



January 12, 2005

## **SUPREME COURT AGREES TO HEAR MAJOR BUSINESS CIVIL LIBERTIES CASE**

*(Arthur Andersen LLP v. United States)*

The United States Supreme Court agreed to hear a challenge to a lower court ruling that would allow federal prosecutors to criminalize legitimate business housekeeping activities without the necessity of having to show any criminal intent. In *Arthur Andersen LLP v. United States*, the U.S. Court of Appeals for the Fifth Circuit upheld the high profile criminal conviction of the accounting firm for willful obstruction of justice simply because Andersen supervisors reminded company employees to follow the company's document retention policy prior to the initiation of an investigation of Andersen by the Securities and Exchange Commission (SEC) into the Enron matter.

In a brief filed on behalf of itself and the U.S. Chamber of Commerce in December 2004, WLF argued that the lower court ruling is not only inconsistent with the rulings of other circuit courts, but also could subject thousands of businesses to criminal prosecution for failing to retain documents that may be subject to any future government agency investigation. This uncertainty in the law is contrary to well established legal principles such as the Rule of Lenity that fair notice be given in proscribing criminal conduct, and that criminal intent or mens rea must be demonstrated. WLF also argued that enforcing vague criminal statutes would cause damage to the economy, employees, and shareholders of unfairly targeted companies.

"The Supreme Court's decision to hear this important case is welcome news and should send a signal to federal prosecutors to be careful with leveling criminal charges against companies for honest business practices," said Paul D. Kamenar, WLF's Senior Executive Counsel.

WLF's brief was filed with the pro bono assistance of Carter Phillips, Virginia A. Seitz, and Eamon P. Joyce of Sidley Austin Brown & Wood LLP in Washington, D.C. The Court is expected to hear the case in April, with a decision by the end of June.

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