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WLF Urges Supreme Court to Hear Case About Which Law Governs Climate-Change Litigation

(Sunoco LP v. City & County of Honolulu; Shell PLC v. City & County of Honolulu)

“Interstate and international greenhouse-gas emissions are controlled by federal law, not fifty different States’ laws.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to hear important cases about whether suits over greenhouse-gas emissions are governed by state or federal law. WLF’s amicus brief explains why the Court should hear the cases and reverse the Hawaii Supreme Court.

The cases arise from Honolulu’s lawsuit against dozens of energy companies. The complaint alleges that the energy 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. The Hawaii state courts held that Honolulu’s claims are governed by state common law. The energy companies seek review of that holding.

In its amicus brief supporting the energy companies, WLF argues that claims about greenhouse-gas emissions and 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. Congress’s passing the Clean Air Act does not change that reality. Congress often passes laws that touch on areas governed by federal common law without affecting the preemptive effect of the federal common law.

The brief also 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. As the number of these cases continues to multiply, now is the time for the Supreme Court to resolve the split on this important question.

Celebrating its 47th 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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