

Press Release

Washington Legal Foundation

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SUPREME COURT DECLINES CASE ON STATE CONTROL OF CORPORATE INVESTING (*Alliant Energy Corp. v. Bridge*, No. 03-569)

The U.S. Supreme Court today announced that it would not hear a challenge to a Wisconsin statute that regulates the investments and stock offerings of out-of-state companies. The Washington Legal Foundation (WLF) had filed a brief asking the Court to hear the case, arguing that the law violates the Commerce Clause of the U.S. Constitution by regulating the out-of-state activities of out-of-state corporations. The Court's decision leaves intact the ruling of the lower court, the U.S. Court of Appeals for the Seventh Circuit, which upheld the law.

The Wisconsin Utility Holding Company Act imposes sweeping restrictions on the financial activities of public utility holding companies, defined as any company that owns 5% or more of the voting shares of a Wisconsin public utility. The Act regulates out-of-state activities of out-of-state companies in several ways. First, it provides that no person may acquire more than 10% of the shares of a public utility holding company without the approval of the Wisconsin Public Service Commission (PSC) meaning that an out-of-state entity must have Wisconsin's permission before it can acquire 10% or more of the shares of an out-of-state company, if the company qualifies as a public utility holding company.

The Act also limits a holding company's non-utility investments to roughly 25% of its utility assets; again, even with respect to a non-Wisconsin holding company wishing to invest in non-Wisconsin assets. Finally, if a holding company's non-utility investments conduct business outside certain areas generally related to energy conservation or utility services, the holding company is deemed a public service corporation and cannot raise capital by selling its securities without PSC approval and can be barred from issuing dividends.

In its brief in the Supreme Court, filed November 17, 2003, WLF argued that a state law such as Wisconsin's that directly controls extraterritorial commerce ; commerce occurring wholly outside the state's borders ' is *per se* invalid under the Commerce Clause. The brief noted U.S. Supreme Court precedents striking down state regulations of out-of-state transactions. WLF's brief also pointed to the need for a free flow of investment capital in the public utility industry in view of the infrastructure investment required to modernize the nation's electrical grid. Finally, the brief pointed out the international implications of laws such as Wisconsin's, which affect international investment in the U.S. utility industry; the brief argued that regulation of such investment is properly carried out at the federal level, where national policy can speak with a single voice.

WLF's brief was drafted on a *pro bono* basis by Donald B. Verrilli, Jr., a partner in the Washington, D.C. office of Jenner & Block, and Iris Bennett, an associate at the firm.

WLF is a public interest law and policy center with supporters in all 50 states. It has filed briefs in numerous cases defining the proper scope of the Commerce Clause, including *National Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999), *aff'd*, 530 U.S. 363 (2000)..

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.