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WLF Seeks Supreme Court Reversal of Impossible Clean Air Act Standards Set by EPA

(American Municipal Power, Inc. v. Environmental Protection Agency)

“EPA utterly disregarded a fundamental obligation of government in this case: in a nation of laws, agencies must not pass regulations with which people cannot comply. The ability to conform one’s conduct in advance to avoid breaking the law (and being penalized) is a basic component of liberty.”

—Mark Chenoweth, WLF General Counsel

WASHINGTON, DC—Washington Legal Foundation yesterday asked the United States Supreme Court to review and reverse a D.C. Circuit decision that allowed EPA to set emission standards under the Clean Air Act that are impossible for industry and other affected entities to meet. In an *amicus* brief filed in *American Municipal Power, Inc. v. EPA*, WLF pointed out that no one believes the so-called Boiler MACT rule can be complied with at all times, because even the best controlled and maintained equipment malfunctions sometimes.

Hence, EPA is essentially requiring operators of hundreds of thousands of boilers in the United States—including at hospitals, churches, shopping malls, apartment complexes, schools, prisons, restaurants, and industrial settings—to subject themselves to civil and criminal sanctions whenever their equipment malfunctions. Although EPA promises to exercise prosecutorial discretion, boiler operators properly demand to be held to emission standards that are possible to comply with. No one should have to depend on the discretion of a prosecutor in order to avoid civil and criminal penalties. Besides which, private lawsuits can also enforce these standards.

WLF argues that EPA’s regulation violates the Due Process Clause. Applying this emission standard at all times makes it impossible for cities, businesses, and others that own and operate industrial boilers to comply with federal law. Given this extraordinary burden of liability imposed by a federal agency, WLF has asked the Supreme Court to intervene. Andrew Grossman and Mark DeLaquil of Baker & Hostetler LLP provided substantial *pro bono* assistance to WLF in preparing this *amicus* brief.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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