



**For Immediate Release**

**July 31, 2007**

**WLF URGES SUPREME COURT TO ALLOW JUDGES  
TO DEPART FROM SENTENCING GUIDELINES**  
*(Gall v. United States)*

The Washington Legal Foundation (WLF) filed a brief last week in the U.S. Supreme Court in an important case urging it to give federal district court judges greater latitude in imposing a sentence that falls outside the U.S. Sentencing Guideline range for a particular sentence. The outcome of the case will have a significant impact on federal sentencing practices that affect business owners and executives, particularly with respect to regulatory offenses for which the current Guidelines call for excessive prison terms for minor infractions.

In its brief filed in *Gall v. United States*, WLF argued that Congress intended that punishments should fit the crime and the offender, but that the defective Sentencing Guidelines do neither. For 20 years, the Guidelines dictated mandatory sentences that regularly called for severe prison sentences, some ranging from three to nine years or even more, for minor regulatory infractions, including environmental offenses where no harm occurred. In 2005, the Supreme Court in *Booker v. United States* struck down the mandatory feature of the Guidelines as unconstitutional under the Sixth Amendment right to jury trial.

Since the *Booker* decision, however, many courts of appeals have reversed sentences imposed by district court judges below the Guideline level as unreasonable. In doing so, they ruled that the Guidelines should be given a presumption of reasonableness and special weight. Last month, the Supreme Court ruled in *Rita v. United States* that courts of appeals *may* give a Guideline sentence a presumption of reasonableness, but that district courts were not bound to do so. A companion case of *Claiborne v. United States* was also heard to decide the issue of whether a district court must show "extraordinary circumstances" whenever it imposes a sentence outside the Guideline range. However, because *Claiborne* died before the Court issued any decision, it dismissed the case and instead granted review of the pending *Gall* case to decide the issue.

WLF argued in its brief that the sentencing judge only is required to consider the particular Guideline applicable to the case without giving it any special weight. Indeed, Congress mandated that the courts consider six other factors when imposing a sentence. For example, Congress intended that the sentencing courts consider factors such as the defendant's history and characteristics, disparity in sentencing, and the nature of the offense, all of which the Guidelines do not adequately take into account. Congress also directed that the Guidelines allow for probation for first offenders in non-violent cases. Yet in some cases, the Guidelines call for the statutory maximum prison sentence for a first offender. Overall, the Guidelines simply do *not* comport with Congress's expressed goal that any sentence "be sufficient, *but not greater than necessary*" to meet the sentencing goals of deterrence and just punishment.

"Just as we have junk science in the courtrooms, we unfortunately also have junk guidelines that dictate lengthy prison sentences for first-offenders, including small businessmen," said Paul Kamenar, WLF's Senior Executive Counsel. "The Supreme Court should emphatically reiterate what it said in *Booker and Rita*, namely, that the Sentencing Guidelines are advisory only, and are not to be given special weight by sentencing courts," Kamenar added.

WLF's brief, filed on behalf of itself and the Allied Educational Foundation, pointed out examples of excessively severe prison terms for first offenders. For example, in one WLF-supported case, *McNab/Blandford v. U.S.*, three small businessmen were sent to prison for eight years under the Guidelines for importing frozen seafood because they were packed in plastic bags instead of cardboard boxes. In another WLF-supported case, *Thurston v. U.S.*, a businessman is facing at least additional three years in prison under the Guidelines for an offense even though the more culpable co-defendant was given probation as part of a plea bargain with the approval of the Justice Department. WLF pointed out in its *Gall* brief that these sentences are not only unreasonably severe and produce unwarranted disparities, but they are triply harsh when one considers that before the Guidelines were promulgated, federal prisoners were usually released on parole after serving one-third of their time. Because parole has been abolished, a prison term of three years today is functionally equivalent to prison term of nine years before the Guidelines came into effect.

WLF has long been in the forefront of opposing criminalization of business activities and critical of the U.S. Sentencing Guidelines. WLF participated in the *Booker and Rita* cases, and many other Guideline cases in lower federal courts. WLF also sued the Sentencing Commission for not conducting its business in an open and transparent manner. WLF's brief was filed as part of its CRIMINALIZATION OF FREE ENTERPRISE-BUSINESS CIVIL LIBERTIES PROGRAM, which is designed to oppose governmental policies that unfairly target businesses and businessmen for minor regulatory infractions where more appropriate administrative and civil remedies are available.

The High Court will hear the case sometime in the fall, with a decision expected by early 2008.

\* \* \*

For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief can be obtained on its website at [www.wlf.org](http://www.wlf.org).