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WLF Urges Ninth Circuit to Maintain Settled Standard of Proximate Causation

(*City of Oakland v. BP p.l.c.*)

“The proximate-cause requirement confines the judiciary to resolving disputes it is equipped, and sanctioned, to handle.”

—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today filed an *amicus curiae* brief urging the Ninth Circuit to affirm a ruling that declines to move the task of addressing climate change into the courts.

Oakland and San Francisco are searching for funding for sea-wall construction and other climate-change programs. As part of this search, they have joined the growing number of cities bringing novel public-nuisance lawsuits. In 2011 the City of New York and others brought such a suit against several electric-power companies. The case went to the Supreme Court, which concluded that the claims before it were displaced by the Clean Air Act.

Trying to circumvent that ruling in favor of fossil-fuel *emitters*, Oakland and San Francisco sued five fossil-fuel *producers*. The district court dismissed the cities’ claims because (1) they are displaced by federal common law, (2) the Clean Air Act displaces any federal common-law claim directed at domestic fossil-fuel emissions, and (3) any federal common-law claim directed at foreign emissions interferes with the separation of powers and the nation’s foreign policy. The Ninth Circuit should affirm these holdings.

But even if they could get to the merits of their lawsuits, the cities would face many insurmountable obstacles. One such obstacle is the tort element of proximate cause—the requirement that a direct connection exist between the conduct of the defendant and the harm to the plaintiff. In its brief, WLF shows that the causal chain from the production of fossil fuels to the harm raised by the cities is too long, too winding, and too tangled to support liability.

WLF also explains why the Ninth Circuit should not deviate from the traditional proximate-cause rule. Relaxing the proximate-cause standard would create arbitrary and retroactive liability, in violation of the Due Process Clause. Further, requiring proximate causation properly constrains the judicial role. If a court may impose liability on a party only remotely connected to a social harm, avenues open for making sweeping choices from the bench about who should have to spend how much on what problems. A court is neither equipped nor authorized to engage in such central planning.

Celebrating its 42nd 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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