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## WLF Urges Third Circuit to Affirm Federal Court's Lack of Jurisdiction to Enforce Nonfinal Agency Order

*(Gulden v. Exxon Mobil Corp.)*

**“The Plaintiffs’ theory of jurisdiction finds no support in the text or history of the Sarbanes Oxley Act.”**

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Third Circuit to affirm the dismissal of a suit by two former Exxon employees to enforce a preliminary order of the Occupational Safety and Health Administration (OSHA). WLF joined the U.S. Chamber of Commerce, the Association of American Railroads, and the National Manufacturers Association on the amicus brief, which was drafted by David Morrell, Jacqueline Holmes, and Ryan Proctor of Jones Day.

The case arises from an OSHA complaint by two former Exxon employees who allege that their terminations violated the whistleblower protections of the Sarbanes Oxley Act. After an initial investigation, OSHA agreed with the complainants and ordered their preliminary reinstatement. Exxon then sought de novo hearing before an administrative law judge in the Department of Labor. When the complainants sued to enforce the preliminary order in the U.S. District Court for the District of New Jersey, Exxon moved to dismiss the action because Sarbanes Oxley does not give federal courts jurisdiction to enforce preliminary restatement orders. Agreeing with that construction of the statute, the District Court granted Exxon’s order and dismissed the suit.

In their brief urging affirmance, amici argue that the plain text of Sarbanes-Oxley authorizes judicial enforcement only of final—not preliminary—orders. Statutory context and history reinforce this conclusion. What’s more, plaintiffs’ policy arguments for overriding the statute’s plain meaning improperly imply a cause of action where Congress did not create one—a practice the Supreme Court rejected long ago. Adhering to the statutory text as written also promotes the venerable judicial policy of adopting clear and administrable rules for defining subject-matter jurisdiction.

*Celebrating its 46th 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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