Nos. 04-1244 & 04-1352

In The Supreme Court of the United States

JOSEPH SCHEIDLER, ET AL.,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICI CURIAE* OF THE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE, ET AL. IN SUPPORT OF RESPONDENTS

(List of *Amici Curiae* on Inside Cover)

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The Religious Coalition for Reproductive Choice
The American Humanist Association
Americans for Religious Liberty
Disciples for Choice
The Unitarian Universalist Association
United Church of Christ Justice and Witness Ministries

QUESTIONS PRESENTED

Amici will address the following questions:

1. Whether the Hobbs Act prohibits acts or threats of physical violence that obstruct, delay or affect interstate commerce?

2. Whether RICO authorizes the district courts to grant injunctive relief in private lawsuits?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES:

TABLE OF AUTHORITIES – Continued

STATUTES

TABLE OF AUTHORITIES – Continued

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

Amici[1] are voluntary associations of persons committed to the principle that every woman must be free to decide if and when to have children according to the dictates of her conscience and religious beliefs.[2]

The lead organization – The Religious Coalition for Reproductive Choice – founded in 1973 by clergy and laity, is a non-partisan, non-profit education and advocacy organization of national groups and caucuses from major denominations including the Episcopal Church, Presbyterian Church (USA), United Church of Christ, United Methodist Church, Unitarian Universalist Association, and Reform and Conservative Judaism. Although the membership has diverse views about abortion rights, all agree that decisions about family, including whether and when to have children, are matters of individual conscience that must be made free of coercion and violence of any kind.

Amici believe that free, peaceful and unrestricted debate on the issue of abortion is a fundamental aspect of religious and constitutional liberty. However, religious and constitutional freedoms cannot flourish in a society that permits organizations to engage in violence, threats and fear without restraint. It is important to us and to all who

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part and that no person or entity, other than the *amici curiae*, their members or counsel, made a monetary contribution to the preparation or submission of this brief. This brief is submitted with the consent of the parties, whose consent letters have been filed with the Clerk.

[2] Individual statements of the *amici curiae* are attached in the Appendix.

seek peaceful social dialogue that our activities not be tarnished by the false invocation of religious and constitutional freedom to justify violence, threats and fear in an effort to forcefully impose beliefs on others.

A nationwide injunction is particularly important where the victims – which include clergy, their families, their homes and others – are lawful individuals or businesses engaging in the free exercise of religious expression, and when law enforcement cannot or does not protect those who, like the clinics and women here are "especially vulnerable to the threat of mob violence." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 349 (1993) (O'Connor, J., dissenting).

Amici are interested in a final and prompt resolution of this case because religious organizations, their members and others who disagree with petitioners' beliefs should be permitted to seek protection from the violent behavior aimed at suppressing the free exercise of their legal, religious and constitutional freedoms. Consequently, *amici* file this brief in opposition to petitioners, urging that federal district courts should be permitted to issue injunctive relief under the Hobbs Act and RICO to prevent and restrain these continued acts of violence no matter where they may occur.

SUMMARY OF ARGUMENT

The decisions of the lower courts demonstrate that petitioners' nationwide pattern of crimes included violent assaults and physical attacks on patients, doctors, clinic staff, and police, plus destruction of medical equipment, supplies, and other property, committed for the purpose of

obtaining control over the property of women's health centers and their patients. *See National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001), *National Organization For Women, Inc. v. Scheidler*, 91 Fed.Appx. 510, 2004 WL 375995 (7th Cir. 2004).

These violent crimes have but one purpose: to hinder a woman's free choice to decide if and when to have children according to the dictates of her conscience and religious beliefs. It is not enough for petitioners and those like them to peacefully assemble and debate the social and religious issues of abortion. They act in organized groups to overwhelm local police forces, blockade the entrances to clinics, and commit criminal acts of violence on those who have different religious beliefs. *Id.*

The lower courts applied federal law to prohibit petitioners' violent efforts to impose their views on others, yet allowed petitioners to peacefully assemble, speak and pray in furtherance of their beliefs. Those courts, in our view, struck the proper balance between protecting the constitutional freedom to peacefully advocate social change while prohibiting the violent curtailing of the freedom of others to act differently and to adhere to different beliefs.

