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WLF Asks Federal Court to Rein in Human-Rights Suits Filed Under Alien Tort Statute

(Doe I v. Exxon Mobil Corp.)

“It is rarely appropriate for federal courts to create private rights of action when Congress has declined to do so. It is never appropriate to do so when, as here, the lawsuit is highly likely to create diplomatic strife between the United States and a foreign government.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. District Court for the District of Columbia to dismiss a long-running suit filed by human rights activists against a multinational corporation under the Alien Tort Statute (ATS). In a brief filed in *Doe I v. Exxon Mobil Corp.*, WLF argues that although Congress adopted the ATS in 1789 as a means of reducing the risks of diplomatic strife, many ATS suits filed in recent years have had the opposite effect—they increase strife between the United States and a foreign government.

The ATS states that federal district courts have jurisdiction to hear tort claims filed by aliens who allege that a defendant violated their rights under international law. But Congress has not authorized aliens to file any such lawsuits, except for a very narrow category of suits authorized by the Torture Victim Protection Act. Several federal appeals courts in recent decades have nonetheless proceeded on their own to recognize private rights of action filed by human rights groups under the ATS. Those lawsuits typically allege: (1) a foreign government’s mistreatment of its own citizens violated their human rights; and (2) U.S. corporations doing business in that country should be held liable for “aiding and abetting” the violations—frequently, by funding government security forces that guard the corporation’s production facilities. A recent Supreme Court decision (*Jesner v. Arab Bank*) may finally bring a halt to this spate of ATS suits; it held that it is generally up to Congress, not the courts, to decide whether to recognize ATS claims.

This suit is among the Nation’s longest-running ATS lawsuits. Several Indonesian citizens filed it in 2001, claiming that their government committed atrocities during a civil war that raged in Indonesia 20 years ago. But they sued Exxon, not Indonesia (which is protected from suit by sovereign immunity). They contend that Exxon aided and abetted Indonesia’s human-rights violations by providing funding and training to Indonesian security forces that protected Exxon gas facilities. WLF’s brief argues that such lawsuits—in which an American court is asked to sit in judgment of the conduct of a foreign government—inevitably create significant conflict between the United States and the foreign government. Indeed, Indonesia has repeatedly objected to the lawsuit. WLF’s brief argues that although Congress may determine that the benefits of permitting such lawsuits outweigh the obvious diplomatic costs, courts are not permitted to make that determination on their own.

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.