



**For Immediate Release**

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**WLF URGES SUPREME COURT TO  
REVIEW IMPORTANT ENDANGERED SPECIES CASE  
(*GDF Realty Investments v. Norton*)**

The Washington Legal Foundation (WLF) filed a brief on behalf of itself and the Allied Educational Foundation in the United States Supreme Court urging it to review and reverse a court of appeals decision that would give the Department of Interior's Fish & Wildlife Service essentially unlimited authority to regulate local land development across the country in the name of protecting endangered species, including plants and bugs, that are local in nature and do not affect interstate commerce.

In this case, the Fish & Wildlife Service denied a permit to GDF Realty to develop its property and was threatened with criminal prosecution because it might disturb certain beetles that live only in certain nearby caves in Texas. The bugs spend their entire lives underground and have absolutely no commercial value. The developer even offered to donate portions of the land to a nonprofit conservation group, but was rebuffed by government officials.

The U.S. Court of Appeals for the Fifth Circuit rejected the arguments that the Commerce Clause does not give the agency the authority to regulate local activities that do not affect interstate commerce. The Supreme Court held in a pair of landmark decisions in *United States v. Lopez* and *United States v. Morrison*, that the Commerce Clause does not give the federal government the authority to regulate activity that is not economic in nature and does not substantially affect interstate commerce. Accordingly, this principle should apply to local land use that may affect species found only in a single county or small area within a state. The states, of course, are free to regulate local land development that may impact local plant and animal species.

Over the years, WLF has filed briefs in a number of endangered species cases raising the Commerce Clause issue. The courts of appeals are now split on how to address these important questions, and consequently, the prospects for Supreme Court appear to be good at this time. WLF's brief was drafted with the *pro bono* assistance of Mark A. Perry and Amir Cameron Tayrani of the Washington, D.C. office of Gibson, Dunn & Crutcher, LLP.

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For information, contact WLF Senior Executive Counsel Paul Kamenar at 202-588-0302. A copy of WLF's brief can be obtained from its website at [www.wlf.org](http://www.wlf.org).