Campaigns of threats and violence against women and others who may seek or convey information about reproductive choice are not limited to health clinics. What happened to the respondents to compel them to commence the underlying class action almost twenty years ago is also compelling today. Following Congress' attempt to craft a response (the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994)) that homes in on the criminal activity at health care clinics, some protesters have altered their conduct by engaging in violent activity at places

other than clinics. The homes of clergy, private residences and other places have been reported as targets in order to circumvent injunctions and other penalties under the Freedom of Access to Clinic Entrances Act.

Clergy members, their families and others who exercise their First Amendment right to religious expression, and who seek to convey information about reproductive choice, have also fallen victim to actual and threatened force, violence and fear. Indeed, notwithstanding petitioners' contention that they abandoned their wrongful conduct after enactment of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, the trial court found that petitioners pattern of crimes had continued unabated and that petitioners continue to cross state lines to promote and carry out their crimes in new jurisdictions. The district court therefore concluded that an injunction was necessary. *See National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001); *National Organization For Women, Inc. v. Scheidler*, 91 Fed.Appx. 510, 2004 WL 375995 (7th Cir. 2004).

In crafting its injunction against petitioners, the district court was careful not to impose liability on constitutionally protected speech and other activity. The critical distinction between petitioners' constitutionally protected rights of speech, assembly and religion and their unlawful acts and threats of violence was carefully tailored in the nationwide injunction entered by the district court to implement the jury verdict. *National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687, 705 (7th Cir. 2001).

However, during the twenty years that this case has been litigated, petitioners have demonstrated that they will continue to engage in their violent actions in order to

interfere with those who have different religious beliefs and may seek or convey information about reproductive choice. They have proven that they will attempt to circumvent established law and the enactment of new laws to avoid a national ban on their violent acts.

These continued, coordinated and planned nationwide acts and threats of physical violence are why *amici* believe that injunctive relief should be available to the district courts in order to finally prevent petitioners' violent acts and their continued attempts to stifle the free exercise of religion. Petitioners' violent acts and the injunction issued by the district court are entirely supported by the Hobbs Act, 18 U.S.C. § 1951(a), and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, and the legislative history surrounding the adoption of these statutes.

ARGUMENT

I. The Hobbs Act Prohibits Petitioners' Nationwide Pattern of Violent Efforts to Impose Their Views on Others.

While the Hobbs Act is susceptible to two interpretations, the three-way reading is far more sensible.[3] Petitioners' contention that 18 U.S.C. § 1951(a) only forbids committing or threatening violence in furtherance of a plan to obstruct commerce by robbery or extortion is

[3] Respondents' interpretation of 18 U.S.C. § 1951(a) is referred to as the "three-way" interpretation, as it forbids robbery, extortion and physical violence. Petitioners' interpretation is referred to as the "two-way" interpretation, as it forbids only robbery and extortion.

contrary to the letter, intent and spirit of the Hobbs Act. Or, as Professor Craig Bradley put it so succinctly in his 1994 Supreme Court Review article, "this [two-way] interpretation makes no sense!" Craig M. Bradley, *NOW v. Scheidler: RICO Meets the First Amendment,* 1994 SUP. CT. REV. 129, 142 (1994).

As respondents proved at trial, petitioners' chosen tactic was a form of forcible invasions and blockades that petitioners called "blitzes." Abundant evidence showed that petitioners and their members regularly assaulted clinic personnel and patients: petitioners beat on their cars, hit and clawed them, choked them, threw them to the ground, shoved and elbowed them, and slammed them against buildings. *See National Organization For Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001); *National Organization For Women, Inc. v. Scheidler*, 91 Fed.Appx. 510, 2004 WL 375995 (7th Cir. 2004).

Religious organizations, their clergy and members should be free to convey information about reproductive choice without fear of violence or unlawful infringement of their free exercise of religion. Petitioners' conduct is just the sort that the Hobbs Act forbids. These violent assaults and physical attacks are indistinguishable from crimes carried out by terrorist groups with no economic motive. The confusing reading of the Hobbs Act offered by petitioners – that the statute does not forbid threats or acts of physical violence – threatens all Americans engaging in the free exercise of religious expression and legal rights.

