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

WLF Urges Supreme Court to Reinstate Federal Jurisdiction over Michigan’s Treaty-Defying Lawsuit *(Enbridge Energy v. Nessel)*

“When a case implicates the very reasons the Founders created the federal judiciary, that case should be heard by a federal judge.”

—Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to reverse an appellate court decision that prevented a federal district court from hearing a case involving a federal question—whether Michigan’s state lawsuit against an energy company violates a U.S. treaty obligation.

The case arises from the Michigan attorney general’s state-law action against Enbridge Energy and several of its affiliates. Michigan’s suit targets Enbridge-run Line 5, a pipeline that has provided energy to consumers in the United States and Canada for over seventy years. Line 5’s operations are protected from inappropriate state- or provincial-government interference by a 1977 treaty between the U.S. and Canada. Normally, a case involving a treaty presents a “federal question” and can be heard only in federal court. But when Enbridge tried to remove the case to the Western District of Michigan, it was rebuffed.

As WLF’s amicus brief explains, there are two major reasons why this was a mistake. First, Michigan’s suit itself defies the treaty, and that requires an arm of the national government, like a federal court, to immediately review the state’s action. Second, the Framers emphasized the importance of access to the federal courts in cases where state governments might impede interstate or international commerce. Those issues are, in part, why the Founders created an independent federal judiciary in the first place. As a general rule, WLF argues, “cases the Framers would find ‘proper objects of federal superintendence and control’ should be removed to federal court.”

Celebrating its 48th 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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