

News Release



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FOR IMMEDIATE RELEASE

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High Court Urged To Find State-Law Antitrust Claims Preempted Under Natural Gas Act

(*ONEOK, Inc. v. Learjet, Inc.*)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court decision that exposes natural gas companies to massive state regulation—in the form of state antitrust liability—for conduct that is the exclusive province of a comprehensive regulatory scheme.

In a brief filed in *ONEOK, Inc. v. Learjet, Inc.*, WLF argued that Congress enacted the Natural Gas Act (NGA) to unify regulation in the natural gas wholesale market and to give exclusive authority over that market to the Federal Energy Regulatory Commission (FERC). But the Ninth Circuit's recent decision threatens to disrupt that uniform federal scheme by allowing attorneys motivated by large jury awards to create potentially 50 different state regulatory regimes that would bind the natural gas industry. Such an outcome, WLF cautioned, would lead to chaos and serve as an unnecessary drag on free enterprise.

"By permitting private plaintiffs to second guess FERC under the guise of state-law civil suits," said WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief, "the decision below permits juries to reach judgments that differ from FERC's as to how to regulate industry conduct affecting wholesale rates" "If plaintiffs are allowed to manipulate state-law duties as a backdoor way to regulate natural gas practices that affect the interstate wholesale market, the Supreme Court's preemption precedents will be rendered a dead letter" Andrews said.

The Ninth Circuit reversed the district court's decision and held that plaintiffs' claims were not preempted because they invoke only the state's supervision of state *retail* transactions, which are outside of FERC's jurisdiction, as opposed to wholesale transactions. In its brief, WLF argued that the NGA exclusively reserves to FERC the power to regulate any practice that affects wholesale rates, so the fact that the alleged conduct in this may affect retail rates as well as wholesale rates is of no consequence. The relevant question, WLF argued, is whether plaintiffs' state-law actions are directed at conduct in a field that NGA occupies.

WLF also argued that the appeals court's holding below would result in a windfall for enterprising plaintiffs' attorneys, who could circumvent FERC's comprehensive regulatory scheme by simply identifying some practice of interstate gas companies that impacts gas prices, locating a plaintiff who purchased natural gas at retail, then filing suit seeking damages under state consumer protection laws. In its brief, WLF argued that FERC, not the plaintiffs' bar, should be deciding how interstate natural gas practices are regulated.

WLF is a public interest law and policy center with supporters in all 50 States. WLF routinely

litigates in state and federal courts to promote free enterprise, individual rights, and a limited and accountable government. In particular, WLF devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation.

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.