A. The Plain Language of the Hobbs Act Prohibits Petitioners' Violent Acts.

The entire text of the Hobbs Act can only be fairly read to include forbidding robbery, extortion and physical violence. The Hobbs Act defines "robbery" and "extortion" by reference to acts involving "actual or threatened force [or] violence. . . . " *Compare* 18 U.S.C. § 1951(b)(1) *with* 18 U.S.C. § 1951(b)(2). Substantially equivalent language used in the text of subsection 1951(a) with respect to any other acts involving physical violence ("or commits or threatens *physical violence* to any person or property"), does not refer to "robbery" and "extortion," because both acts are already defined as acts involving "actual or threatened force [or] violence." *Compare* 18 U.S.C. § 1951(a) *with* 18 U.S.C. § 1951(b)(1) and 1951(b)(2).

This Court has held repeatedly that "courts must presume that a legislature says in a statute what it means and means in a statute what it says. . . . " *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). As such, the restrictive interpretation proposed by petitioners would make subsection 1951(a) superfluous. *See Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569 (1998) ("Statutory interpretations that 'render superfluous other provisions in the same enactment' are strongly disfavored.") (quoting *Freytag v. Commissioner,* 501 U.S. 868, 877 (1991)).

Likewise, this Court observed that, "[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme – because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible

with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (citing *Sorenson v. Secretary of Treasury,* 475 U.S. 851, 860 (1986)); *see also Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. 41, 54 (1987); *Weinberger v. Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609, 631-632 (1973); *Jarecki v. G.D. Searle & Co.,* 367 U.S. 303, 307-308 (1961).

The seeming ambiguity produced by the petitioners' proposed restrictive interpretation limiting the Hobbs Act to "robbery" and "extortion" when section 1951(a) is read in isolation from the definitions of "robbery" and "extortion" contained in subsection (b), disappears when subsections 1951(a) and 1951(b) are read in unison with one another, using the defined terms "robbery" and "extortion." *See Scheidler*, 396 F.3d at 815-16 (holding that "[a]t a minimum, it is hard to argue with the proposition that any reading of the Hobbs Act ought to take into account the statute as a whole. That means that the language of § 1951(a) should be understood in light of the definitions provided by § 1951(b).").

B. The Supreme Court Has Already Supported the Three-Way Interpretation of the Hobbs Act.

In 1960, the Supreme Court declared, in *Stirone v. United States,* 361 U.S. 212 (1960), that the Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress had to punish interference with interstate commerce by extortion, robbery *or physical violence*." *Id.* at 215 (emphasis added).

In 2003, in this very case, this Court reaffirmed its adherence to the broader interpretation of the Hobbs Act.

In *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393 (2003) (NOW II), this Court observed that "the words of the Hobbs Act 'do not lend themselves to restrictive interpretation' because they 'manifes[t] . . . a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery *or physical violence*.'" *Id.* at 408 (citing *U.S. v. Culbert*, 435 U.S. 371, 373 (1978) and quoting *Stirone*, 361 U.S. at 215) (emphasis added).

Moreover, notwithstanding its current position, for over thirty years the United States has also adhered to the broader interpretation of the Hobbs Act.[4] In *U.S. v. Frank*s, 511 F.2d 25 (6th Cir. 1975) and, as recently as 1999, in *U.S. v. Yankowski*, 184 F.3d 1071 (9th Cir. 1999), the United States argued that "the Hobbs Act criminalizes any act of violence to person or property that has an effect on commerce, even if the alleged violent act had no connection to any executed or planned robbery or extortion." *Yankowski*, 184 F.3d at 1072. *Accord Frank*s, 511 F.2d at 31 ("The government counters that it need neither allege

[4] While the Ninth Circuit in *U.S. v. Yankowski*, 184 F.3d 1071 (9th Cir. 1999) and the Sixth Circuit in *U.S. v. Frank*s, 511 F.2d 25 (6th Cir. 1975) concluded that the Hobbs Act applies only to "extortion" and "robbery," the United States clearly took the position in support of the broader three-way interpretation of the Hobbs Act in those cases. Such position, taken as late as 1999, seems at odds with the United States' *amicus* brief herein, particularly where it argues that "[i]n light of the text and history of the Hobbs Act, *it has long been the view of the United States* that the Hobbs Act proscribes violent acts only when linked to a planned or intended robbery or extortion." Brief for the United States as *Amicus Curiae* at 18, *Scheidler v. Nat'l Organization of Women* (Nos. 04-1244 and 04-1352). *Cf. Yankowski*, 184 F.3d at 1072 and *Franks*, 511 F.2d at 31. *See Scheidler*, 396 F.3d at 815.

nor prove extortion if it alleges and proves physical violence affecting commerce.").

