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## High Court Hears Argument Today on Backdoor Regulation of Natural Gas Service Via State-Law Antitrust Suits

(*ONEOK, Inc. v. Learjet, Inc.*)

**“The Natural Gas Act promotes uniformity, not random regulation by jury verdict. Permitting private plaintiffs to pursue state-law antitrust suits that second-guess FERC would lead to industry-wide chaos and an unnecessary drag on investment in a vibrant and growing sector of the economy.”**  
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—This morning the U.S. Supreme Court will hear oral argument on whether to overturn a decision of the U.S. Court of Appeals for the Ninth Circuit that exposes natural gas companies to massive state regulation—in the form of state antitrust liability—for conduct that is the exclusive province of a comprehensive federal regulatory scheme. Senior Litigation Counsel Cory Andrews, who authored WLF’s *amicus* brief, will be available following oral argument to discuss the case and assess whether the justices’ questioning suggested any particular outcome.

Washington Legal Foundation’s brief urges reversal of the appeals court’s decision, arguing that the Ninth Circuit’s recent decision threatens to disrupt a federal framework by allowing plaintiffs’ attorneys motivated by outsized state jury awards to create 50 different state regulatory regimes for the natural gas industry. Such an outcome, WLF warns, would lead to compliance chaos and retard investment in the industry.

The Ninth Circuit reversed a district court Multi-District Litigation decision and held that plaintiffs’ claims were not preempted because they involved *retail* transactions, which are outside FERC’s purview over *wholesale* transactions. However, as WLF’s brief explains, the NGA reserves to FERC the exclusive power to regulate any practice that affects wholesale rates. Thus, even though the conduct at issue in this case allegedly affected both retail *and* wholesale rates, it still counts as a practice that affects wholesale rates for preemption purposes. The only relevant question is whether plaintiffs’ state-law claims are directed at conduct in the field that the NGA occupies—and they are.

Ahead of oral argument, WLF issued this statement by Senior Litigation Counsel Cory Andrews: **“The Natural Gas Act promotes uniformity, not random regulation by jury verdict. Permitting private plaintiffs to pursue state-law antitrust suits that second-guess FERC would lead to industry-wide chaos and an unnecessary drag on investment in a vibrant and growing sector of the economy. If plaintiffs are allowed to manipulate state-law duties as a backdoor way to regulate natural gas practices that affect the interstate wholesale market, the Supremacy Clause will be rendered a dead letter.”**

*WLF is a free-market, public-interest law firm and policy center that opposes state-law regulation when it threatens uniform federal regulatory regimes that promote commerce and protect consumers.*