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NY High Court Urged To Invalidate Municipal Bans On Fracking

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

This week the Washington Legal Foundation (WLF) filed a brief with the New York State Court of Appeals urging it to review (and ultimately overturn) a decision that threatens to allow New York municipalities to ban oil and gas exploration, even though the New York Legislature has expressly preempted all regulation of the oil and gas industry.

In a brief filed in *Norse Energy Corp. USA v. Town of Dryden*, WLF argued that under New York State's Oil, Gas and Solution Mining Law ("OGSML"), the New York Legislature reserved to itself exclusive jurisdiction over the regulation of the oil and gas industry. As a result, zoning ordinances like the one recently enacted by the Town of Dryden, which bans all oil and gas exploration within the town limits, are preempted under State law.

"While home rule is an important legal principle, the legislature has the authority to preempt any delegated power," WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief with the Court. "Here, zoning laws enacted at the local level cannot supersede legislation appropriately made at the state level, nor undercut the legislature's policy decision to deliver a uniform solution to a state-wide issue," Andrews said.

The case arises following a recent surge of municipal fracking bans throughout the State of New York. In this case, Norse Energy Corp. (and its predecessors-in-interest) owned leases covering approximately 22,200 acres of land in the Town of Dryden. Following a simple majority vote by the Town of Dryden's board, Norse Energy saw more than five million dollars in investment capital wiped out. In its brief, WLF expressed concern that a lack of predictability and consistency with regard to stakeholders' settled expectations will ultimately result in a destabilization of the oil and gas industry.

In recent years, over 100 New York municipalities have enacted bans or moratoria on hydraulic fracturing, resulting in protracted litigation over whether the localities have the legal authority to do so. In its brief urging review of these novel and important issues, WLF argued that such local bans and moratoria are not only expressly preempted under the OGSML, they are implicitly preempted under the principles of field and conflict preemption. WLF also emphasized the potential benefits of hydraulic fracturing for the State of New York, including economic growth, job creation, and increased tax revenues.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF has regularly appeared as an amicus in state and federal courts in

cases involving preemption and environmental issues.

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.