

**FOR IMMEDIATE RELEASE****April 5, 2006**

WLF SUPPORTS EASING SARBANES-OXLEY REQUIREMENTS FOR SMALLER PUBLIC COMPANIES

The Washington Legal Foundation (WLF) filed comments this week as part of its Investor Protection Program with the Advisory Committee on Smaller Public Companies to the U.S. Securities and Exchange Commission (SEC). The Committee recently released a final draft report recommending that the SEC exempt a category of smaller public companies from some of the burdensome and costly reporting requirements of Section 404 of the controversial Sarbanes-Oxley (SOX) legislation. SOX was originally intended to require more accurate financial reporting to the SEC, but is being administered unfairly, particularly for smaller companies.

WLF supported the Committee's Recommendation establishing a scaled or proportional securities regulation for smaller public companies, and the corresponding relief under SOX as recommended, including allowing smaller public companies to follow the financial statements rules now applicable for small business issuers. Under the proposed definition of smaller public companies, the Committee divides smaller companies into two sub-categories, "microcap" and "smallcap" companies. Currently, companies whose common stock fit the category of "microcap" have an equity capitalization below approximately \$128 million. Those fitting the "smallcap" category have an equity capitalization between \$128 million and \$787 million.

While WLF supported the exemption, it also encouraged the Committee to consider the size of revenues inasmuch as many small companies, such as those in the biotech field, could have capitalization of \$800 million (and thus, not be considered a smallcap under the proposed definition), and yet have little or no revenues.

WLF also reiterated a common complaint against SOX by investors and smaller companies alike, that huge compliance costs are actually hurting both investors and killing a generation of smaller start-up companies. As one investor aptly put it, "I have seen small companies in which I am a stockholder spend *ridiculous* amounts of my money trying to comply with legislation that is total overkill. The managements of small companies are wasting way too much of their time trying to comply with SOX [which] would be much better spent running their businesses." The SEC is expected to act on these recommendations and issue proposed regulations later this year.

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For further information, contact Paul Kamenar, WLF's Senior Executive Counsel, at 202-588-0302. A copy of WLF's comments are available on its website at www.wlf.org under its Investor Protection Program.