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PROFESSOR FRIED JOINS WLF CHALLENGE TO TEXAS IOLTA PROGRAM (*Washington Legal Foundation v. TEAJF*)

The Washington Legal Foundation has gained an important ally in its effort to strike down Texas's Interest on Lawyers' Trust Accounts (IOLTA) program. The brief WLF filed today in the U.S. Court of Appeals for the Fifth Circuit in connection with its IOLTA challenge was co-written by Professor Charles Fried of Harvard University Law School. Professor Fried is former Solicitor General of the United States and a former Justice on the Massachusetts Supreme Judicial Court.

IOLTA is a program under which Texas (and many other states) require attorneys to turn over interest generated by their clients' trust funds to a fund used to finance legal aid organizations. The program's constitutionality was thrown into considerable doubt in 1998, when the U.S. Supreme Court rejected Texas's arguments and ruled in *Phillips v. WLF* that IOLTA interest is the property of those whose funds generated the interest.

"WLF is extremely pleased to welcome Professor Fried to its litigating team," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Professor Fried is one of the nation's preeminent legal scholars; adding his voice to those who believe that IOLTA is a violation of basic property rights is bound to have a significant impact," Samp said.

In its brief filed today with the appeals court, WLF claims that the IOLTA program violates the Fifth Amendment rights of Texas citizens by taking their property without just compensation. The lawsuit also claims that the program violates the plaintiffs' First Amendment rights by forcing them to associate with political causes with which they disagree.

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 1998, more than \$120 million was raised through IOLTA programs nationwide, nearly \$6 million in Texas alone. WLF has been battling in the courts against the spread of IOLTA programs since 1991.

WLF filed suit on behalf of the plaintiffs in 1994 in federal district court in Austin, Texas. The trial judge dismissed the case in 1995, upholding the Texas IOLTA Program on the ground that IOLTA depositors lack any property rights in the interest earned on their funds. In a stunning victory for WLF, the court of appeals reversed that dismissal in 1996, holding that the interest income does indeed belong to the IOLTA depositors. The U.S. Supreme Court affirmed the appeals court decision in 1998. Ever since the Supreme Court's decision, a dark cloud has hung over IOLTA programs nationwide.

The case then returned to the district court for a trial, which was held in September 1999. In January of this year, the district court once again upheld the IOLTA program. Although now bound by the Supreme Court's decision that IOLTA interest belongs to the IOLTA depositors, the district court nonetheless held that Texas's expropriation of that interest violates neither the Fifth Amendment Takings Clause nor the First Amendment. WLF appealed that decision to the appeals court, where the case is pending. Texas will file a response to WLF's brief this summer, and the parties will have an opportunity to argue the case before a three-judge panel in the fall.

The case may wind up in the U.S. Supreme Court again, because both sides have pledged to seek further review if their side loses in the appeals court. A loss of IOLTA funding at this time would be particularly significant to legal aid groups, because Congress has imposed significant restrictions on their other major source of funding -- grants from the federal Legal Services Corporation.

WLF is a pro-free enterprise law and policy center with supporters nationwide, 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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