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In Victory For WLF, Supreme Court Requires Lower Courts To Decide If Climate-Change Suits Belong In Federal Court

“After today’s decision, appellate courts cannot avoid deciding whether climate-change suits present a federal question that should be heard by federal courts.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Supreme Court today corrected a widespread misreading of the bar on appellate review of remand orders. The 7-1 ruling was a victory for Washington Legal Foundation, which filed an *amicus curiae* brief urging the Court to overturn a Fourth Circuit decision that refused to consider B.P.’s argument that Baltimore’s suit raised a federal question that belongs in federal court.

Baltimore, like many other states and localities, sued in state court arguing that 21 energy companies created the “public nuisance” of global warming by extracting, producing, and selling fossil fuels. The energy companies removed the case to federal court, arguing 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 and held that it lacked appellate jurisdiction over the rest of the remand order.

WLF’s brief showed how the Fourth Circuit’s ruling did not comport with the 230-year history of removal jurisdiction. The brief explained 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. Today, the Supreme Court agreed that the Fourth Circuit has jurisdiction to decide whether the case could be removed to federal court.

Celebrating its 44th 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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