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## **WLF ASKS U.S. SUPREME COURT TO UPHOLD STATE TAX CREDITS FOR INVESTMENT**

*(DaimlerChrysler Corp. v. Cuno)*

The Washington Legal Foundation (WLF) filed a brief today in the U.S. Supreme Court asking the Justices to reverse an appeals court decision that struck down a state program of tax incentives for economic development.

Ohio, like the majority of states, offers income tax incentives to encourage business investment within the state. After DaimlerChrysler entered into an agreement with the city of Toledo, Ohio to build a new factory in the city, creating thousands of jobs, the company received investment tax credits from the state. A group of taxpayers brought suit. The federal district court rejected the lawsuit, but the U.S. Court of Appeals for the Sixth Circuit held that Ohio's program is invalid under the "dormant" Commerce Clause of the Constitution. The U.S. Supreme Court agreed to hear the case on September 27, 2005.

In its brief, WLF noted that the states have long granted incentives through prospective tax credits to attract new investment as a means of fostering economic growth in the state. WLF argued that the Ohio tax credit (and other such state programs) does not violate the dormant Commerce Clause, as the credit did not involve the type of protectionist tax regime that the Court has frequently invalidated in the past and did not in any way penalize a company for conducting activities outside the state. WLF also argued that the appeals court's decision should be reversed and the case should be dismissed because the plaintiffs in this case lack standing to challenge the tax program.

J. Pat Powers, a partner in the Palo Alto, California office of Baker & McKenzie and co-chair of the firm's state and local tax practice, drafted WLF's brief on a pro bono basis.

WLF is a nonprofit, nonpartisan public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF engages in litigation and participates in administrative proceedings to defend free enterprise, individual rights, and a balanced civil justice system. To that end, WLF has frequently appeared in the U.S. Supreme Court and lower courts to address issues of importance to free enterprise.

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. A copy of the brief is posted on WLF's web site, [www.wlf.org](http://www.wlf.org).