



For Immediate Release

February 23, 2005

**WLF REPRESENTS CHAMBER OF COMMERCE
BEFORE U.S. SUPREME COURT IN
BUSINESS CIVIL LIBERTIES CASE**

(Arthur Andersen LLP v. United States)

The Washington Legal Foundation (WLF) filed its brief this week with the U.S. Supreme Court urging it to reverse a court of appeals decision that would 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 legitimate 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, 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.

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 Supreme Court will hear the case on April 27 and issue a decision by June.

* * *

For information, contact Paul Kamenar, WLF Senior Executive Counsel, at 202-588-0302. WLF's brief is posted on WLF's website at www.wlf.org.