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WLF Urges Supreme Court To Hear Important Case About Greenhouse-Gas Litigation

(Suncor v. County of Boulder)

“The Tenth Circuit’s decision would allow States to treat oil companies as added revenue streams with the help of politically motivated state-court judges.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to hear an important case about whether suits over greenhouse-gas emissions belong in state or federal court. WLF’s *amicus* brief explains why the case is important and why the U.S. Court of Appeals for the Tenth Circuit got it wrong.

The case arises from a lawsuit filed by the County of Boulder and other localities against two oil companies. The complaint alleges that the oil companies caused a public nuisance by continuing to explore for, and sell, oil after learning about carbon dioxide’s contribution to climate change. Like many similar suits, the plaintiffs seek billions of dollars in damages for the companies’ worldwide activities.

In its *amicus* brief supporting the oil companies, WLF argues that the Supreme Court should hear the case because the Tenth Circuit’s decision was wrong. Claims about greenhouse-gas emissions causing climate change are necessarily and exclusively governed by federal common law. The claims bear much resemblance to the other areas that are governed by federal common law. There is no way to determine the effects of greenhouse-gas emissions caused by one company, much less one company in one small jurisdiction. The brief then warns of the devastating effects of denying review. Consumers might soon be spending over \$200 to fill their gas tanks if politically vulnerable state-court judges can award billions in damages in these suits.

WLF’s brief also highlights another error the Tenth Circuit made. When applying the well-pleaded complaint rule, the court misconstrued the rule’s corollary. In the Tenth Circuit’s view, plaintiffs can almost always plead around federal jurisdiction over federal-law claims by veiling them in state-law clothing. This defeats the purpose of federal-question jurisdiction and will lead to gamesmanship in many different areas. The Court should not allow that. Rather, it should grant the petition and hear this important case.

Celebrating its 45th 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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