C. Congress Intended that the Hobbs Act Would Forbid Petitioners' Acts of Violence.

Congress intended that the Hobbs Act would forbid threatening or committing physical violence in furtherance of a plan to "obstruct, delay or affect commerce." The Hobbs Act was first proposed during World War II, and "a major concern of Congress at that time was that interstate shipments of commodities and war material not be interfered with." Bradley, *supra*, at 143. Thus, "Nazi saboteurs who blew up interstate shipments or delayed them through bomb threats . . . would be guilty under this reading of the statute. So too would anti-abortion protestors who, with no economic motive, interfered by threats or violence with the abortion business. . . ." Bradley, *supra*, at 143-44.

If, as petitioners argue, Congress intended to limit the applicability of subsection 1951(a) only to "robbery" and "extortion," then Congress would not have used the descriptive language "or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section" at all. Indeed, "under this reading, the 'physical violence' clause would be less inclusive, and hence would add nothing, to the preceding 'robbery' and 'extortion' clauses." Bradley, *supra*, at 142-43.

Professor Bradley explains that "[o]ne who commits violence in furtherance of a plan to commit robbery or extortion has either committed, attempted, or conspired to

commit robbery or extortion and thus has violated the first clause, rendering the third clause nugatory." Bradley, *supra*, at 142-43. Had Congress intended the Hobbs Act to apply only to robbery and extortion, it could have simply declared that, whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion, or attempts or conspires so to do in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

Such restrictive language would have been free of ambiguity, would have made full use of the defined terms "extortion" and "robbery," and would have left no doubt whatsoever that Congress intended section 1951(a) to apply only to acts constituting "robbery" and "extortion." While Congress could have drafted section 1951(a) narrowly to apply only to "extortion" and "robbery," Congress purposefully inserted the language that could only apply to undefined acts of violence, other than the defined crimes of "extortion" and "robbery." *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

Petitioners' coordinated and planned nationwide acts and threats of physical violence, which stifle the free exercise of religious expression and other legal rights, is just the sort that the Hobbs Act forbids. Petitioners' violent acts are entirely supported by the letter and intent of the Hobbs Act.

From our perspective, while petitioners should be free to peacefully debate the issue of abortion, the Hobbs Act – its text, relevant Supreme Court precedent, and Congressional

intent – prohibit petitioners' violent actions as proven against them at trial.

II. RICO Authorizes District Courts To Grant Injunctive Relief In Private Lawsuits.

As explained above, petitioners' acts of violence and threats of violence violate the Hobbs Act, and thus serve as a predicate for injunctive relief under RICO. Injunctive relief for private parties under RICO is not only permitted under the plain language and structure of RICO, it is also essential to prevent attacks not only on health clinics, but on all persons and entities targeted because of their religious beliefs. Without nationwide injunctive relief under RICO, petitioners will be able to continue their violent acts simply by moving from state to state. Such injunctive relief is therefore a necessity to prevent petitioners from using violent efforts to impose their religious views on others.

A. RICO's Plain Language and Structure Authorize Injunctive Relief to Private Plaintiffs.

RICO's civil remedy provisions are contained in three subsections. 18 U.S.C. § 1964. The first, subsection (a), authorizes the district courts "to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders." It goes on to delineate a non-exclusive list of permissible forms of equitable relief.

> The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to:

> ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

Subsection (a) neither identifies nor limits the RICO plaintiffs who may receive injunctive relief, thus creating an equitable right that is coextensive with the right to sue to enforce the substantive prohibitions of section 1962 of RICO. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90 (1998).

The parties who may sue as RICO plaintiffs are identified in subsections (b) and (c) of section 1964. Section 1964(b) authorizes the government to "institute proceedings under this section," adding that the government may request preliminary injunctive relief and accept performance bonds from the defendants. Subsection (c) authorizes private persons who are injured in their "business or property by reason of a violation of section 1962" to "sue," adding that they shall recover treble damages and their costs, including reasonable attorney fees.

Subsections (b) and (c) of section 1964 do not expressly reference subsection (a). Neither subsection expressly limits the scope of subsection (a) nor expressly states that some RICO plaintiffs but not others may sue to enforce section 1964's equitable provisions. As a result, the statute authorizes private plaintiffs to sue for the equitable relief

described in section 1964(a) for the same reason that the government is so authorized: the natural reading of section 1964 as a whole is that subsection (a) applies with equal force to all of the parties identified in the subsections following it. *See Chambers Dev. Co. v. Browning-Ferris Indus.*, 590 F. Supp. 1528, 1540-41 (W.D. Pa. 1984), where the court denied defendants' motion to strike plaintiff's claim for equitable relief holding that section 1964(a) applies equally to private plaintiffs and the government.

