

Gardere Attorneys Faulk, Gray Fight Climate Change Litigation in U.S. Supreme Court

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HOUSTON – Houston environmental lawyer Richard O. Faulk, Chair of Litigation Department at Gardere Wynne Sewell, and John S. Gray, a Houston Partner in the firm’s Environmental Practice Group, have filed a brief with the U.S. Supreme Court on behalf of a number of industry groups to oppose the expansion of climate change litigation and ask the High Court to review and reverse the decision by the 2nd Circuit Court of Appeals in AEP v. Connecticut.

A copy of the brief can be found at www.gardere.com/Binaries/Press%20and%20Publications/AmEle...

The 2nd Circuit ruling, handed down last year, allowed a group of plaintiffs to proceed on claims that greenhouse emissions from various facilities created a “public nuisance” and contributed to global warming. The defendants petitioned for certiorari in the Supreme Court based on the argument that setting emissions standards is a “political question” constitutionally entrusted to Congress and the EPA, and not to the courts. However, to the plaintiffs’ dismay, the U.S. Solicitor General has filed a brief in support of the defendant’s petition, says Mr. Faulk.

In their supporting brief, Mr. Faulk and Mr. Gray argue that courts are ill-equipped to deal with planetary controversies. They emphasize that courts lack the tools and resources to create universal standards and to “reach results that are principled, rational, and based upon reasoned distinctions.” Without guidance from the political branches of government, courts hearing these expansive controversies would operate in an atmosphere of “lawlessness” where they are asked to impose “standardless” liability.

The industry groups represented by Gardere include the American Chemistry Council, American Coatings Association, National Association of Manufacturers, National Petrochemical and Refiners Association, Property Casualty Insurers Association of America, and the Public Nuisance Fairness Coalition. This filing marks the third brief that Mr. Faulk and Mr. Gray have filed in climate change cases pending in the federal appellate courts. Previous filings were made in cases pending before the 5th and 9th U.S. Circuit Courts of Appeal.

“We are proud of the leadership position Rick and John have taken on climate change and public nuisance issues,” says Steve Good, Gardere’s Managing Partner. “Supreme Court practice represents the pinnacle of advocacy, and we are always honored when clients choose Gardere to represent them at the High Court.”

Gardere Wynne Sewell LLP, an AmLaw 200 firm founded in 1909 and one of the Southwest’s largest full-service law firms, has offices in Austin, Dallas, Houston and Mexico City. Gardere provides legal services to private and public companies and individuals in areas of energy, hospitality, litigation, corporate, tax, government affairs, environmental, labor and employment, intellectual property and financial services.

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