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COURT DISMISSES WLF CHALLENGE TO TEXAS IOLTA PROGRAM (*Washington Legal Foundation v. TEAJF*)

A federal district judge in Austin, Texas this week upheld the constitutionality of Texas's IOLTA (Interest on Lawyers' Trust Accounts) program. The decision by Judge James Nowlin is a setback for the Washington Legal Foundation (WLF), whose lawsuit against the IOLTA program argues that the program violates the First and Fifth Amendment rights of Texas citizens.

WLF has vowed to press forward with its challenge. It will soon file an appeal from the district court decision in the U.S. Court of Appeals for the Fifth Circuit in New Orleans.

This week's decision marks the second occasion on which Judge Nowlin has dismissed WLF's lawsuit. On the first occasion, in 1995, Judge Nowlin held that clients are not the owners of the interest earned on their trust funds and thus that they have no property rights at stake. That decision was unanimously reversed by the Fifth Circuit in 1996, a reversal that was upheld by the U.S. Supreme Court in 1998. The Supreme Court held 5-4 that IOLTA interest belongs to the clients whose funds generated the interest. The case then came back to the district court for trial, which was held last September. In his ruling issued last week, Judge Nowlin acknowledged (contrary to his prior ruling) that clients do indeed have property rights in the interest generated by their funds, but he held that Texas violates neither the Fifth Amendment's Takings Clause nor the First Amendment when it confiscates the property.

IOLTA is a program under which Texas (and many other states) require attorneys to turn over interest generated by their clients' trust accounts to a fund used to finance legal aid organizations. WLF's suit, *Washington Legal Foundation v. Texas Equal Access to Justice Foundation*, alleges that the IOLTA program violates the Plaintiffs' Fifth Amendment rights by taking their property without just compensation; the suit also alleges that the program violates the First Amendment rights of Texas citizens by forcing them to provide financial support to political causes with which they disagree.

"While we are disappointed by Judge Nowlin's decision, we are not totally surprised in light of his prior ruling upholding the IOLTA program," said WLF Chief Counsel Richard Samp. "We anticipate a more favorable result when the case reaches

the Fifth Circuit, where a three-judge panel unanimously ruled in our favor in 1996," Samp said.

IOLTA programs have become increasingly popular with the organized bar in recent years as a method of funding legal services programs that are unable to obtain funding from state legislatures. The Texas program, set up by order of the state's Supreme Court, requires attorneys to place all client trust funds into interest-bearing checking accounts. An attorney who so desires may establish a separate account for a client so that all interest earned accrues to that client. But if doing so is administratively infeasible -- either because the funds being held are too small in amount or are being held for too short a time period -- then the attorney is required to place the funds into a special IOLTA account, and all interest earned on that IOLTA account must be forwarded to the Texas Equal Access to Justice Foundation, which in turn distributes the funds to a variety of nonprofit organizations that provide legal services.

IOLTA programs, now in existence in all 50 states, have become a major source of funding for legal services groups. In 1999, close to \$150 million was raised through IOLTA programs nationwide, nearly \$6 million in Texas alone.

The Plaintiffs (who include, in addition to WLF, a Houston attorney and a Texas citizen who has funds being held in an IOLTA account) object to many of the activities funded by IOLTA programs. The Plaintiffs charge that much of the Texas IOLTA funding has gone to groups with an activist bias and has been used to fund lobbying and politically oriented litigation. For example, in Texas, numerous groups have used IOLTA money to litigate on behalf of undocumented aliens seeking to avoid deportation. Other recipients of IOLTA funding have been in the forefront of partisan litigation involving disputed elections. The Plaintiffs object to having the interest generated by their funds used in that manner. The Plaintiffs made clear that they do not object to the Texas legislature appropriating tax dollars to provide essential legal services to the indigent. Rather, the Plaintiffs object to what they view as a confiscation of their property by the courts and its use to support causes to which they object.

WLF is a public-interest law and policy center with supporters in all 50 states, including many in Texas. It devotes a substantial portion of its resources to promoting economic liberty and a limited and accountable government.

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