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WLF Asks High Court to Reject Backdoor Regulation of Natural Gas Rates via State-Law Antitrust Suits

(*ONEOK, Inc. v. Learjet, Inc.*)

“The Natural Gas Act promotes uniformity, not random regulation by jury verdict. Permitting private plaintiffs to pursue state-law antitrust suits that second-guess FERC would lead to industry-wide chaos and an unnecessary drag on investment in a vibrant and growing sector of the economy.”
—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to overturn a decision of the U.S. Court of Appeals for the Ninth Circuit that exposes natural gas companies to massive state regulation—in the form of state antitrust liability—for conduct that is the exclusive province of a comprehensive federal regulatory scheme.

In a brief filed in *ONEOK, Inc. v. Learjet, Inc.*, WLF argued that Congress enacted the Natural Gas Act (NGA) to regulate the natural gas wholesale market uniformly and to give exclusive rulemaking authority over that market to the Federal Energy Regulatory Commission (FERC). The Ninth Circuit’s recent decision threatens to disrupt that framework by allowing plaintiffs’ attorneys motivated by outsized state jury awards to create 50 different state regulatory regimes for the natural gas industry. Such an outcome, WLF warned, would lead to compliance chaos and retard investment in the industry.

The Ninth Circuit reversed a district court Multi-District Litigation decision and held that plaintiffs’ claims were not preempted because they involved *retail* transactions, which are outside FERC’s purview over *wholesale* transactions. However, WLF’s brief explained that the NGA reserves to FERC the exclusive power to regulate any practice that affects wholesale rates. Thus, even though the conduct at issue in this case allegedly affected both retail *and* wholesale rates, it still counts as a practice that affects wholesale rates for preemption purposes. The relevant question is simply whether plaintiffs’ state-law claims are directed at conduct in the field that the NGA occupies—and they are.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “The Natural Gas Act promotes uniformity, not random regulation by jury verdict. Permitting private plaintiffs to pursue state-law antitrust suits that second-guess FERC would lead to industry-wide chaos and an unnecessary drag on investment in a vibrant and growing sector of the economy. If plaintiffs are allowed to manipulate state-law duties as a backdoor way to regulate natural gas practices that affect the interstate wholesale market, the Supremacy Clause will be rendered a dead letter.”

WLF is a national public interest law firm and policy center that regularly advocates against state-law regulation that stands as an obstacle to federal regulatory regimes that promote interstate commerce.

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