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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court to Allow Federal-Court Adjudication of Climate-Change Claims

(*B.P. p.l.c. v. Mayor and City Council of Baltimore*)

“The Founders understood the problems posed by having politically vulnerable state judges decide questions of national importance.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Supreme Court to allow federal courts to hear climate-change lawsuits. Although the Court’s 1996 *Yamaha* decision broadly defined the word “order” in appellate-jurisdiction statutes, the Fourth Circuit relied on old circuit precedent in holding that it lacked jurisdiction to review most of the District Court’s order remanding the case to state court.

The appeal arises from Baltimore’s lawsuit against 21 defendant energy companies. Baltimore claims that the energy companies created the “public nuisance” of global warming by extracting, producing, and selling fossil fuels. This is the latest in a string of similar lawsuits that state and local governments have filed against energy companies in state courts around the country.

Baltimore filed the case in Maryland state court and the energy companies removed it to federal court. The defendants argued that federal officers directed their energy-producing activities and that Baltimore’s climate-change claims arise under federal law. The District Court rejected these arguments and remanded the case to state court. The Fourth Circuit reviewed only the federal-officer claim. Disagreeing with the Seventh Circuit, the Fourth Circuit held that it lacked appellate jurisdiction over the rest of the remand order. The Supreme Court agreed to resolve the circuit split on this important jurisdictional question.

As WLF’s brief shows, the Fourth Circuit’s ruling does not comport with the 230-year history of removal jurisdiction. The brief explains that “the Founders understood the problems posed by having politically vulnerable state judges decide questions of national importance.” Congress has reaffirmed this several times over the past 60 years. The Fourth Circuit ignored this history of removal jurisdiction to avoid addressing important questions about climate-change litigation. WLF therefore urges the Supreme Court to reverse the Fourth Circuit’s decision and allow this litigation to proceed in federal court.

Celebrating its 43rd 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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