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## WLF Urges High Court to Prevent Federal Seizure of Electronic Communications Stored Overseas

*(United States v. Microsoft Corp.)*

**“Any application of American law in another country risks creating conflicts with that nation’s government. Congress, not a court, is the body that can most appropriately determine whether law-enforcement considerations outweigh the foreign-relations costs of demanding emails stored overseas.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation (WLF) late yesterday urged the U.S. Supreme Court to prevent federal officials from seizing emails stored by Microsoft in Ireland for one of its customers. In a brief filed in *United States v. Microsoft Corp.*, WLF argues that the Stored Communications Act (SCA)—a 1986 federal statute designed to protect email privacy and that authorizes law enforcement officials to gain access to private emails in limited circumstances—has no application outside of the United States.

All parties agree that the SCA does not apply extraterritorially. That limitation is unsurprising; at the time of the SCA’s adoption 30 years ago, email was in its infancy, and no one contemplated that U.S. email service providers would be preserving billions of emails and storing them at datacenters around the world. The federal government nonetheless invokes the SCA in pursuing emails stored in Ireland. It argues that its demand for the emails does not constitute extraterritorial application of the SCA because Microsoft is headquartered in the United States and thus can be required to produce the emails in this country (after retrieving them from Ireland).

WLF’s brief argues that the presumption against the extraterritorial application of U.S. laws applies in this case and should prevent the federal government from gaining access to emails stored in Ireland. (Microsoft’s policy is to store emails in its customer’s claimed country of residence, so it is likely that the customer lives in Ireland.) Federal officials claim to have reason to believe that the targeted email account is being used for illegal drug transactions. WLF responds that U.S. law enforcement needs can be met through alternative means: they can ask to be given access to the emails by Irish officials, who have pledged cooperation if U.S. officials request their assistance. WLF’s brief acknowledges that the SCA is out of date but argues that any modernization should come from Congress, not from a court acting unilaterally.

*Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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