

**FOR IMMEDIATE RELEASE****May 5, 2006**

COURT URGED TO UPHOLD RIGHT TO SPEAK ON ISSUES OF PUBLIC IMPORTANCE

(Doe I v. Wal-Mart Stores, Inc.)

The Washington Legal Foundation (WLF) today urged a U.S. District Court in Los Angeles to uphold the First Amendment right of businesses to speak freely on issues of public importance.

In a brief filed in *Doe I v. Wal-Mart Stores, Inc.*, WLF argued that corporations should be allowed to speak freely about their overseas labor practices without the threat of lawsuits by activist groups who object to such speech. WLF argued that speech on issues of public importance is entitled to full First Amendment protection regardless whether it is uttered by an individual or by a corporation that offers products for sale.

The right of businesses to address their overseas practices has been a hotly contested issue ever since the California Supreme Court ruled in *Kasky v. Nike, Inc.* that businesses are entitled to *no* First Amendment protection for such statements if plaintiffs can convince a jury that the statements are false. The U.S. Supreme Court declined to review the *Kasky* decision, and apparel manufacturer Nike (which had been sued for comments about its overseas labor practices) was later forced to settle the case rather than incur the substantial costs of defending itself in court. *Kasky* has spawned numerous copycat suits under California's unfair competition law (UCL), including this one against Wal-Mart.

"Unless courts are willing to dismiss suits of this sort, there is substantial danger that truthful speech will be chilled," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Speech on matters of public concern needs breathing space -- potentially incorporating certain false or misleading speech -- in order to survive," Samp said.

The case was filed by individuals who are employed in California by Wal-Mart's competitors. They contend that Wal-Mart obtains an unfair advantage over its competitors when it buys goods manufactured overseas, allegedly under sweat shop conditions, and then maintains goodwill in California by lying to consumers about these overseas labor practices. The plaintiffs contend that their employers have been forced to lower their wages in order to meet Wal-Mart's unfairly low prices. They seek an injunction that would prohibit Wal-Mart from continuing to make false claims about those labor practices.

In its brief urging dismissal of the claims, WLF argued that any effort to obtain a prior restraint against Wal-Mart's speech runs afoul of the First Amendment. WLF argued that prior restraints against fully protected speech are virtually never permitted and are generally limited to national security cases. WLF argued that even if the plaintiffs were correct that Wal-Mart's defense of its overseas business practices should be deemed "commercial speech," that speech is still entitled to full First Amendment protection when (as here) it relates to a matter of considerable public interest and does not explicitly encourage a commercial transaction. WLF argued that the appropriate response by those who believe that Wal-Mart's speech has been false is to engage in counter-speech of their own, not to attempt to silence Wal-Mart.

WLF also urged the court to dismiss claims raised against Wal-Mart by several overseas workers under the Alien Tort Statute (ATS). The plaintiffs allege that the labor practices of Wal-Mart's suppliers amount to slavery and forced labor, in violation of international law. WLF argued that the ATS does not recognize such claims when they involve private actors, such as Wal-Mart, who are not alleged to have acted under the authority of a country's laws. WLF also argued that the plaintiffs at most have alleged that Wal-Mart has aided and abetted others (*e.g.*, its suppliers) to violate international law, and that the ATS does not encompass claims that a defendant is guilty of aiding and abetting others' violations of the law.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States, including many in California. It devotes a significant portion of its resources to protecting the speech rights of the business community.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.