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SUPREME COURT RULES ON IMPORTANT PREEMPTION CASE

(International Association of Independent Tanker Owners v. Locke)

Yesterday the U.S. Supreme Court handed the Washington Legal Foundation (WLF) a victory when it decided unanimously that federal law preempts Washington State laws that attempt to regulate sea-going oil tankers.

This case arose when the International Association of Independent Tanker Owners (Intertanko) brought a suit in federal district court, challenging sixteen of Washington's "best available protection" (BAP) regulations that apply to oil tankers entering state waters. These include regulations prescribing "watch practices, policies, and procedures"; "training beyond the training necessary to obtain a license or merchant marine document"; "policies, procedures, and practices for alcohol and drug testing"; the number of hours that crew members may work each day; and a requirement that "[a]ll licensed deck officers and the vessel's designated person in charge . . . are proficient in English and speak a language understood and spoken by subordinate officers and the crew." The district court ruled against Intertanko, deciding that the regulations were neither preempted by federal law nor posed an impermissible interference with the federal government's foreign affairs power.

The Ninth Circuit affirmed in part and reversed in part. It struck down a regulation governing global positioning system and radar requirements because it was "virtually identical" to requirements under federal law. In all other respects, however, it upheld Washington's regulations against arguments by Intertanko and the United States, which intervened on appeal. The court reasoned that the international agreements cited as evidence that the regulations were preempted established a floor, not a ceiling, and that local governments, such as Washington, remained free to impose higher standards on oil tankers entering state waters. Both Intertanko and the United States subsequently filed petitions seeking review by the U.S. Supreme Court, which were granted.

In a brief filed with the Court, WLF had argued that Washington's laws do not deserve the usual presumption that Congress did not intend to preempt local law. Such a presumption should not be indulged, according to WLF, when the challenged state law occupies an area traditionally reserved to the federal government. The Washington laws challenged in this case fit that description. First, Washington's tanker laws cover matters, including the tanker crew's training, manning, and language, outside the domain

traditionally allotted to state police powers. Second, these laws cover matters of national and international, rather than purely local, importance. The federal government, acting alone or in concert with other nations, has already set standards governing the same matters to which Washington's laws are directed. Third, by attempting to supplant international standards, Washington State exposes the entire nation to the risks of impeded commerce and international retaliation. In fact, fourteen of America's major trading partners, including Canada and the European Community, have formally protested Washington's laws because of the "uncertainty and confusion" they create.

The Supreme Court agreed with WLF, specifically ruling that the presumption against preemption "is not triggered when the State regulates in an area where there has been a history of significant federal presence." The Court went on to say that Washington's regulations regarding navigation watch procedures, English language skills, training, and casualty reporting are preempted by federal law. In addition, it remanded the case to the district court to determine whether Washington's other oil tanker regulations also impermissibly intrude into an area delegated by the Constitution to the federal government.

"States should not interfere in a field, like international shipping, where the federal government holds paramount authority," said WLF's Senior Counsel for Litigation Affairs Shawn Gunnarson soon after the Court's opinion was released. "Evidently the Supreme Court agrees, since it unanimously concluded that Washington State's regulations governing oil tankers are preempted by federal law."

The Washington Legal Foundation is a nonprofit public interest law and policy center with supporters nationwide. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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