To hold otherwise, this Court would need to amend subsection (b) by, in effect, adding the word "only" into its text, making the lead sentence read "[Only] the Attorney General may institute proceedings under this section." That concoction of exclusivity would improperly change the plain meaning of the sentence as written. *See In re Managed Care Litigation*, 298 F. Supp. 2d 1259 (S.D. Fla. 2003) (holding that injunctive relief is available to private civil RICO plaintiffs based on the plain language of the statute, finding that where the plain meaning of the statute was clear, it was neither necessary nor appropriate to consult the legislative history). Thus, under the language and structure of the statute, injunctive relief is available to respondents to prevent the further violent curtailing of their freedom to adhere to different beliefs than petitioners.

B. RICO Does Not Expressly Preclude An Award of Injunctive Relief to Private Plaintiffs.

In *Franklin v. Gwinnett County Pub. Sch.*, this Court reiterated the long-standing presumption that "all appropriate remedies" are available under a statute that provides a private right of action "unless Congress has

expressly indicated otherwise." 503 U.S. 60, 66 (1992) (emphasis added). "[A]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979).

Nothing in the language of RICO can be fairly read to prohibit federal district courts from using their historical authority to grant equitable relief to private plaintiffs when appropriate. *See Motorola Credit Corp. v. Uzan*, 202 F. Supp. 2d 239, 244 (S.D.N.Y. 2002) (concluding that RICO "nowhere expressly denies courts this [injunctive] power in private civil actions, and thus the normal presumption favoring a court's retention of all powers granted by the Judiciary Act of 1789 prevails"); *Aetna Cas. & Sur. Co. v. Liebowitz*, 570 F. Supp. 908, 910 (E.D.N.Y. 1983), *aff'd*, 730 F.2d 905 (2d Cir. 1984) (noting that there is no "clear indication that Congress intended to deprive the district court of its traditional equity jurisdiction to grant preliminary injunctive relief to a plaintiff who could show irreparable injury resulting from a defendant's alleged violation of § 1962"). That interpretation of RICO is correct. To hold otherwise would afford those victims of violence targeted for their religious beliefs no legal means of preventing similar acts of violence from occurring in the future.

Section 1964(a)'s failure to identify the parties that may seek equitable relief does not exclude any party from its scope even inferentially, let alone expressly. As noted above, subsection (b)'s authorization of governmental equitable proceedings is not exclusive on its face. And subsection (c)'s grant of a treble damage remedy to private parties is hardly an express indication that those parties

are precluded from obtaining equitable relief. Section 1964, in short, does not affect the district courts' traditional equitable powers.

This conclusion is reinforced by Congress' directive that RICO should be "liberally construed to effectuate its remedial purpose." Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970). As this Court has stressed, "if Congress' liberal-construction mandate is to be applied anywhere, it is in section 1964, where RICO's remedial purposes are most evident." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 n.10 (1985). Any ambiguity in the text is therefore clarified by the Congressional mandate to liberally construe section 1964 to prevent and restrain RICO violations. Injunctive relief was properly granted to respondents so as to "make good the wrong done," and enjoin petitioners from further attempts to use violence to impose their views upon others. *See Franklin*, 503 U.S. at 66 and quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946).

C. Analysis of the Clayton Act's Equitable Relief Provisions Does Not Support a Different Result.

Comparing the similar language of RICO section 1964(c)[5] and section 4 of the Clayton Act,[6] does not compel

[5] "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c), as enacted (1970).

[6] "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him

(Continued on following page)

a finding that private plaintiffs are precluded from seeking equitable relief under section 1964(c). There is no question but that RICO section 1964(c), by itself, does not address the question of whether equitable relief may be awarded to private plaintiffs. But, when subsection (c) is read in conjunction with section 1964(a), those two linked provisions authorize private plaintiffs to sue for injunctive relief. The Clayton Act reaches the same result by a different route.

Although section 4 of the Clayton Act does not permit private equitable relief, another section of the Act, section 16, does. At the time of RICO's enactment, section 16 provided that:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws. . . .

