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## Court Urged To Affirm Judge's Discretion To Sanction Government Wrongdoing

*(Hornbeck Offshore Services, LLC v. Jewell)*

The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court ruling that second guessed a district judge's decision to sanction the Department of Interior for contempt, even though the judge found that the government's evasive conduct amounted to a "determined disregard" of its preliminary injunction order.

In a brief filed in *Hornbeck Offshore Services, LLC v. Jewell*, WLF argued that the Fifth Circuit's holding warrants Supreme Court review because it squarely conflicts with the law of several other federal circuits. WLF pointed out that the case presents two recurring and important questions of federal practice on which the courts of appeal disagree: namely, (1) the scope of a district judge's authority to sanction conduct intended to evade a court order and (2) the appropriate standard of review on appeal from that sanction order. WLF also argued that the a district court's ability to ensure compliance with its orders is especially important in those cases where, as here, the contemnor is an agent of the Executive Branch, a co-equal branch of government.

"Despite the district court's detailed consideration of the circumstances surrounding the Department of Interior's 'end-run' around its order, the Fifth Circuit's reversal has undercut the district judge's ability to sanction such defiance," said WLF Senior Litigation Counsel Cory Andrews after filing WLF's brief. "But if federal courts lack sufficient discretion to sanction contemptuous conduct by the Executive Branch, the Judiciary's integral role in the Constitution's system of checks and balances will be eroded," Andrews said.

The case arises from an oil-drilling moratorium issued by the Department of Interior following the Deepwater Horizon incident in April 2010. That moratorium—which applied indiscriminately to all 33 previously permitted wells—was challenged by the oil and gas industry as arbitrary and capricious under the Administrative Procedure Act. Unable to find any rational relationship between the factual record and the drastic scope of the moratorium, the district court granted a preliminary injunction barring enforcement of the moratorium.

The Administration immediately undertook a series of actions designed to undermine the district court's order, including an announcement by the Secretary of the Interior that the moratorium would be reissued quickly; testimony by the Secretary before Congress that the moratorium remained "in place"; statements by Interior Department officials "reminding" the industry that if it began drilling it would incur significant costs once ordered to stop; and issuance by Interior of a virtually identical moratorium order after the Fifth Circuit refused to stay the district court's order. Ultimately, the government was able to prevent drilling for nearly three months after issuance of the district court's order.

After the moratorium was lifted, the district court agreed and ordered the government to pay the companies legal fees as a sanction. The Fifth Circuit reversed by a divided vote. Although the panel majority acknowledged that the government had effected an “end-run” around the injunction, it reversed because the actions of the government were not “explicitly prohibited” by its construction of the district court’s order. In its brief filed in support of the industry plaintiffs, WLF argued that only the Supreme Court’s discretionary review can now vindicate the important interests at stake in this case.

WLF is a public interest law and policy center with supporters in all 50 States. WLF routinely litigates in state and federal courts to promote free enterprise, individual rights, and a limited and accountable government. In particular, WLF devotes a substantial portion of its resources to protecting the integrity of the judicial process.

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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](http://www.wlf.org).