Press Release

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FOR IMMEDIATE RELEASE August 31, 2015

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WLF Asks High Court to Clarify that RICO Act Does Not Cover Overseas Conduct

(RJR Nabisco, Inc. v. The European Community)

"In an era of ever-increasing globalization, the Supreme Court's review is desperately needed to safeguard the longstanding presumption against the extraterritorial application of U.S. law."
— Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today called on the U.S. Supreme Court to hear (and ultimately reverse) a recent Second Circuit decision that further widens an existing circuit split on whether, and to what extent, the Racketeer Influenced and Corrupt Organizations Act (RICO) applies extraterritorially. In a brief filed in *RJR Nabisco, Inc. v. The European Community*, WLF argues that the decision below drastically expands the reach of RICO civil liability by reading the statute to extend to foreign racketeering allegations, foreign enterprises, and foreign injuries.

As WLF's brief demonstrates, RICO's civil provisions provide for treble damages and recovery of all costs, including attorneys' fees, to prevailing plaintiffs. As a result, civil RICO is uniquely prone to abuse, even when properly cabined to wholly domestic matters. WLF's brief contends that allowing foreign litigants to bring what are otherwise ordinary foreign civil disputes into U.S. federal courts will dramatically increase the burden on the federal courts, impose higher litigation costs on multi-national businesses, and force defendants into coercive settlements. WLF believes the Second Circuit's ruling is particularly troubling given the Supreme Court's recent *Kiobel v. Royal Dutch Petroleum Co*. decision. Because that decision foreclosed bringing certain claims under the Alien Tort Statute, activist plaintiffs have strategically pivoted to civil RICO as a potential surrogate for litigating such claims.

WLF's brief further argues that Supreme Court review will help ensure that federal courts do not erroneously adopt an interpretation of U.S. law that produces foreign policy consequences unintended by the political branches. Although the plaintiffs in this case happen to be foreign sovereigns, private plaintiffs initiate the vast majority of civil RICO litigation. If ill-considered decisions by U.S. courts blur the accepted territorial limits of U.S. law, other nations may well retaliate in kind. U.S. companies would then find themselves subject to similar actions brought by overseas plaintiffs in foreign courts.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: "Since RICO was first adopted in 1970 as a device for combating organized crime, activist attorneys have tried to transform it into a tool for attacking the overseas conduct of American corporations and for second-guessing American foreign policy. In an era of ever-increasing globalization, the Supreme Court's review is desperately needed to safeguard the longstanding presumption against the extraterritorial application of U.S. law."

WLF is a free-market, public-interest law firm and policy center that regularly litigates to defend free enterprise and the rule of law from depredations like the extraterritorial application of U.S. law.

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