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COURT UPHOLDS LAW LIMITING ACCESS TO ARRESTEE INFORMATION

***(LAPD v. United Reporting Publishing Corp.,* No. 98-678)**

The U.S. Supreme Court today declined to overturn a California law that permits localities to withhold from the public at large the names and addresses of those arrested, while at the same time releasing that information to select groups. While rejecting a broad-based challenge to the law, the Court left open the possibility that the law might be unconstitutional as applied in particular cases.

The 7-2 decision in *Los Angeles Police Dep't v. United Reporting Publishing Corp.* was a setback for WLF, which had filed a brief in the case urging that the statute be struck down. WLF argued in its brief that police departments act improperly when they release arrestee information to a select group (such as newspapers) without making the information generally available. WLF's attorneys were heartened by the limited nature of the Court's decision and noted that the decision leaves the lower courts (to which the case will be remanded) free to strike down the law on other grounds.

The case involves a challenge to a California statute that provides that the names and addresses of arrestees are to be made available to those (such as newspapers and private investigators) wishing to use the information for scholarly, journalistic, political, governmental, or investigative purposes. Those receiving the information, however, must swear that they will not use the information for commercial purposes. WLF argued that those restrictions on the use of information violate the First Amendment.

Those challenging the law include companies that wish to sell arrestees' names and addresses to anyone who might have an interest in contacting the arrestee. Potential purchasers include, for example, driver education schools offering classes to those charged with reckless driving, attorneys offering assistance in connection with court proceedings, and religious officials offering pastoral support. The U.S. Court of Appeals for the Ninth Circuit ruled last year in their favor, finding that the law was "facially" invalid -- meaning that there are no set of circumstances under which the law could be upheld. The Supreme Court said today that the Ninth Circuit's ruling went too far; it said that the plaintiffs were not permitted to raise a First Amendment "facial" challenge to the California law because they were not prohibited from conveying information in their possession. Rather, the

plaintiffs' only complaint was that they were denied access to information which the government, if it so chose, would be free to keep secret from everyone.

The Court remanded the case back to the Ninth Circuit for consideration of the plaintiffs' other claims. On remand, although the plaintiffs will be precluded from reasserting their claim that the statute is facially invalid under the First Amendment, they will be able argue that the law *as applied to them* violates their First Amendment rights. They will also be able to argue that the statute violates the Equal Protection Clause by granting newspapers access to arrest information while denying it to others simply because they plan to use it for commercial purposes.

"Incredibly, California seeks to justify its law as a means of protecting the privacy of those it has just arrested," WLF Chief Counsel Richard Samp said after the Supreme Court handed down its ruling. "But the law freely permits newspapers to report the names and addresses of those arrested; it is hard to imagine a greater intrusion than that on one's privacy. In any event, we find it hard to have sympathy for the privacy rights of those arrested for committing a felony," Samp said. WLF has pledged to support continued efforts to strike down the law.

In its Supreme Court brief, WLF argued that the First Amendment does not permit the government to impose greater restrictions on commercial speech than on non-commercial speech where the asserted justifications for the restrictions apply just as strongly to the latter as to the former. WLF noted that California's only justification for prohibiting commercial use of arrestee information is to protect the privacy of those arrested; it claims that some arrestees might be upset if they receive numerous solicitation letters following their arrest. But, WLF argued, that rationale does not justify discriminating against commercial uses of arrest information, because arrestees' privacy interests are far more threatened by noncommercial uses of the information (e.g., printing the names and addresses of all arrestees in the newspaper) than by commercial uses.

WLF filed its brief with the pro bono assistance of David H. Remes of the Washington, D.C. law firm of Covington & Burling. The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to protecting the rights of the business community from overly intrusive government regulations.

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For further information, contact WLF Chief Counsel Richard Samp at (202) 588-0302.