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Supreme Court to Hear Arguments on Federal Efforts to Seize Emails Stored Overseas

(United States v. Microsoft Corp.)

“Any effort to apply American law in other countries risks creating conflicts with that country’s government. Congress, not a court, is the body that can most appropriately determine whether law-enforcement considerations outweigh the foreign-relations costs likely to be incurred as a result of demands for emails stored overseas.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Supreme Court will hear oral arguments tomorrow, February 27, at 10 a.m. in *United States v. Microsoft*, a case that will determine whether the federal government has the authority to seize emails stored overseas. WLF Chief Counsel Richard Samp, who drafted WLF’s brief in this case, will be available tomorrow afternoon to discuss what the oral arguments may have revealed about likely outcomes.

The sole issue before the Court is whether 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 any application outside of the United States. The federal government argues that its effort to gain access to emails stored in Ireland does not constitute an impermissible 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).

In its brief, WLF argued (in agreement with Microsoft) that the presumption against the extraterritorial application of U.S. laws applies in this case and that Microsoft’s ability to retrieve the requested emails from Ireland does nothing to alter that presumption. 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. WLF added that any 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.

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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