



FOR IMMEDIATE RELEASE

May 1, 2018

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges High Court to Protect Property Owners from Unreasonable Endangered Species Act Controls

(Weyerhaeuser Co. v. U.S. Fish & Wildlife Service)

“The lower courts have held that the judiciary may not review decisions by environmental regulators to impose significant land-use restrictions under the Endangered Species Act. That holding contradicts the ‘strong presumption’ that federal administrative actions are judicially reviewable and runs roughshod over private property rights.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The Washington Legal Foundation late yesterday urged the U.S. Supreme Court to overturn a decision by the U.S. Fish and Wildlife Service (FWS) to designate private property in Louisiana as “critical habitat” for an endangered species of frog, even though the frog does not live in Louisiana and could not do so without substantial land modifications. In a brief filed in *Weyerhaeuser v. U.S. Fish & Wildlife Service*, WLF argued that lower courts erred in concluding that Congress barred cost-benefit challenges to such designations. WLF’s brief was joined by the Allied Educational Foundation.

The disputed Louisiana land consists of 1,500 acres of forest that the owners hope to develop, but its potential for development is substantially decreased by the “critical habitat” designation. FWS officials estimated that the designation decreases land values by as much as \$35 million. They also recognized that the designation would have little, if any, short-term value for the endangered frog because the landowners’ permission (unlikely to be granted) is required before the necessary land modifications are done and the frogs are transported to the land from their current Mississippi habitat. Despite this near-infinite cost-benefit ratio, FWS decided to exercise its discretion to proceed with the designation.

WLF’s brief argued that the Endangered Species Act (ESA) expressly authorizes courts to review whether FWS abuses its discretion when it designates land as “critical habitat” despite recognizing that the costs of designation greatly exceed benefits. WLF noted that Congress amended the ESA to require FWS’s assessment of costs and benefits—a strong indication that Congress intended to permit judicial review under an abuse-of-discretion standard. WLF also argued that the decision below undermines the strong presumption that all federal administrative actions are subject to judicial review. WLF charged that FWS is extorting landowners in hopes that they will agree to permit species to be introduced onto their land in return for an FWS agreement to partially lift development restrictions. The Court is likely to hear oral arguments in October and issue a final decision in 2019.

Celebrating its 41st 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.

###