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**COURT URGED TO LIMIT LIBEL SUITS
BASED ON PERFORMANCE EVALUATIONS
(Raytheon Technical Services Co. v. Hyland)**

The Washington Legal Foundation (WLF) today urged the Virginia Supreme Court to protect First Amendment rights by imposing strict limits on the ability of disgruntled employees to file defamation actions against their employers based on unhappiness over statements made in annual performance evaluations.

In a brief filed in *Raytheon Technical Services Co. v. Hyland*, WLF argued that allowing employees to sue every time they disagree with a performance evaluation will cause corporations -- wary of the prospect of large jury verdicts -- to cease providing candid evaluations. WLF argued that by its very nature, a performance evaluation constitutes a supervisor's subjective judgment regarding how well an employee is performing and as such constitutes a nonactionable statement of opinion.

"All too often, sympathetic juries award multi-million dollar verdicts to employees who receive negative performance evaluations," said WLF Chief Counsel Richard Samp after filing WLF's brief. "But the chilling effect of such verdicts helps no one -- least of all employees, who need honest feedback to assist them in improving job performance and thereby to advance in their careers," Samp said.

The case involves a former executive of a government contracting firm. After the company lost several major government contracts that she was responsible for negotiating, the executive received a somewhat negative performance evaluation from the president of the company. The evaluation stated, among other things, that the executive was "frequently verbose and vocal in her opinions" and that she was unwilling to "accept and work on" criticism from others. Some months later, the executive was discharged from her job.

The executive thereafter filed several lawsuits against the company, alleging among other things that the company had breached her employment contract and that she had been discriminated against on account of her sex. All of her claims were eventually rejected other than her defamation claim, in which she alleged that the company president had knowingly made false charges against her. A jury awarded her \$1.5 million in compensatory damages and \$2 million in punitive damages (later reduced to the statutory maximum of \$350,000).

In support of the defendants' appeal to the Virginia Supreme Court, WLF argued that the First Amendment prohibits defamation actions based on statements of opinion. WLF argued that such claims are nonactionable because there is no such thing as a false idea; if one disagrees with another's opinion, one's only recourse is to speak in opposition to the idea, WLF argued. WLF argued that statements in a performance evaluation are virtually never provably true or false (*e.g.*, whether an employee is "competent," is "unable to accept criticism," or is "frequently verbose and vocal in her opinions") and thus must be deemed nonactionable statements of opinion. WLF argued that unless a performance evaluation makes serious charges that can be proven false (*e.g.*, that the employee committed a crime), employees should not be permitted to file defamation actions against their employers based on subjective comments contained in the evaluation.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States, including many in Virginia. It devotes a significant portion of its resources to protecting the speech rights of the business community.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.