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WLF Asks Supreme Court to Review Montana Supreme Court Decision Undermining CERCLA

(Atlantic Richfield v. Christian)

“Congress says that landowners may not disrupt an expensive, complex, EPA-led environmental-restoration project. Our Constitution’s Supremacy Clause ensures that, in this context, what Congress says, goes.”

—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to review a Montana Supreme Court ruling that allows private landowners to impede the EPA’s efforts to clean one of the nation’s largest Superfund sites.

The Comprehensive Environmental Response, Compensation, and Liability Act—known as CERCLA—empowers the EPA to orchestrate the restoration of sites containing hazardous waste. To ensure that the EPA can clean a site effectively, CERCLA contains various provisions that block states or private parties from interfering with an EPA-directed site cleanup plan. The Montana Supreme Court nonetheless affirmed an order allowing landowners to seek money for a cleanup plan that conflicts with the EPA-directed cleanup of Montana’s Anaconda Smelter Superfund site.

In its brief, WLF argues that the Montana Supreme Court should have treated the case as a classic instance of conflict preemption. Instead, in allowing the case to proceed, the state court gutted at least five discrete parts of CERCLA, including a provision that bars legal challenges to an EPA cleanup plan and a provision that bars cleanups conducted without EPA approval.

The Montana Supreme Court rested its decision on two “saving” clauses in CERCLA. To reach its destination, however, the Montana Supreme Court had to bypass a line of U.S. Supreme Court decisions holding that saving clauses like the ones in CERCLA authorize only state-law claims that complement federal law. The landowners’ claim overtly conflicts with federal law, and is therefore preempted.

As WLF explains in its brief, the Montana Supreme Court’s decision imperils the EPA’s work at Montana’s many Superfund sites. At each site, plaintiffs may now seek to implement various competing cleanup plans, each of which may impede and uproot the others. “Like Disney’s Mad Tea Party ride,” WLF remarks, “this regime will move a lot around while taking no one anywhere.”

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.

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