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February 14, 2014

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WLF Asks High Court to Toss Flawed \$104 Million NYC Pollution Verdict

(Exxon Mobil Corp. v. City of New York)

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WASHINGTON, DC—The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to review, and ultimately overturn, a New York federal jury’s eye-popping \$104 million award against Exxon Mobil for alleged pollution-related injuries that have not yet happened and may never even occur.

The case arises from a 2003 suit brought by the City of New York, alleging that Exxon (and others) contaminated groundwater in Jamaica, Queens with the gasoline additive methyl tertiary-butyl ether (MTBE). Under the Clean Air Act, Congress required Exxon to use an “oxygenate” in its gasoline, and the jury found that EPA-approved MTBE was the safest, feasible means of complying with the federal mandate.

In its brief in support of discretionary review, WLF argues that settled principles of conflict preemption preclude the court below from imposing liability on Exxon for using the most prudent means of complying with the Clean Air Act. WLF also argues that Exxon was not liable as a matter of law because the City never used the allegedly contaminated groundwater at issue, and its good-faith intent to begin using that water sometime in the next 20 years—at a point in time and in a manner that may not cause a problem even if MTBE reaches the water supply—is not an imminent injury of the kind necessary to make it “ripe” for review.

Upon filing its brief, WLF issued a statement by Senior Litigation Counsel Cory Andrews: “Courts should not be able to force companies into a no-win dilemma between complying with a federal mandate and incurring over \$100 million of liability under state law. If juries are free to engage in rampant speculation about what might happen years from now, it will result in the payout of enormous verdicts for injuries that may never occur. If municipalities can tag-team with the plaintiffs’ bar to recover huge sums for conjectural future injuries, our system of civil justice will soon come to resemble a casino craps table where cash-strapped local governments get to bet on litigation with house money.”

WLF is a public interest law and policy center that regularly litigates in environmental matters to promote a rational balance between environmental protection and economic growth.

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