



September 21, 2012

APPEALS COURT REJECTS SUIT SEEKING \$400 MILLION FOR CO2 EMISSIONS

(Kivalina v. ExxonMobil Corp.)

On September 21, 2012, the U.S. Court of Appeals for the Ninth Circuit rejected an attempt by the Alaskan village of Kivalina to revive a lawsuit contending that global warming is destroying the village by melting Arctic sea ice. Suing under a common law theory of nuisance, Kivalina had asked the court to reverse the trial court's dismissal of its complaint demanding up to \$400 million from 19 leading American oil and energy companies for their alleged role in contributing to global warming through their carbon dioxide emissions.

The appeals court held that federal regulation under the Clean Air Act by the Environmental Protection Agency "displaced" the lawsuit's claims. The court also held that the policy issues raised in the litigation were matters more appropriately left for determination by the executive or legislative branch in the first instance. The decision was a victory for WLF, which filed a brief in the case asking that the district court's dismissal be affirmed because the lawsuit presents a nonjusticiable political question and because Kivalina lacks standing to bring such an action under these facts.

"This is a welcome decision in a frivolous case that dragged on for far too long," said Cory Andrews, WLF's Senior Litigator. "As the court properly recognized, it is one thing for democratically elected state legislatures to adopt a comprehensive regulatory scheme to address the challenging issue of climate change," Andrews said. "It is quite another for plaintiffs' lawyers to demand hundreds of millions of dollars in damages from power companies for engaging in entirely legal, state-sanctioned conduct."

WLF's brief was drafted with the *pro bono* assistance of Douglas Halsey and David Draigh with the law firm White & Case LLP.

In its brief, WLF argued that the relief demanded by Kivalina in the lawsuit, by exposing the defendants to virtually limitless liability, would threaten the viability of entire industrial sectors, even though those industrial sectors admittedly are minor contributors to global greenhouse gas levels, their emissions of greenhouse gases are entirely lawful, and they undoubtedly provide services of great social utility. Under these circumstances, WLF agreed with the judgment of the district court that the lawsuit presented a nonjusticiable political question, and that the village of Kivalina lacked

standing to bring its sweeping claims in the action.

WLF is a public interest law and policy center with supporters in all 50 States. WLF regularly litigates in environmental matters to promote a rational balance between environmental protection, on one hand, and economic growth and property rights on the other.

* * *

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.