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WLF Asks Supreme Court to Overturn Montana State Court Decision Undermining CERCLA

(Atlantic Richfield v. Christian)

“The best environmental outcomes will arise only if the EPA, and the EPA alone, makes the final call about what measures are needed to restore a Superfund site. Fortunately, that’s exactly how CERCLA actually works.”

—Corbin K. Barthold, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today filed an amicus curiae brief urging the U.S. Supreme Court to reverse 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.

WLF’s brief argues 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 Montana Supreme Court rested its decision on two “saving” clauses in CERCLA. But to reach this result, WLF explains, the 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.

Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

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