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Media Contact: Cory Andrews | 202-588-0302

WLF Asks N.Y. High Court To Invalidate Municipal Zoning Bans On Fracking

(Norse Energy Corp. USA v. Town of Dryden)

“While home rule is an important legal principle, the New York Legislature has the authority to preempt any delegated power. The Town of Dryden’s zoning laws cannot supersede legislation appropriately enacted at the state level, nor can it undercut the Legislature’s policy decision to craft a uniform solution to a state-wide issue.” – Cory Andrews, WLF Senior Litigation Counsel

ALBANY, NY—The Washington Legal Foundation (WLF) today asked the New York Court of Appeals to overturn a decision that threatens to allow N.Y. municipalities to ban oil and gas exploration locally, even though the state legislature has expressly preempted all oil and gas regulation.

In a brief filed in *Norse Energy Corp., USA v. Town of Dryden*, WLF argued that under New York’s Oil, Gas and Solution Mining Law (“OGSML”) the New York Legislature reserved to itself exclusive jurisdiction to regulate the oil and gas industry. As a result, the OGSML expressly preempts all local zoning ordinances that seek to ban oil and gas exploration within town limits. WLF also argued that the OGSML impliedly preempts all such ordinances because the two laws irreconcilably conflict.

In recent years, over 100 New York municipalities have enacted bans or moratoria on oil and gas activities, including hydraulic fracturing, resulting in protracted litigation over whether localities have the legal authority to do so. In its brief, WLF expressed concern that a lack of predictability and consistency regarding stakeholders’ settled expectations will destabilize the oil and gas industry.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews:

“While home rule is an important legal principle, the New York Legislature has the authority to preempt any delegated power. The Town of Dryden’s zoning laws cannot supersede legislation appropriately enacted at the state level, nor can it undercut the Legislature’s policy decision to craft a uniform solution to a state-wide issue.”

WLF’s brief was filed with the *pro bono* legal assistance of Deborah Misir of the law firm Lally & Misir LLP.

WLF is a national 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 and economic growth.

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