simply that the environmental groups had raised "substantial questions" about the adequacy of the EIS.

The judge granted the injunction because, he found, the harm that the plaintiffs would suffer if an injunction were denied was far greater than the harm that the Navy would suffer if an injunction were granted. The court rejected the Navy's claim that delaying construction of the OLF would be a blow to national security.

In its brief asking that the injunction be overturned, WLF argued that the district judge acted improperly in rejecting the Navy's determination regarding the importance of the new OLF. WLF argued that at the very least, the judge should have granted substantial deference to the Navy's determination, but he rejected it out of hand with virtually no explanation and in the absence of any evidence that contradicted the Navy's evidence. WLF argued that the Constitution assigns military matters to the President and Congress and that the courts should largely steer clear of such issues.

WLF also argued that the judge erred in finding that the plaintiffs would be harmed by denial of a preliminary injunction. WLF noted that the OLF is not scheduled to be completed until 2007 at the earliest, so a trial on the plaintiffs' claims could be completed long before any aircraft reach the area. The plaintiffs claim that they will be injured by a "bureaucratic steamroller" if the project is allowed to go forward -- they contend that once an agency spends millions of dollars on a project, it takes on a momentum that is impossible to resist regardless what further environmental studies eventually show. WLF argued that such "bureaucratic steamroller" harms are not the type of harm that should be considered in deciding whether to grant a preliminary injunction.

WLF is a public interest law and policy center with supporters in all 50 states, including many in North Carolina. It devotes a significant portion of its resources to ensuring a strong national defense. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

\* \* \*

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](http://www.wlf.org).