



FOR IMMEDIATE RELEASE

February 22, 2016

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Asks High Court to Preempt State Tort Suits that Impose Liability on Companies for Following Federal Law

(Exxon Mobil Corp. v. State of New Hampshire)

“For 15 years, oil refiners added MTBE to their gasoline because federal environmental officials required them to do so. Yet, because they obeyed federal law, these refiners now face billions of dollars in legal claims arising under state law. The Supreme Court should call a halt to this jackpot justice.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today filed a brief urging the U.S. Supreme Court to review and reverse a New Hampshire Supreme Court decision that upheld massive liability against an oil refiner for having added the oxygenate Methyl Tertiary Butyl Ether (MTBE) to its gasoline. MTBE is a chemical that reduces air pollution from a car’s exhaust but can contaminate groundwater if leaked or spilled from storage tanks.

The New Hampshire courts determined that ExxonMobil (and every other oil company in the state) acted negligently when it complied with the federal reformulated gas (RFG) program by adding MTBE to the gasoline it distributed in New Hampshire. WLF’s *amicus* brief in *Exxon Mobil Corp. v. State of New Hampshire* argues that the state courts instead should have held that federal law preempted the state tort claim, because it was impossible for oil companies to comply simultaneously with federal law and New Hampshire’s (retroactive) mandate not to distribute MTBE. While federal officials nominally permitted refiners to pick from among several possible gasoline additives, refiners’ only feasible option was MTBE. ExxonMobil now faces a \$236 million state judgment (plus similar lawsuits in numerous other states) for obeying federal law.

WLF also asked the Supreme Court to consider whether New Hampshire violated ExxonMobil’s due process rights by conducting a “trial by formula” that prevented the company from raising individualized defenses to allegations that its conduct caused groundwater contamination throughout the State. WLF’s brief notes that the Supreme Court held in its 2011 *Wal-Mart* decision that the trial-by-formula approach is impermissible in federal court because it violates federal statutory law. WLF urged the Court to hold that the Due Process Clause of the U.S. Constitution requires affording defendants in state-court proceedings similar procedural fairness.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “For 15 years, oil refiners added MTBE to their gasoline because federal environmental officials required them to do so. Yet, because they obeyed federal law, these refiners now face billions of dollars in legal claims arising under state law. The Supreme Court should call a halt to this jackpot justice. New Hampshire seeks to recover a huge judgment from Exxon despite never having to present evidence that Exxon was responsible for any gasoline spills in the State.”

WLF is a public-interest law firm and policy center that advocates against state tort judgments that undermine uniform federal regulations that promote safety and protect interstate commerce.