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Supreme Court Grants Review of Montana State Court Decision Undermining CERCLA

(Atlantic Richfield v. Christian)

**“The Supreme Court has, wisely, grabbed this chance to restore CERCLA’s power to offer some predictability to those responsible for treating a Superfund site.”
—Corbin K. Barthold, WLF Litigation Counsel**

WASHINGTON, DC—The U.S. Supreme Court today granted review of 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. WLF filed an *amicus curiae* brief in support of the petition for review.

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.

WLF’s brief argued that the Montana high 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 U.S. Supreme Court asked for the United States’ view on whether review should be granted. The United States agreed that the Montana high court’s decision is erroneous, but recommended that the Court deny review. The Supreme Court has taken the case anyway, confirming the importance of addressing and resolving issues that greatly impact the efficient cleanup of Superfund sites.

WLF plans to file an *amicus* brief at the merits stage urging the Supreme Court to reverse the Montana high court and restore uniformity to the operation of CERCLA.

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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