15 U.S.C. § 26 (1970). Similarly, the government is authorized to seek equitable relief in another self-contained Clayton Act provision, section 15, which provided at the time of RICO's enactment that:

> The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

15 U.S.C. § 25 (1970).

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sustained, and the cost of the suit, including a reasonable attorney's fee." 15 U.S.C. § 15, as enacted (1970).

In sum, the Clayton Act authorizes governmental and private equitable relief in two separate statutory provisions, section 15 and section 16, with each separate section granting equitable rights and expressly identifying the parties which may enforce those rights. RICO authorizes equitable relief in one subsection of section 1964, subsection (a), and then identifies the parties who may sue for that relief in the following two subsections, (b) and (c). While structurally different, both enactments allow all plaintiffs, private and governmental, to sue for equitable relief.

D. Public Policy Supports the Seventh Circuit's Holding that RICO Authorizes Injunctive Relief to Private Parties.

Should the district court's nationwide injunction be overturned, the inevitable result will be a multiplicity of costly, inefficient lawsuits, jurisdiction by jurisdiction, with repetitive challenges to the same illegal conduct by numerous plaintiffs against the same defendants. Despite the enactment of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, without a nationwide injunction petitioners would legally be able to cross state lines to avoid an injunction in one jurisdiction while continuing to engage in the identical illegal conduct at different clinics or places of religious worship in different jurisdictions. *See National Organization for Women, Inc. v. Scheidler*, No. 86-C-7888, 1999 WL 571010, at *14-15 (N.D. Ill. Jul. 28, 1999) (discussing how petitioners are avoiding injunctions under the Freedom of Access to Clinic Entrances Act). Further, there is currently no protection against illegal nationwide plans of violence for those who have been targeted because of their religious beliefs at

places other than health clinics or places of religious worship. A nationwide injunction is therefore necessary to effectively deter such plans to incite violence that infringe upon civil and religious liberties.

CONCLUSION

For the foregoing reasons, the judgment of the Seventh Circuit should be affirmed.

Respectfully submitted,

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APPENDIX A

The Religious Coalition for Reproductive Choice

The Religious Coalition for Reproductive Choice ("RCRC") is the national coalition of religious and religiously affiliated organizations with official statements and positions in support of reproductive choice as an aspect of religious freedom.

RCRC was founded as a project of the United Methodist Church Board of Church and Society in 1973 to bring religious organizations together to demonstrate religious support for the new U.S. Supreme Court decision *Roe v. Wade*. Originally named the Religious Coalition for Abortion Rights ("RCAR"), RCAR expanded its mission in 1993 to include family planning, sexuality education, and health and human services and accordingly changed its name to the Religious Coalition for Reproductive Choice. RCRC is an educational and advocacy organization, incorporated as Internal Revenue Code sections 501(c)3 and 501(c)4 organizations and headquartered in Washington, D.C. Membership is by application only, and organizations meeting criteria for membership are admitted by vote of RCRC's governing body. Member organizations are listed below. Together these organizations have more than 20 million members in the United States. RCRC also includes affiliates in 25 states, a national Clergy for Choice Network with about 2,000 members of all faiths, chapters on campuses and seminaries, and the National Black Church Initiative, guided by an advisory group of prominent African American religious leaders.

RCRC, its member organizations, members of its clergy network, and affiliated congregations and seminaries have been subjected to violence, threats and fear because of

their religiously grounded beliefs in favor of reproductive choice. Our interest in this case is to protect clergy, congregations, and seminaries, as well as individual women, from unlawful harassment, violent behavior and fear intended to stifle their free exercise of religion. We believe that clergy must be free to counsel women facing problem pregnancies without fear of intimidation. Clergy and lay religious leaders must also be free to speak about reproductive choice, including abortion, from the pulpit without fear of harassment. Without federal protection, clergy members and their families face situations like the one documented below, in an essay by Douglas Buchanan of Wooster, Ohio, whose father was a Presbyterian minister in a congregation that supported a local Planned Parenthood clinic:

> I didn't know who the angry people were who stood outside our church that Sunday, yelling and beating on the glass doors. My parents whisked me away before I could read the signs they held or see the pictures that emblazoned on them, but not before I could feel the wave of hatred seep through the cracks in the doorway . . .
>
> A few years later, they would jump out from under tables at an award ceremony for my father, a Presbyterian minister – a ceremony that also commemorated *Roe v. Wade* – and started yelling. . . .
>
> But now, that Sunday, they knew where we lived, and they waited outside our house, pacing and stalking back and forth on the sidewalk with their signs and hateful presence, walking around the house, looking in the windows and banging on the door. Their so-called 'Christian Love' seemed to extend no further than those that

> thought like they did and agreed with their ideals. Anyone else, even a family of a minister, even two small brothers, eight and three years old, were viable targets for their hate.
>
> My parents called the police, who said there was nothing we could do as long as they stayed on the sidewalk. I remember huddling behind a chair in the corner of a room, pocketknife at the ready, determined to defend my home if they burst in.

(Faith & Choices, Winter 2004, Religious Coalition for Reproductive Choice).

We believe that a nationwide injunction is particularly important where the victims – which include clergy, their families, their homes and other people and places – are lawful individuals or businesses engaging in the free exercise of religious expression. We seek a final and prompt decision of this case because the religious organizations that are associated with RCRC should be permitted to seek protection from the violent behavior aimed at suppressing the free exercise of their legal, religious and constitutional freedoms.

Member Organizations of RCRC (as of October 2005)

Episcopal Church in the United States of America
Episcopal Urban Caucus
Episcopal Women's Caucus
Presbyterian Church (USA) Washington Office
Presbyterian Church (USA) Women's Ministries
Presbyterians Affirming Reproductive Options
United Church of Christ Justice and Witness Ministries
General Board of Church and Society, United Methodist Church

General Board of Global Ministries, Women's Division, United Methodist Church
Catholics for a Free Choice
Church of the Brethren Women's Caucus
Disciples for Choice
Lutheran Women's Caucus
Methodist Federation for Social Action
YWCA of the USA
Rabbinical Assembly (Conservative Judaism)
United Synagogue of Conservative Judaism
Women's League for Conservative Judaism
Society for Humanistic Judaism
Jewish Reconstructionist Federation
Central Conference of American Rabbis (Reform Judaism)
Women's Rabbinic Network of the Central Conference of American Rabbis
North American Federation of Temple Youth
Union for Reform Judaism
Women of Reform Judaism, The Federation of Temple Sisterhoods
American Jewish Committee
American Jewish Congress
Anti-Defamation League of B'nai B'rith
Hadassah, WZOA
Jewish Women International
NA'AMAT USA
National Council of Jewish Women
Women's American ORT
American Humanist Association
American Ethical Union
National Service Conference of the American Ethical Union
Unitarian Universalist Association of Congregations
Unitarian Universalist Women's Federation
Young Religious Unitarian Universalists

American Humanist Association
The American Humanist Association ("AHA") is the oldest and largest humanist organization in the nation, dedicated to ensuring a voice for those with a positive, nontheistic outlook. The mission of the AHA is to promote the spread of humanism, raise public awareness and acceptance of humanism, and encourage the continued refinement of the humanist philosophy. One of humanism's core values is to ensure reproductive freedom. The AHA has been working to advance reproductive rights for over forty years.

Americans for Religious Liberty
Americans for Religious Liberty ("ARL") is an ecumenical nationwide nonprofit educational organization, founded in 1982, dedicated to defending and advancing freedom of conscience, religious freedom, and church-state separation. ARL has been an *amicus* in a number of cases before the Supreme Court, including cases on reproductive rights. ARL's consistent position has been that the First Amendment and other sections of the Constitution protect the right of every woman to follow her own conscience in dealing with a problem pregnancy.

Disciples for Choice
Disciples for Choice is an organization of members of the Christian Church (Disciples of Christ) and friends of the cause of reproductive choice. The stance of responsible freedom is supported historically by General Assembly Resolution #24 (San Antonio, 1975), which reads in part: "Therefore be it resolved that the General Assembly . . . [r]espect[s] differences in religious belief concerning abortion and oppose[s] in accord with the principle of religious liberty, any attempt to legislate a specific religious opinion or belief concerning abortion upon all Americans. . . . "

Unitarian Universalist Association
The Unitarian Universalist Association (the "Association") is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and personal religious freedom. Most relevant to the case at bar are the Association's resolutions specifically supporting the fundamental right of individual choice in reproductive matters and the right of a female to have an abortion at her own request upon medical/social consultation of her own choosing.

United Church of Christ Justice and Witness Ministries